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Final

STATE OF MINNESOTA

POLLUTION CONTROL AGENCY

In the Matter of the Proposed Repeal of Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3; and, in Substitution Thereof, the Proposed Adoption of 6 MCAR §§4.4001 - 4.4021 Relating to Permits, 6 MCAR §§4.4101 - 4.4111 Relating to National Discharge Elimination System Permits, 6 MCAR §§4.4201 - 4.4224 Relating to Hazardous Waste Facility Permits, and 6 MCAR §§4.4301 - 4.4306 Relating to Air Emission Facility Permits; and the Proposed Amendments to Minn. Rule APC 19, Renumbered as 6 MCAR §§4.4311 - 4.4321, Indirect Source Permits

Renumbered as MN Rules 7001

STATEMENT OF NEED AND REASONABLENESS

MINNESOTA POLLUTION
CONTROL AGENCY
1935 West County Road B2
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December 15, 1983

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## I. INTRODUCTION

Since its creation in 1967, the Minnesota Pollution Control Agency (Agency) has adopted a number of different rules which set forth the procedures for the issuance of permits to sources of air, water and land pollution. The existing permit rules are as follows:

| | |
|---|---|
| Minn. Rule MPCA 5 | Permits |
| Minn. Rule APC 3 | Permits (Air Quality) |
| Minn. Rule APC 19 | Permits for Indirect Sources |
| Minn. Rule WPC 4 | Regulation Relating to Storage or Keeping of Oil and Other Liquid Substances Capable of Polluting Waters of the State |
| Minn. Rule WPC 36 | Regulation for Administration of the National Pollutant Discharge Elimination System (NPDES) and State Disposal System Permit Programs |
| 6 MCAR §4.8051 | Rules for the Control of Pollution from Animal Feedlots |
| Minn. Rule SW 5 | Plan Approval and Permit Issuance, Denial and Revocation (Solid Waste) |
| 6 MCAR §4.6011 | Exemptions for Solid Waste Disposal Facilities Located in Sparsely Populated Areas and County Solid Waste Management Plans |
| 6 MCAR §4.6102 | Permit and Letter of Approval Requirements (Sewage Sludge Disposal) |
| 6 MCAR §4.9006 | Hazardous Waste Facility Permit Program |
| 6 MCAR §4.9007 | Contents of Hazardous Waste Facility Permit Applications |

Although the first of these rules, Minn. Rule MPCA 5, was intended to create a procedure applicable to all Agency permits,

the other permitting rules incorporate their own procedures, which were developed separately as a part of the particular program being administered by the Agency. As a result, there is no "standard" Agency permitting procedure.

The Agency believes that it would be desirable to establish a standard permitting procedure so that the public may more easily understand the Agency's manner of processing permit applications. The Agency also believes that it would be helpful to the public to have Agency rules relating to permits codified as an easily identifiable group so that permitting procedures for all kinds of Agency programs can be easily found without searching through all of the Agency's substantive rules.

The Agency has reviewed the current permitting rules to see whether it is feasible to create a standard permitting procedure for the Agency. The Agency believes that it is feasible to create such a procedure so long as the needs of individual programs are fulfilled through supplemental rules. Consequently the Agency is proposing a set of rules (6 MCAR §§4.4001 - 4.4021, entitled "Permits") to set forth the standard permitting procedure and four sets of supplemental rules which are uniquely applicable to certain Agency programs:

1. 6 MCAR §§4.4101 - 4.4111, National Pollutant Discharge Elimination System permits.
2. 6 MCAR §§4.4201 - 4.4224, Hazardous waste facility permits.

3. 6 MCAR §§4.4301 - 4.4305, Air emission facility permits.
4. Amendments to Minn. Rule APC 19, renumbered as 6 MCAR §§4.4311 - 4.4321, Indirect source permits.

The nature of all five sets of rules is briefly discussed below.

A. Description of 6 MCAR §§4.4001 - 4.4021, Permits.

This set of rules sets forth the "standard" permitting procedure for issuance, modification, revocation and reissuance, reissuance, and revocation without reissuance of permits. It applies to ten different types of Agency permits: 1) solid waste disposal permits, 2) hazardous waste facility permits, 3) sewage sludge landspreading permits, 4) letters of approval for sewage sludge landspreading sites, 5) disposal system construction permits (including sewer extension permits), 6) National Pollutant Discharge Elimination System Permits, 7) feedlot permits, 8) liquid storage permits, 9) air emission facility permits, and 10) indirect source permits. The rule does not create the requirement to obtain a permit. The requirement to obtain a permit will in all cases be found either in a statute or in another rule.

For some of the permits listed above, portions of the rule are specifically declared to be inapplicable. However, for most permits the rules provide the following procedures:

1. The applicant submits a written application containing specified information.
2. The Director of the Agency reviews the permit application for completeness. No further processing of the permit

application takes place until the Director finds that the application is complete.

3. The Director makes a preliminary determination as to whether the permit should be issued or denied. The Director prepares a draft permit. For certain facilities, the Director also prepares a fact sheet summarizing the basis for the draft permit and its conditions.

4. The Director prepares and distributes a public notice of the permit application and the Director's preliminary determination. The notice establishes a period during which any person, including the applicant, may submit comments on the draft permit or request a contested case hearing or public informational hearing.

5. If a contested case hearing or public meeting request is granted, the Agency holds the hearing or meeting.

6. The Agency makes its final decision.

The rules set forth some of the conditions which permits must contain. The rules also set forth the justifications for the Director to commence proceedings to modify a permit, revoke and reissue a permit, or revoke a permit without reissuance.

B. Description of 6 MCAR §§4.4101 - 4.4111, National Pollutant Discharge Elimination System Permits.

The set of rules relating to National Pollutant Discharge Elimination System (NPDES) permits supplements 6 MCAR §§4.4001 -

4.4021. It adds requirements which enable the Agency to issue NPDES permits in compliance with the Clean Water Act, 33 U.S.C. §§1251 et seq. and the regulations adopted by the U. S. Environmental Protection Agency (EPA).

C. Description of 6 MCAR §4.4201 - 4.4224, Hazardous Waste Facility Permits.

This set of rules also supplements 6 MCAR §§4.4001 - 4.4021. It adds requirements which will enable the Agency to issue hazardous waste facility permits in accordance with the Resource Conservation Recovery Act, 42 U.S.C. §§6901 et seq. and the regulations adopted by EPA. The Agency's efforts to obtain interim authorization to administer the federal hazardous waste permitting program in Minnesota are more fully discussed in the Statement of Need at pages 10-12.

D. Description of 6 MCAR §§4.4301 - 4.4305, Air Emission Facility and Air Pollution Control Equipment Permits.

This set of rules preserves some of the requirements applicable to air pollution sources set forth in existing Minn. Rule APC 3 and amends or adds other requirements. It is also supplementary to 6 MCAR §§4.4001 - 4.4021.

E. Description of Amendments to Minn. Rule APC 19, Renumbered as 6 MCAR §§4.4311 - 4.4321, Indirect Source Permits.

This set of rules is being amended to delete the permit issuance procedures which it contains. It is also being amended to clarify portions of the existing rule. It is also supplementary to 6 MCAR §§4.4001 - 4.4021.

## II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The statutory authority of the Agency is set forth generally in Minn. Stat. chapters 115 and 116. The Agency's authority to adopt rules setting forth permitting procedures and requirements is found in Minn. Stat. §115.03, subd. 1(e) (1982) and Minn. Stat. §116.07, subd. 4 (1982).

Minn. Stat. §115.03, subd. 1(e) (1982) grants the Agency the following powers and duties:

> To adopt, issue, reissue, modify, deny, or revoke, enter into or enforce reasonable orders, <u>permits</u>, variances, standards, <u>regulations</u>, schedules of compliance, and stipulation agreements, under such conditions as it may prescribe, in order to prevent, control or abate water pollution, or for the installation or operation of disposal systems or parts thereof, or for other equipment and facilities.

(Emphasis supplied.) Therefore the Agency has adequate statutory authority to issue permits relating to sources of water pollution and to adopt rules applicable to permit issuance.

Minn. Stat. §116.07, subd. 4 (1982) grants the Agency broad authority to "adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws of 1969, Chapter 1046, for the prevention, abatement, or control of air pollution." The same authority to adopt, amend and rescind rules is granted to the Agency with respect to the "collection, transportation, storage, processing and disposal of solid waste" and with respect to the "management, identification, labeling, classification, storage, collection, treatment,

transportation, processing and disposal of hazardous waste and location of hazardous waste facilities." The Agency's authority to issue permits for sources of air pollution and to solid and hazardous waste facilities is described in Minn. Stat. §116.07, subds. 4a and 4b (1982). The Agency has adequate statutory authority to issue permits to these types of facilities and to prescribe by rule permitting procedures and requirements.

## III. STATEMENT OF NEED

The discussion below addresses the need for each set of rules which the Agency proposes to adopt, amend or repeal.

### A. Need for 6 MCAR §§4.4001 - 4.4021, Permits.

As previously discussed at page 2, the Agency believes that it is desirable to have a standard permitting procedure to aid the public in understanding the Agency's manner of processing permit applications. The Agency also believes that it is desirable to codify its permitting rules as an easily identifiable group. Since the Agency does not now have a standard procedure and since the current permitting rules are scattered throughout other Agency rules, there is a need to adopt new rules to accomplish this purpose.

### B. Need for 6 MCAR §§4.4101 - 4.4111, National Pollutant Discharge Elimination System Permits.

The NPDES permit rules are proposed, along with 6 MCAR §§4.4001 - 4.4021, to replace the existing Minn. Rule WPC 36,

"Regulation for Administration of the National Pollutant Discharge Elimination System (NPDES) and State Disposal System Permit Program." It should be noted that the issuance of state disposal system permits, which are required by Minn. Stat. §115.07 (1982), is covered entirely by 6 MCAR §§4.4001 - 4.4021 and is therefore not a part of the newly proposed 6 MCAR §§4.4101 - 4.4111.

To understand the need for the proposed NPDES permit rule it is useful to know the history of the NPDES program.

In 1972, the United States Congress adopted Amendments to the Federal Water Pollution Control Act (P.L. 92-500) which established the NPDES permit program for the purpose of regulating the discharge of pollutants into the waters of the United States. The program was to be administered on the federal level by the EPA. The amendments established national goals for the improvement of water quality and also recognized the need for achieving existing and future state goals for the improvement of water quality. The issuance of NPDES permits establishing discharge limitations is the means of reaching these goals.

Although the NPDES program is a federal program, Congress specifically provided for the delegation of the administration of the program to the states. The State of Minnesota took the necessary actions to qualify for delegation of administration of the program. One of these actions was to adopt Minn. Rule WPC 36. The State requested authority to administer the NPDES program and

was granted this authority on June 30, 1974. Since that time the Agency has issued NPDES permits pursuant to that rule.

In 1977, Congress adopted the Clean Water Act, 33 U.S. §§1251 et seq., which amended P.L. 92-500. The Act required some changes to be made to the NPDES permit program, both on the federal and state level where administration of the program had been delegated.

EPA, under Congressional mandate to develop rules for a new permitting program relating to hazardous waste facilities, undertook a major effort to consolidate its rules under which it administered several of its permitting programs. As a part of that effort, EPA updated its rules relating to the NPDES program to conform to the new requirements of the Clean Water Act. The results of this effort was the promulgation on May 19, 1980, of 40 C.F.R. Parts 122 and 124, entitled "EPA Administered Permit Programs: the National Pollutant Discharge Elimination System; the Hazardous Waste Permit Program; and the Underground Injection Control Program" and "Procedures for Decisionmaking." These rules are commonly referred to as the "Consolidated Permit Regulations." They provided uniform permitting procedures for five programs administered by EPA.

More recently, EPA revised the format of the Consolidated Permit Regulations, deconsolidating 40 C.F.R. Part 122 (permit requirements) and Part 123 (state program requirements). The

revised rules were published at 48 Fed. Reg. 14146 (April 1, 1983).

Under EPA's regulations set forth in 40 C.F.R. Part 123 (48 Fed. Reg. 14178 - 14189), in order for a state to maintain its authority for administering the NPDES program, the state's permitting program must include the same requirements as those imposed by EPA in its rules.

In developing the standard permitting procedure of 6 MCAR §§4.4001 - 4.4021, the Agency incorporated many of the procedures and requirements contained in EPA's regulations. However, the Agency tried to keep 6 MCAR §§4.4001 - 4.4021 as streamlined as possible and as general as possible so that those rules could apply both to permits issued pursuant to federal law and to permits issued purely under state law. The need for the adoption of 6 MCAR §§4.4101 - 4.4111 arises from the need to supplement the standard permitting rules so that federal and state requirements specifically relating to NPDES permits are included in Minnesota's NPDES program.

C. Need for 6 MCAR §§4.4201 - 4.4224, Hazardous Waste Facility Permits.

The hazardous waste facility permit rules are proposed, along with 6 MCAR §§4.4001 - 4.4021, to replace existing 6 MCAR §§4.9006 and 4.9007, "Hazardous waste facility permit program" and "Contents of hazardous waste facility permit applications."

The existing hazardous waste facility permit rules were

adopted pursuant to Minn. Stat. §116.07, subds. 4 and 4a (1982), which allow the Agency to issue permits to hazardous waste facilities and to adopt rules concerning hazardous waste facilities. Since the adoption of those rules, EPA has adopted comprehensive rules relating to the permitting of hazardous waste facilities. These rules are set forth in 40 C.F.R. Parts 270 and 124 (48 Fed. Reg. 14146 et seq.)

EPA is authorized under the Resource Conservation Recovery Act, 42 U.S.C. §§6901 et seq. to delegate its permitting program to a state if the state establishes its own hazardous waste facility permit program and that program is equivalent to (at least as stringent as) EPA's program. The Agency desires to obtain delegation from EPA to administer the hazardous waste facility permit program in Minnesota. In order to obtain this delegation the Agency needs to adopt 6 MCAR §§4.4201 - 4.4224 so that the Agency's program will contain the same requirements as those imposed by the EPA regulations.

6 MCAR §§4.4201 - 4.4224 are necessary for the further reason that the standard permitting rules, 6 MCAR §§4.4001 - 4.4021, do not contain all of the essential requirements of the existing hazardous waste facility permitting rules. These rules are needed to identify who must obtain a permit and to add application requirements, terms and conditions which are specific

to hazardous waste facility permits.

D. Need for 6 MCAR §§4.4301 - 4.4305, Air Emission Facility Permits.

As in the case of the NPDES and hazardous waste facility programs, the need to adopt 6 MCAR §§4.4301 - 4.4305 arises from the need to supplement the standard permitting rules to address the needs of the Agency in permitting sources of air pollution. The rules as proposed: 1) specify the persons who do and do not need to obtain a permit, 2) enable the Agency to obtain the information it needs to evaluate a permit application, and 3) adds permit conditions which are appropriate to sources of air pollution. All of these provisions are needed to make the permitting procedures for air pollution sources clear to regulated parties and to the public.

E. Need for Amendments to Minn. Rule APC 19, Renumbered as 6 MCAR §§4.4311 - 4.4321, Indirect Source Permits.

The amendments to Minn. Rule APC 19 are proposed as a part of the Agency's effort to make the standard permitting procedure applicable to as many of its permitting programs as possible. Minn. Rule APC 19 contains a permit procedure as well as other requirements. The Agency is not proposing to make any substantive changes to the current Minn. Rule APC 19 or the indirect source permitting program administered by the Agency.

The amendments to Minn. Rule APC 19 are needed to conform the rule to the format established in 6 MCAR §§4.4001 - 4.4021 and

to eliminate the procedural language of the present Minn. Rule APC 19, which would now be redundant, and in some cases slightly inconsistent with, the standard permitting procedure. The Agency is also taking the opportunity to amend the rule to clarify portions of it for the purpose of making it more easily understandable to the public.

F. Need for Repeal of Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3.

The Agency's creation of a standard permitting procedure could have been accomplished by amending Minn. Rule MPCA 5, and all of the proposed supplements to the rule could have been accomplished by amending Minn. Rule WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3. However, due to the desire of the Agency to create a uniform format for all of these rules, it was much easier in most cases to draft the new version of the rules "from scratch," incorporating the language of the older rules where desirable. The Agency's proposal to adopt new rules to accomplish the purposes previously described creates the need to repeal Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3.

## IV. STATEMENT OF REASONABLENESS

The discussion below addresses the reasonableness of the provisions of each set of rules which the Agency proposes to adopt, amend or repeal.

A. Reasonableness of 6 MCAR §§4.4001 - 4.4021, Permits.

The proposed rules 6 MCAR §§4.4001 - 4.4021 establish a permitting procedure which is logical, fair, and gives the public and the applicant an adequate opportunity to comment on the permit. The rules provide an opportunity for the holding of a contested case hearing or public informational meeting. They set forth reasonable conditions to be included in the permit.

The rules do not create a procedure which is different in any fundamental way from the procedure currently being followed by the Agency under its existing rules. The basic premises of the proposed procedure have always been followed by the Agency in issuing permits for major facilities of all types. Adoption of the rules will therefore not create any unreasonable inconvenience to persons who have been familiar with the Agency's previous permitting procedures.

The rules are consistent with the procedures followed by the EPA pursuant to its permitting regulations (48 Fed. Reg. 14146 et seq.) It is reasonable to make the rules consistent with EPA's rules because this will aid the Agency in obtaining delegation of the hazardous waste facility permitting program pursuant to RCRA and in maintaining its control over the NPDES program.

In many respects, the procedures of 6 MCAR §§4.4001 - 4.4021 are identical to those set forth in EPA's regulations 40 C.F.R. Parts 122, 270, and 124 (48 Fed. Reg. 14146 et seq.). When EPA

published the version of its regulations known as the Consolidated Permit Regulations, it also published a preamble which explains the basis of many of the requirements. The preamble begins at 45 Fed. Reg. 33291 (May 19, 1980). To the extent that the discussion therein supports the reasonableness of 6 MCAR §§4.4001 - 4.4021, it is hereby incorporated herein by reference.

It is also reasonable to make Agency permitting procedures consistent for all Agency permits because consistency will help the public to understand the process for obtaining permits.

The following discussion addresses the reasonableness of the individual provisions of the rules.

6 MCAR §4.4001, Definitions.

Section A. of this rule incorporates by reference a number of definitions contained in 6 MCAR §4.3002, which is one of the Agency's rules of procedure. Adoption of existing definitions by reference is reasonable because it promotes consistency between Agency rules governing the administration of its programs.

Section B. of the rule contains three additional definitions.

"Draft permit" is defined for the purpose of making it clear that if the Director's preliminary determination on a permit application is to deny, to refuse to reissue, or to revoke a permit, the public is to be given notice of that preliminary determination in the same manner as if a permit were proposed to be issued, reissued, modified, or revoked and reissued. It is reasonable to define this term because the definition helps the

public to understand the public notice requirements.

"Permit" is defined to clarify the fact that the rules are intended to apply only to permits and not to orders, variances, stipulation agreements or certifications issued by the Agency. It is reasonable to define this term to clarify this point.

"General permit" is defined to clarify that this term applies only to those permits issued under 6 MCAR §4.4021 to a category of permittees whose operations, emissions, activities, discharges, or facilities are the same or substantially similar. This is a new term for the Agency, and thus it is reasonable to define it in order to inform the public of the type of permit to which the term applies.

6 MCAR §4.4002, Applicability.

It is the desire of the Agency to make its standard permitting procedure applicable to as many Agency permitting programs as possible. Sections A. - J. specifically list those permits to which the rule applies. It is reasonable to specify those permits to which the rules apply.

Due to the nature of certain permits, it was necessary to make certain exceptions to the rules. These exceptions are found in sections D., E., G., H., I. and J. and are discussed further below.

Section D. (letters of approval for sewage sludge landspreading sites): Section D. provides exceptions from 6 MCAR §§4.4004 A. and C., 4.4010 D. and E. and 4.4011 for letters of

approval for sewage sludge landspreading sites.

6 MCAR §4.4004 A. provides that, except as otherwise required by 6 MCAR §4.4106 and 4.4204, a permit application for a new facility or activity may be submitted at any time. However, it is recommended that applications for new permits be submitted at least 180 days before the planned date of the commencement of facility construction of the activity. 6 MCAR §4.4004 C. provides that applications for permits to be reissued shall be submitted at least 180 days before the expiration date of the existing permit. The main purpose for this lead time is to assure that the Agency will have adequate time to review permit applications and follow the permitting procedures.

6 MCAR §4.4004 D. provides that the time periods referenced in 6 MCAR §4.4004 A. and C. shall be 30 days instead of 180 days. This is reasonable because persons needing a letter of approval for sewage sludge landspreading sites typically find themselves in circumstances where they do not have 180 days advance notice of the need for the new or reissued permit. In addition, the Agency has in the past handled these types of approvals in a short period of time and does not need the full 180 days to process the permit application.

6 MCAR §4.4010 D. and E. and 4.4011 provide for public notice of the permit application and preliminary determination and for a public comment period. The purpose of the public notice provisions of the rules is to give the public 30 days' notice of

the pendency of significant actions which are proposed and which may have an adverse impact on the environment. Section D. exempts letters of approval for sewage sludge landspreading sites from these requirements. This is reasonable because public participation requirements for sewage sludge letters of approval are specifically set forth in 6 MCAR §4.6107 C. That rule establishes a 14 day notice period for these approvals.

<u>Section E. (sanitary sewer extensions)</u>: Section E. provides exceptions from 6 MCAR §§4.4004 A. and C., 4.4010 D. and E., 4.4011, and 4.4015 for sanitary sewer extension permits.

Section E. provides that the time periods referenced in 6 MCAR §4.4004 A. and C. shall be 60 days instead of 180 days. It is reasonable to shorten the application period for sanitary sewer extension permit applications because these applications have in the past been processed in a reasonably short period of time.

6 MCAR §§4.4010 D. and E. and 4.4011 relate to public notice procedures. The Agency has been issuing sanitary sewer extension permits for many years and has not used a public notice procedure as set forth in 6 MCAR §§4.4010 D. and E. and 4.4011. The reason for this is that, although there is a need to review applications for sanitary sewer extension permits to determine whether the receiving disposal facility can handle the additional wastewater load, an approval to construct a sewer extension does not authorize an additional discharge to the waters of the state.

It authorizes construction of a system to carry wastewater to a publicly owned treatment works (POTW). The owner or operator of the POTW is also required to have an Agency permit and to operate the POTW in compliance with applicable standards, schedules of compliance and permit conditions. This permit is issued only after full public notice procedures. It is reasonable to continue to issue sewer extension permits in the same manner as the Agency has in the past becaue it allows the Agency to act expeditiously on these types of permit applications and because the Agency's experience is that, in the vast majority of cases, there is not a great deal of public interest in sewer extension permits from the standpoint of impacts on water quality. Where a particular case may be controversial from that standpoint, however, the rules do not preclude the Agency from voluntarily seeking public input on the proposed Agency action.

6 MCAR §4.4015 relates to the terms and conditions of permits. The provisions of 6 MCAR §4.4011 make sense in terms of a facility which will be constructed and then actively operated for a period after completion of construction. Sanitary sewer extensions, once in place, are not actively operated in the same manner as other facilities. They remain in place underground and act as a conveyance to a POTW. The terms and conditions described in 6 MCAR §4.4015 do not make sense in this context. It is therefore reasonable to exempt sanitary sewer extension permits from the requirements of that rule.

Section G. (feedlot permits): Section G. provides exceptions from 6 MCAR §§4.4004 - 4.4007 for permits for the construction or operation of a feedlot. This is reasonable because the Agency's rules 6 MCAR §§4.8051, "Rules for the Control of Pollution from Animal Feedlots," and 5.8052, "Rules for the Processing of Animal Feedlot Applications by Counties," already cover the subject matter addressed by 6 MCAR §4.4004 - 4.4007.

Section H. (liquid storage permits): Section H. provides exceptions from 6 MCAR §§4.4004 A. and C., 4.4010 D. and E., 4.4011, and 4.4015.

Section H. provides that the time periods referenced in 6 MCAR §4.4004.A. and C. shall be 90 days instead of 180 days. It is reasonable to establish a 90 day application period for liquid storage permits because these applications in the past have been processed in a relatively short time.

6 MCAR §§4.4006 C., D. and E. relate to public notice procedures. It is reasonable to exclude liquid storage permits from public notice requirements because liquid storage permits have been issued for many years under Minn. Rule WPC 4 without public notice. Permitted facilities are not designed to result in a discharge to surface or ground water, and the primary thrust of the permit requirement is to ensure proper construction of the storage facility. This exclusion does not preclude the Agency from seeking public input in controversial cases.

Section I. (air emission facility permits):

Section I. provides that the standard permitting procedure does not apply to permits issued pursuant to Minn. Rule APC 8, which relates to open burning. Section I. also exempts from the public notice requirements of 6 MCAR §§4.4010 D. and E. and 4.4011 permits for the construction, modification, or reconstruction of a facility with a potential controlled net increase of a single criteria pollutant of less than 100 tons per year or to permits for operation of a facility with an actual emission rate of a single criteria pollutant of less than 500 tons per year. The rule exempts from the requirements of 6 MCAR §4.4010 E.3. permits for the construction, modification, or reconstruction of a facility with a potential controlled net increase of a single criteria pollutant of 100 tons per year to 250 tons per year or to permits for operation of a facility with an actual emission rate of a single criteria pollutant of 500 tons per year to 5,000 tons per year. Finally, the rule provides that the recommended time period for submission of applications for new permits is 180 days, except that for a permit not subject to a Minnesota or federal public notice requirement, the recommended time period shall be 90 days.

It is reasonable to exempt the open burning permit program from the standard permitting procedure because of the difference in purpose of the open burning permit program and the other permit

programs of the Agency. An open burning permit does not authorize construction or operation of an on-going facility; rather, its purpose is to ensure that when a person conducts open burning, it is conducted in compliance with the physical requirements of the rule, such as distance requirements and restrictions from burning certain materials. There is not, as there is with facility permits, a need to establish on-going monitoritoring and operational requirements in the permit. The activity to be permitted is generally a one-time event of limited duration. The need for the action usually becomes known on short notice, which makes it reasonable not to require extensive applications, draft permits, and a 30-day public comment period.

The rule as proposed exempts from the notice requirements specified in 6 MCAR §§4.4010 D. and E. and 4.4011 permit applications for new, modified, or reconstructed facilities with emissions of less than 100 tons per year of a single criteria pollutant. Ths rule as proposed has the same exemption for renewal of existing permits for facilities with an actual emission rate of a single criteria pollutant of less than 500 tons per year. The purpose of this exemption is to require full public notice procedures only for facilities which the Agency considers to be "major." It is reasonable to select a 100 ton cut-off for new, modified, or reconstructed facilities because this has traditionally been the cut-off point for classifying sources as

"major." It is reasonable to select a higher cut-off point for renewal of existing permits because when the facilities with emissions of between 100 and 500 tons emissions were originally permitted, they would have gone through public notice, and if renewed permit provides no change in emissions, there is unlikely to be significant public interest in renewal of permits for facilities of this size. The reasonableness of these exemptions is borne out by Agency experience, which has shown that the above-described types of permits have not generated much public interest in the past.

The proposed rule also exempts from the requirements of 6 MCAR §4.4010 E. facilities with emissions in the range of 100 tons per year to 250 tons per year for new, modified or reconstructed facilities and 500 tons per year to 5000 tons per year for existing facilities. 6 MCAR §4.4010 E. requires circulation of the public notice of the permit application and preliminary determination in the geographical area of the facility. This exemption is reasonable because the past experience of the Agency has demonstrated that members of the public who are interested in facilities of the size ranges are adequately informed if the Agency notifies "interested persons" as required 6 MCAR §4.4010 E.2. However, it is reasonable to require full public notice for facilities above these size ranges because these facilities have greater potential for adverse environmental

impacts and are thus more likely to generate interest from the general public.

Section J. (permits for facilities which attract mobile sources of air pollutants): Section J. exempts indirect source permits from 6 MCAR §4.4015 A. and B. Section 4.4015 A. specifies a five-year term for permits. Section 4.4015 B. requires that certain types of special conditions be included in permits. This permitting program constitutes a preconstruction review of facilties which attract cars, which may result in unacceptably high concentrations of carbon monoxide. Once a facility receives a construction permit from the Agency, the Agency does not regulate the operation of the facility in the same manner as it regulates a facility which emits air pollutants. It is reasonable to exempt this type of permit from 6 MCAR §4.4015 A. because it is a permit which primarily gives preconstruction approval to a project, negating the need for a specific term of the permit. It is reasonable to exempt this type of permit from 6 MCAR §4.4015 B. because the type of special conditions required in that rule are not applicable to indirect source permits.

6 MCAR §4.4003, Permit Required. – (7001.0030)

This rule makes it clear that a person who is required to obtain a permit shall not install, modify or operate the facility to be permitted until the permit has been issued by the Agency. This provision parallels other statutes (see, e.g., Minn. Stat.

§116.081 (1982)) and rules which relate to the requirement to obtain Agency permits. It is reasonable to include this provision to clarify and emphasize that construction, installation, modification, or operation must not begin until after a permit has been issued.

(7001.0040)

6 MCAR §4.4004, Application Deadlines.

This rule addresses the time for filing applications. Sections A. - C. are discussed below.

Section A., Application for new permit: This rule provides that applications for new permits may be filed at any time but that it is recommended that applications be filed 180 days prior to the planned date of commencement of the activity for which a permit is sought. It is reasonable to recommend advance submission of applications for new permits and to require advance submission of applications for permit reissuance because the Agency needs adequate time to review the permit application.

Section B., Modification or revocation and reissuance of existing permits: This rule provides that application for modification of a permit may be made at any time, except that if the need for the modification stems from a federal requirement, then the rule requires the application to be filed in accordance with the time limits specified by EPA. This is reasonable because this situation will only occur where the Agency has been delegated the authority to administer a federal program,

such as the NPDES permit program.

Section C., Reissuance of existing permits: This rule requires that an application for reissuance of a permit must be filed 180 days prior to the expiration of the existing permit. It is reasonable to require advance submission of applications for permit reissuance because the Agency needs adequate time to review the permit application. The applicant has certain knowledge of the expiration date of the permit, and thus can easily plan to meet the application deadline.

6 MCAR §4.4005, Written Application.

This rule sets forth the information required to be submitted by the applicant. It is reasonable to require the applicant to submit sufficient information so that the Agency can determine whether or not the proposed facility will comply with all applicable statutes and rules. The information requirements in this rule are consistent with the Agency's existing rule, Minn. Rule MPCA 5, and with EPA's permitting regulations.

6 MCAR §4.4006, Signatures.

This rule specifies who must sign permit applications. Sections A. through C. specify persons who have substantial authority in the organization constituting the applicant. The purpose of these requirements is to ensure that the signer of the application has authority to bind the applicant. This is reasonable because it makes the management of the applicant

directly accountable and responsible for the statements made in the permit application.

Section D. provides that if the operator of the facility for which the application is submitted is different from the owner, both the owner and the operator must sign the application. However, the Director is authorized to make exceptions from this if the Director finds that it is impracticable under the circumstances to require both signatures. The requirement that both the owner and operator sign the application is reasonable because each of these entities has some degree of control over the facility or activity, and thus both should be responsible for the information that appears in the permit application. The provision for exception to this rule is reasonable because there may be circumstances when one of those two parties has all the necessary information for the permit such that the requirement for the other party to sign the application is a mere technicality and obtaining the second signature is impracticable. Under these circumstances, it is reasonable to require only one signature.

6 MCAR §4.4007, Certification.

EPA's rules relating to state program requirements, 40 C.F.R. §§123.25(a)(5) and 271.14(e) require states administering NPDES and RCRA programs to require applicants to certify the truth and accuracy of the information in the permit application, based on their inquiry of the person or persons who manage the system, or

those persons directly responsible for gathering the information. It is reasonable to include this requirement to enable the Agency to retain its authority to administer the NPDES program and to obtain authority to administer the hazardous waste facility permit program. It is also reasonable to include this requirement for applicants for all Agency permits covered by the rule because it will encourage applicants to inquire into the truth and accuracy of the information they intend to submit.

6 MCAR §4.4008, Retention of Records.

EPA's rules relating to state program requirements, 40 C.F.R. §§123.25(a)(4) and 271.14(d), require states administering NPDES and RCRA programs to require applicants to retain records relating to the permit application for three years. It is reasonable to include this requirement to enable the Agency to retain its authority to administer the NPDES program and to obtain authority to administer the hazardous waste facility permit program. It is reasonable to apply this requirement to applicants for all Agency permits covered by the rule because questions may arise as to the information used in making the application, and retention of the information would assist in the resolution of those questions.

This rule provides that the time period is automatically extended if there is a pending enforcement action against the facility and that the Director may also request that the time period be extended. This is reasonable because historical information may be important in an enforcement action or may be

needed under the circumstances in a given case.

6 MCAR §4.4009, Review of Permit Application.

This rule provides for review of the permit application by the Director and for suspension of processing of the appication until complete information is received. This provision is reasonable because the Director cannot make sound decisions as to whether the proposed facility will meet applicable statutes and rules unless full and complete information is received.

6 MCAR §4.4010, Preliminary Determination and Draft Permit.

This rule requires the Director to make a preliminary determination as to whether the permit application should be granted or denied and to draft a permit in the form in which the Director would recommend that it be issued. The rule also provides for preparation of a fact sheet and a public notice and for distribution of the public notice. The reasonableness of the individual sections of the rule are discussed below.

Section A., Preliminary determination: It is reasonable for the Director to make a preliminary determination on the permit application because this preliminary determination serves as a focal point in soliciting comments from the applicant and the public. The preliminary determination also serves as the Director's recommendation to the Agency.

Section B., Draft permit: This section creates no new requirements. The Agency staff has always prepared a draft

permit. It is reasonable to require the preparation of a draft permit because it puts the applicant and the public on notice of the specific requirements which the Director recommends that the Agency impose on the applicant.

Section C., Fact sheet: This rule requires the preparation of a fact sheet for certain NPDES and hazardous waste facility permits and for each draft permit which the Director finds is the subject of widespread public interest or involves issues of major importance to the Agency or to the public. The preparation of a fact sheet has always been a requirement of the NPDES permit program under existing Minn. Rule WPC 36. This requirement is also required to be included in the Agency's NPDES and hazardous waste facility permit programs by 40 C.F.R. §§123.25(a)(27) and 271.14(w). The purpose of a fact sheet is to explain the basis for the Director's preliminary determination and the terms and conditions of the draft permit. This is reasonable because it aids the applicant and the public to understand the Director's recommendation.

Section D., Public notice of permit application and preliminary determination: This section provides for the preparation of a public notice of the permit application and the preliminary determination. The public notice must state that any person may submit comments on the draft permit or on the preliminary determination during the public comment period, which shall be 30 days unless a different public comment period is

established by another Agency rule. This type of public notice has been used in many of the Agency's permit programs (see Minn. Rules WPC 36 and APC 3). Public notice requirements are also required to be included in the Agency's NPDES and hazardous waste facility permit programs by 40 C.F.R. §§123.25(a)(28) and 271.14(x). It is reasonable to issue public notice of permit applications and the preliminary determinations thereon which solicit public comments because it gives persons outside the Agency an opportunity to raise legitimate issues which the Agency should consider in issuing the permit.

Section E., Distribution of public notice: This section lists the ways that the Director must make the public notice available to members of the public. These or similar types of requirements have been followed in the past in issuing some Agency permits. These distribution requirements are also required to be included in the Agency NPDES and hazardous waste facility permit programs by 40 C.F.R. §123.25(a)(28) and 271.14(x). It is reasonable to distribute the public notice in the manner specified in this section because the requirements are designed to reach a wide range of interested persons.

6 MCAR §4.4011, Public Comments.

This rule specifies that during the public comment period any interested person, including the applicant, may submit written comments on the permit application or on the draft permit. It also allows a person to request that the Agency hold a public

informational meeting or a contested case hearing. It requires the persons making the comments to state their interest in the permit, the action they want the Agency to take and the reasons for the request. These requirements are reasonable because written comments will help the Agency to understand what is desired and why.

If a permit is only proposed to be modified, the rule limits comments to the modifications. This is reasonable because the remainder of the permit conditions were subject to full public notice and opportunity for comment and hearing at the time when the original permit was issued, and these conditions need not be reopened when no change is proposed.

The rule also permits the Director to extend the public comment period if necessary to facilitate public comment. This is reasonable because occasionally the applicant or a member of the public can show good cause why more time is needed for comment, and occasionally unforeseen circumstances arise which make extension of the comment period desirable.

6 MCAR §4.4012, Public Informational Meeting.

This rule specifies what must be done when the Agency receives a request to hold a public informational meeting.

The reasonableness of this rule is best understood in light of the Agency's experience. In the past, the Agency has put permits on public notice and have received requests for a "public hearing." Further discussion with the person requesting the

hearing has revealed that in some cases the person does not want to participate in a contested case hearing, but only wants a forum for public discussion to gain a better understanding of the activity proposed to be permitted. The "public informational meeting" serves this purpose.

The rule provides that the Agency shall hold a public informational meeting if such a meeting would help clarify and resolve issues regarding the Director's preliminary determination or the terms of the draft permit. This language is intended to be limiting because in the past the Agency has received requests for "public hearings" concerning issues which the Agency has no power to affect, such as local zoning disputes. It is reasonable to include this limiting language because holding Agency meetings on issues over which the Agency has no jurisdiction serves no purpose, expends Agency resources needlessly, and is ultimately frustrating to all concerned. The one exception to this rule is that if pursuant to 6 MCAR §4.4218 A. a public informational meeting is requested with respect to a hazardous waste facility, such a meeting must be held. This is due to the requirements of federal law, which are further discussed at page 132.

This rule provides for the holding of the public informational meeting in the geographical area of the facility or activity to be permitted, if the person requesting the action so desires. This is reasonable because holding the meeting in the affected area will promote public participation.

The rule also provides for the issuance of a notice of the meeting. This is reasonable because the people need to know the time, date, place and subject matter of the meeting in order to attend.

The rule provides for consolidation of two or more matters if that is desirable and does not adversely affect anyone. This is reasonable because it provides for the economical use of Agency resources.

6 MCAR §4.4013, Contested Case Hearing.

The purpose of this rule is to set forth criteria for granting a request for a contested case hearing, to specify the contents of the notice of hearing, and to cross reference the statutes and other rules under which the hearing will be held.

The criteria for granting a contested case hearing are: 1) that the person requesting the hearing has raised a material issue of fact or the application of facts to law, 2) that the Agency has jurisdiction to make determinations on the issue, and 3) that there is a reasonable basis underlying the issue raised. These criteria are intended to ensure that contested case hearings, which are expensive and time-consuming, are only held when there is a genuine issue to be decided involving facts such that the taking of testimony and evidence will be helpful in making a decision. Also, the issue must be within the power of the Agency to decide or else all parties' time and effort will be spent for no purpose. This is reasonable in the interest of the efficient

use of Agency and other resources and is also in the interest of fairness to the applicant and the public.

The rule provides that if the Agency denies a request for a contested case hearing and if a public informational meeting would help clarify or resolve issues regarding the terms of the draft permit, such a meeting shall be held. This is reasonable because a public informational meeting is a more suitable forum for the concerns of a person who requests a contested case hearing without raising a material issue.

The rule specifies the contents of the public notice and cross references the statutes and other rules under which the hearing will be held. These sections are reasonably designed to clarify to the public what procedures will be followed once a contested case hearing is ordered.

6 MCAR §4.4014, Final Determination.

This rule sets forth the basis upon which the Agency will make a final determination on a permit. During the public comment period on this rule the Director will propose modifications to the language of this proposed rule. Specifically, the Director will propose the following amendment to the proposed language of Sections A., B.1, and B.2.:

> A. Agency action. Except as provided in B., the agency shall issue, reissue, revoke and reissue, or modify a permit if the agency determines that the proposed permittee or permittees will, with respect to the facility or activity to be permitted, comply or will undertake a schedule of compliance to achieve compliance with all applicable state ~~and federal~~

pollution control statutes administered by the agency, ~~and~~ agency rules, and conditions of the permit and that all applicable requirements of Minnesota Statutues, chapter 116D and the rules promulgated thereunder have been fulfilled.

B. Agency findings. The following findings by the agency constitute justification for the agency to refuse to issue a new or modified permit, to refuse permit reissuance, or to revoke a permit without reissuance:

1. that with respect to the facility or activity to be permitted, the proposed permittee or permittees will not comply with all applicable state ~~and federal~~ pollution control statutes administered by the agency, ~~and~~ agency rules, or conditions of the permit;

2. that there exists at the facility to be permitted unresolved noncompliance with applicable state ~~and federal~~ pollution control statutes administered by the agency, ~~and~~ agency rules, or conditions of the permit, and that the permittee will not undertake a schedule of compliance to resolve the noncompliance;

The following discussion addresses the reasonableness of the rule as modified.

Section A. of this rule provides that, except as provided in B., the Agency shall issue, reissue, revoke and reissue, or modify a permit if the Agency determines that the proposed permittee will comply or will undertake a schedule of compliance to achieve compliance with all applicable state pollution control statutes administered by the agency, agency rules, and conditions of the permit and that all applicable requirements of Minn. Stat. §116D and the rules promulgated thereunder have been fulfilled. Section B. sets forth findings of the Agency which constitute

justification for the Agency to refuse to issue a new or modified permit, to refuse permit reissuance, or to revoke the permit without reissuance. These findings are:

1. That with respect to the facility or activity to be permitted, the proposed permittee or permittees will not comply with all applicable state pollution control statutes administered by the agency, agency rules, and conditions of the permit;
2. That there exists at the facility to be permitted unresolved noncompliance with applicable state pollution control statutes, agency rules or permit conditions and that the permittee will not undertake a schedule of compliance to resolve the noncompliance;
3. That the permittee has failed to disclose fully all facts relevant to the facility or activity to be permitted, or that the permittee has submitted false or misleading information to the Agency or to the Director;
4. That the permitted facility or activity endangers human health or the environment and that the endangerment cannot be removed by a modification of the conditions of the permit;
5. That all applicable requirements of Minn. Stat. §116D and the rules promulgated thereunder have not been fulfilled.

It is reasonable to set forth the standards under which the Agency will take final action on permit applications. It is

reasonable to issue a permit only if the permittee will either meet or will undertake a schedule of compliance to meet all applicable pollution control statutes and rules, including Minn. Stat. §116D and the rules promulgated thereunder, and with the conditions of the permit because the purpose of the entire permitting program is to enforce pollution control statutes and rules and to protect the environment. It is reasonable to deny a permit application if there is an unresolved noncompliance situation at the facility to be permitted because granting the application would allow the noncompliance to continue. It is also reasonable to deny a permit application if the applicant has failed to disclose all relevant facts or if the permittee has submitted false or misleading information, because the denial will act as a sanction for behavior which is not forthright and honest.

Section C. cross references the Agency rules which the Agency must follow if a contested case hearing has been held. This is reasonable because it informs the public as to where the proper procedures are set forth.

5 MCAR §4.4015, Terms and Conditions of Permits.

This rule provides for the term of Agency permits (Section A.), the special conditions to be included in Agency permits (Section B.), and the general conditions to be included in Agency permits (Section C.). The reasonableness of these sections is discussed below.

Section A., Term of permit: This section

establishes that the maximum term of an Agency permit will be five years. Existing rules relating to NPDES permits, hazardous waste facility permits, and air emission facilities are already required to have a maximum term of five years. (Minn. Rule WPC 36(m); 6 MCAR §4.9006 G.1.f.; Minn. Rule APC 3(a)(3)(dd).) Therefore for these permits, this rule creates no new requirements. It is reasonable to extend this requirement to other permits covered by the rule because the Agency's experience has shown that state and federal pollution control statues and rules as well as state and federal policy for implementing the laws can change significantly over a relatively short period of time. These developments change the responsibilities of the permittees. In addition, other conditions within the control of the permittee can change over time. Including an expiration date in permits which is no greater than five years after the date of issuance is desirable so that the permitted activity can be reevaluated and public input may be solicited. This rule forces both the permittee and the Agency to make sure that the permit and the operations of the permitte are up to date with state and federal laws.

Section B., Special conditions: This section provides for a case-by-case determination as to what permit conditions are needed to ensure that the permittee will conduct the permitted activity in a manner which is in compliance with all applicable pollution control statutes and rules. It reflects the current practices and existing rules of the Agency with respect to

permit issuance. It allows for the inclusion in the permit of any needed schedule of compliance, monitoring and testing and reporting requirements, retention of records, and a requirement that all required reports be signed by the permittee or a duly authorized representative. It is reasonable to tailor permit conditions for the special circumstances and individual operations of the permittee to ensure that the permittee will comply with all applicable statutes and rules. It is also reasonable to require monitoring and testing and reporting so that the Agency can assess the compliance status of the permitted activity.

Section C., General conditions: This section requires certain conditions to be included in the permit, either expressly or by reference. Many of them have been imposed in Agency permits in the past. Others are paraphrased from an existing Agency rule, as follows:

| 6 MCAR §4.4015 | Existing Rule |
|---|---|
| C.1. | Minn. Rule APC 3(g)(1)(aa) |
| C.2. | Minn. Rule APC 3(g)(1)(bb) |
| C.3. | Minn. Rule WPC 36(1)(6)(bb)<br>Minn. Rule APC 3(g)(1)(cc)<br>Minn. Rule APC 19(h)(4) |
| C.5. | Minn. Rule APC 3(g)(1)(dd)<br>6 MCAR §4.9006 G.1.a. |

| 6 MCAR §4.4015 | Existing Rule |
|---|---|
| C.8. | Minn. Rule APC 3(g)(3)(aa)<br>Minn. Rule APC 19(h)(8) |
| C.9. | Minn. Rule WPC 36(1)(6)(dd)<br>6 MCAR §4.9006 G.1.b.<br>Minn. Rule APC 3(g)(1)(ee) and (ff)<br>Minn. Rule APC 19(h)(7) |

General conditions C.1., C.2., C.3., C.4., C.7., C.9., and C.15. are statements of existing law. It is reasonable to include these provisions in the rules in order to notify the permittee of these principles. Conditions C.5., C.6., C.8., C.10. - 14. place affirmative duties on the permittee to conduct the permitted activity in conformance with the permit, to provide relevant information on request, to report violations of permit conditions, to give notice of alterations or additions to the facility or activity which could result in noncompliance, and to seek approval before transferring the permit. It is reasonable to impose these conditons upon permittees because they aid the Agency, which has limited staff and cannot inspect and monitor all the permitted facilities and activities in the state, in enforcing pollution control laws.

6 MCAR §4.4016, Continuation of Expired Permit.

This rule allows a permittee to continue to conduct the permitted activity beyond the permit's expiration date if the permittee has filed a timely application for reissuance, the permittee is in compliance with the expired permit, and the

Agency, through no fault of the permittee, has not yet taken final action on permit reissuance. This rule is reasonable because it prevents the permittee from being out of compliance with the requirement to hold a permit where the permittee has done all that can reasonably be expected but the Agency, either because of the holding of a public informational meeting or contested case hearing or because of other administrative delays has not acted on the application for reissuance of the permit.

6 MCAR §4.4017, Justification to Commence Modification of Permit or Revocation and Reissuance of Permit.

This rule sets forth eight conditions which justify the commencement of proceedings to modify a permit or to revoke and reissue a permit. These conditions relate to: changes in the permitted facility or activity which have the potential to affect the environment; receipt of new information; changes in pollution control statutes or rules due to either federal, state or court action; events beyond the control of the permittee; a finding by the Director that a change is needed in order to remove a danger to the human health or the environment; or receipt of a request to transfer the permit. It is reasonable to include these provisions in the rules because they put permittees on notice as to what sorts of events will trigger the modification or revocation and reissuance of an Agency permit.

6 MCAR §4.4018, Justification to Commence Revocation Without Reissuance of Permit.

This rule lists four justifications for revocations without

reissuance of a permit. These justifications involve failure of the permittee to comply with pollution control laws, failure of the permittee to submit complete and truthful information, termination of the permitted activity, or finding that the activity endangers human health or the environment and that the danger cannot be cured by modifying the permit. It is reasonable to include these provisions in the rule because the situations listed are serious in nature. The fact that 6 MCAR §4.4014 C. gives the permittee the right to a contested case hearing prior to revocation of the permit renders this rule reasonable from the standpoint of due process.

6 MCAR §4.4019, Procedure for Modification; Revocation and Reissuance; and Revocation Without Reissuance of Permits.

Section A. of this rule provides that the procedure for modification, or revocation and reissuance of permits shall be the same procedure as is used in the initial issuance of permits, with certain exceptions to that rule specified in Sections B and C. This is reasonable because the permit issuance procedure provides for comment by the applicant and by the public on the terms and conditions under which the permittee will be allowed to operate.

Section B. provides that, upon obtaining the consent of the permittee, the Agency may modify a permit as to the ownership or control of a permitted facility or activity without following the procedures in 6 MCAR §§4.4010 - 4.4019 if the Agency finds that no other change in the permit is necessary and if the Agency has

received a binding written agreement between the permittee and the proposed transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities between the permittee and the proposed transferee. During the public comment period on the rule the Agency intends to propose the following amendment to the first sentence of the rule that would require submission of a binding written agreement only for solid and hazardous waste facilities:

> Upon obtaining the consent of the permittee, the agency may modify a permit as to the ownership or control of a permitted facility or activity without following the procedures in 6 MCAR §4.4010-4.4019 if the agency finds that no other change in the permit is necessary. ~~and if~~ If the permit is a permit described in 6 MCAR §4.4002 A. or B., the agency must also find that the agency has received a binding written agreement between the permittee and the proposed transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities between the permittee and the proposed transferee.

The rule also provides that within 60 days of receipt of a complete written application for modification as to ownership and control, the Director must place the matter on the Agency agenda for consideration by the Agency. The rule provides that the Agency shall not unreasonably withhold or unreasonably delay approval of the proposed permit modification. This rule as amended is reasonable because if the proposed permit modification involves no change in the permitted facility or activity, there should be no change in the impact of the permitted facility or activity on the environment and thus no need to follow public notice procedures. However, where the permitted facility or

activity involves solid or hazardous waste, the Agency is interested in ensuring that the buyer and seller have come to an agreement as to the allocation of liabilities and responsibilities with respect to the facilities, since closure of a solid or hazardous waste facility will not necessarily end a pollution problem at the facility. Therefore it is reasonable to require the permittee and the transferee to demonstrate by documentation that they have allocated between themselves any responsibilities and liabilities. It should be noted that this rule does not require the submission of a written agreement if the permittee and the transferee elect to follow the standard permit procedure for the permit modification.

Section C. lists four minor modifications which need not go through the entire public notice procedure. These minor modifications include typographical errors, minor changes in interim compliance dates, changes in the permit which do not involve any increase in the emission or discharge of pollutants into the environment and which do not reduce the Agency's ability to monitor the permittee's compliance with pollution control statutes and rules, and minor modifications provided in other applicable Agency rules. It is reasonable to minimize the Agency's effort in making changes to permits which have no impact, real or potential, upon the environment.

Section D. of the rule provides that the Director must notify

the permittee of any proposal to revoke a permit without reissuance. The permittee, upon request, has the right to a contested case hearing. This section of the rule is reasonable because it gives the permittee the opportunity to prove in an evidentiary hearing that the proposed revocation is not justified.

6 MCAR §4.4020, Mailing List.

This rule establishes a mailing list to be kept by the Agency for persons who desire to receive copies of some or all public notices issued by the Director pursuant to 6 MCAR §4.4010 D. It provides a mechanism for the Director to keep the list up to date. This practice has been followed informally by the Agency in the past. It is reasonable to include this provision in the rule to notify the public of their opportunity to receive notices issued by the Agency relating to proposed Agency permits.

6 MCAR §4.4021, General Permits.

This rule establishes a procedure by which the Agency may, for certain categories of pemittees, issue a single permit to several permittees whose operations, emissions, activities, discharges, or facilities are the same or substantiall similar. Such a permit is known as a "general permit." At the outset of this discussion it should be noted that the issuance of a single general permit to several permittees will be an administrative convenience to the Agency and not a relaxation of requirements for permittees. These permittees will still be required to submit permit applications and perform all of the obligations of other

permittees.

The general permit concept is derived from a similar EPA procedure which is a part of the NPDES program and which is applicable to certain categories of discharges that have little or no impact on the environment. These categories, because they are numerous, would require significant administrative resources to permit individually. This expenditure of administrative resources is not seen as having a corresponding benefit to the environment. Therefore, EPA has developed a procedure whereby a single permit covers several permittees. The Agency has determined that Minnesota has categories of permittees in many of its permitting programs which could appropriately be regulated by a general permit.

Sections A. - F. of the rule are discussed below.

Section A. of the rule provides that this type of permit can be issued for all agency permits listed in 6 MCAR §4.4002 except for agency permits required for the treatment, storage, and disposal of hazardous waste. This is reasonable because the Agency has been informed that if it provided for issuance of general permits to hazardous waste facilities, EPA would not delegate its RCRA permitting program to the Agency on the grounds that the Agency's rule is less stringent than EPA's rules.

Section B. of the rule provides that if the Agency finds that it is appropriate to issue a single permit to a category of permittees whose operations, emissions, activities, discharges or

facilities are the same or substantially similar, it shall proceed under Sections C. through F. This rule is reasonable because it describes the nature of a general permit and directs the public to the additional rules under which the Agency must proceed in order to issue a general permit.

Section C. states that the Agency shall not issue a general permit unless it makes four findings:

1. That there are several permit applicants or potential permit applicants who have the same or substantially similar operations, emissions, activities, discharges, or facilities;
2. That the permit applicants discharge, emit, process, handle, or dispose of the same types of waste;
3. That the operations, emissions, activities, discharges, or facilities are subject to the same or substantially similar standards, limitations, and operating requirements; and
4. That the operations, emissions, activities, discharges, or facilites are subject to the same or substantially similar monitoring requirements.

It is reasonable to require the Agency to make these finding ecause otherwise a single permit would not appropriately regulate all of the facilities to be covered by the permit.

Section D. makes it clear that the procedures to be followed to issue a general permit are the same as for other permits.

However, the Agency is required to publish notice of intent to issue a general permit in the State Register. This is reasonable because the different facilites and activities to be regulated by a general permit are likely to be located in different areas of state, and for this reason there may be statewide interest in the general permit. Notice in the State Register will provide statewide notice of the intent to issue the general permit.

Section E. provides that a general permit issued by the Agency must state specifically the geographic area covered by the permit. This is reasonable because it informs the public of the exact nature of the permit.

Section F. provides that if a permit applicant eligible to be covered by a general permit requests an individual permit, the Agency shall process the application as an application for an individual permit. This is reasonable because the general permit procedure is intended only as an administrative convenience, and if the permittee would prefer to have an individual permit, the Agency has no objection to processing the application in that manner.

Section F. also provides that if the Agency finds that the operations, emissions, activities, discharges, or facilities of a permit applicant or a permittee covered by a general permit would be more appropriately controlled by an individual permit, the Agency shall issue an individual permit. The rule also lists factors to be considered in this determination. These factors

relate to the potential for significant environmenal effects; the compliance of the permittee with the general permit and with applicable statutes and rules, and alterations to the facility permitted under the general permit. This is reasonable because it is foreseeable that some facilities which would otherwise be eligible to be covered by a general permit do in fact require special attention and individualized permit conditions.

B. Reasonableness of 6 MCAR §§4.4101 - 4.4111, National Pollutant Discharge Elimination System Permits.

It is reasonable to adopt rules which, in combination with 6 MCAR §§4.4001 - 4.4021, replace existing Minn. Rule WPC 36 relating to NPDES permits because the standard permitting procedure rules alone do not cover the requirements that are specific to NPDES permits. In addition, the federal government requires states administering the NPDES program to impose certain requirements upon permit applicants and permittees which are not contained in the existing rule.

In many respects, the requirements of 6 MCAR §§4.4101 - 4.4111 are identical to the requirements of EPA set forth in 40 C.F.R. Parts 122 and 124. As previously discussed at page 15, the preamble to EPA's publication of the Consolidated Permit Regulations explains the basis of many of the requirements. This preamble begins at 45 Fed. Reg. 33291 (May 19, 1980). To the extent that the discussion therein supports the reasonableness of 6 MCAR §§4.4101 - 4.4111, it is hereby incorporated herein by

reference.

The following discussion addresses the reasonableness of the individual provisions of the rules.

6 MCAR §4.4101, Scope and Construction of Rules.

This rule lists the rules which govern the application procedures, issuance and conditions of a NPDES permit. It is reasonable to include this provision to make it clear that this rule must be read in conjunction with other Agency rules for complete coverage of the subject matter.

6 MCAR §4.4102, Satisfaction of Requirement for Two Permits.

This rule provides that if a person who discharges a pollutant into the waters of the state is required by Minnesota statutes and rules to obtain both a NPDES and a state disposal system permit, the issuance of a NPDES permit under these rules shall satisfy the requirement to obtain both permits. This rule is reasonable because it embodies current Agency practice and because it makes permitting simpler for permittees who are technically under the obligation to obtain two permits for the same activity.

6 MCAR §4.4103, Definitions.

Section A. of this rule incorporates by reference definitions contained in Minn. Stat. §115.01 (1982) and in 6 MCAR §4.4001. Cross referencing existing statutory definitions is reasonable because it notifies the public of the existence of key definitions which have been established by the legislature. Adopting the

definitions of 6 MCAR §4.4001 by reference is reasonable because it promotes consistency within the Agency's permitting programs.

Sections B. through EE. of the rule contain 30 additional definitions. Of these, twenty are either taken directly from or are paraphrased from the EPA regulations. 40 C.F.R. §122.2 defines "average monthly discharge limitation," "average weekly discharge limitation," "best management practices," "continuous discharge," "daily discharge," "direct discharge," "discharge of of a pollutant," "effluent limitation," "effluent limitation guideline," "indirect discharger," "maximum daily discharge," "new discharger," "new source," "primary industry category," "process wastewater," "publicly owned treatment works," and "toxic pollutant." 40 C.F.R. §122.41(m) defines "bypass." "Source," "facilities and equipment" and "commencement of construction" are defined in 40 C.F.R. §122.29(a)(2), (a)(5) and (b)(3), respectively. It is reasonable to adopt the federal definitions of these terms because the Agency is implementing a federal program and is required to be consistent with federal rules.

The term "municipality" is also defined in 40 C.F.R. §122.2. The Agency has departed from that definition somewhat. It has excluded Indian tribes from the definition. This is reasonable because the U. S. Supreme Court has held that states lack jurisdiction to issue NPDES permits to Indians on Indian lands. Bryan v. Itasca County, Minnesota, 96 S.Ct. 2102 (1976). The language in the definition is taken from Minn. Stat. §116.16,

subd. 2(2) (1982). This is reasonable because this language is consistent with the federal rule but is more specific to Minnesota.

It is reasonable to define the terms "Clean Water Act," "best available technology," "National Pollutant Discharge Elimination System" and "technology based effluent limitations," which are terms which arise from federal law, because they are referenced elsewhere in the rules. It is reasonable to define "non-contact cooling water" and "vessel" because they are used in the portion of the rule relating to the requirement to apply for a permit. It is reasonable include definitions of "pollutant" and "point source" because of their critical nature under 6 MCAR §4.4104, which contains the requirement to obtain a permit. Section A. of that rule provides:

> Except as provided in B., no person shall discharge any pollutant from any point source into the waters of the state without obtaining a National Pollutant Discharge Elimination System permit from the agency.

(Emphasis supplied.) These terms are defined in Minn. Stat. §115.01, subd. 13 and 15 (1982).

6 MCAR §4.4104, Requirement to Obtain a Permit.

This rule establishes the general requirement to obtain a NPDES permit (Section A.), the exclusions from that rule (Section B.), and establishes that certain facilities are permitted by rule if they meet certain requirements (Section C.) It also provides for the termination of eligibility to be permitted by rule (Section D.). The reasonableness of these sections is

discussed below.

Section A., which is quoted above, establishes the requirement to obtain a permit. It is reasonable because persons discharging a pollutant from a point source are required by federal law (see Sections 301(a) and 402 of the Clean Water Act, 33 U.S.C. §1311(a) and 1342) to obtain a permit and because the permitting process is a reasonable way to control water pollution, which is a major task which the Minnesota legislature has assigned to the Agency.

Section B. establishes nine categories of discharges which do not require a NPDES permit. It is reasonable to exclude the first seven discharges from the requirement to obtain a permit because they are specifically excluded under 40 C.F.R. §122.3 from the requirement to obtain a permit. It is reasonable to exclude the last two discharges from the requirement to obtain a permit because they are excluded under 40 C.F.R. §122.2 from the requirement to obtain a permit by virtue of the fact that they are excluded from the definition of "pollutant."

6 MCAR §4.4105, Application Deadline.

This rule provides that if a person proposes to construct a new facility or engage in a new activity for which a permit is required, the person must submit a written permit application at least 180 days before the planned date of the commencement of facility construction or of the planned date of the commencement of the activity, whichever occurs first. This application

deadline currently exists in Minn. Rule WPC 36(e). It also parallels EPA's regulation 40 C.F.R. §122.21(c). This requirement is reasonable because the Agency needs to receive the permit application in advance so that it will have enough time to process it.

6 MCAR §4.4106, NPDES Permit Application.

This rule sets forth the information required to be submitted by the applicant. This information is necessary for two purposes. One of these purposes is to allow the Director to determine what types of limitations and conditions are needed to be contained in the permit to ensure compliance with all applicable statutes and rules. The other purpose is to inform the Director of the nature and processes employed at the source so that the Director can properly establish those effluent limitations and standards which need to be calculated using EPA's effluent limitation guidelines. It is reasonable to require the applicant to submit sufficient information so that the Agency can make a determination as to whether or not the proposed facility will comply with applicable statutes and rules and to enable the Agency to issue the permit in the form that will ensure such compliance. The information requirements in this rule are consistent with the Agency's existing Minn. Rule WPC 36 and with 40 C.F.R. §122.21.

6 MCAR §4.4107, Effluent Analysis by Existing Manufacturing, Commercial, Mining and Silvicultural Dischargers.

This rule requires that any existing manufacturing,

commercial, mining and silvicultural discharger must analyze a sample of its effluent. It also specifies the methods of sampling and analysis and the parameters to be analyzed.

This rule is taken from 40 C.F.R. §122.21(g). Requirements at least as stringent as those contained in 40 C.F.R. §122.21(g) are required to be included in the state NPDES program by 40 C.F.R. §123.25(a)(4). It is reasonable to include these requirements in the rules in order to maintain the delegation which the Agency has to implement the NPDES program in Minnesota.

The basis of the requirements of 40 C.F.R. §122.21(g) is discussed in detail by EPA in the preamble to the publication of the Consolidated Permit Rules, which appears at 45 Fed. Reg. 33516, 33526 - 33543 (May 19, 1980). This discussion is hereby incorporated herein by reference in support of the reasonableness of 6 MCAR §4.4107.

6 MCAR §4.4108, Preliminary Determination, Draft Permit, and Public Comments.

The purpose of this rule is to establish that for NPDES permits, there are certain exceptions to the requirements of 6 MCAR §4.4010 and 4.4011 relating to public notice of draft permits and preliminary determinations and the use of fact sheets concerning draft permits and public comments. These exceptions are provided in Sections B. and C. of the rule. The exceptions provided in this rule reflect current requirements of Minn. Rule WPC 36.

Section B. provides that the Director must prepare a fact

sheet for each draft permit for a facility that the Director finds to be major based on a review of the potential impacts of the facility on the environment. This requirement is included in order to comply with 40 C.F.R. §123.25(a)(27), which requires that state programs must provide for preparation of fact sheets for major facilities. Therefore this requirement is reasonable.

Section C. provides that the Director shall respond to all significant public comments received during the public comment period. The response may be made either orally or in writing. This requirement is included in order to comply with 40 C.F.R. §123.25(a)(31), which requires state programs to provide for responses to public comments. Therefore this requirement is reasonable.

6 MCAR §4.4109, Establishment of Special Conditions for National Discharge Elimination System Permits.

Section A. of this rule provides that NPDES permits must contain conditions necessary for the permittee to achieve compliance with federal and state laws. These conditions are to be established initially by the Director in the draft permit but are subject to final issuance by the Agency. It is reasonable to include these conditions as a way of enforcing federal and state water pollution control laws.

The reasonableness of the types of special conditions to be included in a permit is discussed below.

Section B., Effluent limitations, standards and prohibitions: This section provides that the Director is to

establish appropriate effluent limitations, standards and prohibitions for the permitted facility. The inclusion of effluent standards and limitations is currently required in existing Minn. Rule WPC 36(1)(1).

Inclusion of effluent limitations, standards and prohibitions is also required by 40 C.F.R. §123.25(a)(15) to be included in the state NPDES program.

The rule contains provisions relating to (1) the expression of effluent limitations, standards and prohibitions, (2) considerations in establishing effluent limitations, standards and prohibitions, (3) calculation of effluent limitations, standards and prohibitions (Section B.3.), and (4) a protection period (Section B.4.).

It is reasonable to specify the manner in which effluent limitations will be expressed in order to promote consistency among permits. The provisions of Section B.1. of the rule are consistent with 40 C.F.R. §122.45.

It is reasonable to list the federal and state statutes and rules which the Director will consider in making a case-by-case determination as to the appropriate effluent limitations, standards and prohibitions to be included in the permit because such a list notifies the applicant and the public as to the bases upon which permit conditions will be established.

It is reasonable to specify the manner in which the effluent

limitations, standards and prohibitions will be calculated in order to promote consistency and fairness. These calculation requirements are consistent with 40 C.F.R. §122.45.

Section B.4. establishes a period during which dischargers who have complied with new source performance standards will not be subject to more stringent technology based standards. This protection period is contained in EPA's regulation 40 C.F.R. §122.29(d). It is reasonable because a permittee who has complied with standards which require the implementation of the latest technology has made a significant capital investment and should not be required to replace this equipment for a reasonable period of time. However, it should be noted that the protection period is limited to technology based standards; it does not apply where, pursuant to 6 MCAR §§4.8014 and 4.8015 C.9., a discharger is required to meet effluent limitations which are necessary to maintain the water quality of the receiving water at the standards of quality and purity established by 6 MCAR §4.8015. Therefore this rule will not allow the violation of water quality standards.

Section C., Best management practices: This section allows the Director to include permit conditions requiring the implementation of best management practices by the permittee if a numerical standard cannot be established or if such practices are necessary to achieve compliance with other numerical standards in the permit. This rule is consistent with 40 C.F.R. §122.44(k). This rule is reasonable because it allows flexibility in

establishing appropriate permit conditions providing for compliance.

Section D., Reporting violations: This section requires the Director to list the pollutants which are of concern with respect to the permitted facility and requires the permittee to report all violations of the maximum daily discharges of these pollutants. This is reasonable because it provides prompt notice to the Director of a problem occurring at the permitted facility which may have an adverse impact on water quality, allowing the Director to quickly require that corrective actions be taken.

Section E., Monitoring requirements: This section requires the Director to include in the permit monitoring requirements that are specific to the permitted facility. This requirement is already in existing Minn. Rule WPC 36(n) and is consistent with 40 C.F.R. §122.44(i). It is reasonable because it aids in the enforcement of federal and state water pollution control laws.

Section F., Pretreatment requirements for publicly owned treatment works: This section requires that if the permittee is required by 40 C.F.R. §403.8 to develop a pretreatment program, the Director shall incorporate the provisions of that program in the permit and submit all information required by 40 C.F.R. §403.12. This requirement is consistent with 40 C.F.R. §122.44(j)(2) and is required to be included in the state NPDES program by 40 C.F.R. §123.25(a)(15). The pretreatment program requirements were established by EPA as part of an effort to limit the discharge of

pollutants which have been introduced into municipal wastewater by industry and which were not being adequately treated. Since a required pretreatment program will have an impact upon the wastewater that is received, treated and discharged by the publicly owned treatment system, it is reasonable to include those provisions in the NPDES permit to ensure that they are followed.

Section G., Conditions imposed in construction grants: This section requires that if the applicant is using construction grant funds to construct or operate its facility, the Director shall incorporate into the permit any conditions of the grant which relate to compliance with effluent limitations, standards or prohibitions or water quality standards. This requirement is reasonable because it reinforces the existing obligation of the applicant to use federal and state funds in a manner that is consistent with the purpose for which they were granted and which will further the goals of abating water pollution.

Section H., Conditions related to navigation: This section requires that the permit must include any conditions to assure that navigation and anchorage will not be substantially impaired. 40 C.F.R. §122.4(e) prohibits the issuance of any NPDES permit which would result in a substantial impairment of navigation and anchorage. Therefore it is reasonable to require the inclusion of permit conditions which will allow the permit to be issued.

Section I., Conditions in reissued permits: This section provides that reissued permits may not be less stringent than the original permit unless certain circumstances are present. This requirement is consistent with 40 C.F.R. §122.44(l) and is required to be included in the state NPDES program by 40 C.F.R. §123.25(a)(15). The circumstances which are listed involve changes in the facility or changes in federal statutes or regulations or state statutes or rules. This rule is reasonable because it is not desirable to allow the degradation of effluents or of water quality unless good reasons exist to do so and federal and state laws allow it.

6 MCAR §4.4110, General Conditions of National Pollutant Discharge Elimination System Permits.

This rule provides that each NPDES permit shall contain the conditions set forth in 6 MCAR §4.4015 and the conditions listed in sections A.1. - A.12. In addition, specific types of facilities are required to meet the general conditions listed in Sections B. (manufacturing, commercial, mining and silvicultural dischargers) and C. (publicly owned treatment works).

These rules are consistent with EPA regulations. The following shows the sections of the EPA regulations which impose the conditions in this rule upon NPDES permittees.

| 6 MCAR §4.4110 | 40 C.F.R. |
|---|---|
| A.1. | 122.41(a)(1) |
| A.2. | 122.41(a)(2) |
| A.3. | 122.41(c) |

| 6 MCAR §4.4110 | 40 C.F.R. |
|---|---|
| A.4. | 122.41(l)(4)(i) |
| A.5. | 122.41(l)(4(ii) |
| A.6. | 122.41(l)(4)(iii) |
| A.7. | 122.41(j)(5) |
| A.8. | 122.41(k)(2) |
| A.9. | 122.41(m)(3)(ii) |
| A.10. | 122.41(m)(2) |
| A.11. | 122.41(m)(4) |
| A.12 | 122.41(n) |
| B. | 122.42(a) |
| C. | 122.42(b) |

These conditions are required to be included in the state NPDES program by 40 C.F.R. §123.25(a)(12) and (13).

It is reasonable to require that these conditions be included in NPDES permits because they are, in addition, to being required by federal regulations, aids to the Agency in assuring proper operation of the permitted facility and continued effluent quality.

6 MCAR §4.4111, Final Determination.

The provisions of this rule are supplementary to the final determination standards of 6 MCAR §4.4014 and reflect the prohibitions upon issuing NPDES permits which are contained in 40 C.F.R. §122.4. These prohibitions are required to be included in the state NPDES program by 40 C.F.R. §123.25(a)(1). Because the Agency is administering a federal program, it is reasonable to

prohibit the issuance of NPDES permits which could not be issued if EPA were administering the program in Minnesota.

C. Reasonableness of 6 MCAR §§4.4201 - 4.4224, Hazardous Waste Facility Permits.

It is reasonable to adopt rules which, along with 6 MCAR §§4.4001 - 4.4021, replace existing 6 MCAR §§4.9006 and 4.9007 because the standard permitting procedure rules alone do not cover the requirements that are specific to the hazardous waste facility permitting program. In addition, the federal government requires that states who wish to receive delegation to administer the federal hazardous waste facility permitting program must impose certain requirements upon applicants and permittees which are not contained in the existing rules.

In many respects, the requirements of 6 MCAR §§4.4201 - 4.4224 are identical to those of EPA regulations 40 C.F.R. Parts 270 and 124. EPA's publication of the Consolidated Permit Regulations was accompanied by a preamble which explains the basis of many of the requirements. This preamble begins at 45 Fed. Reg. 33290 (May 19, 1980). To the extent that the discussion therein supports the reasonableness of 6 MCAR §§4.4201 - 4.4224, it is hereby incorporated herein by reference.

The following discussion addresses the reasonableness of the individual provisions of the rules.

6 MCAR §4.4201, Scope.

This rule lists the rules which govern the application procedures, issuance and the conditions of a hazardous waste

facility permit. It is reasonable to include this provision to make it clear that this rule must be read in conjunction with other Agency rules for complete coverage of the subject matter.

6 MCAR §4.4202, Definitions.

This rule incorporates by reference definitions contained in 6 MCAR §§4.4001, 4.9100 and 4.9380 B. Cross referencing definitions applicable to the Agency's overall permitting procedure and to rules which apply specifically to hazardous waste facilities is reasonable because it promotes consistency among the Agency's permitting programs.

6 MCAR §4.4203, Permit Requirements.

This rule establishes which activities are included (Section A.) and excluded (Section B.) from the requirement to obtain a hazardous waste facility permit and establishes that certain facilities are permitted by rule if they meet certain requirements (Section C.). It also provides for the termination of eligibility of certain owners and operators to be permitted by rule (Section D). The reasonableness of these sections is discussed below.

Section A., Permit Required: This section establishes the requirement to obtain a permit. The Agency is charged with the duty to regulate the management of waste, including the treatment, storage, and disposal of hazardous waste. The Agency has used the system of issuing permits to regulate waste management facilities for many years, first through the solid waste program and then through the hazardous waste program.

Based on this experience the Agency has chosen to continue the permitting program for hazardous waste facilities. Therefore it is reasonable to require facilities, which by definition treat, store, or dispose of hazardous waste to obtain a hazardous waste facility permit. It is reasonable for the Agency to require a permit for other activities such as establishing, constructing, operating, closing, or expanding a hazardous waste facility since they could affect the facility's ability to comply with standards and permit conditions. If a person was allowed to establish and construct a facility prior to obtaining a permit under the argument that actual treatment, storage, or disposal of hazardous waste had not yet occurred, the Agency could be in the position of having to choose between issuing a permit to a facility which might not meet the location and design standards of the rules or denying a permit to a fully constructed facility causing a substantial economic loss. If a facility which has an Agency permit to treat, store, or dispose of hazardous waste were allowed to be expanded or modified without having to obtain a permit prior to expansion or modification, the Agency would have no assurance that the expanded or modified facility would be able to comply with appropriate standards and permit conditions. Therefore it is reasonable to require persons conducting activities other than actual treatment, storage, or disposal of hazardous waste to obtain an Agency permit for these activities.

<u>Section B., Exclusions</u>: Certain activities which

have been excluded under the facility standards of 6 MCAR §§4.9280 - 4.9422 or have been exempted from the permit requirement under the provisions of 6 MCAR §§4.9100 - 4.9560, are also excluded in this rule from the requirement to obtain a permit. These activities are very limited in scope and generally are subject to specific facility standards under 6 MCAR §§4.9100 - 4.9560. Generally these activities, if performed in compliance with the specified standards, present a low potential for adverse effects on human health and the environment and the issuance of a permit would not alter or reduce this potential.

Section B.1. allows generators to store hazardous waste on-site for up to 90 days without a permit so that they can accumulate a reasonable quantity of hazardous waste prior to shipment to an off-site facility or placement in an on-site facility. It is reasonable to allow generators some time to make arrangements for managing their wastes without requiring them to obtain a facility permit since it generally is not possible for generators to transport wastes to a facility immediately after generation. As a practical matter, almost all generators must store their wastes on-site for some period of time. Without this exemption almost all generators would be required to obtain a facility permit. Considering the large number of generators, the requirement that generators store their wastes in compliance with specific storage standards, and the system for regulating generators through the disclosure program, the issuance of

facility permits to all generators would be minimally beneficial. Also considering the large number of generator and the limited staff available, requiring such permits would create for the Agency an additional administrative burden which could delay the processing of permit applications for facilities with higher potentials for adverse effects on human health and the environment.

Section B.2. allows farmers to dispose of their own pesticide wastes in accordance with manufacturer's instructions without obtaining a facility permit. Considering that the pesticides themselves are spread on land without an Agency permit it is reasonable to allow proper disposal of pesticide wastes without a permit. Also considering the number of farmers and the low potential for adverse effects on human health and the environment and the requirement that the waste be properly managed, the issuance of permits to farmers for this activity would be minimally beneficial. As previously discussed under the generator exemption, requiring permits for such activities would create an additional administrative burden for the Agency.

Section B.3. exempts totally enclosed treatment facilities from the permit requirement. By definition, such facilities are constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example of such a facility is a pipe in which waste acid is neutralized. It would be minimally

beneficial to issue a permit to such a facility since the potential for adverse effects on the environment and human health is already very limited.

Section B.4. allows transporters to store manifested shipments of hazardous waste for up to ten days without a permit so that shipments can be consolidated or transferred to another transporter (interlined). It is reasonable to allow transporters some time to accomplish these routine activities, since the containers are required to meet applicable Department of Transportation (DOT) standards, are stored for a short period of time, and storage probably does not occur all of the time, thus reducing the potential for adverse effects. If transporters were required to obtain facility permits for short term storage, more small shipments of waste would be transported at high cost, reducing efficiency by having trucks with only partial loads on the road and thus increasing the chances of spills on the road. It would also discourage transporters from picking up small shipments and consolidating them into larger shipments, thus forcing more generators to store hazardous waste on site for longer periods of time and thereby increasing the number of small storage facilities. Considering these drawbacks and the lack of significant benefits from requiring such permits it is reasonable to have this exemption.

Section B.5. allows activities associated with immediate spill cleanup to occur without obtaining a permit. Due to the

necessity to cleanup spills rapidly to minimize damage to the environment and human health hazards it is not reasonable to delay such activities by requiring a permit to be obtained. Also, since spills are unexpected and unpredictable in nature, a permit could not be obtained prior to the spill occurring. However, once immediate activities have been completed and the crisis is over, a permit is required for treatment, storage, or disposal of the cleanup materials. This is reasonable since time would be available to either obtain a permit or to transport the wastes to a facility with interim status or a permitted facility. Also in no case would wastes be allowed to be improperly managed.

Section B.6. allows the addition of absorbents to wastes (or wastes to absorbents) in containers without need for a permit. This process must be done at the time the waste is first placed into the containers and must comply with certain requirements of the proposed hazardous waste technical rules. Some of these requirements pertain only to ignitable, reactive, and incompatible wastes. The others deal with the condition of the containers and the compatibility of the wastes with the containers. Several generators of waste may decide to place absorbent materials into containers with hazardous wastes to make the wastes acceptable for disposal or transportation. This practice should not be discouraged by requiring a permit. It is reasonable to provide this exemption because this type of activity poses little, if any, additional hazard than does the mere act of placing hazardous

wastes into containers, which requires no permit.

The beneficial use, reuse, recycle, or reclamation of hazardous waste is subject to reduced technical standards and, under Section B.7. and B.8., reduced permitting requirements based on the type of waste and the type of process utilized by the facility. 6 MCAR §4.9129 sets forth the various technical and permit requirements for these facilities. These reduced requirements serve to encourage beneficial use, reuse, recycle and reclamation of hazardous waste while still providing assurance of proper management of the wastes. Also, since these wastes tend to have some monetary value, there is an inherent incentive to beneficially use, reuse, recycle, or reclaim the waste. This is generally not true of most waste facilities. Therefore, it is reasonable to allow reduced permitting requirements for these types of facilities.

Section B.9. exempts management of wastes as provided in 6 MCAR §§4.9128 C.12., 4.9130 A., 4.9134 E.3. and 5., 4.9209, or 4.9210 B. from the requirement to obtain a permit. The management activities covered by this section are discussed below.

6 MCAR §4.9128 C.12. allows the storage of hazardous waste in product equipment where it is generated until such time it leaves the unit, without a facility permit. An example of this is the storing of petroleum products in tanks which generates tank bottoms that are hazardous wastes. These tank bottoms would not

be subject to the permit requirment until they are removed from the tank or the tank is no longer utilized for product storage. This is reasonable since the intent is storage of product, not waste. Also due to the monetary value of the product, there is an incentive to store it properly. Such storage could be subject to regulation under the liquid storage rules of existing Minn. Rule WPC 4. Regulation under that program would be adequate to address concerns regarding proper storage and spill prevention and containment. Therefore double regulation in this case would provide minimal benefits and is not necessary.

6 MCAR §4.9130 A. exempts hazardous waste residues in "empty containers" from regulation under the hazardous waste program, therefore no hazardous waste permit requirements would apply to activities associated with "empty containers." It generally is not feasible or practical to remove 100 percent of a material from a container using routine removal methods since some material will adhere to the surface of the container thus requiring special procedures such as triple rinsing to remove all of the material. Therefore some practical provision was necessary for defining and regulating "empty containers." Based on this provision it is reasonable not to require permits for activities associated with "empty containers."

6 MCAR §4.9134 E.3. exempts facilities which store polychlorinated biphenyl (PCB) wastes from having to obtain a

hazardous waste facility permit for this storage provided certain storage requirements are met. The Agency also regulates PCB's under 6 MCAR §4.8038. This rule contains provisions regarding proper storage of PCB wastes. This program has been adequately regulating such storage for several years. Many of the PCB storage facilities covered by 6 MCAR §4.9134 E. are also subject to 6 MCAR §4.8038; therefore it is reasonable at this time not to require such facilities to apply for and receive another approval from the Agency for such storage. Those facilities not subject to 6 MCAR §4.8038 handle small volume PCB units which do not pose a substantial threat to human health or the environment if stored properly. Accordingly, it is sufficient to specify the storage requirements but not to require a hazardous waste facility permit. Similarly, the burning of mineral oil dielectric fluid containing less than 500 ppm PCB in high efficiency boilers is regulated in federal regulations, 40 C.F.R. §761.60. No permit for this activity is required under federal hazardous waste regulations. This activity will be regulated by the Agency under the air emission facility permit requirements. Therefore it is reasonable to exempt such burning from permit requirements in the hazardous waste facility permit program.

6 MCAR §4.9209 allows a generator to store his waste on site without a permit during the period of time in which the Director is making a determination as to whether or not the waste is a

hazardous waste. Since the determination has not yet been made, it would not be reasonable to require a person to go through the time, effort and expense of obtaining a permit which may not be needed once the determination is finally made. Therefore during such time the Director is making a determination, no permit should be required.

6 MCAR §4.9210 allows small quantity generators to store their wastes on site without a permit provided they comply with certain storage requirements and the wastes are properly managed. Considering the amount of waste involved (only small quantities as defined in 6 MCAR §4.9210) and the requirements to be met, there is a low potential for adverse effects due to these storage areas and therefore it is reasonable to exempt them from the permit requirement.

Section C., Permits by Rule, and Section D., Termination of Eligibility for Permit by Rule: Section C. establishes that four categories of facilities are deemed to have obtained a permit without making application if the owner or operator has met certain conditions. Section D. allows the Agency to terminate the eligibility of an owner or operator of an elementary neutralization unit, a pretreatment unit, a wastewater treatment unit or a combustion waste facility to be permitted by rule if the owner or operator has violated any requirement of 6 MCAR §§4.9480 - 4.9481, if the owner or operator is conducting other activities which require an individual hazardous waste

facility permit, or if the Agency finds that an individual permit is necessary under the circumstances to protect human health or the environment. The reasonableness of the provisions of Sections C. and D. are discussed below.

Under Sections C.1. and C.2., ocean disposal barges and vessels which have and are in compliance with a federal permit under 40 C.F.R. Part 220, and publicly owned treatment works which have and are in compliance with a National Pollutant Discharge Elimination System (NPDES) or State Disposal System (SDS) permit and both of which are in compliance with the identification number, manifest, recordkeeping and reporting requirements of 6 MCAR §4.9280 - 4.9322, are deemed to have a hazardous waste facility permit, without applying for one. These facilities are already regulated and permitted through another federal or state program and the only purely hazardous waste related provisions are those that are not site-specific and do not need to be particularized in an individual permit. Therefore, it is reasonable to make the missing hazardous waste provisions applicable through a general regulatory statement. This method avoids requiring duplicate permit processing and duplicate paperwork while achieving the same level of environmental protection. Enforecment action can be taken if noncompliance occurs even though an individual hazardous waste permit has not been issued.

Under Sections C.3. and 4., elemental neutralzation units,

pretreatment units, wastewater treatment units and combustion waste facilities which meet the conditions established in this rule are deemed to have a hazardous waste facilty permit without applying for one. These types of facilities either are regulated through other Agency programs (pretreatment and wastewater treatment units and combustion waste facilities) or are very simple well understood processes which handle only corrosive wastes (elementary neutralization units). The provisions relating to hazardous wastes are not site-specific and can be addressed through a set of facility standards. 6 MCAR §§4.9480 - 4.9481 contains specific standards for these types of facilities and exempts them from the final and interim status facility standards of 6 MCAR §§4.9280 - 4.9322. In addition to being regulated under other Agency programs, these facilities are indirectly regulated by the hazardous waste disclosure program since the incoming waste and resulting treated wastes must be included in the disclosure which is submitted to the Agency or Agency approved county for review and approval. Also, the wastes must be evaluated to determine whether or not they are hazardous wastes. These facilities are not currently regulated by the federal hazardous waste program.

Since elementary neutralization units, pretreatment units, wastewater treatment units and combustion waste facilities are not necessarily covered by an individual permit for the activity involving hazardous waste, as are ocean disposal barges and

vessels and publicly owned treatment works, provisions for terminating eligibility to be permitted by rule are included for the first group of facilities. Just as permittees with individual permits are allowed the opportunity for a public informational meeting or contested case hearing regarding termination of a permit, so too are persons whose activities are permitted by rule.

There are four findings which constitute justification for terminating eligibility. It is reasonable to terminate eligibility for a facility which does not meet the conditions set forth in C.3. or C.4. of this rule of which has violated the requirements of 6 MCAR §§4.9480 - 4.9481, since compliance with those conditions and requirements serves as the basis for eligibility to be permitted by rule. It is also reasonable to terminate eligibility for a facility which is required to obtain a hazardous waste facility permit for some other activity, since facility prmits are to cover all hazardous waste activities occurring at that location. Also, conducting other hazardous waste activities at the facility could affect the facility which is permitted by rule, thus making it necessary to address operation of the entire facility in an individual permit. It is reasonable to terminate the eligibility of an owner or oprator to be permitted by rule if circumstances exist which make it necessary to require an individual permit to protect human health or the environment because protection of human health and the environment is a primary responsibility of the Agency.

6 MCAR §4.4204, Hazardous Waste Facility Permit Application.

This rule describes the application requirements for existing and new hazardous waste facilities. The topics covered include the form and timing of application and the updating of permit applications.

Section A. provides for the submission of an application in two parts, Part A and Part B. The two part application process is used so that, based on the information provided in the Part A, applicants can be readily identified and placed in the permit processing system, interim status determinations can be made for existing facilities, and priorities set for permitting of facilities. If a one-part application procedure were used the type and quantity of information required would make if much more difficult and time-consuming for an owner or operator of a new or existing facility to initiate a permit application and for an existing facility owner to quality for interim status. Therefore, it is reasonable to use a two-part permit application process.

Owners and operators of existing hazardous waste facilities are required by Section B.1. to submit a Part A application within 90 days of the effective date of this rule. Since the Part A is not a lengthy document and since many of the larger facilities will have already submitted their Part A to the Agency, the 90 day deadline for Part A submission is reasonable. It is reasonable that if the applicant has already submitted a complete and

accurate Part A to the EPA which accurately reflects the requirements of the state's hazardous waste rules there is no need to submit a Part A to the Director. If the Part A information submitted to EPA is not complete with respect to all portions of the facility and all wastes stored, treated or disposed of subject to regulation under 6 MCAR §§4.9100 - 4.9560, it is reasonable to require the owner or operator to submit a revised Part A within 90 days of the effective date of this rule.

Part B applications can be submitted any time after submission of the Part A, except upon request of the Director the Part B must be submitted no later than six months from the date of the request. Based on the type and quantity of information required for the Part B application it is believed that six months is an adequate time period for gathering the data and necessary information to complete and submit the Part B application. Therefore, it is reasonable to adopt a six month deadline for submission of Part B.

Section B.2. requires that a person who proposes to construct a new hazardous waste facility must submit Parts A and B of the application at least 180 days before the planned date for beginning of construction. This is a reasonable requirement to allow time for review of the application, for conferring with the applicant regarding conditions and time schedules to be included in the permit, public noticing, consideration of comments, hearing requests and the possibility of a public informational meeting

being held. The 180 day period is considered a minimum processing time for a permit. However, if problems with the application are encountered or there is a request for a contested case hearing the processing time could be signficantly longer than 180 days. Therefore, it is reasonable to require that the application be submitted at least 180 days before construction is to begin, and it is to the applicant's advantage to submit the application allowing as much time as possible before the expected date of commencement of construction.

Section B.3. provides that timing for the application for reissuance of existing permits is governed by 6 MCAR §4.4004 except as follows: If the Director receives a request for extension of the time for filing the written aplication showing good cause for the extension, the Director shall grant the extension so long as the final date for filing the application does not extend beyond the expiration date of the permit. It is recognized that in certain cases problems arise in completing permit applications, such as time delays in obtaining certain types of information needed for inclusion in the application. In these cases, it is reasonable to allow this time extension for submission of the application for reissuance provided the applicant shows good cause. The provision in 6 MCAR §4.4016 for continuation of expired permits states in apart that the permittee may continue to conduct the permitted activity after the permit expires if the Agency has not taken final action on the

application due to no fault of the permittee. It is therefore reasonable to provide for this extension of the time for filing of the application for reissuance since the permittee can still be considered to be operating under a permit during this period rather than operating with an expired permit in violation of state rules.

Section C. requires the owner or operator to submit a revised Part A application if he has not yet submitted the Part B under the following circumstances:

a) if the submission of an amended application is necessary to comply with 6 MCAR §4.4216 E., or

b) if the Agency amends 6 MCAR §§4.9128 - 4.9137 to list or designate as hazardous a waste which was not listed or designated as hazardous at the time of submission of the original Part A.

It is reasonable to require up-to-date information regarding changes in the designation of hazardous wastes and changes in the facility as required by the interim status standards in 6 MCAR §4.4216 E. because the Director needs accurate information in order to draft an appropriate permit and to enforce the interim status standards.

6 MCAR §4.4205, Certification of Permit Applications and Report.

This rule requires that the applicant must, in addition to making the certification as to the truth and accuracy of the information in the permit application as required by 6 MCAR

§4.4007, certify that he or she is aware that there are significant penalties for submitting false information. EPA's rules relating to state program requirements, 40 C.F.R. §271.14(e) requires states to require applicants to make this certification. It is reasonable to include this requirement to enable the Agency to obtain authorization to implement the hazardous waste facility permit program.

6 MCAR §4.4206, Contents of Part A of Application.

This rule establishes what information is to be contained in a Part A of a hazardous waste facility application. Submission of a Part A application provides the mechanism for existing facilities to obtain interim status as provided in 6 MCAR §4.4216. The Part A application is designed to provide the Director with sufficient information to prioritize all existing facilities. Based on this prioritization, the Director will request Part B of the permit application from a specific number of these facilities. Also the Part A is intended to provide facility information upon which the Director can process the permit application.

It is reasonable to include in Section A. a cross reference to 6 MCAR §4.4005 so that the applicant will be alerted to the information requirements in the other rule. The information requirements of 6 MCAR §4.4005 are basic identification information which is needed for all facility permits.

Section B., which requires the identification of all wells, springs, and surface water bodies is reasonable due to the potential impact a hazardous waste facility could have on water supplies, aquatic life, and wildlife. Spills of hazardous waste, as well as contaminated runoff and subsurface migration of hazardous waste or waste constituents could all adversely impact wells, springs, and surface water bodies. Requiring the facility's exact location, including latitude and longitude, is reasonable since it is essential to know where the facility is located. Often, especially in open non-urban areas, it is difficult to specify an exact location by a street address or description of the surrounding area, whereas latitude and longitude information can be used to identify on a map the exact facility location. Also, because 6 MCAR §4.9303 requires for land disposal facilities that a notice be placed in the deed identifying where hazardous wastes have been disposed, this information is needed so staff can be sure of exact locations. Information on hazardous waste types and quantities as well as processes utilized and design capacity must be known in order for Agency staff to properly assess the facility's potential for adverse effects on human health and the environment and to prioritize facilities. This information is very basic to the permitting process and therefore should be provided. Also, the information should be readily available to the owner or operator

and thus requiring it be submitted does not place an unreasonable burden on the owner or operator.

It is necessary to require an indication as to whether the facility is new or exsiting so that a determination can be made whether to grant interim status to the facility or to request that a Part B application be submitted. Interim status is only available to existing facilities. Therefore the Agency must be informed as to whether it is interim status the facility is seeking and whether the facility is eligible for interim status. However, for new facilities, both Part A and Part B of a permit application must be submitted as required by 6 MCAR §4.4204 and a permit must be issued prior to construction and operation.

For existing facilities additional information is required by Sections H. and I. Drawings and pictures provide the Director with information of the facility's physical setting. Also, pictures help Agency staff to visualize facilities and provide some indication as to whether the facility is in compliance with the interim status standards of 6 MCAR §§4.9380 - 9.9422. Although the information is not extensive enough to determine compliance with interim status standards, it at least gives a preliminary indication upon which staff can base a follow-up inspection. This is reasonable since one of the conditions which must be met in order to qualify for interim status is compliance with the interim status standards of 6 MCAR §§4.9380 - 4.9422.

Section J. requires that a statement be included which specifies what permits the applicant has applied for or received pertaining to the facility which is the subject of the application. This requirement is taken from 40 C.F.R. §270.13 and is required to be a part of the state's hazardous waste facility permitting program under 40 C.F.R. §271.14(g). Accordingly, this provision has been included in this rule. Since an applicant should know whether application has been made or permits received for the facility, it is reasonable and not burdensome to require submission of such information with the application. Such information could be useful to Agency staff when drafting the facility's hazardous waste permit in order to ensure that it is consistent with other permits.

6 MCAR §4.4207, General Information Requirements for Part B of Application.

This rule establishes what general information is to be contained in a Part B permit application for a hazardous waste facility. The Part B application is designed to provide the Agency with sufficient information to make a determination to either issue or deny a hazardous waste facility permit. Since this determination will affect whether a facility is allowed to operate or be required to close, it is reasonable to require extensive and detailed information regarding the facility's location, design, construction, operation, and proposed closure. Also since this information will serve as a basis for the

conditions in the permit, it is reasonable to require such extensive and detailed facility information. The information requirements are based on the final facility standards of 6 MCAR §§4.9280 - 4.9322. Since compliance with these standards is one of the conditions for issuance of a permit, it is reasonable to require sufficient information to allow the Agency to determine whether the facility is in compliance with these standards. If the facility is not in compliance but is in the process of achieving compliance, a compliance schedule can be established in the permit as provided in 6 MCAR §4.4015. However, if a facility is not able to comply with these standards this must be known by the Agency so that the appropriate determination can be made in accordance with 6 MCAR §4.4014 regarding permit issuance or denal.

As discussed under 6 MCAR §4.4206, the information required in a Part A is necessary and reasonable in order for the Agency to initiate processing permit applications. Therefore, it is reasonable to require a general description of the facility unless an accurate and complete Part A has been submitted.

Sections B. and C. require the submission of waste analyses and a waste analysis plan. It is reasonable to require this information since it is necessary for the facility owner or operator to know what hazardous wastes are being received in order to properly manage the wastes. Since the facility's permit must indicate what wastes can be handled at the facility as well as the

conditions for managing the wastes, it is reasonable for the Agency to require waste analysis information. Also this information is necessary for determining compliance with 6 MCAR §4.9284 and for reviewing the plan for adequacy prior to incorporation into the permit.

Section D. requires the submission of the security procedures and equipment which are required at the facility by 6 MCAR §4.9281 D. Facilities must comply with these requirements unless the Agency specifies otherwise in the permit. Therefore, it is reasonable to require the facility to submit either information showing facility compliance or information showing that the security requirements are not necessary. Based on this information, the appropriate security requirements will be included in the permit.

Section E. requires the submission of a copy of the inspection schedules which are required under 6 MCAR §§4.9281 and 4.9315 - 4.9321. Based on these schedules, inspections will be conducted at the facility thus providing assurance that spills and conditions which could cause sudden hazardous waste release occurrences do not go undetected for long periods of time. Since these schedules establish the frequency and extent of these inspections thus affecting the adequacy of the inspections, it is reasonable to require that the schedules be submitted for Agency review and inclusion in the permit.

Section F. requires a showing of compliance with 6 MCAR

§4.9286 and 4.9287 or a justification for waivers from the requirements of those rules. The requirements of 6 MCAR §§4.9286 and 4.9287 concern preparedness and prevention. Since some of the requirements might not be applicable to all facilities due to a specific situation or condition at a facility, it is reasonable to allow the facility to request a waiver from requirements which are not applicable. Based on the waiver request and accompanying justification, the Agency can either grant or deny the request and include in the permit the appropriate requirements.

Section G. requires submission of a copy of the contingency plan required by 6 MCAR §4.9288 which establishes methods for handling emergencies and unplanned releases of hazardous waste at the facility. Since this plan will determine the facility's response to such situations, it is reasonable to require the plan be submitted for Agency review and inclusion in the permit. If the plan is inadequate or contains improper management procedures, Agency staff will be able to work with the applicant to amend the plan so that it is adequate and can be included in the permit.

Section H. requires submission of a description of procedures, structures and equipment used at the facility to prevent adverse effects on human health and the environment. This section specifically addresses waste unloading procedures, management of run-off from waste handling areas, prevention of water supply contamination, equipment or power failures, and personnel exposure to wastes. This section is reasonable because

hazardous waste facilities have the potential for adversely affecting human health and the environment, which can be avoided or mitigated if appropriate procedures, structures and equipment are used at the facility. It is reasonable to require the submission of this information so that the Agency may include the use of those preventative measures at the facility.

Section I. requires submission of a description of precautions to prevent accidental ignition or reaction of ignitable, reacitve or incompatible wastes. Since ignitable, reactive, and incompatible wastes have a great potential for causing explosions, fires, and unplanned releases of hazardous wastes, it is reasonable to request information on what special precautions the facility will take regarding the handling of these types of wastes. This information can then be reviewed for adequacy and included in the permit to assure proper handling of these types of wastes.

Section J. requires the submission of a description of traffic control at the facility. Since traffic management at the facility can affect the facility's potential for accidents and unplanned releases of hazardous wastes, it is reasonable to require this information. This is particularly important for large facilities which receive many shipments of hazardous wastes. Requiring information on road conditions and capacities is reasonable for the reason that this information is necessary for determining whether the roads are adequate for the types of

vehicles expected to be used the facility. If the roads are not adequate, improvements may need to be made or limits may be placed in the permit on the types of vehicles which can use the facility.

Section K. requires a showing of compliance with 6 MCAR §4.9282, which requires facilities to provide personnel training and establish minimum program requirements. It is reasonable to request this information so that the Agency can determine whether the facility is in compliance with this standard. Also, since facility operation is dependent on facility personnel and the extent they have been trained, it is reasonable to require this information.

Section L. requires a showing of compliance with rules relating to closure and post-closure plans. The provisions of 6 MCAR §§4.9298 - 4.9301 and 4.9315 - 4.9321 contain closure and post-closure requirements including the requirement to establish closure and post-closure plans. Requiring the submission of these plans is reasonable, so that compliance can be determined and so the plans can be incorporated into the permit. Since proper closure and post-closure activities are necessary to prevent adverse effects on human health and the environment, it is reasonable to require facilities to provide assurance that the facility can and will be properly closed and, if necessary, provided with proper post-closure care. Also, since the closure and post-closure plans provide the basis for cost estimates as required by 6 MCAR §§4.9305 and 5.9307, it is vital that the plans

be accurate and detailed and that the Agency has reviewed and approved them in conjunction with issuing a permit. The amount of funds available to conduct closure and post-closure activities as well as the activities themselves are dependent on these plans; therefore it is essential that the Agency be afforded the opportunity to review, amend, and approve these plans.

Seciton M. requires showing of compliance with 6 MCAR §4.9303, which requires existing disposal facilities to place a notice in the deed indicating the property has been used for disposal of hazardous waste. It is reasonable to require documentation showing this has been done so the Agency can determine whether the facility is in compliance with this requirement. It is reasonable to require that notice be placed in the deed prior to issuance or denial of a permit, since even if a permit is not issued, the future development of the property could be affected by the past disposal of hazardous waste, and prospective buyers of the property should be made aware of this.

Sections N., O., and P. require submission of the closure, post-closure, and corrective action cost estimates and financial assurance mechanisms, which are required by 6MCAR §§4.9304 - 4.9310. These estimates are based on the closure, post-closure, and corrective action plans required in 6 MCAR §§4.9298, 4.9300, and 4.9297. Closure, post-closure, and corrective action activities can be very expensive but are essential in preventing adverse effects on human health and the environment. The value of

the financial mechanism is dependent on the cost estimates. Based on those requirements, it is reasonable to require facilities to submit cost estimates and copies of the financial assurance mechanisms showing compliance with 6 MCAR §§4.9304 - 4.9310.

Section Q. requires a showing of compliance with 6 MCAR §4.9312 relating to liability coverage. In order to show compliance with this requirement it is reasonable to require applicants to submit a copy of the insurance policy or other documentation showing compliance. Also, since there are provisions for allowing variances to the insurance requirement, it is reasonable to allow applicants to submit a request for variance and supporting information for consideration during the permitting process. The permit can then include the appropriate liability requirements.

Sections R., S., and T. require the submission of a topographic map, floodplain information, and other locational information. It is reasonable to require a topographic map showing the facility and surrounding area to be submitted, since this information is necessary for determining the facility's potential for adverse effects on the surrounding area. Contours are necessary for determining surface water flow at the facility.

Requiring general information such as map date, scale, and direction arrows is reasonable so that the map can be accurately interpreted. It is reasonable to require information on floodplains, wetlands, shorelands, wells, wind speed and

direction, zoning and uses of surrounding area, boundaries of parks and wildlife refuges and barriers for drainage or flood control, so that compliance with location standards and the potential for adverse effects on water supplies, aquatic life, wildlife and the surrounding area can be ascertained. Locational information such as boundaries, township, range and section numbers, buildings, structures, and operational units is required so that the exact location and facility layout can be determined. Based on this information the Agency can also determine what units of government would have jurisdiction over the facility so that a public notice can be sent to them as required in 6 MCAR §4.4217. Information on fences, gates and access control is required to help the Agency determine facility compliance with the security requirements of 6 MCAR §4.9281 D. Based on this information, appropriate conditions can be included in the permit

6 MCAR §4.9285 contains location standards for hazardous waste facilities. It is reasonable to require locational information to determine whether the facility is in compliance with these standards. Since 6 MCAR §4.9285 A. establishes special facility conditions for facilities located in floodplains it is reasonable to require facilities to submit a determination with supporting information, as to whether the facility is located in a floodplain. For facilities located in the floodplain, the applicant can either provide protection to prevent washout or establish procedures for removing the hazardous wastes from the

facility before flood waters can reach the facility. Therefore it is reasonable to require information showing which option the facility has chosen to follow and information showing compliance with the appropriate standard.

Section T. requires the submission of any additional information which the Director needs to determine whether the facility will meet all applicable federal and state statutes and rules. Since the intent of the Part B permit application is to provide sufficient information for the Agency to make a determination to issue or deny a hazardous waste facility permit and 6 MCAR §4.4014 sets forth the findings which must be made in order to make a final determination, it is reasonable to require additional information which is relevant to the facility and needed to make that determination.

6 MCAR §4.4208, Part B Information Requirements for Facilities That Store Containers of Hazardous Waste.

This rule establishes what additional information is to be contained in a Part B permit application for hazardous waste facilities which store hazardous waste in containers. The information requirements of this rule are based on the final facility standards of 6 MCAR §4.9315. These standards are specific for facilities which store hazardous waste in containers. Since facility compliance with these standards is one of the conditions for issuance of a permit, it is reasonable to require sufficient information to enable the Agency to determine whether

the facility is able to comply and whether a permit should be issued.

Section A. of the rule requires a showing of compliance with 6 MCAR §4.9315 F., which requires container storage ageas to have a containment system which satisfies certain conditions. It is reasonable to require the applicant to submit a description of the containment system which addresses the conditions in 6 MCAR §4.9315 F. to allow the Agency to determine whether the facility is in compliance with that rule. Also since the permit is to contain conditions regarding the containment system, it is reasonable to require detailed information regarding the storage system. Since the containment system serves to contain spills and other releases of hazardous waste and to prevent contamination of ground water, it is reasonable to have Agency staff review the system for adequacy.

Sections B. and C. require submission of information on the type of containers to be used, information on the waste types to be stored in each type of container, and an operations manual. Since 6 MCAR §4.9315 contains requirements regarding the condition of containers, the compatibility of wastes with containers and the management of containers, it is reasonable to require information on container and waste types and an operations manual. Also since these factors affect the facility's ability to properly store hazardous waste, it is reasonable that Agency staff review this information to be sure than hazardous waste is being stored

properly prior to permit issuance. The waste and container information and operations manual can then be included as permit conditions.

Section D. relates to waste not containing free liquids. The storage of wastes not containing free liquids poses a lower potential for contamination due to spills and other releases of hazardous waste than wastes which do contain free liquids. This is due to the dry nature of the waste and the waste's tendency to remain stationary when spilled. 6 MCAR §4.9315 F.4. provides special considerations for these types of facilities based on the lower potential and dry nature of the waste. If the facility can satisfy the requirements of 6 MCAR §4.9315 F.4., the containment system described in 6 MCAR §4.9215 F.1. is not required. Due to this special case, it is reasonable to require these facilities to submit information showing compliance with the special conditions of 6 MCAR §4.9315 F.4. so that the permit can reflect the applicable standards regarding the containment system.

Sections E. and F. relate to ignitable, reactive, and incompatible wastes which possess a great potential for causing fires, explosions, and unplanned releases of hazardous waste. Accordingly, 6 MCAR §54.9315 G. and H. contain special requirements for managing these types of wastes. Therefore, it is reasonable to require information on how the facility will comply with these requirements to assure proper handling of these special types of wastes. Also this information can be used to establish

appropriate permit conditions for the facility.

6 MCAR §4.4209, Part B Information Requirements for Storage or Treatment Tanks.

This rule establishes what additional information is to be contained in a Part B permit application for hazardous waste facilities which treat or store hazardous waste in tanks. The information requirements of this rule are based on the final facility standards of 6 MCAR §4.9316. These standards are specific for facilities which treat or store hazardous waste in tanks. Since facility compliance with these standards is one of the conditions for issuance of a permit, it is reasonable to require sufficient information to enable the Agency to determine whether the facility is able to comply and whether a permit is to be issued.

Section A. requires a showing of compliance with 6 MCAR §4.9316 B., C., G., and H., which contain requirements for the design and operation of facilities which treat or store hazardous waste in tanks. It is reasonable to require information on tank design and construction for review in order for the Agency to determine whether the tanks meet the standards and are adequate for storing or treating the hazardous waste managed at the facility. Also this information is necessary for the Agency to establish in the permit a minimum shell thickness as required in 6 MCAR §4.9316 B.1.

Underground tanks present special concerns due to the general

inability to inspect them for leaks, spills, and other conditions which could cause release of hazardous waste and the tank's high potential for contamination of soil and ground water due to its placement below surface grade. Accordingly there are special provisions in 6 MCAR §4.9316 B.3. for underground tanks. Based on these special concerns and provisions, it is reasonable to require specific information regarding underground tanks and their compliance with these special conditions.

6 MCAR §4.9316 C. contains general operating requirements, including provisions for preventing overfilling. To assure operation of the facility and compliance with these requirements, it is reasonable to require information on piping and waste feed systems. Also for facilities which handle ignitable, reactive or incompatible wastes, due to the waste's high potential for explosions, fires, and unplanned releases of hazardous waste, and the special requirements in 6 MCAR §4.9316 G. and H., it is reasonable to require information on special operating procedures for these types of wastes.

Section B. of the rule requires a showing of compliance with 6 MCAR §4.9316 E., which requires tank areas to have a containment system which satisfies certain conditions. It is reasonable to require the applicant to submit a description of the containment system which addresses the conditions in 6 MCAR §4.9316 E. to show facility compliance. Since the containment system serves to contain spills and other releases of hazardous waste and to

protect ground water from contamination, it is reasonable to have Agency staff review the system for adequacy. Also since the permit is to contain conditions regarding the containment system, it is reasonbable to require detailed information on which to base these conditions.

6 MCAR §4.4210, Part B Information Requirements for Surface Impoundments.

This rule establishes what additional information is to be contained in a Part B permit application for hazardous waste facilities which store, treat, or dispose of hazardous waste in surface impoundments. The information requirements of this rule are based on the final facility standards of 6 MCAR §4.9317. These standards are specific for facilities which store, treat, or dispose of hazardous waste in surface impoundments. Since facility compliance is one of the conditions for issuance of a permit, it is reasonable to require sufficient information to enable the Agency to determine whether the facility is able to comply and whether a permit is to be issued.

The standards in 6 MCAR §4.9317 apply to surface impoundments which treat, store, or dispose of hazardous waste and which are designed and operated to prevent discharge into the land, ground water, and surface water. Considering that most existing surface impoundments were not designed nor intended to meet the no discharge criterion, very few, if any, existing surface impoundments will qualify for a permit under this rule.

Therefore most facilities seeking a permit under this rule will be new facilities or at least redesigned existing impoundments. For existing surface impoundments which cannot comply with the liner requirements of 6 MCAR §4.9317 C.1. there are provisions in 6 MCAR §4.9317 G.3. for closing such facilities. The Agency may choose to issue a permit addressing closure and post-closure requirements for such facilities. Considering the high potential surface impoundments have for contaminating soil, ground water, and surface water and the difficulty in showing compliance with the no discharge standard, it is reasonable to require detailed and complete design information. Since most of the facilities will be new ones for which plans and specifications have not yet been prepared, it is reasonable to require the plans and specifications be detailed enough that a contractor could build the facility. This form will help the Agency in its review of the information and in making its determinations regarding facility compliance and permit issuance. Also these plans and specifications will be necessary for an independent registered engineer to certify the surface impoundment in accordance with 6 MCAR §§4.9317 E.3. - 4. and 4.4223 B.3.a. and for the Agency to respond to that certification in accordance with 6 MCAR §4.4223 B.3.b.

Section A. of the rule requires a listing of hazardous wastes to be placed in a surface impoundment. This is necessary to evaluate if the requirements of 6 MCAR §§4.4317 C.1. and H. - I. are met. 6 MCAR §4.9317 C.1. requires that the liner system be

compatible with the wastes managed at the surface impoundment. 6 MCAR §4.9317 H. - I. require that ignitable, reactive, and incompatible wastes be managed to eliminate the danger associated with these characteristics. It is reasonable to include a listing of hazardous wastes to be managed in a surface impoundment because such a list is necessary in order to determine those hazardous constituents for which concentration limits must be established under 6 MCAR §4.9297 F.

Section B. of the rule requires a showing of compliance with 6 MCAR §4.4317 B., which contains requirements for information on the location of the surface impoundment. Because the location of a surface impoundment will influence the fate of any contamination which may escape from it, it is reasonable that the permittee submit information to demonstrate that the location is suitable.

Section C. of the rule requires the submission of plans and an engineering report. This requirement is reasonable because these items are necessary in order to verify that the surface impoundment is designed, constructed, operated, and maintained in accordance with 6 MCAR §4.9317 C. These plans and the engineering report must include analyses of the liner and leak detection, collection, and removal systems; methods to prevent overtopping; and the structural integrity of the dikes.

Section D. of the rule requires the submission of an inspection plan which describes how the surface impoundment and its components will be inspected to meet the requirements of 6

MCAR §4.9317 E.1. - 2. This requirement is necessary because this plan must be reviewed as to adequacy by the Agency staff. An inspection plan is also needed so that it can be at the surface impoundment as a reference.

Section E. of the rule requires the submission of a certification by a registered professional engineer that the dikes of the surface impoundment are structurally competent in accordance with 6 MCAR §4.9317 E.3. Section F. of the rule requires that a certification must also be submitted that the uppermost liner meets design specifications as required under 6 MCAR §4.9317 E.4. It is reasonable to require these certifications because the Agency needs this information to evaluate compliance with the hazardous waste rules.

Section G. of the rule requires a description of the procedure to be used for removing the surface impoundment from service as required under 6 MCAR §4.9317 F.2. and F.3. Because removing a surface impoundment from service occurs in order to protect human health and the environment, it is important that the procedures are established in advance. These procedures need to be submitted so that the Agency can review them in order to assure that the facility is able to comply with the hazardous waste rules.

Section H. of the rule requires the submittal of a description of how hazardous waste residues and contaminated materials will be removed from the surface impoundment at closure

as required under 6 MCAR §4.9317 G.1.a. For any wastes not to be removed from the surface impoundment upon closure, the owner or operator must submit detailed plans and an engineering report describing how 6 MCAR §4.9317 G.1.b. and G.2. will be complied with. Because removal of wastes and waste residues will occur at most surface impoundments at closure, it is necessary to plan their removal. The plan will also be instrumental in determining what will be the closure costs for the surface impoundment. The Agency must review the proposed removal of waste and waste residues to determine if the plan complies with 6 MCAR §4.9317 G. Therefore it is reasonable to require submission of the plan.

Sections I. and J. of the rule require a showing of compliance with 6 MCAR §4.9317 H. and I. relating to ignitable, reactive, and incompatible wastes. Because these wastes possess a great potential to cause explosions, fire, and unplanned releases of hazardous waste, special provisions for managing these wastes exist. It is reasonable to require this information so that the Agency can determine whether the surface impoundment is in compliance with hazardous waste rules.

6 MCAR §4.4211, Part B Information Requirements for Waste Piles.

This rule establishes what additional information is to be contained in a Part B permit application for hazardous waste facilities which store or treat hazardous waste in waste piles. The information requirements of this rule are based on the final

facility standards of 6 MCAR §4.9318. These standards are specific for facilities which store or treat hazardous waste in waste piles. Since facility compliance with these standards is one of the conditions for issuance of a permit, it is reasonable to require sufficieint information to enable the Agency to determine whether the facility is able to comply and whether a permit should be issued.

Section A. of the rule requires a listing of hazardous wastes to be placed in a waste pile. This is necessary to evaluate if the requirements of 6 MCAR §4.9318 C.1. - 2. and 6 MCAR §4.9318 H. - I. are met. 6 MCAR §4.9318 C.1. - 2. require that the liner and leachate collection system be compatible with the wastes managed at the waste pile. 6 MCAR §4.9318 H. - I. require that ignitable, reactive, and incompatible wastes be managed to eliminate the dangers associated with these characteristics. A listing of hazardous wastes to be managed in a waste pile is also necessary in order to determine those hazardous constituents for which concentration limits must be established under 6 MCAR §4.9297 F.

Section B. of the rule requires that if a permittee seeks an exemption from 6 MCAR §4.9297 for a waste pile as provided by 6 MCAR §4.9318 A. the permittee must provide an explanation of how the requirements of 6 MCAR §4.9318 A.1. - 4. will be complied with. This is reasonable as these exemptions are to major parts of the rules, such as ground water monitoring, and the permittee should clearly explain why an exemption will not result in harm to

the environment.

Section C. of the rule requires a showing of compliance with 6 MCAR §4.9318 B., which contains requirements for information on the location of a waste pile. Because the location of a waste pile will influence the fate of any contamination which may escape from it, it is reasonable that the permittee submit information to demonstrate that the location is suitable.

Section D. of the rule requires the submission of plans and an engineering report. These are necessary in order to verify that the waste pile is designed, constructed, operated, and maintained in accordance with 6 MCAR §4.9318 C. These plans and the engineering report must include analyses of the liner, leachate collection and removal system, and if applicable, the leak detection, collection and removal system. Management of run-on, run-off, wind dispersal of particulate matter, and leachate must also be addressed. It is reasonable to require this information so that the Agency can determine compliance with 6 MCAR §4.9318 C.

Section E. of the rule requires that if an exemption from 6 MCAR §4.9297 K.5. is sought that plans and an engineering report which describe how the requirements of 6 MCAR §4.9318 D.1. are met must be submitted. This is reasonable as the Agency must have sufficient information to determine if an exemption to 6 MCAR §4.9297 K.5. is warranted.

Section F. of the rule requires that if an exemption from

6 MCAR §4.9297 is sought that plans and an engineering report which describe how the requirements of 6 MCAR §4.9318 E. are met must be submitted. This is reasonable so that the Agency can determine whether an exemption from 6 MCAR §4.9297, Ground water monitoring, is warranted.

Section G. of the rule requires the submission of an inspection plan which describes how the waste pile and its components will be inspected to meet the requirements of 6 MCAR §4.9318 F. If an exemption is sought to 6 MCAR §4.9297 the inspection plan must describe how the inspection requirements of 6 MCAR §4.9318 E.1.b. will be complied with. It is necessary to submit this plan in order that its adequacy can be reviewed by the Agency. An inspection plan is also needed so that it can be at the waste pile as a reference.

Section H. of the rule requires that if treatment is carried out on or in the pile, details of the process and equipment used, and the nature and quality of the residuals must be submitted. This information is necessary in order for the Agency to evaluate the effectiveness of the treatment and is therefore reasonable.

Sections I. and J. of the rule require a showing of compliance with 6 MCAR §4.9318 H. and I. relating to ignitable, reactive, and incompatible wastes. Since these wastes possess a great potential to cause explosions, fire, and unplanned releases of hazardous waste, special provisions for managing these wastes exist. It is reasonable to require this information so that the

Agency can determine whether the waste pile is in compliance with these provisions.

6 MCAR §4.4212, Part B Information Requirements for Land Treatment.

This rule establishes what additional information is to be contained in Part B permit applications for hazardous waste facilities which propose to use land treatment to treat or dispose of hazardous waste. The information requirements of this rule are based on the final facility standards of 6 MCAR §4.9419. These standards are specific for facilities which treat or dispose of hazardous waste in land treatment units. Since facility compliance with these standards is one of the conditions for issuance of a permit, it is reasonable to require sufficient information to enable the Agency to determine whether the facility is able to comply and whether a permit should be issued.

Section A. of the rule requires a description of plans to conduct a treatment demonstration as required under 6 MCAR §4.9319 C. The description must include: the wastes to be tested, sources of data, and specific laboratory or field tests. Because of the many variables involved in making a demonstration it is reasonable to require details on a demonstration so that the Agency can determine whether it is adequate.

Section B. of the rule requires a description of a land treatment program as required under 6 MCAR §4.9319 B. This information must be submitted with the plans for the treatment demonstration,

and updated following the treatment demonstration. It is reasonable to require this information as it will be used by the Agency to specify the elements of the treatment program such as the waste types, design and operating practices, unsaturated zone monitoring, and the extent of the treatment zone as required in 6 MCAR §4.9319 B.

Section C. of the rule requires a description of how the unit is or will be designed, constructed, operated, and maintained in order to meet the requirements of 6 MCAR §4.9319 D. It is necessary and reasonable that this information be submitted because the Agency under 6 MCAR §4.9319 D. must specify in the permit how the unit shall be designed, constructed, operated, and maintained. The Agency can only do this if the permittee first makes a proposal and the Agency then evaluates it.

Section D. of the rule requires that if food chain crops might be grown in or on the treatment zone of the land treatment unit, a description of how the demonstrations required under 6 MCAR §4.9319 E. will be conducted must be submitted. Because Agency approval of the growth of food chain crops is based on whether the permittee can comply with the conditions of 6 MCAR §4.9319 E. it is necessary that proof of compliance be furnished.

Section E. of the rule requires that if food chain crops are to be grown after closure, a description of how the requirements of 6 MCAR §4.9319 E. will be complied with must be submitted. Because Agency approval of the growth of food chain crops is based on

whether the permittee can comply with the conditions of 6 MCAR §4.9319 E. it is necessary that proof of compliance be furnished.

Section F. of the rule requires a description of the vegetative cover to be applied to closed portions of the facility, and a plan for maintaining such cover during the post-closure care period, as required under 6 MCAR §4.9319 H.1.h. and H.3.b. It is reasonable to require this information in order for the Agency to determine whether the land treatment unit is properly closed.

Sections G. and H. of the rule require a showing of compliance with 6 MCAR §4.9319 I. and J. relating to ignitable, reactive, and incompatible wastes. Since these wastes possess a great potential to cause explosions, fire, and unplanned releases of hazardous waste, special provisions for managing these wastes exist. It is reasonable to require this information so that the Agency can determine whether the land treatment unit is in compliance with these provisions.

6 MCAR § 4.4213, Part B Information Requirements for Landfills.

This rule establishes what additional information is to be contained in a Part B permit application for hazardous waste facilities which dispose of hazardous waste in landfills. The information requirements of this rule are based on the final facility standards of 6 MCAR §4.9420. These standards are specific for facilities which dispose of hazardous waste in landfills. Since facility compliance with these standards is one

of the conditions for issuance of a permit, it is reasonable to require sufficient information to enable the Agency to determine whether the facility is able to comply and whether a permit should be issued.

Section A. of the rule requires a listing of hazardous wastes to be placed in a landfill or landfill cell. This is necessary to evaluate if the requirements of 6 MCAR §4.9320 C. and 6 MCAR §4.9230 H. and I. are met. 6 MCAR §4.9320 C. requires that the liner, leachate collection system, and leak detection, collection, and removal system be compatible with the wastes managed at the landfill. 6 MCAR §4.9320 H. and I. require that ignitable, reactive, and incompatible wastes be maintained to elminate the dangers associated with these characteristics. A list of hazardous wastes to be managed at a landfill is also necessary in order to determine those hazardous constituents for which concentration limits must be established under 6 MCAR §4.9297 F.

Section B. of the rule requires a showing of compliance with 6 MCAR §4.9320 B., which contains requirements for information on the location of a landfill. Because the location of a landfill will influence the rate of any contamination which may escape from it, it is reasonable that the permittee submit information to demonstrate that the location is suitable.

Section C. of the rule requires the submission of plans and an engineering report. These are necessary in order to verify that the landfill is designed, constructed, operated, and maintained in

accordance with 6 MCAR §4.9320 C. These plans and the engineering report must include analyses of the liner, leachate collection and removal system, and leak detection, collection, and removal system. Management of run-on, run-off, and leachate must also be addressed. It is reasonable to require this information so that the Agency can determine compliance with 6 MCAR §4.9320 C.

Section D. of the rules requires the submission of an inspection plan which describes how the landfill and its components will be inspected to meet the requirements of 6 MCAR §4.9320 E. It is necessary to submit this plan in order that its adequacy can be reviewed by the Agency. An inspection plan is also needed so that it can be at the landfill as a reference.

Section E. of the rules requires the submission of detailed plans and an engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with 6 MCAR §4.9320 G.1. and a description of how each landfill will be maintained and monitored after closure in accordance with 6 MCAR §4.9320 G.2. Because 6 MCAR §4.9320 G.1. and 2. include some general performance standards it is reasonable to require the submission of information which demonstrates how the permittee will comply with these provisions.

Sections F. and G. of the rule require a showing of compliance with 6 MCAR §4.9320 H. and I. relating to ignitable, reactive, and incompatible wastes. Since these wastes possess a great

potential to cause explosions, fire, and unplanned releases of hazardous waste, special provisions for managing these wastes exist. It is reasonable to require this information so that the Agency can determine whether the landfill is in compliance with these provisions.

Section H. of the rule requires that if a liquid waste or waste containing free liquids is to be landfilled, an explanation of how the requirements of 6 MCAR §4.9320 J. will be complied with. Because 6 MCAR §4.9320 J. greatly restricts the landfilling of liquid waste or waste containing free liquids it is necessary to provide sufficient information for the Agency to determine if these provisions are complied with.

Section I. of the rule requires that if containers of hazardous waste are to be landfilled, an explanation of how the requirements of 6 MCAR §4.9320 K. and L., as applicable, will be complied with. 6 MCAR §4.9320 K. and L. must be complied with in order to ensure that settling in the completed landfill is minimized. Therefore, it is reasonable to require submittal of sufficient information so that the Agency can determine if 6 MCAR §4.9320 K. and L. are complied with.

6 MCAR §4.4214, Part B Information and Special Procedural Requirements for Thermal Treatment Facilities.

This rule establishes what additional information is to be contained in Part B permit application for hazardous waste facilities which thermally treat hazardous waste. The information

requirements of this rule are based on the final facility standards of 6 MCAR §4.9321. These standards are specific for facilities which thermally treat hazardous waste. Since facility compliance with these standards is one of the conditions for issuance of a permit, it is reasonable to require sufficient information to enable the Agency to determine whether the facility is able to comply and whether a permit is to be issued. In addition, this rule provides additional procedural requirements for processing of applications for permits for facilities of this type.

The rule provides that the applicant must fulfill the requirements of Sections A., B. or C. The Director must then complete the requirements of D.

The reasonableness of these sections is discussed below.

Section A., Ignitable, corrosive, or reactive waste exemption: This section provides that if the applicant is seeking the exemption provided by 6 MCAR §4.9321 A.2. or A.3. relating to ignitable, corrosive, or reactive wastes, the applicant shall submit the information listed in Sections A.1. - 4. The exemption referenced applies to facilities which thermally treat hazardous waste, provided that the only hazardous wastes treated at the facility are hazardous solely because of ignitability, corrosivity, or reactivity and that the wastes do not contain any of the constituents listed in 6 MCAR §4.9137 or only contain insignificant concentrations of these constituents.

The information required by the rule is designed to allow the Agency to determine whether the applicant qualifies for the exemption claimed. It is reasonable to allow the Director to determine whether the claim is valid or whether the applicant must instead proceed under Sections B. or C.

Section B., Trial burn: This section provides that the applicant shall submit the results of a trial burn conducted pursuant to 6 MCAR §4.4221. This is the option the Agency anticipates most applicants will pursue. The trial burn requirements of 6 MCAR §4.4221 are based on the standards of 6 MCAR §4.9321 and are discussed in greater detail under the section addressing the reasonableness of 6 MCAR §4.4221. It is reasonable to require trial burns for thermal treatment facilities since this is the most accurate method of determining whether a facility is able to comply and under what conditions compliance is achieved with the performance standards of 6 MCAR §4.9321. During the trial burn, operating conditions which produce facility compliance with the performance standards are established. These operating conditions are then included in the facility's permit, if a permit is issued. Generally, compliance with these permit operating conditions is considered sufficient to ensure compliance with the performance standards. However, when necessary, the Agency can require compliance testing to verify actual facility compliance. Considering the importance of establishing proper operating

conditions in the permit, it is reasonable to require an actual trial burn which demonstrates facility compliance with the performance standards under specific operating conditions.

Section C., Comparison of wastes treated in previous trial burns: This section provides an alternative to performing a trial burn when it is not feasible or not practical. Foreseeable situations of this type involve proposed facilities which are not yet in existence and proposals to burn wastes where the same or similar wastes have been treated in previous trial burns at facilities which are substantially similar to the facility for which the permit application is made.

The purpose of the information requirements is to cause the applicant to analyze the waste to be treated and to submit sufficient information about the wastes, the facility, and the previous trial burn so that the Director can make comparisons from which judgments can be made as to whether the proposed faiclity can be operated in compliance with the applicable performance standards. Another purpose is to allow the Director to establish appropriate operational conditions in the facility permit.

It is reasonable to provide this alternative to the applicant because, for proposed facilities, this is a good way to predict compliance with standards prior to the construction of the facility. It is reasonable to allow the construction of a thermal treatment faicility, which requires the investment of a large amount

of capital, only after reasonable predictions are made that the facility will comply with the applicable performance standards so that the facility will be allowed to operate. For existing facilities, it may not be justified in terms of cost to require a trial burn for wastes which, in the past, have successfully been treated at a similar facility. The comparison procedure provides a reasonable means for the Agency to predict compliance with performance standards without requiring the expenditure of unnecessary funds by the applicant.

Section C. contains extensive information requirements. Section C.1. requires detailed information concerning the waste analysis performed. This is reasonable because it is necessary for the Director to know the nature of the wastes to be treated in order to make a comparison to the wastes treated in the previous trial burn and in order to specify in the permit those constituents which must be destroyed.

Sections C.2. and 3. require detailed information on the thermal treatment units, including air pollution control equipment, if required. This is reasonable since this information serves as a basis for determining whether the units to be compared are simlilar. The criteria used for determining similarity include these thermal treatment unit parameters: type, linear dimensions, capacity of prime mover, auxiliary fuel feed system, combustion zone temperature, residence time, ratio of air to waste

feed rates, air pollution control devices, and ratio of waste to fuel feed rates. All of the criteria for similarity must be met in order for the units to be deemed similar. Therefore , it is reasonable to require detailed information regarding the criteria parameters. Additional thermal treatment unit information such as nozzle and burner design is required since these factors affect the unit's ability to comply with the destruction and removal efficiency standards.

Section C.4. requires a description and comparison of the wastes to be burned with the wastes burned in the previous trial burn. It is reasonable to require the applicant to make this comparison to aid the Director in making a determination as to whether the wastes being compared are similar.

Section C.5. requires a description and comparison of the design and operating conditions of the proposed thermal treatment unit with the design and operating conditions of the unit used in the previous trial burn. It is reasonable to require the applicant to make this comparison to aid the Director in making a determination as to whether the thermal treatment units being compared are similar.

Section C.6. requires a description of the operating procedures proposed by the applicant to meet the applicable performance standards. The establishment of operating conditions

in the permit is essential. Once established, the permittee's compliance with those operating conditions will constitute compliance with the performance standards. As a result, it is essential that the permit operating conditions be accurate and detailed. Therefore, it is reasonable to require information on the proposed operating conditions.

Section C.7. requires submission of information on estimated emissions of particulates and sulfur dioxide. This information is needed to determine whether the facility will comply with federal and Agency rules relating to air quality. This information is also necessary to determine whether the permit should contain additional conditions relating to the protection of air quality. Therefore it is reasonable to include this information requirement.

Section C.8. requires the submission of any additional information which the Director determines is relevant to the decision on permit issuance. Since the intent of the Part B permit application is to provide sufficient information to enable the Agency to make a determination regarding permit issuance in accordance with 6 MCAR §4.4014, it is reasonable to require any other additional information which is necessary to making that determination.

Section D., Review of part B application for thermal treatment facilities: Section D. provides procedures for the review of applications for thermal treatment facilities.

If the applicant has proceeded pursuant to Sections A. or B., the Director reviews the application for completeness pursuant to 6 MCAR §4.4009. This is reasonable because it is consistent with the Agency's normal procedure for processing permits.

If the applicant has proceeded pursuant to C., the Director reviews the application and finds it complete (and thus eligible to be processed) only if the applicant has met all the information requirements of C. and has demonstrated that the wastes compared are substantially similar, that the thermal treatment units are substantially similar, and that the data from the other trial burn is adequate such that the Director is able to specify adequate operating conditions. This is reasonable because if the Director can make these findings it is reasonable to predict that the proposed facility will be able to comply with applicable performance standards.

6 MCAR §4.4215, Additional Part B Information Requirements for Surface Impoundments, Waste Piles, Land Treatment Units, and Landfills.

This rule establishes additonal Part B information requirements for surface impoundments, waste piles, landfills, and land treatment units. These information requirements are derived from the ground water protection requirements of 6 MCAR §4.9297. It is reasonable to require that sufficient information be submitted so that Agnecy staff can evaluate a facility's

compliance with the standards of 6 MCAR §4.9297 and draft appropriate permit conditions.

The reasonableness of Sections A. and B. is discussed below.

<u>Section A., Ground Water Protection</u>: This section presents the Part B information requirements to allow the Agency to establish the appropriate ground water monitoring and response programs for a regulated unit. The following will be specified in the permit: ground water monitoring well types, depths and locations; a detection monitoring program that specifies monitoring parameters and frequencies; ground water protection standards for hazardous waste constituents; a compliance monitoring program that specifies monitoring parameters and frequencies; a corrective action program that establishes appropriate responses to ground water contamination and a monitoring program to assess the effectiveness of the response activities. Each of the requirements contained in A.1. - 8. contribute necessary information to establish the ground water protection program in the permit.

Section A.1. requires submittal of any ground water monitoring results obtained during interim status. This information is necessary to determine any past impacts on the ground water from the unit or to assist in establishing background ground water quality. This information may be used to establish

ground water protection standards for the monitored parameters. It is reasonable to require its submittal because the Agency needs all available information on existing ground water quality to establish appropriate permit standards.

Section A.2. requires submittal of information pertaining to the identification of the uppermost aquifers (and hydraulically connected aquifers) and the flow rates and directions of ground water at the site. This information will be used to locate monitoring wells along the waste management area and to establish proper depths of monitoring wells. This information is also necessary in the development of a corrective action program to be used in the event of ground water contamination. Since both the applicant and the Agency need such information, it is reasonable to require its submittal.

Section A.3. requires submittal of specific additional information on the topographic map required by 6 MCAR §4.4207 R. This information includes the location of the waste management area, property boundary, proposed "point of compliance," proposed monitoring well locations, and, if possible, any information required by A.2. The boundaries of the waste management area are to be used to establish the point of compliance under 6 MCAR §4.9297 H. The point of compliance is where the ground water protection standards are to be met. It is therefore reasonable

and necessary to be able to locate this compliance boundary for the purposes of drafting the permit. Identification of the property boundary is necessary because, in the event of ground water contamination, the property boundary must be monitored to show that contamination is not leaving the permittee's property. If it does, the Agency will assume that corrective action was not satisfactory, and the permit will specify that the permittee will stop accepting waste at the unit. It is therefore reasonable to require that information regarding the property line be submitted.

The proposed "point of compliance" is required so that the Agency knows that the permit applicant designed his monitoring program using the correct point of compliance. Again, since this "point" is where standards are to be monitored for and met, it is reasonable that this information be provided to the Agency.

Identification of the proposed ground water monitoring well locations is required so that the Agency can review the appropriateness of the proposed monitoring program. This information is to be included in the permit. Therefore it is reasonable to require its submittal.

Section A.4. requires submission of information on any existing contamination plumes. For the same reasons set forth in the discussion concerning Section A.1., this is a reasonable

requirement.

Section A.5. requires submission of detailed plans and an engineering report on the proposed ground water monitoring program. Section A.6. requires submission of information necessary to establish a detection monitoring program under 6 MCAR §4.9297. Section A.7. requires submittal of information necessary to establish a compliance monitoring program under 6 MCAR §4.9297 L. It is reasonable to require the submission of this information because these programs are required to be specified in the permit to assess ground water impacts of a facility.

Section B., Corrective action program: This section establishes the information requirements necessary for a corrective action program under 6 MCAR §4.9297 M. and requires submission of an engineering feasibility plan for a corrective action program. This is required because a permit applicant must be able to show that corrective action can reasonably be expected to bring a unit back to compliance with the ground water protection standard after the standard has been exceeded. It is therefore reasonable to require the submission of this information.

Section B.1. requires submission of information on existing ground water contamination. It is necessary to have this

information while establishing protection standards and to determine needs for cleaning up existing contamination. It is therefore reasonable to require its submission.

Section B.2. requires submission of the concentration limits that are to be set in the permit. While this information is necessary even without the requirement of the corrective action program, it is also to be used to determine when corrective action must be implemented and when it has been successful in achieving compliance. It is therefore reasonable to require this information for the corrective action program.

Section B.3. requires submission of detailed plans and an engineering report that describe the proposed corrective actions. This information is needed so that it can be reviewed to determine if it can reasonably be expected to comply with the requirements of 6 MCAR §4.9297 M. The element of the corrective action program is to be included in the permit. Thus, it is reasonable to require that this information be submitted in the Part B application.

Section B.4. requires submission of information regarding a ground water monitoring program to assess corrective action effectiveness. This is a requirement of 6 MCAR §4.9297 M. This monitoring program is to be reviewed by the Agency and included in the permit. Therefore it is reasonable to require its submission.

Section B.5. requires submission of a time estimate for corrective action completion. This will be used to determine if corrective action can be completed before off-site ground water contamination has occurred. It will be used to determine costs for corrective action. It also will be used to implement provisions of 6 MCAR §4.9297 which require cessation of waste acceptance if corrective action is not completed within a reasonable period of time. Because these uses relate directly to items required to be in the permit, this is a reasonable information requirement.

Seciton B.6 requires submission of a cost estimate for corrective action. This estimate will be used to determine the appropriate level of financial assurance for corrective action required under 6 MCAR §4.9310. Since the Agency must review the cost estimate (prepared pursuant to 6 MCAR §4.9309) and include the financial assurance requirements in the permit, it is reasonable to require submission of this cost estimate.

6 MCAR § 4.4216 Interim Status.

Section A. of this rule provides that during the period after submission of a Part A application and prior to a final determination by the Agency on the permit application, the owner or operator of an existing hazardous waste facility shall be

considered to be in compliance with the requirement to obtain a permit if EPA has granted the owner or operator interim status or if the Director finds that the owner or operator has submitted a complete Part A permit application and is in compliance with the facility standards.

Interim status is a concept which arises from EPA's regulations, 40 C.F.R. §§270.70 - 270.73. It provides a means for existing facility owners to continue operations during processing of their permit application providing they meet the required standards. Since the application and processing of hazardous waste facility permits will be time consuming, it is reasonable to allow interim status for existing facilities so they can maintain continuity of operation during the time their permit applications are being processed.

Section B. provides an exception to the rule concerning qualification for interim status. It provides that any person who was required, prior to the effective date of this rule, to apply for and obtain interim status from EPA but who failed to do so is not eligible to obtain interim status from the Agency. The reason for the inclusion of this language in the rule is EPA's concern that persons who were required to obtain interim status under EPA's rules might escape punishment for this violation by submitting a Part A application to the Director. This provision

is reasonable because the purpose of interim status is to protect persons who have operated existing hazardous waste facilities in compliance with the law, not to condone the unlawful conduct of those who have ignored the previously effective federal requirements.

Section C. of the rule provides that if the Director determines that an owner or operator of an existing facility does not qualify for interim status, the Director shall give notice in writing of that fact and the fact that the owner or operator is subject to Agency remedies for a violation of its rules. It is reasonable to inform persons of their failure to qualify for interim status so that they will be encouraged to take the necessary action to come into compliance with Agency rules.

Section D. of the rule specifies certain prohibitions applicable to facility owners having interim status. No activity is allowed under interim status that is not specified in the Part A application or which would constitute a reconstruction of the facility. It is reasonable not to permit activities for which no permit application has been received.

Section E. of the rule specifies four types of changes which are allowed during interim status. The first allows treatment, storage, or disposal of a hazardous waste not previously specified in the original Part A application if the owner or operator submits a revised Part A application prior to the commencement of

the activity. Although the waste may be new, the facility is still required to comply with the interim status standards of 6 MCAR §§4.9380 - 4.9422. Since the generation of new hazardous wastes is not prohibited it is reasonable to allow existing facilities to manage new hazardous wastes, provided that the Agency is notified.

The second, third and fourth types of changes are allowed only if the owner or operator has submitted a revised Part A application and the Director approves the change. Section E.2. allows an increase in the design capacity or a change in process if there is a lack of available treatment, storage or disposal capacity at another permitted hazardous waste facility. This is reasonable becauses it encourages treatment, storage and disposal of hazardous waste at facilities which meet applicable standards. Section E.3. allows the addition of new processes for the treatment, storage, or disposal of hazardous waste if the addition is necessary to prevent a threat to human health or the environment as a result of an emergency situation or the addition is necessary for the owner to comply with federal, state or local requirements, including the state hazardous waste facility standards. This is reasonable because it protects human health and the environment and encourages compliance with federal and state law. Section E.4. allows for change of ownership during interim status if the new owner demonstrates compliance with

applicable rules. This is reasonable since there is no justification not to transfer ownership or operational control if the new owner or operator can comply with federal and state law.

Section F. provides that during the interim status period the owner or operator must comply with the interim status standards of 6 MCAR §§4.9380 - 4.9422. It is reasonable to cross reference these rules because the reference alerts the regulated parties to the requirements of those rules.

Section G. provides that interim status terminates automatically when the Agency has taken final action on the permit application. Interim status means that the owner or operator is deemed to be in compliance with the requirement to obtain a permit; it is reasonable to terminate interim status when final action is taken on the permit application since interim status is no longer necessary. The Director can terminate interim status if the applicant fails to furnish a complete part B of the permit application within the required time or the owner or operator is in violation of the interim status standards. Since interim status is based on being in compliance with facility standards, it is reasonable to terminate interim status if the owner or operator is in violation of any of the facility standard requirements.

6 MCAR §4.4217, Preliminary Determination, Draft Permit and Public Comments.

This rule provides that the provisions of 6 MCAR §§4.4010 and 4.4011 apply to hazardous waste facility permits except as

specifically provided in Sections A. - E. The reasonableness of each of these sections is discussed below.

Section A., Fact sheets: This section requires the preparation of fact sheets which are required for all major hazardous waste facilities as determined by the Director. The definition of "major" is based upon the magnitude of the potential impacts on the environment by the facility. It is reasonable to require fact sheets to be prepared for major facilities due to their complexity, their potential for environmental impacts, and the likelihood of widespread public interest for this type of facility. In addition, EPA's regulation relating to state program requirements, 40 C.F.R. §271.14(w) provides that in order for a state to obtain authorization to administer the federal hazardous waste facility permit progam, the state must require the preparation of fact sheets for major facilities.

Section B., Comment period: This section extends the normal comment period provided by 6 MCAR §4.4010 from 30 to 45 days. The 45 day public notice period of permit applications and preliminary determination is reasonable since it is required by EPA's regulation 40 C.F.R. §271.14(x) for a state to obtain authorization to administer the hazardous waste facility permit program. This rule is reasonable because the 45 day notice period provides a reasonable time frame for an interested party to become aware of the proposed action, conduct necessary reviews, and

prepare and submit written comments to the Agency.

Section C., Public notice of permit application and preliminary determination: This section broadens the requirements of 6 MCAR §4.4010 to include the requirement that the public notice be mailed to local, state and federal governmental units who have jurisdiction and/or authority over the construction, operation, and siting of the facility. This provision is reasonable because these other units of government having jurisdiction over the facility location are likely to have an interest in the permit application.

Section D., Distribution of public notice: This section requires the Director to publish the notice in a local newspaper and arrange for the notice to be broadcast over at least one local radio station. It is reasonable to publish the notice in the newspaper since it is both a customary and often essential means for communicating with the public. In order to achieve additional public exposure and to meet EPA's requirements for state programs (40 C.F.R. §271.14(x)) it is reasonable to include the feature of radio broadcasting of the public notice information.

Section E., Response to public comments: Prior to final action being taken on a permit application, the Director or Agency is required by this section to respond to comments received during the public notice comment period, public informational

meetings or contested case hearings. There is a need for the commentors to know what the Director's or Agency's position is on the issues that are raised. It is, therefore, reasonable that the Director or Agency provide them with a response to their comments. It is also reasonable that these documents be available to the public for review, since they are classified as public records under Minn. Stat. §116.075 (1982).

6 MCAR §4.4218, Public Informational Meetings and Contested Case Hearings

The general rules relating to public informational meetings and contested case hearings are set forth at 6 MCAR §§4.4011, 4.4012 and 4.4013. The purpose of this rule is to add additional requirements with respect to hazardous waste facility permits. The reasonableness of sections A. - D. is discussed below.

Section A., Requests: This section makes it clear that a request for a public informational meeting or contested case hearing is to be made in the same manner as for other permits but that the Agency must hold a public informational meeting if requested or if the Agency has denied a request for a contested case hearing. EPA's regulation 40 C.F.R. §271.14(z) requires states desiring to obtain authorization to adminster the hazardous waste facility permit program to include public hearing requirements equivalent to those of EPA. 40 C.F.R. §124.12(a) imposes the requirement to hold a public meeting whenever a hearing request is received. Therefore it is reasonable to

include the requirement so that the Agency may obtain authorization to administer the hazardous waste facility permit program.

Section B., Preparation of public notice: This section cross references the requirement of 6 MCAR §§4.4012 and 4.4013 to prepare a public notice. It is reasonable to include this cross reference to aid the public in determining the procedures that will be followed with respect to public informational meetings and contested case hearings.

Section C., Mailing of public notice: This section contains requirements which are additional to those of 6 MCAR §§4.4012 and 4.4013 relating to the mailing of public notice. It requires distribution to local, state and federal units of government having authority and/or jurisdiction over the area where the facility is located or proposed to be located. It is reasonable to include in the distribution of the public notice to these units of government because they are likely to have an interest in the subject matter of the public informational meeting or contested case hearing.

Section D., Distribution of public notice: This section contains requirements which are additional to those of 6 MCAR §§4.4012 and 4.4013 relating to distribution of public notice. It requires the Director to publish the notice in a local newspaper and arrange for it to be broadcast over a local radio

station. This is reasonable because these are customary and necessary methods for communicating with the public, and provide a means to achieve a broad circulation of the public notice.

6 MCAR §4.4219, Final Determination.

This rule establishes the standards upon which the Agency must base its decision to issue or deny a hazardous waste facility permit.

Section A. provides the general rule that the decision is required to be made in accordance with 6 MCAR §4.4014. This is reasonable because this is the standard procedure used for other Agency permits.

Section B. provides an exception to the general rule with respect to any draft permit concerning a thermal treatment facility prepared pursuant to 6 MCAR §4.4221. In that case the Agency need not find that the facility will comply or will undertake a schedule of compliance to achieve compliance with all applicable Minnesota and federal pollution control statutes and rules. Rather, the Agency must issue a permit authorizing construction of the proposed facility, requiring the permittee to conduct trial burns and requiring submission of the results of the trial burns, if the Agency finds that the facility is likely to qualify for a permit authorizing the operation of the facility under appropriate operating conditions as required by 6 MCAR §4.9321 F. and as necessary to comply with 6 MCAR §4.9321 D. The

rule specifically provides that the permit is then subject to modification to authorize operation and establish operating conditions. However, the rule also specifically provides that issuance of the construction permit does not bind the Agency to authorize operation in the future in the event that the Agency finds that the owner or operator will not be able to operate the facility in accordance with all applicable Minnesota and federal statutes and rules.

The provisions of Section B. are reasonable because they relate to facilities which are unable to perform trial burns for the wastes to be treated and unable to show that comparable trial burns have been done previously. This causes the Director to be unable to make the findings set forth in 6 MCAR §4.4214 D.2. and thus unable to make a prediction that the wastes to be treated <u>will</u> be able to be burned in compliance with Minnesota and federal statues and rules. This rule allows the proposer of a new facility to proceed at his or her own risk to build a facility which the Director finds is <u>likely</u> to qualify for operation authorization, based on the facts available at that time. This is reasonable because it allows the construction of facilities which would otherwise be unable to be built because of the uncertainties involved. While the proposer takes on a certain risk, the Director's required finding that the facility is likely to qualify for operation authorization takes some of the edge off that risk.

Conversely, the Agency should not be bound to issue a permit authorizing operation to a facility which has been issued a permit to construct but which fails to meet the facility standards set forth in 6 MCAR §4.9321 or any other appropriate statutes and rules, once constructed, since otherwise this would require the Agency to issue a permit in violation of Minnesota and federal statutes and rules and would possibly allow a facility to endanger human health and the environment.

Section C. also provides an exception to the general rule with respect to any draft permit concerning a land treatment facility prepared pursuant to 6 MCAR §4.4222. The procedure presented in C. allows the Agency to issue demonstration permits so that permittees can demonstrate that their facilities can meet the performance standards in 6 MCAR §§4.9297 and 4.9319. The demonstration permit may be just for the demonstration or it may be part of a two-phase permit which allows final facility operation after a successful demonstration (contingent on permit modification, if necessary). This section is necessary because, without it, the Agency would, in some cases, not have sufficient information on which to base decisions regarding final permit issuance. The demonstration allows the gathering of this needed information in a controlled manner. This approach is reasonable because it allows that information gathering while ensuring environmental protection.

6 MCAR §4.4220, Emergency Permits.

This rule specifies the standards and procedures for issuance of a temporary emergency permit to allow treatment, storage or disposal of a hazardous waste which the owner or operator of a facility is not otherwise permitted to treat, store or dispose of. These permits are subject to the approval of the Agency.

Section A. authorizes issuance of an emergency permit if the Director finds that there is an imminent and substantial danger to human health or the environment. Since the Agency Board meets on a regular basis only once a month, it is reasonable to provide for issuance of temporary permits by the Director for emergency situations which require immediate action.

Section B. provides that the permit should be issued in writing but that it may be given orally if circumstances warrant. If the permit is given orally, a written emergency permit must be issued within five days after the date of the oral approval. This provision is reasonable because, in the event of a dangerous situation requiring immediate attention, the delay which might result from the need to issue a written permit should be avoided in order to prevent harm to human health or the environment.

Section C. provides that the term of an emergency permit is no longer than 90 days. Due to the short term nature of an emergency situation, the 90 day duration for an emergency permit

is believed to be a reasonable time period for resolving the emergency situation and handling of the waste material.

Section D. provides that the emergency permit must specify the type of waste to be received and the manner and location of its treatment, storage or disposal. This is a reasonable, basic requirement, before approval is given for treating, storing or disposing of any hazardous material.

Under Section E. the Director can terminate the emergency permit if at any time during the 90 day period he or she determines that the action is necessary to protect human health or the environment. This is an important and reasonable provision in the event that unforeseen events associated with treating, storing, or disposing of the waste occur or noncompliance with permit conditions is causing endangerment of human health or the environment.

Section F. requires the permit to incorporate, to the extent possible under the circumstances, all applicable requirements of the hazardous waste facility permit rule and the rules on facility standards. This is reasonable because it is designed to put the permittee on notice of the substantive rules which must be met. The fact that the permit is issued during an emergency should not excuse the permittee from complying with the applicable standards designed to protect the environment.

Section G. requires the Director to notify the public of the

issuance of an emergency permit. It is reasonable to notify the public of the permit action at the time of permit issuance since in most cases there would not be sufficient time to give notice prior to the permit issuance due to the urgency of the situation.

Section H. requires the Director to present the emergency permit to the Agency Board for approval at its next scheduled meeting. Due to the urgency of an emergency approval, it is reasonable to allow the initial emergency approval so long as the Board can consider the action at its first opportunity.

6 MCAR § 4.4221, Hazardous Waste Thermal Treatment Facility Permits.

Under 6 MCAR §4.4214 B., the results of trial burns are required to be submitted as a part of an application for a thermal treatment unit. This rule establishes a mechanism for submission and processing of trial burn plans, procedures for conducting trial burns, and requirements for the submission of trial burn results. The technical requirements of this rule are based on the thermal treatment facility standards of 6 MCAR §4.9321. The purpose of a trial burn is to demonstrate thermal treatment operating conditions such that a hazardous waste can be thermally treated within the performance standards of 6 MCAR §4.9321 and to demonstrate that a new thermal treatment facility can operate similarly as provided in 6 MCAR §4.4214 C. Trial burns are essential in order for the Agency to determine facility compliance with the thermal treatment performance standards and to establish

permit operating conditions.

The reasonableness of sections A. - K. of the rule are discussed below.

Section A., Phase one requirements: This section provides that the Agency will specify in a thermal treatment permit operating conditions and allowable waste feeds during phase one of facility operation. Phase one is the time period that follows facility construction and lasts until the trial burn begins. During this period the facility is to be brought up to normal operating conditions and any "bugs" are worked out. This period is to last to a maximum of 720 hours of operating time (unless the Director approves an extension of up to 720 hours). Allowing such a "shakedown" time period is necessary to ensure that the facility is performing satisfactorily during the trial burn. It is reasonable to allow this time period. It is also reasonable that the Agency specify acceptable wastes to be burned and the operating conditions so that environmental protection can be ensured during phase one.

Section B., Phase two requirements: This section provides that the Director shall establish permit conditions during phase two, the trial burn. This is reasonable because effects of a trial burn on the environment must be reviewed and minimized by the establishment of such permit conditions as are necessary.

Section C., Trial burn plan: This section requires submission of a trial burn plan to the Director. This is reasonable because the person proposing to conduct the trial burn should in the first instance make the plans as to how the trial burn can best be conducted to determine the conditions under which the facility can be operated in compliance with thermal treatment performance standards.

This section also establishes what information is to be contained in a trial burn plan. Waste analysis information is required regarding each waste or mixture of wastes to be burned. Requiring information on heat value and waste form is reasonable since these are basic parameters which affect the thermal treatment unit's ability to meet performance standards. For example, a liquid waste with a high heat value generally will burn more readily and completely than a solid waste with a low heat value.

Since most of the standards of 6 MCAR §4.9321 are based on the thermal treatment of hazardous wastes which contain organic hazardous constituents, it is reasonable to require substantial information regarding all organic hazardous constituents in the wastes and waste mixtures. This includes information on the types and quantities of organic hazardous constituents since these factors will affect the Director's designation of trial principal organic hazardous constituents for which destruction and removal

efficiencies must be calculated during the trial burn.

A detailed engineering description of the thermal treatment unit, including air pollution control equipment, is required. This is reasonable since this information serves as a basis for determining whether the thermal treatment unit is capable of attaining the proposed operating conditions. Also these factors are basic to the unit and affect the thermal treatment unit's ability to meet the destruction and removal efficiency standard. Therefore, this information must be reviewed prior to the Director designating trial principal organic hazardous constituents, and to the Agency making its findings regarding trial burn approval.

A detailed description of sampling and monitoring procedures is required. This is reasonable since comprehensive sampling and monitoring during a trial burn is essential to determining compliance with the performance standard. Since the intent of the trial burn is to determine such compliance it is necessary and reasonable for the Agency to require the applicant to submit this information for review and approval. All of the factors listed could affect the compliance determination. For example, sample analysis procedures used to analyze for principal organic hazardous constituents must be accurate and complete to ensure that these constituents are thermally degraded and not simply transferred to the ash or scrubber liquid during treatment.

A detailed test schedule is required. Trial burns should be

kept as short as possible, but each test burn should be of sufficient duration to collect data for a thorough evaluation. If large quantities of waste are allowed to be treated during a trial burn, the applicant might disregard the exploratory concept of the trial burn and consider the trial burn to be an opportunity to dispose of wastes which could not otherwise be treated. Therefore, duration and quantity of waste should be specified in the trial burn plan and subject to Agency review and approval. Other provisions such as safety measures could also be required in the trial burn plan to ensure the protection of staff and maintenance of facility integrity during the trial burn.

A detailed test protocol is required. This protocol specifies the intended operating conditions for each test burn in the trial burn plan. Based on this and other information in the trial burn plan the Agency can check that the specified conditions are achievable and consistent. For example, based on the heating value of the waste, the waste feed rate, and the percent excess air, the achievable combustion zone temperature can be determined and compared to the temperature given in the test protocol. Since the operating conditions affect the thermal treatment unit's ability to meet the destruction and removal efficiency standard, it is reasonable to require a detailed test protocol be submitted for Agency review and approval.

Information regarding the emission control equipment is

required. Since the emission control equipment directly affects the thermal treatment unit's ability to meet the destruction and removal efficiency standard and other performance standards it is reasonable to require this information be submitted as part of the trial burn plan.

Procedures for rapidly stopping waste feed, shutting down the thermal treatment unit, and controlling emissions in the event of an equipment malfunction are required. If an equipment malfunction occurred during a trial burn there is the possibility that hazardous wastes or hazardous waste constituents would be emitted directly to the atmosphere without adequate treatment thus endangering human health or the environment. Considering the consequences of such an occurrence it is essential that provisions for responding to this occurrence be in place to prevent or minimize any adverse effects. Therefore, it is reasonable to require such procedures be included in the trial burn plan.

Since the intent of the trial burn plan and request for approval is to provide sufficient information to enable the Agency to make a determination regarding the trial burn, it is reasonable to require any other additional information which is necessary to making that determination.

Section D., Review of trial burn plan: This section establishes procedures for processing trial burn plans and requests for approval. The Director reviews the trial burn plan

for completeness and based on this review will either continue processing the request or suspend further processing and notify the owner or operator of any deficiency or incompleteness. This method of reviewing trial burn requests is consistent with the method used to review permit applications in accordance with 6 MCAR §4.4009. This is reasonable since an incomplete trial burn plan would not contain sufficient information for the Agency to make the findings necessary to approve the trial burn plan and request. However, to enable the owner or operator to provide a complete trial burn plan it is reasonable to require the Director to notify the owner or operator of the deficiency or incompleteness.

Once the trial burn plan is complete, the Director continues processing the trial burn request. This involves designating trial principal organic hazardous constituents for which destruction and removal efficiencies must be calculated during the trial burn. This is reasonable since the intent of the trial burn is to demonstrate the thermal treatment unit's ability to comply with the performance standards of 6 MCAR §4.9321. Those performance standards include a destruction and removal efficiency standard for principal organic hazardous constituents.

In designating the trial principal organic hazardous constituents the Director must consider the organic hazardous constituents and their concentration in the proposed waste feed

and the difficulty of thermally treating the constituents. For listed wastes the Director must also consider the basis for the listing as indicated in 6 MCAR §4.9136. Based on the waste analysis data and the basis for listing given in 6 MCAR §4.9136, the Director can determine which organic hazardous constituents are present in the waste feed. The Director can then designate trial principal organic hazardous constituents based on the degree of difficulty of thermal treatment and the concentration of the organic hazardous constituents in the waste. Generally, organic constituents which are difficult to thermally treat and are present in the highest concentrations will be designated as trial principal organic hazardous constituents. This approach is reasonable since the difficulty of thermal treatment and the concentration of organic hazardous constituents in the waste feed will affect the thermal treatment unit's ability to demonstrate compliance with the performance standards of 6 MCAR §4.9321. Since facility compliance is based on the results of the trial burn, it is essential that the appropriate constituents be designated as trial principal organic hazardous constituents for which destruction and removal efficiencies are calculated during the trial burn. Accordingly, these constituents should be designated by the Director and subject to Agency approval.

Section E., Approval of trial burn plan: Once the Director has finished reviewing the trial burn plan, it is subject

to Agency action regarding approval. If the Agency makes the necessary findings, the plan shall be approved. This method of Agency review and approval is comparable to that for facility permits as provided in 6 MCAR §4.4014. The requirements that the Agency find the trial burn is likely to determine whether the facility can meet the performance standards and will aid the Director in determining operating conditions are reasonable since obtaining that information is the intent of a trial burn. If the trial burn is not likely to provide the information necessary to demonstrate compliance or to establish operating conditions, there is good cause not to approve the trial burn since the risks would outweigh the benefits. Also, if this information can be obtained through other means, which are acceptable to the Agency, such as comparing similar wastes and trial burn data from previous trial burns, it is preferable to utilize those other means due to the risk associated with trial burns. However, the Agency does recognize that in many cases, particularly during the initial stages of implementing the hazardous waste permitting program, trial burns will be the only acceptable means for obtaining the necessary information. As the Agency gains experience and information in this area, it is anticipated that the need for trial burns will decrease.

The requirement that the Agency find that the trial burn itself will not present an imminent hazard to human health or the

environment is reasonable to assure protection of human health and the environment. Since it is the Agency's responsibility and duty to protect human health and the environment this requirement is necessary and reasonable.

Section F., Conduct of trial burn: This section also establishes procedures for conducting the trial burn and generating the necessary information from the trial burn. Since the trial burn plan will have been reviewed and approved by the Agency and is designed to regulate the trial burn, it is reasonable to require that the trial burn be conducted in accordance with the approved trial burn plan. Also, since the intent of the trial burn is to generate information on facility compliance with the performance standard and appropriate operating conditions, it is reasonable to require the owner or operator to generate that information.

Quantitative analyses as well as a mass balance and computation of destruction and removal efficiency of each trial principal organic hazardous constituent are required. This information is reviewed and evaluated to assure that these values are within the regulatory performance standards set forth in 6 MCAR §4.9321. Since one of the main performance standards is the destruction and removal efficiency standard for principal organic hazardous constituents, it is reasonable to require this information in order to determine whether the facility is able to

comply with this standard. It is essential to analyze all the waste streams for principal organic hazardous constituents and do a mass balance to ensure that these constituents are thermally degraded and not simply transferred to the ash or scrubber liquid during the trial burn.

For test burns with emissions of hydrogen chloride exceeding 1.8 kilograms per hour, a computation of hydrogen chloride removal efficiency is required. This is reasonable since there is a performance standard in 6 MCAR §4.9321 D.2. regarding hydogen chloride removal. This information is needed in order for the Agency to determine whether the facility is able to comply with this standard.

6 MCAR §4.9321 D.3. contains a standard for particulate emissions. To ensure compliance with this standard, a computation of particulate emissions is required.

Other information on fugitive emission control, temperatures, combustion gas velocity, and carbon monoxide monitoring is required. This is used to determine acceptable operating standards as required in 6 MCAR § 4.9321 F., and, therefore, is reasonable.

Considering that the intent of a trial burn is to demonstrate facility compliance, it is reasonable to require any other information necessary to make such a determination.

Section G., Submission of certification, results and data: This section requires the owner or operator to submit

the trial burn results, underlying data, and a certification that the trial burn was conducted in accordance with the trial burn plan. Considering that the owner or operator is required to generate this information so that the Agency can make a determination regarding compliance, it is reasonable to require that the information be submitted to the Director. Also, considering that the trial burn must be conducted in accordance with the approved trial burn plan, it is reasonable to require the owner or operator to certify that this has occurred. Since facility compliance is determined based on the trial burn results it is reasonable to require a certification so the Agency is assured that the results are from a trial burn which was conducted in accordance with the approved trial burn plan. The time limit of ninety days is to ensure that the information is submitted in a timely manner. Based on past Agency experience with stack testing and analyses, ninety days is considered to be a reasonable and adequate amount of time to compile and submit the trial burn results.

Section d., Authorized signature: All submissions required by this rule, including the trial burn plan and request for approval, as well as information relating to trial burn results, must be properly signed in accordance with 6 MCAR §4.4006 C. and must contain the certification required in 6 MCAR §4.4205. This is comparable to the requirements for a permit

application. Considering that these submissions may be included in a permit application, and will provide a basis for determining facility compliance with facility standards, it is reasonable to have certification and signature requirements comparable to those for permit applications. Since determinations affecting future operation of the facility will be made based on these submissions, it is reasonable to require that they be signed and certified by a person having responsibility for the overall operation of the facility and authority to implement a compliance program if necessary.

Section I., Phase three requirements: This section provides that the Director will specify conditions in the facility permit for facility operation during phase three of the permit. Phase three is the time period after the trial burn and before the results of the trial burn are reviewed by the Agency. This section is reasonable because the facility is allowed to continue operating in a manner controlled by permit conditions to ensure that the environment is protected.

Section J., Phase four requirements: This section provides that the Director will specify conditions in the facility permit for facility operation during phase four. Phase four is normal facility operation after trial burn results have shown that the wastes to be burned can be burned according to applicable standards. It is reasonable to establish final permit

conditions which are suitable to ensure that the facility operates in accordance with the requirements of 6 MCAR §4.9321.

Section K., Requirements for existing hazardous waste facilities: This section contains provisions for existing thermal treatment facilities to submit trial burn plans for Agency approval and to coordinate the submission of trial burn results and a Part B application. Since existing facilities with interim status could perform trial burns by collecting data during normal operations, this section allows them to seek Agency approval if they wish. Such Agency review and approval is desirable from the standpoint that the facility operator would have some assurance that the data collected is sufficient to comply with the permit application information requirements. Since collection and analysis of such data can be expensive it is to the operator's benefit to be assured that the information needed in the permit application can be obtained from the data he has or will be collecting.

Existing facilities may [illegible] to pursue the trial burn plan approval option prior to [illegible] requesting the submission of a Part B application. Since obtaining Agency approval for the trial burn could take some time and the trial burn results are a major portion of the information required in the application, it is reasonable to provide a means for coordinating the submission of the trial burn results and the Part B application.

6 MCAR §4.4222, Land Treatment Demonstration Permits.

This rule provides the mechanisms for preparing and issuing permits for land treatment units. These permits can include requirements for treatment demonstrations or may in fact only cover such demonstrations. This rule covers submittal requirement for treatment demonstrations and provisions for permit modification in light of demonstration results. Also, Section A. allows laboratory demonstrations to be undertaken without formal permitting. The reasonableness of Sections A. - F. is discussed below.

Section A., Letters of approval: This section provides procedures for the request for and issuance of letters of approval for controlled laboratory demonstrations of hazardous waste land treatment. This section was included so that these typically small-scale, non-threatening laboratory experiments could proceed without the need for a full-blown hazardous waste facility permit. Basically these experiments will be studies to see if land treatment might be a feasible treatment/disposal method for a particular waste. They then would be followed up by a treatment demonstration which would determine necessary field conditions for a final permit. The provisions of this section are reasonable because they allow research into waste treatability to proceed without burdensome permitting procedures in cases where no significant hazards are posed to human health or the environment.

Section B., Permit requirements: This section

requires that a person wishing to perform a treatment demonstration (other than as provided for in A.) apply for a treatment demonstration permit. The permit may be just for the demonstration or it may be a two-phase permit covering the demonstration as well as final operation of the unit. The section also presents criteria for issuing short-term (demonstration only) and two-phase permits. A short-term permit can be issued only when the Part B application provides sufficient information upon which to base demonstration conditions and sufficient evidence exists upon which to base demonstration requirements. A two-phase permit can only be issued when similar information and evidence exists for full-scale facility operation and the evidence indicates that the waste material can be successfully land treated. It is reasonable to allow both short-term and two-phase permits to be issued so that information that can only be obtained from field tests becomes available prior to final unit operation. It is reasonable to set criteria for when such permits can be issued so that the necessary information requirements are clear to both the permit applicant and the Agency. Further, making a condition of a two-phase permit issuance the requirement that evidence of waste treatability be provided is reasonable so that the public is assured that final operation can only be permitted by the Agency (in a two-phase permit) when there is an excellent chance that it will succeed and ground water will not be contaminated.

Section C., Permit applications: This section requires that a person applying for a short-term or two-phase land treatment permit must submit a complete Part B permit application unless the Director exempts him or her from some of the data requirements. In some cases, some data requirements will be unnecessary, especially for demonstrations. For example, traffic flow patterns are certainly not needed if the unit is adjacent to a production facility and wastes are transported to the unit by pipeline. It is reasonable to give the Director the authority to allow incomplete Part B permit applications where the missing information is not necessary to establish appropriate permit conditions.

Section D., Two-phase permits: This section presents the conditions which must be included in each phase of a two-phase permit. These conditions must be sufficient to ensure that the unit is operated in accordance with 6 MCAR §4.9319. It is reasonable to require that such conditions be specified in the permit because the permit's purpose is to specify facility-specific conditions needed to comply with the applicable rules. The permit is used to enforce the rules.

This section also specifies that the first phase of the permit is effective upon permit issuance. It is reasonable to allow the demonstration to proceed once the permit is in effect because all conditions necessary for the demonstration are set in the permit. The second phase only begins when the permit reflects

the conditions necessary to comply with 6 MCAR §4.9319 and no permit modifications are necessary. The reasonableness of this approach is addressed in the discussion on Section F.

Section E., Submission of certification, determinations, and data: This section requires that a person with a two-phase permit make a certification to the Agency upon completion of hte demonstration. The certification is to indicate that the demonstration was completed in accordance with the permit conditions. Requiring such a certification is reasonable because the Agency needs to be kept apprised of changes in activities at a facility so that the permit can be enforced.

This section also requires that within 90 days after the demonstration the permittee shall submit data collected during the demonstration and a determination as to whether compliance with 6 MCAR §4.9319 C. and E. was achieved. The Agency must receive these items so that appropriate permit modifications are made for phase two of the permit. If the permittee determines that the demonstration did not succeed, the Agency must be aware of this to ensure that the site is properly closed and no further waste applied. Therefore, it is reasonable that the permittee submit this type of information in a timely manner.

Section F., Permit modification: This section presents the requirements for permit modification before the second phase of a two-phase permit becomes effective. If no modifications are required it is reasonable that phase two is

effective when the Director notifies the permittee that he or she concurs with the permittee's determination of a successful demonstration. The Director must also notify commenters on the original permit and others who requested notification. Since no changes have occurrèd since original permit issuance it is reasonable, however, not to reopen the permit for additional comment. The same holds true for minor permit modifications resulting from the demonstration. Again, it is reasonable to allow phase two operation immediately becase the basic treatment program has not significantly changed since permit issuance.

If modifications to the permit under 6 MCAR §4.4224 are required, phase two of the permit cannot become effective until the modifications are made. This is reasonable because significant changes to the treatment program are being made, and they should be subject to the normal public participation requirements for permit modification.

6 MCAR §4.4223, Terms and Conditions of Hazardous Waste Facility Permits.

This rule provides for the term of a hazardous waste facility permit and for general conditions which, in addition to the general conditions required by 6 MCAR §4.4015 C., are to be included in those permits.

Section A. provides that the term of a hazardous waste facility permit shall be five years. This is consistent with all other Agency permits, as provided in 6 MCAR §4.4015 A. Due to the

high potential of harm to the environment from a hazardous waste facility, it is reasonable that these permits be reviewed and reissued on a five year basis.

Section B. provides that the general conditions set forth in 6 MCAR §4.4015 C. apply to hazardous waste facilities except for the general condition set forth in 6 MCAR §4.4015 C.11. It is reasonable to cross reference the general conditions applicable to these facilities under the standard permitting rule because it alerts regulated parties to these conditions. The exemption relating to 6 MCAR §4.4015 C.11. is necessary because the provisions of that rule differ from the requirements of EPA's regulation 40 C.F.R. §270.30(1)(6) with respect to the time for submission of a written report. EPA's regulation relating to state program requirements, 40 C.F.R. §271.14(i) requires the state's program to contain provisions substantially similar to 40 C.F.R. §270.30(1)(6). As a result, Section B. deletes the provisions of 6 MCAR §4.4015 C.11. as a permit condition for hazardous waste facilities and Section B.4. is put in its place. Section B.4. is consistent with EPA's regulation. It is reasonable to substitute Section B.4. so that the Agency can obtain authorization to administer the federal hazardous waste facility permit program.

The permit conditions required in Sections B.1., B.2., B.3. and B.5. are also required to be included in the state's program by 40 C.F.R. §270.30(1)(6). These sections are discussed below.

Section B.1. provides that the permittee need not comply with conditions of the permit to the extent and for the duration such noncompliance is authorized in an emergency permit. This is reasonable because the very purpose of an emergency permit is to temporarily allow a deviation from the normal requirements imposed upon a facility.

The permittee is required by Section B.2. to maintain records from all ground water monitoring wells for the active life of a facility and for disposal facilities for the post closure care period. Also, the permittee is required to maintain an operating record until closure of the facility. It is reasonable to require the creation of an on-going record of the ground water quality in the vicinity of the facility so that any possible impacts of the facility on the ground water quality during the life of the facility and post closure period can be detected. The operating record provides a summary of the volumes and types of waste accepted at the facility which is reasonable for use in Agency requlation of the facility and for use in determining compliance with facility operational standards.

In addition to the requirements of 6 MCAR §4.4203 A. concerning the need for a permit to be issued prior to certain activities taking place at a hazardous waste facility, Section B.3. requires that the permittee and engineer certify that the construction of the facility has been completed in compliance with the conditions of the permit. In addition the Director will

inspect the facility to verify compliance with the permit conditions. These are reasonable requirements designed to provide the Agency with assurance that the facility construction was completed in compliance with all permit conditions before approval for commencement of operations is given.

Section B.4. requires the permittee to orally notify the Director within 24 hours if he discovers a release or discharge of a hazardous waste or a fire or explosion at the facility which may endanger human health or the environment outside of the facility. The permittee is required to submit a written report describing the incident within 15 days after the incident occurs. The Agency's responsibility is to regulate the treatment, storage, and disposal of hazardous waste which includes any accidents or spills associated with a particular facility. It is therefore reasonable to require the permittee to provide details of any spills or discharges, fires, or explosions which may threaten human health or the environment outside the facility.

In addition to the reports required under 6 MCAR §4.4015 the permittee must submit the following reports in accordance with Section B.5.:

1) Manifest discrepancy report, to be submitted to the Director within 10 days after discovering an unresolved discrepancy in a manifest for a hazardous waste shipment.
2) Unmanifested waste report, to be submitted to the Director within 10 days of receipt of the waste if the

permittee is unable to reconcile delivery of a shipment of hazardous waste without the required manifest or shipping paper.

3) Annual report, to be submitted to the Director concerning the activities at the facility during the previous year.

4) Notification of receipt of waste for which no permit is held, to be submitted to the Director immediately upon receipt of a waste for which the permittee is not authorized to manage.

Since the Agency is responsible for the tracking of hazardous wastes and for the regulations of their storage, treatment and disposal, it is reasonable to require the permittee to submit these reports in order to keep the Director informed of the disposition and composition of unpermitted or unmanifested wastes that may be received at a facility. The annual report is a reasonable requirement since it provides a summary of activities at the facility for assessing the facility operation, identifying potential problem areas that may require permit modification, and determining overall compliance with facility standards.

6 MCAR §4.4224, Modification, Revocation and Reissuance of Permit.

This rule establishes additional provisions beyond those specified in 6 MCAR §§4.4018 and 4.4019 regarding the modification, and revocation and reissuance of hazardous waste facility permits. 6 MCAR §§4.4018 and 4.4019 set forth general

provisions for the modification, and revocation and reissuance of Agency permits. However, due to considerations which are only applicable to hazardous waste facility permits, administrative provisions are needed in addition to those provided in the general rule. To accommodate these considerations, this rule establishes additional reasons which constitute justification for the Director to commence proceedings to modify, or revoke and reissue a hazardous waste facility permit. These reasons are based on requirements set forth in 6 MCAR §§4.9280 - 4.9322, which are applicable to hazardous waste facilities.

Based on the approach used in 6 MCAR §§4.4018 and 4.4019 for permits in general, this rule distinguishes between modifications and minor modifications of permits. Generally, permits are modified in accordance with the procedures set forth in 6 MCAR §§4.4011 - 4.4013. However, for changes which are considered minor in nature, the Director may modify a permit without following these procedures. In determining which changes are considered minor modifications, the Agency considered the potential effect the permit change could have on human health and the environment, and the requirements in 6 MCAR §§4.9280 - 4.9322.

The reasonableness of Sections B. - D. is discussed below.

Section B., Additional justifications for modification of permits or revocation and reissuance of permits: This section provides 13 additional justifications for permit modification or revocation and reissuance.

Section B.1. involves discovery by the Director that modification of a closure plan is required by 6 MCAR §§4.9298 D. or 4.9300 C. 6 MCAR §4.9298 requires the owner or operator of a hazardous waste facility to have an Agency approved closure plan and 6 MCAR §4.9300 requires the owner or operator of a hazardous waste disposal facility to also have an Agency approved post-closure plan. These plans are incorporated into the facility permit. However, 6 MCAR §§4.9298 D. and 4.9300 C. contain provisions for amending these plans whenever changes or events occur which affect the plan, such as changes in closure or decontamination methods, or changes in the maximum extent of the operation which will be unclosed during the life of the facility. Accordingly, this rule contains the additional administrative provisions necessary to amend the plan contained in the facility permit. Considering that such changes might be necessary and that the permit must be specific and up-to-date in order to be an effective tool in regulating the facility, it is reasonable to have provisions for modifying the permit.

Section B.2. involves the filing by the permittee of a request for an extension of the time periods contained in 6 MCAR §4.9299. 6 MCAR §4.9299 contains provisions regarding closure activities, including time limits allowed for closure and provisions establishing a basis for approving time extensions. Provided the owner or operator makes the demonstrations required in 6 MCAR §4.9299, the Agency may approve a time extension.

However, the closure plan, which is part of the facility permit, specifies when the facility will be finally closed and a schedule for final closure. If a time extension is to be approved, the permit would require modification to reflect this change. Accordingly, this rule contains the additional administrative provisions necessary to amend the plan contained in the facility permit. Since closure activities for some facilities could require more time to complete than the rule allows, it is reasonable to modify the permit to allow time extensions.

Section B.3. involves the receipt by the Director of a notification of expected closure under 6 MCAR §4.9298. Since closure of a facility is a major action and needs to be closely regulated by the Agency, means for modifying a facility permit when closure is imminent must be available. In many cases permit modifications will not be necessary under these circumstances. However, it is reasonable to have the option for those cases where modifications are necessary.

Section B.4. involves a finding by the Director that modification of the post-closure period is necessary as provided by 6 MCAR §4.9301 A. 6 MCAR §4.9301 A. requires that post-closure care must continue for 30 years after the date closure is completed. That rule also contains provisions allowing the Agency to adjust the post-closure period by reducing or extending it and specifying the basis for adjusting this period. Accordingly, this rule contains the administrative provisions necessary to amend the

permit to reflect the adjustment in the post-closure period. An example of when this provision might be applicable is the case of a land treatment facility which has not rendered all the waste nonhazardous within the six-month closure period, but which has done so within five years of final closure. Since hazardous waste is no longer present at the facility, it is reasonable to reevaluate the time needed for post-closure care.

Section B.5. involves a finding by the Director that security requirements need to apply to a facility after closure. Since the facility's permit may not have included these requirements for after closure, a permit modification may be necessary to ensure that the facility will not harm human health or the environment. It is reasonable to allow the permit to be modified for these reasons.

Section B.6. involves a finding by the Director that the permittee has made the demonstration required by 6 MCAR §4.9301 C. such that a disturbance of the integrity of the containment system should be authorized. 6 MCAR §4.9301 C., which prohibits the owner or operator from disturbing the integrity of the final cover, liner, or other containment system component or the function of the monitoring system of a disposal facility, also contains a provision which allows Agency to authorize disturbance of the integrity of the containment system if the owner or operator demonstrates that disturbing the integrity is warranted. However, the post-closure plan specifies procedures

for ensuring the integrity of the containment system and the function of the monitoring system, and is contained in the permit. Therefore, if the disturbance is authorized by the Agency, the permit would need to be modified so that the post-closure plan can be changed to include information regarding the disturbance. Accordingly, this rule contains the additional administrative provisions necessary to amend the plan contained in the facility permit. Since it may be necessary to disturb the containment system to reduce a threat to human health or the environment or to use the property as proposed provided it will not increase the potential hazard to human health or the environment, it is, therefore, reasonable to have permit modification provisions to accommodate this need.

Sections B.7. and B.8. involve the adjustments to the levels of finacial responsibility required by 6 MCAR §4.9312. 6 MCAR §4.9312 establishes financial liability requirements for owners and operators of hazardous waste facilities. However, the liability amounts are the same for all facilities unless either the owner or operator can demonstrate to the Agency or the Agency determines that the level of financial responsibility is not consistent with the degree and duration of risks associated with the treatment, storage, or disposal of wastes at the facility. Due to the variability of facilities and their associated risks, it is reasonable to allow the level of financial responsibility to be adjusted according to the conditions and risks associated with

each facility. Since the permit specifies the level of financial responsibility, any changes in that level must be included in the permit. Therefore, the adjustment of the level of financial responsibility is a reasonable justification for modifying the facility permit. Accordingly, this rule contains the additional administrative provisions necessary to modify the permit to reflect adjustments in the level of financial responsibility.

Section B.9. involves a finding by the Director that a corrective action program specified in the permit has not brought the regulated unit into compliance with the ground water protection standard within a reasonable period of time. Since 6 MCAR §4.9297 requires that a corrective action program result in compliance within a reasonable amount of time, this situation obviously should result in some type of modification to the permit. 6 MCAR §4.9297 provides that such a unit cease accepting waste because an unanticipated release from the unit is occurring which apparently cannot be stopped by the corrective action program. It is reasonable that this constitutes grounds for permit modification or revocation and reissuance because changes to the permit are necessary either to modify the corrective action plan or to require that waste cease to be accepted at the unit.

Section B.10. involves including a detection monitoring program in a permit when the compliance period ends for a facility which has been performing compliance monitoring or corrective action. Since detection monitoring is less burdensome than

compliance monitoring, the permittee should have this option if the compliance period is over and corrective action is not necessary. The original permit may not have included a detection monitoring program; therefore it is reasonable to allow a permit modification to include such a program.

Section B.11. involves a delayed reaction to monitoring results of samples collected prior to permit issuance. If the facility is operating under a compliance monitoring program and the results indicate violation of the ground water protection standard, 6 MCAR §4.9297 requires that the facility begin corrective action. The permit modification would be to require implementation of the corrective action program. Since the permit should have originally been issued under the corrective action mode (but was not because the information was not available) it is reasonable to allow this modification.

Section B.12. involves including conditions applicable to units at a facility that were not previously included in the permit. This provision allows the Agency to correct oversights when requirements were not originally included in permits. It also allows inclusion of requirements or conditions contained in new rules. It is reasonable to allow these types of modifications to ensure that all facilities are subject to all applicable requirements and conditions of the rules.

Section B.13. involves the situation where a land treatment unit is not achieving complete treatment as required in its

permit. In this situation, modifications to the operation of the unit are clearly necessary. These modifications, unless minor, are subject to permit modification or revocation and reissuance. This is reasonable because the Agency must have the authority to require such modifications in the operation of land treatment units to ensure that the applicable standards and requirements are met.

Section C., Additional justification to commence revocation without reissuance of permit: This section provides that a permit can be revoked and not reissued if the annual facility operator's fee is not submitted within 180 days of the due date. This fee is required by another Agency rule. Since payment of annual fees is a condition of operating a facility, it is reasonable that failure to pay such fees within a reasonable time period is justification for permit revocation.

Section D., Minor modifications of permits: This section specifies 11 types of corrections or allowances which can be made to a permit without the need to follow all the procedures of 6 MCAR §§4.4010 - 4.4013. These are considered minor modifications due to the low potential such changes have for adversely effecting human health or the environment. These corrections and allowances are based on requirements set forth in 6 MCAR §§4.9280 - 4.9322, which are applicable to hazardous waste facilities.

Sections D.1. and D.2. involve changing the list of facility

emergency coordinators and the list of equipment in the permit's contingency plan. The contingency plan is required by 6 MCAR §4.9288. This contingency plan must specify persons qualified to act as emergency coordinators and a list of emergency equipment at the facility, as well as many other provisions as required by 6 MCAR §4.9288 D. During the term of the permit, it is quite likely that the list of emergency coordinators and the list of emergency equipment will need to be changed and updated often due to personnel changes and equipment purchases and replacement. Since these are only changes in names and pieces of equipment, but not changes in the requirements or the facility's compliance with the requirements, there should be no change in the facility's potential for adverse effects on human health or the environment. Accordingly, it is reasonable to allow these changes in the lists to occur through a minor modification of the permit.

Section D.3. involves changing the estimates of maximum inventory pursuant to 6 MCAR §4.9298 C.2. As previously mentioned, 6 MCAR § 4.9298 requires the owner or operator of a hazardous waste facility to have a closure plan which is included in the facility permit. This plan must identify steps for closing the facility and must specify an estimate of the maximum inventory of wastes in storage and treatment at any time during the life of the facility, an estimate of the expected year of closure, and a schedule for final closure. This rule allows changes to be made in the closure plan with regards to those three provisions through

a minor modification of the permit. Changes in the estimates of maximum inventory allowed under this rule would not change the facility's permitted capacity or the permit conditions for facility operations. If this change affected the cost for closure, the cost estimate and financial assurance mechanism would have to be adjusted in accordance with 6 MCAR §§ 4.9305 and 4.9306. Considering that this is just an estimate and that the upper limit is established under facility capacity in the permit, it is reasonable to allow changes in the estimate of maximum inventory be made through a minor modification of the permit. Also, if the Director considers the change to be more than minor in nature, he or she could choose to follow the general procedures for permit modification.

Section D.4. involves changing the expected year of closure pursuant to 6 MCAR §4.9298 C.4. Changes in the expected year of closure allowed under this rule would not change the facility's permit expiration date or the requirement to have a valid permit for operation and closure of the facility. If the new year for closure is within the term of the permit, the change would not be significant since by issuing the permit the Agency has already approved facility operation and closure until the permit expires. If the new year for closure is not within the term of the permit, the change could be made as a minor modification; however, the owner or operator would be required to apply for permit reissuance. During the reissuance process, the new year for

closure would be subject to Agency review and approval in accordance with the procedures for permit reissuance. In either case, allowing the change to occur through a minor modification does not significantly change what is allowed under the current permit. Therefore, it is reasonable to allow a change in expected year of closure to occur under this rule as a minor modification.

Section D.5. involves changing schedules for final closure pursuant to 6 MCAR §4.9298 C.4. Changes in the schedule for final closure allowed under this rule would not change the time allowed for closure or the steps required to complete closure. The schedule specifies the total time required for intervening closure activities. If there is a change in the time required for the intervening closure activities, but the resulting total time for closure is not greater than the 90 days allowed in 6 MCAR §4.9299, the change is not significant. Due to the short amount of time available (90 days or less) and the fact that the schedule is really only an estimate of the time it will require, it is reasonable to allow the change to occur through a minor modification rather than a full permit modification. If the change would cause the total time for closure to exceed the 90-day limit, a permit modification would be necessary to allow a time extension. In this case, the permit would be modified for both provisions through the permit modification procedures rather than a minor modification.

Section D.6. involves changing the ranges of the operating

requirements set in the permit to reflect to results of a trial burn provided that the change is minor. Minor changes would include those considered to be "fine-tuning" of the burning process. Significantly different operating conditions from those specified in the permit would not be able to be set through the minor modification process. These might include changes in waste feed rates or dramatic changes in operating conditions. It is, however, reasonable to allow minor changes without proceeding through the formal modification process.

Section D.7. involves changing trial burn operating requirements provided that the change is minor. During phase one operations, new information may become available so that a thermal treatment unit can be operated more efficiently during a trial burn. It is reasonable to allow such minor changes without a formal modification process because operations should improve and because the facility will not be operating significantly different than intended during the initial permitting process. If, however, significant changes were to take place, this minor modification process could not be used.

Section D.8. involves a time extension for determining operational readiness for a thermal treatment facility. During phase one operations the facility is operated to make it ready for phase two, the trial burn. If the permittee can show that good cause exists, the Director may grant a time extension for up to 720 hours. It is reasonable to do so under a minor modification

because unwarranted time delays (during which the facility would have to cease operation) would be possible if a formal modification were required. During the extension the permit conditions for phase one would remain in effect so that the environment would be protected as much as possible.

Section D.9. involves minor changes to the land treatment program to improve treatment. These changes might include lowering waste application rates and minor operating changes. If significant changes were made, such as changing application methods or increasing waste application rates, a major modification to the permit would be required. Allowing the minor changes without a formal permit modification is reasonable because these are changes made because of experience with the facility to improve treatment. This "fine-tuning" process is analogous to that in thermal treatment facilities.

Section D.10. involves minor changes to the land treatment permit conditions in response to field demonstrations or laboratory test results. This section is similar to D.9. and its reasonableness is based on the same considerations. Again, major changes are not permitted under the minor modification process.

Section D.11. involves a second land treatment demonstration when a first demonstration has not shown the conditions for complete waste treatment. The conditions for the second demonstration must be substantially the same as for the first. This provision also allows "fine-tuning" of the demonstration

itself. Major changes to it would require a major permit modification. This provision is reasonable because conditions are basically the same as when the permit was first issued. Obviously, the Director will not allow such a second demonstration unless he or she believes it will be successful; therefore this provision is reasonable from an environmental protection standpoint.

Section E., Consideration of facility siting: Section E. limits consideration by the Agency of facility siting when making its final determination on a permit modification or permit revocation and reissuance. The suitability of the facility location shall not be considered unless new information indicates that a threat to human health or the environment exists which was unknown at the time of permit issuance. Facility siting is subject to consideration during the initial permit issuance procedures. However, once this issue has been decided by the issuance of the initial permit, if no new information is available, there is no reason to make this decision subject to change. Considering that facility location is not something which the owner or operator can change, other than to close the facility and establish a new facility at a new location, it is reasonable to limit consideration of this issue. However, if new information does exist, there could be reason for the Agency to reconsider the issue of facility location, and the rule does not preclude such consideration. Therefore, the rule is reasonable.

D. Reasonableness of 6 MCAR §§4.4301 - 4.4305, Air Emission Facility Permits.

It is reasonable to adopt rules which, in combination with 6 MCAR §§4.4001 - 4.4021, replace existing Minn. Rule APC 3 because the standard permitting rules alone do not cover the requirements that are specific to air emission facilities and air pollution control equipment. The proposed rules do not impose new requirements; rather, they are a redraft of existing requirements in the same format as the NPDES and hazardous waste facility permit rules.

The following discussion addresses the reasonableness of those individual portions of the rule which are in any way changed by the redraft.

6 MCAR §4.4301, Scope.

This rule lists the rules which govern the issuance of air emission facility permits. It is reasonable to include this provision to make it clear that this rule must be read in conjunction with other Agency rules for complete coverage of the subject matter.

6 MCAR §4.4302, Definitions.

This rule incorporates by reference definitions contained in 6 MCAR §§4.4001 and 4.0001 - 4.0041. Cross referencing definitions applicable to air emission facility and air pollution control equipment permits is reasonable because it aids regulated parties and the public to understand the terms used in the rules.

6 MCAR §4.4303, Permit Requirement.

This rule establishes the requirement to obtain an air emission facility permit. This rule is a redraft and consolidation of existing Minn. Rule APC 3(a)(1), the first sentence of Minn. Rule APC 3 (b)(1) and Minn. Rule APC 3(e). It is consistent with Minn. Stat. §116.081 (1982) and creates no new requirements. However, as dicussed below, Section B. of the rule creates some new exemptions from the permit requirement. The reasonableness of these exemptions is discussed below.

Section B.1. exempts a total emission facility with potential emissions of a single criteria of less than 25 tons per year, except for 3 specific types of facilities. It is reasonable to exempt facilities having a relatively small amount of emissions because the Agency does not have the staff and other resources that would be needed to permit every air emission facility in Minnesota. The 25-ton cut-off point is reasonable because it represents a relatively small amount of potential emissions. It was selected because it is a cut-off point currently used in other Agency air programs (e.g., reporting requirements for the Agency's Emission Inventory), and therefore it promotes consistency among Agency air programs.

The three specific types of facilities not exempted by Section B.1. are:

1. a facility subject to Minn. Rule APC 9, Control of Odors in the Ambient Air;

2. a facility subject to federal new source performance standards; and
3. a total emission facility with potential lead emissions of at least 1,000 pounds per year.

It is reasonable not to exempt facilities with the potential to create odor problems because these types of facilities can create a nuisance situation. The Agency needs an administrative mechanism to enforce against these facilities the requirements of Minn. Rule APC 9.

It is reasonable not to exempt facilities subject to New Source Performance Standards (NSPS) promulgated by EPA because EPA has delegated to the Agency the authority to enforce NSPS in Minnesota. If the Agency were to exempt these facilities from its permitting requirements, the facility owner or operator would be required to obtain a permit from EPA. Therefore it is reasonable not to exempt these facilities so that the Agency can enforce NSPS and so that the owner or operator can obtain a facility permit at the state level.

It is reasonable not to exempt facilities with lead emissions due to the nature of the pollutant. Lead is a criteria pollutant, but due to its high toxicity the ambient air quality standards for lead are more than a factor of ten less than the standards for other criteria pollutants. Due to the fact that lead emissions pose health hazards at lower concentrations than the other criteria pollutants, it is reasonable to establish a permit

requirement at a lower annual emission rate. The 1,000 pounds per year cut-off is reasonable because it is comparable to the 0.6 ton value used in identifying a major modification in the Prevention of Significant Deterioration program and the New Source Review program administered by the Agency pursuant to the Clean Air Act.

Sections B.2. - B.9. of the rule exempt from the permit requirement several types of emission facilities. In each case, the exemption is based upon the type of facility and other factors which affect emissions, such as rated heat input, production capacity, or the size of the facility. This approach has been proposed to aid owners or operators of these types of facilities in determining whther or not a permit is required from the Agency. In most cases, the size, production capacity, etc. specified in the rule has been determined by calculating potential emissions and selecting a number which should result in potential emissions of less than 25 tons per year of a single criteria pollutant. It is reasonable to exempt these facilities from the requirement to obtain a permit because they have a relatively small amount of emissions.

6 MCAR §4.4304, Permit Application.

This rule sets forth the information required to be submitted by the applicant. It supplements the requirements of 6 MCAR §4.4005 by adding the information requirements of existing Minn. Rule APC 3(a)(2) and (b)(2).

The proposed rule also adds one additional informational

requirement not found in existing Minn. Rule APC 3. Section C. of the rule, in addition to requiring information on the type of control equipment used, requires information on the design specifications for that control equipment. This information request is reasonable because the Agency cannot assess the effectiveness of the control equipment to be installed, and thus the compliance of the facility with applicable air pollution control rules, without reviewing the performance specifications. In the past this information was obtained under Minn. Rule APC 3(a)(2)(ee) and (b)(2)(ee), which requires submission of "[a]ny other reasonable and pertinent information that may be required by the Director." However, since it is needed in almost all cases, it is reasonable to place the requirement in the rule specifically.

6 MCAR §4.4305, Special Conditions for Air Emission Facility Permits.

This rule provides that in addition to the conditions in 6 MCAR §4.4105 B. and if applicable to the circumstances, an air emission facility permit may contain four additional special conditions:

1. standards of performance for air pollutants from an emission facility;
2. operational requirements for situations where a standard of performance is not applicable or the operational requirements are necessary to achieve complance with a standard of performance;

3. testing and reporting requirements to ensure compliance with standards of performance; and
4. notification and reporting requiremnts for shutdowns and breakdowns.

These special conditions for air emission facility permits are reasonable because they inform the permittee of the standards or operational requirements which they must meet and they require submission of information needed by the Agency to determine whether the permittee is in compliance with state and federal rules and the conditions of the permit.

E. Reasonableness of Amendments to Minn. Rule APC 19, Renumbered as 6 MCAR §4.4311 - 4.4321.

The Agency proposes to amend Minn. Rule APC 19 to eliminate those portions of the rule which duplicate the procedures set forth in 6 MCAR §§4.4001 - 4.4021, Permits, and to change the format of the rule to conform to that of the other rules which are supplementary to 6 MCAR §§4.4001 - 4.4021. This is reasonable because this will make the Agency's permitting programs consistent with each other.

The reasonableness of the amendments to the rules is discussed below.

6 MCAR §4.4311, Scope.

This rule lists the rules which govern the issuance of indirect source permits. It is reasonable to include this provision to make it clear that this rule must be read in

conjunction with other Agency rules for complete coverage of the subject matter.

6 MCAR §4.4312, Definitions.

This rule incorporates by reference definitions contained in Minn. Stat. §116.06, 6 MCAR §§4.4001 and 4.0001 - 4.0041, and Minn. Rule APC 2. Cross referencing definitions applicable to indirect source permits permits is reasonable because it aids regulated parties and the public to understand the terms used in the rules. The amended rule also renumbers existing definitions.

6 MCAR §4.4313, Permit requirements.

The first paragraph of this rule appears as new language due to the fact that it is underlined. However, it merely represents a reorganization and renumbering of paragraph (b)(6) of existing Minn. Rule APC 19. This paragraph creates no new requirements.

Section D. of the rule contains style changes due to the reorganization and renumbering of the rule. However, this section creates no new requirements.

6 MCAR §4.4314, Exemptions.

Section A. of the rule is proposed to be amended to change the phrase "the effective date of this rule" to "February 18, 1975." This change is reasonable because it clarifies the date which separates "existing" sources from "new" sources. It does not change any requirement of the existing rule, because February 18, 1975, was the effective date of Minn. Rule APC 19.

The remaining changes to the rule relate to the renumbering of

the rule and create no new requirement.

6 MCAR §4.4315, Assessment.

The language in this rule which is proposed to be deleted contains procedural requirements which are covered either by portions of 6 MCAR §§4.4001 - 4.4021 or by other portions of this rule. These changes do not add or subtract requirements from the existing rule.

Sections B. and C. of this rule contain the assessment procedure, which was formerly contained in Appendix A of existing Minn. Rule APC 19. These sections do not create any new requirements.

6 MCAR §4.4316, Circumvention.

This rule contains the requirements formerly found in Minn. Rule APC 19(i). This rule creates no new requirements.

6 MCAR §4.4317, Contents of Permit Application.

This rule sets forth the information to be submitted by the applicant. It is reasonable to require the applicant to submit sufficient information so that the agency can make a determination as to whether or not the applicant will comply with applicable rules and standards. This rule contains no new requirements but reflects the requirements of existing Minn. Rule APC 19.

6 MCAR §4.4318, Determination of Air Quality Impact of Indirect Source.

This rule incorporates the requirements formerly set forth in existing APC 19(f)(2). This rule creates no new requirments.

6 MCAR §4.4319, Final Determination.

The changes in this rule consist of deletions of sections which have been placed elsewhere in the rule or which contain procedures covered by 6 MCAR §§4.4001 - 4.4021. This rule neither creates nor deletes any requirements.

6 MCAR §3.4320, Permit Conditions.

This rule incorporates the requirements formerly set forth in section (f) of Minn. Rule APC 19, excluding (f)(2). It also includes portions of sections (h)(6) and (k) of existing Minn. Rule APC 19. This rule creates no new requirements.

6 MCAR §3.4321, Minor Modification.

This section specifies a type of permit modification which can, with the permittee's consent, be made to a permit without the need to follow all the procedures of 6 MCAR §4.4005 - 4.4014. During the public comment period on this rule the Director proposed the following modification to the language of this rule:

> Minor modification of permit. In addition to the corrections or allowances listed in 6 MCAR §4.4019 C., the director upon obtaining the consent of the permittee may modify an indirect source permit without following the procedure in 6 MCAR §§4.4005-4.4014 if the director determines that the modification would not result in an increase in carbon monoxide of greater than one part per million with respect to the eight hour carbon monoxide standard, and that the modification would not result in an increase in carbon monoxide of greater than three parts per million with respect to the one hour carbon monoxide standard, and that the modification would not result in ~~or~~ a violation of the carbon monoxide standard established in 6 MCAR §4.0001 ~~and that the modification would not subject the permittee to the requirement to~~

~~obtain a permit modification as set forth in 6 MCAR §4.4313.~~

This rule as amended allows for simplification of the permit modification procedure for changes to the permit which result in a very small contribution to ambient carbon monoxide and which will not result in a violation of ambient air quality standards for carbon monoxide.

The Director must make three findings before allowing for the simplification of permitting procedures. The Director must find:

1. That the modification would not result in an increase of carbon monoxide of greater than one part per million with respect to the eight hour carbon monoxide standard, and
2. That the modification would not result in an increase of carbon monoxide of greater than three parts per million with respect to the one-hour carbon monoxide standard, and
3. That the modification would not result in a violation of the carbon monoxide standard established in 6 MCAR §4.4001.

The adoption of a 1 ppm threshold increase with respect to the eight-hour eight hour averaging period is reasonable because this number is slightly greater than the smallest change in ambient carbon monoxide levels that can be detected with properly operated carbon monoxide monitoring equipment. (The Agency's experience has shown that changes as small as 0.5 ppm averaged over eight hours can be detected.) It is also reasonable because

it represents a small fraction (one-ninth) of the eight hour carbon monoxide standard of 9 ppm.

The adoption of the 3 ppm threshold increase with respect to the one-hour averaging period is reasonable because it is in approximately the same proportion to the 30 ppm one-hour standard (when 30 ppm is attained) as the 1 ppm threshold is to the 9 ppm standard (when 9 ppm is attained.)

It is reasonable not to allow a simplified procedure if the modification is likely to result in a violation of ambient air quality standards for carbon monoxide because it is the Agency's responsibility to protect against such violations. Therefore it is reasonable to require full permitting procedures for permit modifications of this type.

Based on the foregoing, the provisions of 6 MCAR §4.4321 are reasonable.

F. Reasonableness of Repeal of Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3.

As previously discussed at page 13, the repeal of the existing Minn. Rules MPCA 5 and 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3 is needed because the new rules described and discussed herein are replacements to those rules. Since those existing rules are being replaced by new rules, it is reasonable to repeal them.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Laws 1983, ch. 188 (to be codified as Minn. Stat. §14.115) requires the Agency, when proposing amendments to an

existing rule which may affect small businesses, to consider 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 requirments 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.

The statute requires the Agency to incorporate into the proposed rules any of these methods that it finds to be feasible, unless doing so would be contrary to the statutory objectives that are the basis of the proposed rulemaking.

In drafting the proposed rules 6 MCAR §§4.4001 - 4.4021 the Agency did give consideration to small businesses. 6 MCAR §4.4015 C.6. of that rule ties the requirement to install and maintain back-up or auxiliary facilities to whether the back-up or auxiliary facilities are "technically and economically feasible." This will aid small businesses because they will not have to install back-up or auxiliary facilities which will be economically burdensome to them.

The Agency gave consideration to small business in drafting

the proposed 6 MCAR §§4.4201 - 4.4211, which will, if adopted, replace the Agency's existing Minn. Rule WPC 36 with respect to the issuance of NPDES permits. The revised rules provide an exemption from the requirement to perform a gas chromatograph/mass spectrophotometer analysis for facilities with a gross total annual income averaging less than $100,000 per year for a three year period (in second quarter 1980 dollars). These analyses can cost approximately $1500 per sample. Therefore this exemption will provide monetary relief for some small businesses.

The Agency gave consideration to small business in drafting the proposed 6 MCAR §§4.4201 - 4.4224, which will, if adopted, replace the Agency's existing hazardous waste permitting facility rules. The revised rules provide exclusions from the requirement to obtain a hazardous waste permit for conducting activities which are currently required to be permitted. These exclusions include storage of hazardous waste by generators and transporters for limited time periods, certain types of recycling or reuse of hazardous waste, various management methods for hazardous waste, and the management of hazardous waste by small quantity generators. To the extent that businesses that qualify for these exclusions are often also small businesses, these exclusions are consistent with section (e) of the statute. These rules also allow some facilities to obtain a permit by rule, which means that a facility is deemed to have met the requirement to apply for and

obtain a permit if certain requirements in the rule are met. These types of facilities currently would need to obtain a perit. Some of the facilities covered by a permit by rule may also be small businesses, and as such this provisions is consistent with sections (c) and (e) of the statute.

The exclusions and exemptions contained in the proposed hazardous waste facility permit rules are based upon the quantity of hazardous waste involved, the type of hazardous waste, hazardous waste management techniques, and the risk posed to human health and the environment by these facilities rather than the size of the business. However, the Agency feels that many small businesses will benefit from these exclusions and exemptions, especially small businesses which generate small quantities of hazardous waste or which store their hazardous waste for less than 90 days. Also, many small businesses which do not currently qualify for an exclusion or exemption could modify their hazardous waste management practices so that they would qualify.

The Agency regulates hazardous waste facilities in accordance with the statutory objective of Minn. Stat. ch. 116 to protect the public health and welfare and the environment from the adverse effects which will result when hazardous waste is mismanaged. The hazardous waste facility permit rules, in combination with the hazardous waste technical rules, establish the regulatory program need to achieve that objective. The objective of the permitting

process is to ensure that a hazardous waste facility is designed and operated in compliance with the hazardous waste technical rules. Therefore, except for the limited exemptions provided for specific types of facilities and activities, applying less stringent requirements to small businesses managing hazardous waste, irrespective of waste quantity or the facility's potential for adverse effects on human health and the environment, would be contrary to the Agency's mandate. The Agency believes that the revised hazardous waste permit rules address the concerns of small business to the maximum extent possible without allowing conduct contrary to the statutory goal of protecting the environment.

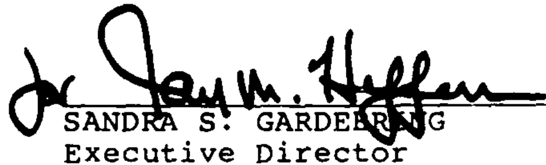
The rules relating to air emission facility permits, 6 MCAR §§4.4301 - 4.4305, contain provisions which are favorable for small businesses. 6 MCAR §4.4303 provides that, with some exceptions, facilities with less than 25 tons of annual emissions of a single criteria pollutant need not obtain a permit. Although not all air emission facilities with annual emissions of less than 25 tons of a single criteria pollutant are necessarily owned or operated by small businesses, the Agency anticipates that this exemption will be beneficial to certain small businesses in Minnesota.

The rules relating to indirect source permits, 6 MCAR §4.4311 - 4.4321, contain provisions which are favorable for small businesses in that the requirement to obtain a permit is related

to the size of the facility or activity. Some small businesses, however, are required to be permitted because of the adverse impact which their facilities could have on ambient air quality if they were unregulated.

## VI. CONCLUSION

Based on the foregoing, the proposed rules 6 MCAR §§4.4001 - 4.4021, 4.4101 - 4.4111, 4.4201 - 4.4224, 4.4301 - 4.4305, the amendments to Minn. Rule APC 19, and the repeal of Minn. Rules MPCA 5 and WPC 36, 6 MCAR §§4.9006 - 4.9007, and Minn. Rule APC 3 are both needed and reasonable.



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Executive Director

Dated: December 15, 1983