

STATE OF MINNESOTA

MINNESOTA POLLUTION

COUNTY OF RAMSEY

CONTROL AGENCY

In the Matter of the Proposed
Adoption of 6 MCAR §§4.9701-4.9706,
Hazardous Waste Facility and
Generator Fee Rules

STATEMENT OF NEED AND
REASONABLENESS

I. Introduction

The Minnesota Pollution Control Agency (Agency) was directed by the 1983 Minnesota Legislature to establish fees "to cover the amount appropriated by the general fund to the Agency for permitting, monitoring, inspection, and enforcement expenses of the hazardous waste activities of the Agency. (Minnesota Laws 1983, Chapter 121, Section 25 to be codified as Minnesota Statute 116.12.) The relevant portion of the law is set forth in Exhibit 1.

Under the proposed rules, hazardous waste treatment, storage, and disposal facilities will be subject to an original permit application fee, a permit renewal fee, and an annual facility operator's fee. Non-metropolitan area hazardous waste generators will pay an initial fee and an annual fee based upon the volume of waste generated. All generators in Minnesota are subject to a 17.5 percent surcharge.

The rules set the amount for the fees and provide a mechanism for their collection. Also included are provisions for recovering a portion of costs incurred for environmental review of proposed new hazardous waste facilities. Penalty provisions are included for late payment or failure to pay the required fee.

The Agency proposes to adopt these rules according to the

procedure for noncontroversial rulemaking provided in Minnesota Statute, Sections 14.21 through 14.28, except that no public hearing will be held in the event that seven or more requests for a public hearing are received as is the usual case. The legislature has specifically provided that no public hearing is required to be held on these rules. Minnesota Laws 1983, Chapter 121, Section 25 provides, in relevant part:

The Agency shall establish the fees provided in subdivisions 2 and 3 in the manner provided in Section 16A.128 to cover the amount appropriated from the general fund to the Agency for that year for permitting, monitoring, inspection, and enforcement expenses of the hazardous waste activities of the Agency.

(Emphasis supplied.)

Minnesota Statute, Section 16A.128, recently amended by Minnesota Laws 1983, Chapter 301, Section 91, requires these fees to be set by rule. The manner in which they are to be set by rule is found in subdivision 2 of the statute, which provides in relevant part:

Fee adjustments authorized under this section may be made pursuant to the procedure for noncontroversial rules in Sections 14.21 to 14.28, but without a public hearing, which the notice of intention to adopt the rules must state when the total fees estimated to be received during the fiscal biennium will not exceed the sum of all direct appropriations, indirect costs, transfers in, and salary supplements for that purpose for the biennium.

(Emphasis supplied.)

Seven drafts of the rules were prepared in July, August and September 1983. An effort was made by the Agency staff to solicit

outside comments on the draft rules. Copies were sent to the seven metropolitan counties, the Metropolitan Inter-County Association, the Minnesota Association of Commerce and Industry, the Outdoors Committee, and the Minnesota Waste Management Board. Several interested persons attended the meetings of the Rules Committee of the Agency on August 22 and September 8, 1983. In addition, interested persons appeared before the Agency Board at its September 27, 1983 meeting. During the entire process, the Agency staff has attempted to address the comments from the Agency Committee as well as those from outside persons.

A part of the administrative requirement for the rulemaking process is review and approval of the fee schedules in the rules by the Minnesota Commissioner of Finance. The approval dated October 10, 1983, is Exhibit 2.

II. Statement of Need

The need to adopt the proposed rules arises from the fact that the Agency is going through a period of rapid growth in the hazardous waste regulatory program. In its 1983 biennial budget request the Agency asked for an appropriation to fund additional staff for the hazardous waste program. The governor supported the request provided that the additional expenditures be offset by imposing fees on regulated hazardous waste activities. The 1983 legislature agreed that the regulated community should bear a portion of the financial burden involved with routine

activities of the hazardous waste regulatory program, including permitting, inspection, and enforcement, and enacted Minnesota Laws 1983, Chapter 121, Section 25.

III. Statement of Reasonableness

The proposed rules are reasonable because they are aimed at the legislature's objective that the Agency collect from persons generating and handling hazardous waste a portion of the administrative costs of regulating hazardous waste activities. The fee amounts established by the rules are reasonably related to the objective of collecting the \$794,400 which the legislature required the Agency to collect. This is shown by the revenue estimates that the Agency has done based on the proposed rules.

The Agency has made estimates of the revenues which it is likely to collect from the two different types of fees established by the rules: 1) hazardous waste facility fees, and 2) hazardous waste generator fees. The two revenue estimates are discussed below.

The Agency has apportioned its fees according to the relative amount of administrative effort involved in various aspects of the regulation of hazardous waste. Based on past experience, the Agency estimates that of the work years involved in the hazardous waste program effort, over half are devoted to hazardous waste facility permitting and permit enforcement. Therefore, the Agency's objective in setting its fees was to collect over half

of the \$794,400 from hazardous waste facility fees and to collect the remainder from hazardous waste generator fees.

Establishing appropriate fee schedules for hazardous waste facility fees involved estimating the number and type of hazardous waste facilities from which fees could be collected. Estimates of the number of hazardous waste facilities in Minnesota that will need hazardous waste permits necessarily involves uncertainty because the number is subject to change. Originally, the U. S. Environmental Protection Agency (EPA) identified 193 facilities in Minnesota. However, numerous facilities have been or will be removed from the list due to facility closure, change in company waste management practices in response to more stringent hazardous waste regulations, and exemptions from permitting requirements pursuant to the Agency's proposed amendments to its hazardous waste rules. The Agency's best estimate is that 125 facilities in Minnesota will be subject to permitting requirements during the 1984-1985 biennium.

The Agency estimates that it will recover \$455,560 in the next biennium from original permit application fees and annual facility operator's fees, which amounts to over half of the \$794,400 total to be collected. The breakdown of these estimates is shown below:

ESTIMATED REVENUES, ORIGINAL PERMIT APPLICATION
AND ANNUAL FACILITY OPERATOR FEES

Permit Fees	<u>FY 84</u>	<u>Number of Facilities</u>	<u>FY 85</u>	<u>Number of Facilities</u>	<u>Biennium</u>
Storage	\$13,500	9	\$22,500	15	\$36,000
Treatment & storage	\$18,600	2	\$65,100	7	\$83,700
Thermal treatment & storage	\$45,600	2	\$45,600	2	\$91,200
Disposal & storage	--	-	\$22,800	1	\$22,800
SUBTOTAL	\$77,700	13	\$156,000	25	\$233,700
Annual Fees	<u>\$110,930</u>	125	<u>\$110,930</u>	125	<u>\$221,860</u>
TOTAL	\$188,630		\$266,930		\$455,560

The Agency also estimated the amount of revenue that would be generated by the hazardous waste generator fees. Pursuant to the proposed 6 MCAR §4.9704, this involved estimating revenues from non-metropolitan area generator fees, the surcharge on non-metropolitan area generators, and the surcharge on metropolitan area generators. The Agency estimates that these fees will generate \$339,889. The breakdown of these estimates is shown below:

ESTIMATED REVENUES, HAZARDOUS WASTE GENERATOR FEES

	<u>FY 84</u>	<u>Number of Facilities</u>	<u>FY 85</u>	<u>Number of Facilities</u>	<u>Biennium</u>
Non-metro area fees	\$113,000	549	\$120,000	586	\$233,000
Non-metro surcharge	\$19,775	549	\$21,000	586	\$40,775
Metro surcharge (17.5 percent of 1983 est.)	\$33,057		\$33,057		\$66,114
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TOTAL	\$165,832		\$174,057		\$339,889

The sum of the estimate of revenues from hazardous waste facility fees and the estimate of revenues from hazardous waste generator fees is \$795,449, which is slightly over the total sought to be collected. However, given the fact that there are several uncertainties involved in the estimates, and given the possibility that not all fees will successfully be collected, it reasonable to set the fees at the levels proposed in the rule.

The fees proposed to be established in the rules reflect the fact that the amount of time necessary to review documents relating to hazardous waste facilities and generators varies according to the complexity of the facilities or wastes involved. This fact makes it reasonable to establish different fee levels for different types of facilities and generators. Therefore the Agency has not simply taken the amount of money to be collected and divided it by the number of expected

administrative actions, but rather has apportioned the fees according to the estimated amount of administrative attention each action must be given. This approach is reflected in the fee schedules established in the rule.

The following discussion addresses the reasonableness of the specific provisions of 6 MCAR §§4.9701 through 4.9706.

6 MCAR §4.9701 Definitions

This rule sets forth 23 definitions of terms found elsewhere in the rules. Of these, twelve are substantially identical to those set forth in the proposed amendments to the Agency's hazardous waste rule 6 MCAR §4.9100. That rule defines "agency," "facility," "land treatment facility," "landfill," "operator," "on-site," "owner," "pile," "surface impoundment or impoundments," "tank," "thermal treatment," and "treatment." It is reasonable to adopt the definitions used in the hazardous waste rule because it promotes consistency among Agency programs. The definitions of the other eleven terms in the rule are discussed below.

"Director" is defined as the Director of the Agency. It is reasonable to define this term in order to clarify the person to whom this term refers.

The definition of "generator" is identical to the definition of that term set forth in the Agency's hazardous waste rule 6 MCAR §4.9100 except that there is an additional definition of the term "by site." During public meetings held

to discuss the draft rules, members of the public commented that they did not understand the term "by site." The Agency proposes to define that term to clarify that if a company has several sites which involve the generation of hazardous waste, that company is a "generator" as to each of those individual sites. It is reasonable to define the term "by site" so that the public understands the Agency's intent in using that term.

"Hazardous waste" is defined to mean a waste which is identified as hazardous in Minn. Stat. §116.01, subd. 13 (1982). This definition is reasonable because it promotes consistency within the Agency's hazardous waste regulatory program.

"Indoor tank" is defined to mean a tank completely enclosed within a building or sheltered from the elements within a roofed structure with no less than three complete solid walls.

"Outdoor tank" is defined as a tank not enclosed or sheltered in that manner. Different fees apply to indoor tanks versus outdoor tanks. Therefore it is reasonable to define these terms to make it clear as to which fees apply to a given tank.

"Injection well" is defined as a shaft or pit dug or bored into the earth into which fluids are injected, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in. This definition expands the definition set forth in 6 MCAR §4.9100 by adding a description of a well. It is reasonable to define this term in order to

make it clear to the public what facilities are subject to fees.

"Non-metropolitan area generator" is defined to clarify what counties are included in the metropolitan area. This is reasonable to make it clear to the public which generators are included in this term.

"Projected estimated cost" is defined to clarify exactly what costs of a hazardous waste facility are to be included in estimating the total cost of a facility. This definition is needed because some fees in the rule are based on the projected estimated cost of the facility. The definition is reasonable because it includes those items needed to bring the project to completion.

"Sewered liquid waste" and "unsewered liquid waste" are defined because different fees apply to these wastes. Therefore it is reasonable to make it clear as to which fees apply to a given waste.

"Storage" is defined as the holding of hazardous waste as provided in 6 MCAR §4.9100, of the Agency's proposed amendments to its hazardous waste rules. This definition is reasonable because it promotes consistency among the Agency's rules relating to hazardous waste.

6 MCAR §4.9702 Hazardous Waste Facility Fees

This rule establishes the hazardous waste facility fees for permits having a term of five years (Section A.), including a

permit application fee, an annual facility operator fee, and a permit reissuance fee. It establishes fees for permits having a term of less than five years (Section B.), fees for combination facilities (Section C.), and fees for environmental review (Section D.). It also contains a payment schedule (Section E.), establishes penalties for failure to submit fees (Section F.), and provides for a facility permit application refund (Section G.). The discussion below addresses the reasonableness of Sections A. through G. of the rule.

Section A. of the rule establishes the permit application fee, annual operator's fee, and permit reissuance fee for hazardous waste facilities where the term of the permit to be issued is five years. This section establishes the maximum permit application fee and permit reissuance fee, because the Agency's proposed Hazardous Waste Facility Permit rule 6 MCAR §4.4223 limits the term of such a permit to not more than five years. It is reasonable to base the maximum fee on a five-year permit term because under ordinary circumstances hazardous waste facility permits will be issued for term of five years.

Section A., Table 1 lists hazardous waste facility fees, starting with the lowest fees (for indoor tanks and containers) and ending with the highest (land disposal facilities, including surface impoundments in which waste remains after closure). The permit issuance and reissuance fees are reasonable because they

reflect the estimates of work-years needed for Agency staff to issue each type of permit. The annual facility operator fees are reasonable because they are based on the Agency enforcement effort that will be involved in assuring that the facility will be in compliance with rules and permits. The Agency will be inspecting each facility at least annually.

Based on the foregoing, the provisions of Section A. are reasonable.

Section B. establishes modified permit application fees for permits with an effective period of less than five years. This is reasonable because occasionally the Agency finds it necessary to issue a permit for a term of less than five years. It would not be fair to charge some permittees the maximum permit application fee more than once every five years when other permittees need only pay the maximum once every five years. Therefore it is reasonable to establish a schedule to compute a partial fee for permits having terms of less than five years.

Section C. establishes a formula for calculating fees for facilities which consist of several treatment, storage, or disposal functions. The rationale used in developing the formula was that permit application review for some types of facilities, especially landfills and incinerators, involve broader and more complex technical review, while less complex facilities, such as storage facilities, involve less rigorous review. Therefore the formula

is comprised of 100 percent of the fee for the most complex type of facility involved in the combination facility plus a percentage of the less complex of the two types of facilities in a combination facility. It is reasonable to charge a larger fee for a combination facility because these facilities require more administrative efforts for permit application review, permit issuance, and permit enforcement.

Section D. establishes fees designed to recover a portion of the Agency's cost of environmental review of a proposed facility. This is authorized by subdivision 3 of Minnesota Laws 1983, Chapter 121, Section 25, which provides: "The Agency may include reasonable and necessary costs of any environmental review under chapter 116D in the original permit fee for any hazardous waste facility." The State of Minnesota already recovers a portion of the cost of environmental review under Minnesota Statutes Section 116D.045 (1982) and Chapter 17 of the rules of the Environmental Quality Board (EQB), 6 MCAR §3.049-3.054, providing for a "charge-back" system. However, the EQB rules do not provide for assessment and collection of any fees for projects costing less than one million dollars, nor for preparation of environmental assessment worksheets (EAW's). It is reasonable to expect that there will be hazardous waste storage or treatment facilities with a cost of less than one million dollars. Therefore it is reasonable for the Agency to establish a procedure to assess the cost of

environmental review with an estimated project cost of less than one million dollars. The fees established by the rule are reasonable because they are reasonably related to the Agency's administrative costs in performing environmental reviews of hazardous waste facilities.

Section E. of the rule provides that fees shall be submitted to the Director and made payable to the State Treasurer. This is reasonable because Minnesota Laws 1983, Chapter 121, Section 25 specifically provides that all fees collected by the Agency must go into the general fund. Section E. establishes a payment schedule. Original permit application fees are to be submitted within 60 days of the effective date of the rules if a Part B application has been submitted and if no permit has yet been issued. It is reasonable to allow these applicants 60 days to submit the fee because this will allow time for a facility to process the funds through its corporate structure. The rule provides that if the Part B application has not yet been submitted, original permit application fees are to be submitted along with facilities plans and specifications. This is reasonable because the Agency's expense of reviewing that application will commence upon receipt of the plans and specifications. The rule requires that annual facility operator fees are to be submitted no later than June 30 of each year. This deadline is reasonable because it will allow facility owners and operators several months after the effective

date of this rule to submit the fees. The rule provides that permit reissuance fees are to be submitted along with the application for permit reissuance. This is reasonable because facility owners and operators know well in advance the date upon which their existing permits will expire, and can thus plan for submission of the reissuance fee.

Section F. of the rule establishes penalties for failure to submit fees in a timely manner. For failure to submit a permit application, the director must suspend any further processing of permit application. Failure to pay the annual operator's fee for thirty days subjects the facility owner or operator to a late fee of twenty percent of the annual fee; an additional ten percent of the fee is due for each thirty day period or fraction thereof that the fee remains unpaid. Failure to pay fees within 180 days after the required date constitutes justification for the director to commence proceedings to suspend or revoke the permit. Establishing penalties for failure to submit fees in a timely manner is reasonable because these penalties will encourage prompt payment of the obligations created by these rules and will thus help to effectuate the legislature's intent that some of the costs of administering the hazardous waste program be paid by regulated persons.

Section G. of the rule provides for refund of a facility permit application fee in two instances: 1) if the applicant

submits an application fee for a five-year permit and then receives a permit for a lesser term; and 2) if the permit application is withdrawn within 60 days of its submittal to the director. In the first instance, the refund will ensure that the permittee pays only what is owed under Section B. of this rule. This is reasonable because it is in accord with the intent of Section B. In the second instance, the Agency will refund 75 percent of the fee. This is reasonable because after 60 days the Agency will have invested some administrative effort into the review of the permit application and should be compensated for the efforts which resulted from the the submission of the permit application.

6 MCAR §4.9703 Non-metropolitan area generator fees

Minnesota Laws 1983, Chapter 121, Section 25, Subdivision 2, requires the establishment of a hazardous waste generator fee system. The fees are required to be based upon the hazardous waste disclosures submitted to the Agency by hazardous waste generators and upon other information available to the Agency.

The legislature recognized that the seven counties in the metropolitan area have already instituted a fee system to recover fees from generators to cover the counties' costs to administer hazardous waste programs. The legislature did not wish to require metropolitan area generators to pay double (equal amounts to the county and to the Agency), nor did it wish the non-metropolitan area generators to pay less than the

metropolitan area generators. Therefore the legislature provided:

If any metropolitan counties recover the costs of administering county hazardous waste regulations by charging fees, the fees charged by the agency outside of those counties shall not exceed the fees charged by those counties. The agency shall not charge a fee in any metropolitan county which charges such a fee.

The purpose of 6 MCAR §4.9703 is to establish generator fees for non-metropolitan area generators, which may not be higher than the fees charged by the metropolitan counties.

This rule establishes the basis of fees (Section A.), a small generator exemption (Section B.), a fee for previously unreported waste (Section C.), a fee schedule for initial fees (Section D.), a fee schedule for annual fees (Section E.), a payment schedule (Section F.), and penalties for failure to submit fees (Section G.). The reasonableness of these sections is discussed below.

Section A. of the rule provides that the Agency shall charge non-metropolitan area generators fees based on the annual reports submitted by generators, disclosures, or other applicable information available to the Agency. This is reasonable because Minnesota Laws 1983, Chapter 121, Section 25, Subdivision 2 requires generator fees to be established on this basis.

Section B. of the rule exempts generators who generate less than 10 gallons or 100 pounds of hazardous waste per year. The Agency has identified 572 non-metropolitan area generators. Of these, 23 are listed as generating less than ten gallons per year.

Exempting these generators is authorized by Minnesota Laws, Chapter 121, Section 25, Subdivision 2, which provides in relevant part:

The agency may exempt generators of small quantities of hazardous waste otherwise subject to the fee if it finds that the cost of administering a fee on those generators is excessive relative to the proceeds of the fee.

Exemption of these generators is reasonable because the small revenue obtained by including these small generators does not warrant the costs that would be incurred to collect the fees.

Section C. of the rule provides that initial fees are to be submitted by any generator who is a new generator after the effective date of these rules or who has failed to submit a disclosure prior to July 1, 1983. It is reasonable to apply initial fees to these generators because the Agency expends manpower to review the disclosures and make a determination that the hazardous waste is correctly managed.

Section C. of the rule also establishes a fee schedule for initial fees for non-metropolitan area generators. The fees assessed depend upon whether the hazardous waste is unsewered liquid waste, sewered liquid waste, unsewered solid waste, or a new waste not previously reported. It is reasonable to vary the fees on this basis because each of these categories of waste requires a different type of review of the management of the waste. For liquid wastes, the fee schedule provides an additional

fee for each additional waste stream over one. This is reasonable because the Agency will be spending additional time and effort to review disclosures and to inspect generators where more than one waste stream is involved.

The lowest fee on the fee schedule for liquid wastes is for sewer liquid waste. This may appear to encourage dumping of hazardous wastes into the sewer. However, this is not the case. Under the pretreatment requirements which apply to discharges to a publicly owned treatment works, only certain wastes can be discharged to the sewer. The publicly owned treatment works is regulated by having a National Pollutant Discharge Elimination System permit and a State Disposal Permit. The owner or operator of the wastewater treatment facility is responsible for the wastes discharged to the sewer system. The agency will enforce appropriate effluent limitations upon the final discharge from the wastewater treatment facility. Therefore the fee schedule will not have the effect of encouraging the dumping of hazardous wastes into the sewers. It is reasonable to charge a lower fee for this type of waste because, as a result of the fact that these wastes are regulated under other programs, there will be less administrative time devoted to them under the hazardous waste regulatory program.

Section D. of the rule provides that if a generator adds a waste that has not been previously reported to the Agency, the

generator shall pay a \$40 fee to the Agency for each new waste stream. This is reasonable because the Agency must review the newly reported waste stream to assure its proper management.

Section E. of the rule establishes a fee schedule for annual fees applicable to non-metropolitan area generators. This amount of the fee depends upon the volume of waste generated as well as whether the hazardous waste is unsewered liquid waste, sewered liquid waste, or unsewered solid waste. The categories shown on this fee schedule are based upon the charges which metropolitan area generators currently impose upon metropolitan area generators. This is reasonable because of the provision of subdivision 2 of Minnesota Laws 1983, Chapter 121, Section 25, Subdivision 2, quoted above, requiring that the fees charged to non-metropolitan area generators not exceed the fees charged by the counties to the metropolitan area generators. All seven metropolitan area counties charge fees for administering their county hazardous waste regulations. The Agency examined the county fee schedules and found that they were not uniform. The Agency developed its fee schedule based on a combination of existing metropolitan county fee schedules. The fees established in the fee schedule are reasonable because they are similar to those now charged by the counties in the metropolitan area.

As in the case of initial fees, the fee schedule for annual

fees contains additional fees for additional waste streams. This is reasonable because of the additional Agency effort needed to review disclosures and inspect generators.

Section F. of the rule establishes a payment schedule. It provides that in fiscal year 1984, a non-metropolitan area generator must submit fees within 60 days upon receipt of a notice from the Director that the fee is due. Fees submitted later than 30 days after the due date shall be deemed late. This payment schedule is reasonable because of the fact that these rules will not be effective until the second half of the state's fiscal year 1984, and therefore prompt payment must be required if the Agency is to collect the required revenues for fiscal year 1984. It is reasonable to allow 60 days for submission of the payment because the generator needs enough time to process the funds through the generator's organization. It is reasonable to consider the fees late if not paid 30 days after the due date because this gives the generator of 90 days to review the fee statement and to resolve any disputes with the Agency as to the correct amount of the fee.

The rule also provides that following the first annual payment, a non-metropolitan generator must remit fees according to a quarterly schedule based on the "Standard Industrial Classification" of the generator. The schedule is identical to schedules found in six of the seven metropolitan county hazardous waste ordinances. Establishing a quarterly pay schedule is

reasonable because it will avoid a situation where the Agency staff must process all the fees at the same time, better distributing the Agency staff's workload.

The rule requires that the fee be made payable to the State Treasurer. This is reasonable because Minnesota Laws 1983, Chapter 121, Section 25 requires the fees to be deposited in the general fund.

Section G. of the rule provides penalties for late payment of fees. The generator must pay a late fee of 10 percent of the annual fee and unpaid penalty for each 30 day period or portion thereof the fee remains paid up to 90 days. Beyond 90 days, the late fee is 15 percent of the annual fee and unpaid penalty for each 30 day period or fraction that the fee remains unpaid. It is reasonable to establish penalties for late payment of fees because these penalties will act as an incentive for timely payment, which furthers the legislature's intent that generators compensate the state its administrative costs involved in the hazardous waste regulatory program.

6 MCAR §4.9704 Generator surcharge

This rule provides that all generators in Minnesota are subject to an annual surcharge equal to 17.5 percent of the annual fee. The rule also provides the manner of payment of the surcharge for non-metropolitan area generators and for penalties for failure to pay the surcharge (Section A.), the manner of

collection of the surcharge from metropolitan area generators and the manner of payment of the surcharge collected by the metropolitan counties (Section B.).

For the metropolitan counties, the surcharge is authorized by Subdivision 2 of Minnesota Laws 1983, Chapter 121, Section 25, which states in relevant part:

The agency shall not charge a [hazardous waste generator] fee in any metropolitan county which charges such a fee. The agency shall impose a fee calculated as a surcharge on the fees charged by the metropolitan counties and by the agency to reflect the agency's expenses in carrying out its statewide hazardous waste regulatory responsibilities. The surcharge imposed on the fees charged by the metropolitan counties shall be collected by the metropolitan counties in the manner in which the counties collect their generator fees. Metropolitan counties shall remit the proceeds of the surcharge to the agency by the last day of the month following the month in which they were collected.

The addition of a surcharge only on metropolitan area generators would result in an inequity for those generators unless the surcharge were applied also to non-metropolitan area generators. The location of the generator does not make a difference to the Agency in terms of administrative costs. Therefore the Agency is proposing to remove this inequity by including a surcharge on the non-metropolitan area generators. As a result, fees for all generators statewide will be the same, regardless of location. It is reasonable to treat all generators equally.

The amount of the surcharge is reasonable because it is no more than the Agency needs to collect the amount of revenue

needed to cover the administrative costs involved in the Agency's hazardous waste program.

The reasonableness of Sections A. through D. is discussed below.

Section A. provides that non-metropolitan area generators must remit payment of the surcharge to the Director at the time of payment of the annual fee. This is reasonable because a once-a-year fee is most convenient both for the generator and for the Agency. This section also provides that failure to pay the surcharge shall subject the generator to the penalties set forth in 6 MCAR §4.9703 E. It is reasonable to treat all late payments of generator fees consistently.

Section B. provides that metropolitan area generators must include the surcharge with the license fee paid to the county in which the generating site is located. This manner of payment is required by statute and is reasonable because it is convenient for the generator.

Section B. also requires the metropolitan counties collecting the surcharge to remit the money to the Director no later than the last day of the month following the month of collection. This is reasonable because it provides sufficient turn-around time for the county.

6 MCAR §4.9705 Generator fee exemptions

This rule exempts three items from generator fees: certain

waste oil (Section A.), waste which is recovered on-site, reused, or recycled (Section B.), and wastes generated as a result of a response action (Section C.)

Section A. of the rule exempts from generator fees those generators of waste oil if the waste oil is beneficially being reused and does not contain hazardous waste listed in 40 Code of Federal Regulations Part 261, Subpart D. This exemption is reasonable because it will encourage the beneficial reuse of waste oil which contains components which are listed as hazardous solely because they are ignitable, such as hexane and acetone. Using mixtures of this sort for fuel may be the best management technique for waste oil. However, should the waste oil contain listed solvents such as trichloroethylene or methyl ethyl ketone, the waste oil will be subject to generator fees. This is reasonable because these wastes will need to be disposed of in a manner that is in accordance with other Agency hazardous waste rules.

Section B. of the rule exempts from generator fees those generators who recycle, reuse, or recover a hazardous waste stream for their own use. However, any sludges or residues from such a recovery process which are hazardous are still subject to the generator fee. This exemption is reasonable because it will encourage recycling, reuse, and recovery of hazardous waste streams, reducing the volume of wastes which require disposal.

Section C. of the rule exempts from generator fees any waste generated as a result of a response action. This exemption is reasonable because it will encourage proper management of the waste generated from spills and clean-up operations. In addition, pursuant to Minn. Stat. §115.061 and Minn. Stat. §115.071, subd. 3 (1982), the Agency can take legal action to recover the administrative costs involved when a responsible party refuses to take appropriate response actions to a spill situation.

6 MCAR §4.9706 Appeal procedure

This rule provides a procedure to appeal a generator fee which is believed to be in error. It is reasonable to provide an appeal procedure because there are circumstances in which the Director could make a mistake in calculating the fee. For example, some fees are based on disclosures relating to past generation of hazardous waste. Where circumstances have changed without the knowledge of the Director, error in calculation is to be expected.

The rule provides that the person has ten days to provide written notice that there has been an error in the fee calculated. The person must state the proper amount of the fee and the method used to calculate the fee. Prompt notice is reasonable in the interest of efficient fee collection and prompt resolution of disputes. The inclusion of a recalculation

of the fee is reasonable because it will aid the Agency staff in determining whether the person is correct.

If the Director finds that the person appealing is correct, no late penalty shall be assessed. However, if the Director finds that the original fee was calculated properly, a late fee will be charged. This is reasonable in the interest of prompt and efficient collection of fees owed to the Agency. It is reasonable for the further reason that it will discourage people from automatically appealing fee assessments for the sole purpose of delaying collection of the fee.

IV. Small Business Considerations in Rulemaking

Minn. Laws 1983, ch. 188 (to be codified as Minn. Stat. §14.115) requires the Agency, when proposing rules 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 requirements for small businesses;
- (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
- (e) the exemption of small businesses from any or all requirements of the rule.

In drafting the proposed rules the Agency did consider

whether it could make the rules less stringent and simpler with respect to small businesses. However, the important consideration in regulating hazardous waste is not necessarily the size of the business being regulated, but the volume of hazardous waste being generated, stored, treated, or disposed. Differentiations on the basis of facility size may or not reflect the size of the business being regulated.

An attempt was initially made to categorize treatment, storage, and disposal facilities on the basis of size to reduce the facility fees for smaller facilities. However, because the technical review and enforcement effort are the same regardless of facility size, it became clear to the Agency that such a categorization was unrealistic for most facilities. One such categorization was made, however, by providing lower fees for a small storage facility (less than 550 gallons or 10 drums).

Some of the exemptions in the generator fee rules may coincidentally provide relief for some small businesses. The rules provide an exemption from the generator fees for generators of less than 10 gallons (or 100 pounds) of hazardous waste per year. This is consistent with the programs in the metropolitan counties. Exempting these very small generators relieves them from the financial and administrative burdens of the fee system.

Evaluation of the waste volumes of those non-metropolitan

generators which have submitted disclosures indicated that a reduced fee was reasonable for the small volume non-exempt generator. For that reason, a non-exempt generator of 55 gallons of hazardous waste or less is required to pay an annual fee of \$30 per year regardless of the number of waste streams.

V. Conclusion

Based on the foregoing, the proposed rules 6 MCAR §§4.9701 through 4.9706 are both needed and reasonable.

Dated: October 31, 1983


SANDRA S. GARDEBRING
Executive Director

5/2/83

[REVISOR] MVH/SK CCRHF0076A

1 storage, treatment or long term containment. The tax shall be
 2 paid to the person who first receives the wastes in this state
 3 at the time the waste is received and shall be remitted by that
 4 person to the commissioner of revenue quarterly in the form and
 5 manner provided by the commissioner.

6 Subd. 7. [DUTIES OF THE AGENCY AND METROPOLITAN COUNTIES.]

7 The agency shall provide to the commissioner the names and
 8 addresses of all persons known to the agency who are subject to
 9 tax under section 22, together with any information which the
 10 agency possesses concerning the amount of hazardous waste
 11 generated and disposed of by those persons. Metropolitan
 12 counties required to regulate hazardous wastes under section
 13 473.811, subdivision 5b, shall provide to the agency the data
 14 and information necessary to allow the agency to carry out its
 15 duties under this subdivision. Upon request by the
 16 commissioner, the agency shall examine returns and reports filed
 17 with the commissioner and notify the commissioner of any
 18 suspected inaccurate or fraudulent declaration or return. The
 19 agency may assist in auditing any person subject to tax under
 20 section 22 when requested by the commissioner.

21 Subd. 8. [PENALTIES; ENFORCEMENT.] The audit, penalty and
 22 enforcement provisions applicable to taxes imposed under chapter
 23 290 apply to the taxes imposed under section 22 and those
 24 provisions shall be administered by the commissioner.

25 Subd. 9. [RULES.] The commissioner may adopt temporary and
 26 permanent rules necessary to implement the provisions of this
 27 section and section 22.

28 Subd. 10. [ADMINISTRATIVE EXPENSES.] Any amount expended
 29 by the commissioner from a general fund appropriation to enforce
 30 and administer section 22 and this section shall be reimbursed
 31 to the general fund and the amount necessary to make the
 32 reimbursement is appropriated from the fund to the commissioner
 33 of finance for transfer to the general fund.

34 Sec. 25. [116.12] [HAZARDOUS WASTE ADMINISTRATION FEES.]

35 Subdivision 1. [FEE SCHEDULES.] The agency shall establish
 36 the fees provided in subdivisions 2 and 3 in the manner provided

1 in section 16A.128 to cover the amount appropriated from the
2 general fund to the agency for that year for permitting,
3 monitoring, inspection and enforcement expenses of the hazardous
4 waste activities of the agency.

5 The legislature may appropriate additional amounts that
6 need not be covered by fees or may provide that the fees shall
7 cover only a portion of the general fund appropriation for the
8 hazardous waste activities of the agency, in order to assure
9 adequate funding for the regulatory and enforcement functions of
10 the agency related to hazardous waste. All fees collected by
11 the agency under this section shall be deposited in the general
12 fund.

13 Subd. 2. [HAZARDOUS WASTE GENERATOR FEE.] Each generator
14 of hazardous waste shall pay a fee on the hazardous waste which
15 he generates. The agency shall compute the amount of the fee
16 due based on the hazardous waste disclosures submitted by the
17 generators and other information available to the agency. The
18 agency shall annually prepare a statement of the amount of the
19 fee due from each generator. The fee shall be paid annually
20 commencing with the first day of the calendar quarter after the
21 date of the statement.

22 The agency may exempt generators of small quantities of
23 hazardous wastes otherwise subject to the fee if it finds that
24 the cost of administering a fee on those generators is excessive
25 relative to the proceeds of the fee. The fee shall consist of a
26 minimum fee for each generator not exempted by the agency and an
27 additional fee based on the quantity of wastes generated by the
28 generator.

29 If any metropolitan counties recover the costs of
30 administering county hazardous waste regulations by charging
31 fees, the fees charged by the agency outside of those counties
32 shall not exceed the fees charged by those counties. The agency
33 shall not charge a fee in any metropolitan county which charges
34 such a fee. The agency shall impose a fee calculated as a
35 surcharge on the fees charged by the metropolitan counties and
36 by the agency to reflect the agency's expenses in carrying out

1 its statewide hazardous waste regulatory responsibilities. The
2 surcharge imposed on the fees charged by the metropolitan
3 counties shall be collected by the metropolitan counties in the
4 manner in which the counties collect their generator fees.
5 Metropolitan counties shall remit the proceeds of the surcharge
6 to the agency by the last day of the month following the month
7 in which they were collected.

8 Subd. 3. [FACILITY FEES.] The agency shall charge an
9 original permit fee, a reissuance fee and an annual operator's
10 fee for any hazardous waste facility regulated by the agency.
11 The agency may include reasonable and necessary costs of any
12 environmental review required under chapter 116D in the original
13 permit fee for any hazardous waste facility.

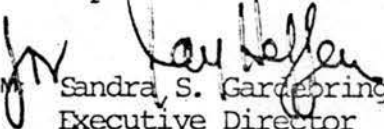
14 Sec. 26. Minnesota Statutes 1982, section 115A.24,
15 subdivision 1, is amended to read:

16 Subdivision 1. [CERTIFICATE.] Except as provided in
17 subdivision 2, By December 15, 1982, on the basis of and
18 consistent with its hazardous waste management plan adopted
19 under section 115A.11, the board shall issue a certificate or
20 certificates of need for disposal facilities for hazardous
21 wastes in the state. The certificate or certificates shall
22 indicate the types and volumes of waste for which disposal
23 facilities are and will be needed through the year 2000 and the
24 number, types, sizes, general design and operating
25 specifications, and function or use of the disposal facilities
26 needed in the state. The board shall certify need only to the
27 extent that the board has determined that there are no feasible
28 and prudent alternatives including waste reduction, separation,
29 pretreatment, processing, and resource recovery which would
30 minimize adverse impact upon natural resources, provided that
31 the board shall require the establishment of at least one
32 commercial disposal facility in the state. Economic
33 considerations alone shall not justify certification nor the
34 rejection of alternatives. Alternatives that are speculative
35 and conjectural shall not be deemed to be feasible and prudent.
36 The board shall consider all technologies being developed in

DEPARTMENT MN Pollution Control Agency

*Office Memorandum*TO: Gordon M. Donhowe, Commissioner
Department of Finance

DATE: September 22, 1983

FROM:  Sandra S. Gardebring
Executive Director

PHONE: 6-7301

SUBJECT: REQUEST FOR HAZARDOUS WASTE GENERATOR & FACILITY FEE SCHEDULE APPROVAL

As per M.S. 16A.128, attached for your review and approval are the fee schedules and resulting revenue projections for the Agency's proposed Hazardous Waste Generator & Facility Fee Rule. Action will be taken on this proposed rule by the Agency Board at its September 27, 1983 meeting. It is anticipated that the proposed fees will be approved, yet it would assist me if your approval was provided prior to the meeting so it could be included in the public presentation and discussion. To assist you in your determination, my staff has met with Al Yozamp and Doug Watnemo of your office on the proposed rule and after their review, have concurred with the proposed fees and revenue projections.

I also note that after Board action September 27th, it is the Agency's intent to publish the rule in the State Register October 10, 1983. At that time, the Agency's statement of need & reasonableness, which is required to include your approval of fees, must be available for public review. Therefore, anticipating that there will be no major changes to the proposed rule made by the Board and that you will have no major concerns, I ask that you provide your approval by October 10, 1983 at the latest and preferably by September 27.

SSG:vjp

Attachment

cc: Doug Watnemo

HAZARDOUS WASTE
GENERATOR AND FACILITY FEES

Review & Approval

Description

Pursuant to Laws of 1983, Chapter 121, Section 25, the Minnesota Pollution Control Agency is establishing administration fee schedules for hazardous waste generators and facilities. As provided by this Law, these fees will be established by rule without public hearing, however, when the rule is publicly noticed the Commissioner of Finance's approval of the proposed fees will be included in the statement of need and reasonableness. Therefore, the Commissioner's approval of this document with its proposed fee schedules will be used as an exhibit to the Agency's statement of need and reasonableness.

Hazardous waste generators shall pay a fee on the hazardous waste which they generate. Fees are based on waste category, (unsewered liquid, sewered liquid or unsewered solid), number of wastes and volume/year. There will be an initial fee as well as an annual fee which will be based on yearly hazardous waste disclosures submitted by the generators and other information available to the Agency. The Agency shall not charge a fee in any metropolitan county which charges such a fee but will impose a surcharge on the fees charged by the metropolitan county and by the Agency to reflect the Agency's expenses in carrying out its statewide hazardous waste regulatory responsibilities.

Any hazardous waste facility regulated by the Agency will be charged an original permit fee, a reissuance fee and an annual operator's fee. Fees are based on the facility's treatment, storage or disposal functions, with fee adjustment allowances for facilities that have a combination of functions.

All fees collected by the Agency under this rule will be deposited in the state's general fund as non-dedicated receipts. It is the intent of these fees to cover all or a portion of the Agency's appropriation/expenses related to hazardous waste regulatory and enforcement activities.

Purpose

The purpose of these fees is to defray or offset the Agency's general fund appropriation for hazardous waste administration expenses related to permitting, monitoring, inspection, and enforcement activities. The Law also includes a provision that states: "The legislature may appropriate additional amounts that need not be covered by fees or may provide that the fees shall cover only a portion of the general fund appropriation for the hazardous waste activities of the Agency, in order to assure adequate funding for the regulatory and enforcement functions of the Agency related to hazardous waste." This provision was specifically addressed in the FY 1984-85 state departments appropriation bill (Laws of 1983, Chapter 301, Section 25) where a rider was included in the Agency's appropriation section. The basis for this rider was to assure that the additional funding appropriated to the Agency for its increased hazardous waste regulatory program efforts in the 1983-85 biennium (\$794,400) would be covered by hazardous waste generator and facility fees. As a result, it is prescribed that projected revenue from the proposed fees for the biennium ending June 30, 1985 will be a minimum of \$794,400. It is also noted that pursuant to M.S. 16A.128, these fees shall be reviewed at least once each six months. After actual and estimated receipts from these fees become more stable and reliable, should this review suggest that projected revenue will not approximate the \$794,400, adjustments to the fee schedules may be made without a public hearing.

Proposed Fee Schedules & Projected Revenue

Generator Fees

I. Fee Schedule

A. Initial One-time Fees

<u>Waste Category</u>	<u>Fee</u>
1. Unsewered Liquid Wastes	\$60 + \$40 for each add'l waste over one
2. Sewered Liquid Wastes	\$30
3. Unsewered Liquid Wastes	\$60 + \$40 for each add'l waste over one
4. New waste not previously reported	\$40

B. Annual Fees

<u>Waste Category/Volume</u>	
1. Unsewered Liquid Wastes	
a. 11 - 55 gpy	\$30
b. 56 - 500 gpy	\$60 + \$20 for each add'l waste over one
c. 501 - 1000 gpy	\$90 + \$20 for each add'l waste over one
d. Over 1000 gpy	\$90 + \$20 for each add'l waste over one + \$12 for each add'l 1000 gal.
2. Sewered Liquid Wastes	
All volumes/wastes	\$75
3. Unsewered Liquid Wastes	
a. 101 - 550 lbs/yr.	\$30
b. 551 - 5,000 lbs./yr.	\$60 + \$20 for each add'l waste over one
c. Over 5,000 lbs/yr.	\$90 + \$20 for each add'l waste over one + \$5 for each add'l 5,000 lbs. or fraction

4. Non-Metro surcharge	17.5%
5. Metro surcharge	17.5%

II. Projected Revenue

A. Non-Metropolitan Fees

	<u>FY '84</u>	<u>FY '85</u>
	\$113,000	\$120,000

Data on non-metropolitan waste generators is somewhat dubious and incomplete. Therefore, in order to project the most realistic estimate of revenue generated from these fees, the Agency reviewed the 573 hazardous waste generator disclosures it received in 1982. These disclosures identified waste/s and estimated volume that would be generated in 1983. Because this was the first time disclosures were made and because there was no incentive to be complete and accurate, the reliability of the data is somewhat questionable. Therefore, for projection purposes a random sampling of 130 disclosures were reviewed which included generator fee calculations. From these calculations, it was determined that the average annual fee would be \$205 with the median being \$221. After these calculations were made, the remaining disclosures were reviewed to assure that the sample of 130 was representative for size and number of waste streams. During this review, 24 of the generators were identified as being exempt from the fee because of volume generated. As a result,

approximations were used for the number of generators that would pay a fee and \$205 was used as the multiplier, with the resulting total being rounded in thousands. It is also noted that because disclosures were used to develop revenue projections, limited initial fees were projected because if disclosure is made prior to the effective date of the rule, the generator is exempt.

B. Non-Metro surcharge	\$19,775	\$21,000
C. Metro surcharge (17.5% of 1982 receipt)	<u>30,057</u>	<u>33,057</u>
Total Generator Revenue	\$165,832	\$174,057

Facility Fees

I. Permit Application Fee Schedule & Projected Revenue

A. Storage	<u>Rate</u>	<u>Facilities</u>	<u>FY 1984 Revenue</u>	<u>Facilities</u>	<u>FY 1985 Revenue</u>
1. Tanks & containers indoors					
a) Greater than 550 gal.	\$ 750				
b) Less than 550 gal.	\$ 500				
2. Tanks & containers outdoors					
a) Greater than 550 gal.	\$1,500	9	\$13,500	15	\$22,500
b) Less than 550 gal.	\$1,000				
3. Piles	\$4,500				
4. Surface impoundment	\$7,500				

B. Disposal & Treatment

- 1. Surface impoundment \$ 9,000
- 2. Treatment not other-wise specified \$ 9,000
- 3. Thermal treatment \$22,500
- 4. Land Treatment \$22,500
- 5. Land disposal \$22,500

*C. Combination Facilities

1. Treatment not other-wise specified/ Outdoor tank greater than 550 gal.	\$ 9,300	2	18,600	7	65,100
2. Thermal/Outdoor tank greater than 550 gal.	\$22,800	2	45,600	2	45,600
3. Land disposal/ Outdoor tank greater than 550 gal.	\$22,800			1	22,800
Total Permit Application/Fees		13	\$77,700	25	\$156,000

The estimated number of facilities that would be permitted is based on time studies on review required for type and size of facilities and the Agency's staff capabilities. It is the Agency's intent, which was supported by various legislative committees, that all facilities would be permitted within a five (5) year period.

II. Annual Operator's Fee Schedule & Projected Revenue

	<u>Rate</u>	<u>Operators</u>	<u>Revenue</u>
A. Storage			
1. Surface impoundments	\$ 1,300	2	\$ 2,600
2. Piles	1,300	3	3,900
3. Tanks & Containers Outdoors			
a) Greater than 550 gals.	450	50	22,500
b) Less than 550 gals	180	5	900
4. Tanks & Containers Indoors			
a) Greater than 550 gals.	225	12	2,700
b) Less than 550 gals.	100	3	300

B. Disposal & Treatment			
1. Surface Impoundments	1,800	2	3,600
2. Treatment not otherwise specified	900	25	22,500
3. Thermal Treatment	3,150		
4. Land Treatment	3,150		
5. Land Disposal	3,150	1	3,150
*C. Combination Facilities			
1. Treatment not otherwise specified/Outdoor tank greater than 550 gals.	990	10	9,900
2. Thermal Treatment/Outdoor tank greater than 550 gals.	3,240	10	32,400
3. Land Disposal/Outdoor tank greater than 550 gals.	3,240	2	6,480
Total Annual Operator Fees			\$110,930

* Fee rates for combination facilities are based on formulas included in the proposed rule. These formulas allow for reduced rates for each additional function over one that is provided by a facility.

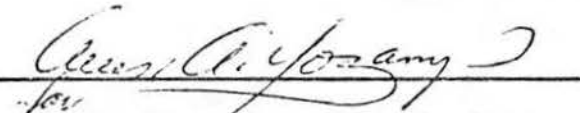
Revenue Recap

<u>Fee</u>	<u>FY 1984</u>	<u>FY 1984</u>
Generator Fees		
Non-Metropolitan Annual Fee	\$113,000	\$120,000
Non-Metropolitan Surcharge	19,775	21,000
Metropolitan Surcharge	<u>33,057</u>	<u>33,057</u>
Sub-Total	\$165,832	\$174,057

Facility Fees

Permit Application Fee	\$ 77,700	\$156,000
Annual Operator Fee	<u>110,930</u>	<u>110,930</u>
Sub-Total	\$188,630	\$266,930
Total Fees	\$354,462	\$440,987
		<u>\$795,449</u>

Reviewed & Approved - to be included in the Agency's
statement of need and reason-
ableness for the proposed rule.


for
Gordon M. Donhowe, Commissioner
Department of Finance

10/10/83
Date