

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Amendment of Hazardous Waste
Rules Governing Small Quantity
Generators, Waste Accumulation, and
Transfer Facilities, Minn. Rules
Parts 7045.0219, 7045.0292, 7045.0365,
7045.0450, and 7045.0552

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of this proceeding is the revision of rules of the Minnesota Pollution Control Agency (hereinafter "Agency") governing small quantity generators, Minn. Rules part 7045.0219, the accumulation of hazardous waste, Minn. Rules part 7045.0292, and the management of hazardous waste at transfer facilities, Minn. Rules parts 7045.0365, 7045.0450, and 7045.0552. These rules are proposed for amendment pursuant to the Agency's authority under Minn. Stat. § 116.07, subd. 4 (1984).

The proposed amendments to the Agency's rules add provisions for satellite accumulation of hazardous waste and add additional management requirements for the waste accumulated by small quantity generators. The amendments also provide additional requirements for hazardous waste transfer facilities and amend the supporting facility standards and interim status standards to reflect these additional requirements.

This Statement of Need and Reasonableness is divided into several parts. Part II contains the Agency's explanation of the need for the proposed amendments. Part III contains the Agency's explanation of the reasonableness of the proposed amendments. Pursuant to the requirements of Minn. Stat. § 14.115 (1984), Part IV documents how the Agency has considered the methods of

reducing the impact of the proposed amendments on small businesses. Part VI contains a reference to the exhibit relied on by the Agency to support the proposed amendments. The exhibit is available for review at the Agency's office at 1935 West County Road B-2, Roseville, Minnesota 55113.

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

Minn. Stat. ch. 14 requires an agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules or amendments proposed. In general terms this means that an agency must set forth the reasons for its proposal and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention and reasonableness means that the solution proposed by the Agency is appropriate.

Need is a broad test that does not easily lend itself to an evaluation of each proposed revision. In this broad sense the need for amendments to the Agency's rules has two bases: the need for consistency with the federal hazardous waste regulations concerning satellite accumulation of hazardous waste and the need for rules which provide an acceptable level of regulation to ensure the protection of human health and the environment. These two bases are discussed below.

A. Need for Consistency with Federal Regulations

In 1976, Congress adopted the Resource Conservation and Recovery Act (hereinafter "RCRA") to regulate the management of hazardous waste. 42 U.S.C.

§§ 6901 et seq. In adopting RCRA, Congress provided for eventual state control of the hazardous waste program and set up the mechanism for the United States Environmental Protection Agency (hereinafter "EPA") to grant authority to states to operate the program. In states that receive authorization, the state program operates in lieu of the federal program. To receive and maintain authorization, the state must have a program which is "equivalent" to the federal program and consistent with federal or state programs applicable in other states. EPA has defined "equivalent" to mean that the state requirements are at least as stringent as federal requirements. In terms of consistency, EPA's goal is to achieve an integrated national program which requires that final state programs do not conflict with each other or with the federal program.

Minnesota received final authorization for its hazardous waste program from EPA effective February 11, 1985. See 50 F.R. 3756 (January 28, 1985). A state with final authorization administers its hazardous waste program entirely in lieu of the EPA. When new more stringent federal requirements are promulgated by EPA, the state is required, within specified time frames, to enact equivalent requirements. However, until they are adopted as state requirements, the federal requirements do not take effect in an authorized state.¹ When new regulations are promulgated by EPA which are less stringent than state requirements, states are not required to amend their statutes or

¹The Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984) make some changes in the federal-state relationship in authorized states with respect to EPA regulatory changes adopted pursuant to that act. None of the proposed amendments fall into that category. Therefore, the requirements outlined are applicable in this case.

rules to incorporate the new, less stringent requirements; however, they are urged to consider adopting those amendments to maintain consistency among state and federal programs.

Although a state program may be more stringent than the federal program and authorized states are not required to adopt federal standards which are less stringent than their own, the Agency believes that it is important to maintain as much consistency as possible. Much of the hazardous waste generated in Minnesota must be sent to other states for treatment or disposal because Minnesota has no commercial disposal facilities and only very limited commercial treatment facilities. This means that even though Minnesota has received authorization for its hazardous waste program, many Minnesota generators must be knowledgeable about the requirements of both the state and federal hazardous waste programs. The need to comply with two or more different sets of standards makes compliance with any set of standards more difficult. Therefore, to the extent it can be accomplished without harming human health or welfare or the environment, it is preferable to incorporate amendments to EPA's hazardous waste regulation into the Agency's hazardous waste rules.

EPA has adopted amendments to 40 C.F.R. Part 262 allowing generators of hazardous waste to accumulate up to 55 gallons of hazardous waste, or one quart of acutely hazardous waste listed in 40 C.F.R. § 261.33(e) in satellite areas at the generator's facility, provided that certain conditions are met. 49 F.R. 49568 (December 20, 1984) (Exhibit 1). The need for those amendments is discussed in Exhibit 1, and that discussion is hereby incorporated by

reference into this document. These amendments make EPA's rules applicable to satellite accumulation less stringent than the Agency's existing rules. The proposed amendments to the Agency's rules incorporate the provisions of the federal regulations as amended. The amendments are needed in order to promote consistency between federal and Agency rules on the subject of satellite accumulation of hazardous waste.

B. Need to Ensure an Adequate Level of Protection

The need to amend the Agency's hazardous waste rules governing small quantity generators, transfer facilities, and waste accumulation came to the Agency's attention during the Agency's review, pursuant to Minn. Stat. § 473.811, subd. 5b (1984), of the hazardous waste ordinances developed by the seven counties of the Twin Cities Metropolitan Area. Several counties expressed the opinion that the Agency's requirements relating to small quantity generators, transfer facilities, and waste accumulation were not sufficiently stringent. For example, the counties were concerned about the fact that under the Agency's rules certain quantities of hazardous waste did not need to be labeled, and this presented a problem to county inspectors, emergency response personnel, and Minnesota Department of Transportation staff, who could not identify by sight whether or not a material was a hazardous waste. In addition, the counties were concerned about the fact that under the Agency's rules large amounts of hazardous waste could be accumulated in an area without being subject to specific regulation so long as the operator rotated the wastes every 10 days. They felt that these accumulations should be subject to certain requirements. During the ordinance review process the Agency committed itself

to address the counties' concerns by reviewing its rules and by amending them to make them more stringent if justified. The proposed amendments are needed to address the counties' concerns and to ensure that an adequate level of protection for human health and safety is provided by the rules.

III. REASONABLENESS OF THE PROPOSED AMENDMENTS TO THE HAZARDOUS WASTE RULES

The Agency is required by Minn. Stat. ch. 14 to make an affirmative presentation of facts establishing the reasonableness of the rules or amendments proposed. Reasonableness is the opposite of arbitrariness and capriciousness. It means that there is a rational basis for the Agency's action.

The reasonableness of each of the proposed amendments is discussed below.

A. Minn. Rules part 7045.0219, subpart 5

The Agency is proposing to amend Minn. Rules part 7045.0219, subpart 5 to impose additional requirements on small quantity generators. Small quantity generators are defined by Minn. Rules part 7045.0219, subpart 1 as those generators who generate less than 1 kilogram of acutely hazardous waste or 1,000 kilograms of other hazardous waste in any calendar month. The Agency's hazardous waste rules allow small quantity generators to accumulate hazardous waste on-site without obtaining a facility permit until the accumulation limits are reached. However, certain management requirements apply. These management requirements include waste evaluations, disclosures, contingency planning, use of manifests, proper management, record keeping and reporting, and certain outdoor storage requirements.

The proposed amendments will impose additional management requirements. Part 7045.0219, subpart 5, item E will be amended to require small generators to comply with Minn. Rules part 7045.0292, subpart 1, item D. Minn. Rules part 7045.0292, subpart 1, item D requires that each container and tank be properly marked and labeled according to Minn. Rules part 7045.0270, subparts 1 and 5, which references the United States Department of Transportation (USDOT) shipping requirements and establishes basic criteria for uniform identification of hazardous waste. Also, a new item J has been added which will require small quantity generators to label or mark all waste containers with the words "Hazardous Waste" at the time waste is initially placed in the container. These requirements are reasonable because they will address the problem previously discussed in the Statement of Need concerning the need for wastes to be readily identifiable by sight by facility inspectors, fire and emergency response personnel, law enforcement officers, and transportation department staff. This rule is also reasonable in that it does not impose a significant burden on small quantity generators, either through additional expense or extensive management practices. It imposes no additional burden on generators who intend to transport the waste, because under the rules all hazardous waste must be labeled and marked when transported.

The proposed amendment also requires small quantity generators to comply with Minn. Rules part 7045.0292, subpart 4, as applicable. Minn. Rules part 7045.0292, subpart 4 applies to satellite accumulation and will be discussed in more detail in Section B. This provision imposes upon small quantity generators the same level of regulation as that imposed upon full scale

generators. This rule represents a relaxation of existing requirements applicable to satellite accumulation by small quantity generators and is therefore reasonable.

The proposed amendments add a new item I under Minn. Rules part 7045.0219, subpart 5. New item I will require that small quantity generators comply with the container provisions of Minn. Rules part 7045.0626, subparts 2, 3, and 4. Minn. Rules part 7045.0626, subparts 2, 3, and 4 contain criteria for the condition of containers, compatibility of wastes with containers, and the management of containers regarding such aspects as leaks, reuse, covers, and exposure to moisture and sunlight. These provisions are applicable to all storage of wastes in containers under interim status. Because small quantity generators are not subject to the 90 day accumulation limit imposed upon other generators by Minn. Rules part 7045.0292 and are thus able to accumulate wastes for indefinite periods, it is reasonable to require that hazardous waste being accumulated by small quantity generators be stored in appropriate containers and managed to avoid spills and leaks. The provisions which are appropriate for interim storage of containers are sufficient to provide adequate protection of human health and the environment from the danger of hazardous waste spills and releases.

B. Minn. Rules part 7045.0292

The Agency is proposing to amend Minn. Rules part 7045.0292 to require that all tanks and containers be marked with the words "Hazardous Waste" and also to make provisions for the satellite accumulation of hazardous waste. The provisions in Minn. Rules part 7045.0292 apply to all generators

accumulating hazardous wastes on-site without a permit. In general these provisions address proper management of the waste as it is accumulated and establish criteria regarding the accumulation period.

The proposed amendment will add a requirement to Minn. Rules part 7045.0292, subpart 1, item C to require that each container or tank be marked with the words "Hazardous Waste" in addition to recording or marking the date of each accumulation period. As previously discussed in Section A, it is reasonable to require that containers or tanks be identified to facilitate inspections and emergency management. This amendment clarifies that the container is to be labeled or marked immediately upon initiation of waste accumulation. This provision is equivalent to a requirement under 40 C.F.R. § 262.34 (a)(3) of the federal regulations.

The proposed amendments will add a subpart 4 to Minn. Rules part 7045.0292 which incorporates revisions to EPA hazardous waste rules on satellite accumulation. Satellite accumulation is the accumulation of hazardous waste from the same generator at various points of generation which is later consolidated at a central storage area at the same site. Under existing Agency rules, generators who are not small quantity generators can only accumulate waste for a 90 day period before it has to be removed or the facility must be permitted for storage. This requirement was based only on the time period from the start of waste accumulation but did not consider the volume of waste generated during this 90 day period. EPA received numerous comments and requests to consider the accumulation provisions to address satellite generation points. It was argued that there may be several places within an industrial

complex where hazardous wastes are initially generated. They stated that imposing a ninety day accumulation limit on these wastes does not reflect the fact that very small amounts may be generated at each point, and it would be more reasonable and efficient to collect and consolidate these wastes at a central area. For example, a generator may regularly dispose of a large hazardous waste stream within the 90 day limit. However, that generator may have a lab facility at the site and this lab may generate a very small hazardous waste stream which cannot be managed with the bulk of the hazardous waste generated. It is reasonable to provide for separate management of this waste through satellite accumulation provisions.

The EPA amended 42 C.F.R. Part 262 to provide for satellite accumulation. These amendments allow for the accumulation of up to 55 gallons of hazardous waste and 1 quart of acutely hazardous waste at any satellite point before removing the waste to a central storage area. After reaching these limits, the waste must be moved to the central storage area within 72 hours. The federal regulations require that the date that the accumulation limits are exceeded be marked on the containers to ensure compliance with this 72 hour removal requirement. It is also required that all containers used to accumulate wastes be clearly marked "Hazardous Waste" in order to provide a general identification of the contents. Additionally, the federal regulations provide certain conditions for the management of containers. These include requirements that the containers be in good condition and covered when waste is not being added or removed, compatible with the waste, and that leaks be corrected.

The Agency is proposing to amend its rules to incorporate provisions similar to the federal amendments into Minn. Rules part 7045.0292, subpart 4.² Subpart 4.A. adopts the federal limits of 55 gallons of hazardous waste and 1 gallon of acutely hazardous waste. This is reasonable because by using the same limits as the federal regulations, the Agency maintains consistency with the federal program and avoids confusion for the regulated community. Also, the 55 gallon limit was supported by persons who commented on the proposed federal amendments, stating that they typically use a 55 gallon drum for accumulating waste. Allowing the accumulation of one drum of nonacutely hazardous waste before imposing permit requirements provides a reasonable balance between safety and the desire of generators to reduce the amount of required waste handling.

It is reasonable to require that containers be marked with the words "Hazardous Waste" and to require that they be managed in an acceptable manner because this will reduce the risk of injury or environmental damage as a result of inadvertent mismanagement.

The requirement to mark the date that excess accumulation begins and to remove the wastes within three days is reasonable because it promotes consistency with federal regulations. Persons who commented on the proposed federal amendments supported the 72 hour limit as providing adequate time to manage the waste while still maintaining acceptable environmental safeguards.

²The reasonableness of the amendments to the federal rules is discussed at 49 F.R. 49568 (December 20, 1984) (Exhibit 1). To the extent that this discussion supports the reasonableness of the Agency's proposed amendments, the discussion in Exhibit 1 is hereby incorporated by reference.

C. Minn. Rules part 7045.0365

The Agency is proposing to amend Minn. Rules part 7045.0365 to require that the owners and operators of transfer facilities comply with certain additional requirements. Transfer facilities are defined by Minn. Rules part 7045.0020, subpart 93 as any transportation related facility where shipments of hazardous waste are held during the normal course of transportation. Storage of hazardous waste is an activity which is subject to regulation. However, under existing Agency rules, these facilities are exempted from specific regulations if manifested hazardous waste is not held at the facility for more than 10 days. The amendments will establish two classes of facilities to be regulated: facilities which handle less than 1,000 kilograms of hazardous waste, and facilities which handle 1,000 kilograms or more of hazardous waste at any time.

Under the proposed amendments, facilities which handle less than 1,000 kilograms of hazardous waste will still be exempt from permit requirements and facility standards, but the owner or operator must notify the Director of the Agency in writing of any hazardous waste handling activities. A notification to the Director is needed because, although small amounts of hazardous waste being transported according to all rule requirements do not present a serious health and environmental risk, there is a potential for mismanagement. It is reasonable to require that the Agency be notified in writing of the existence of these facilities in case of future emergencies and also to allow inspections to be conducted to ensure that owners and operators are complying with the requirement to remove wastes within 10 days.

Under the proposed amendments, owners or operators of facilities which

store 1,000 kilograms or more of hazardous waste will also be required to notify the Director of the Agency in writing of the facility's activities and, in addition, must comply with several management requirements. The owner or operator of a transfer facility which stores 1,000 kilograms or more of hazardous waste is responsible for requirements based on those applied to generators who hold hazardous waste for short periods prior to shipment. This is reasonable because similar concerns exist for the two types of situations. In both cases there is a need to provide for emergency situations, proper management of the waste and the maintenance of records regarding the waste. However, certain of a generator's responsibilities are clearly not applicable to the owner or operator of a transfer facility, and these requirements have not been imposed on transfer facilities. Owners or operators of transfer facilities are not required under the amendments to file disclosures, evaluate the waste, obtain identification numbers or provide annual reports. Those requirements that are imposed by the amendments upon owners and operators of transfer facilities are appropriate and reasonable and will not impose an undue burden on the owner or operator.

The amendments will require that the owner or operator of the transfer facility comply with the following requirements: Minn. Rules parts 7045.0275, subparts 2 and 3 regarding the duty to report and recover spills; part 7045.0292, subpart 1, items E to G regarding the management of outdoor storage areas; part 7045.0556, subpart 5, items A, C, and D regarding inspection; part 7045.0558 regarding personnel training; part 7045.0562, subpart 1 regarding the prevention of accidental ignition of ignitable wastes; part 7045.0566, subparts 2, 3, 4, and 6 regarding preparations for emergencies, the maintenance of equipment and

required aisle space; part 7045.0572, subparts 2 to 6 regarding contingency plans; and part 7045.0626, subpart 4 regarding the management of containers. The amendments also require that the owner or operator of the transfer facility maintain records of the hazardous waste shipments and protect all storage areas from unauthorized access and inadvertent damage from vehicles or equipment. It is reasonable to require compliance with these provisions to ensure that the transfer facility is being properly managed to provide for an acceptable level of protection. The use of 1,000 kilograms as the cut-off limit for the additional requirements is appropriate because this is the limit which distinguishes small quantity generators from full-scale generators. Because the requirements being imposed are based on the generator requirements, it is also reasonable to apply the same volume considerations in their application.

D. Minn. Rules part 7045.0450

The Agency is proposing to amend Minn. Rules part 7045.0450, subpart 3 to add a reference to the need for a transfer facility to be in compliance with Minn. Rules part 7045.0365. This cross reference is needed as a result of the addition of new requirements added by the proposed amendment to Minn. Rules part 7045.0365. It is reasonable to add this cross reference to clarify the requirements applicable to transfer facilities.

E. Minn. Rules part 7045.0552

The Agency is proposing to amend Minn. Rules part 7045.0552, subpart 3 to add a reference to the need for a transfer facility to be in compliance with Minn. Rules part 7045.0365. This cross reference is also needed as a result of the addition of new requirements added by the proposed amendment to Minn. Rules

part 7045.0365. It is reasonable to add this cross reference to clarify the requirements applicable to transfer facilities.

IV. CONSIDERATION OF SMALL BUSINESS

Minn. Stat. § 14.115 (1984) requires Minnesota agencies, when proposing amendments to existing rules which may affect small businesses, to consider reducing the impact of the rule on small businesses. The objective of Minn. Stat. ch. 116 is to protect the public health and welfare and the environment from the adverse effects which will result when hazardous waste is mismanaged. Considerations which would apply less stringent requirements to the hazardous waste generated by small businesses would be contrary to the MPCA's mandate.

The proposed amendments will affect small businesses if they are small quantity generators of hazardous waste or if they operate hazardous waste transfer facilities. In these cases, the amendments will impose the same requirements on small businesses as on large businesses. It is important to note that small quantity generators are not necessarily small businesses. Depending upon the specific situation, small businesses may generate large amounts of hazardous waste and large businesses may only generate very small amounts. The amendments will require additional management of hazardous waste based on the potential for adverse effects on human health and the environment. This potential is not diminished in relation to the size of the business generating or handling the wastes. The amendment will not require small businesses to incur significant expenses through increased material needs or management costs.

The amendments relating to the satellite accumulation of hazardous waste represents a relaxation of management requirements. The same requirements apply to all generators regardless of the size of the business. The satellite accumulation provisions will allow small businesses to accumulate hazardous wastes at satellite points without having to remove the wastes within 90 days. By allowing satellite accumulation, small businesses will save the expense of disposing of partially filled containers every 90 days. Because containers may remain at the facility until the accumulation limits are reached, management expenses will be decreased in many cases.

V. CONCLUSION

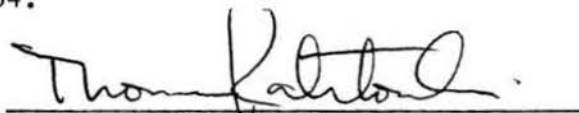
The MPCA has, in this document and its exhibits, made its presentation of facts establishing the need for and reasonableness of the proposed amendments to Minnesota's hazardous waste rules. This document constitutes the MPCA's Statement of Need and Reasonableness for the proposed amendments to the hazardous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

VI. LIST OF EXHIBITS

The Agency is relying on the following document to support these amendments:

<u>MPCA</u> <u>Ex. No.</u>	<u>Title</u>
1	<u>Federal Register</u> , Volume 49, Number 46, pages 49568-49572, December 20, 1984.

Dated: May 17, 1985



Thomas J. Kalitowski
Executive Director