

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Amendment of Hazardous Waste
Rules Governing the Lists of
Hazardous Wastes, Minn. Rules
Pt. 7045.0135

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 the lists of hazardous wastes. This rule is 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 mixtures of solvents to the list of hazardous wastes from nonspecific sources.

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 exhibits relied on by the Agency to support the proposed amendments. The exhibits are 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 (1984) 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 and the need to extend regulation to wastes that present a hazard to human health and the environment.

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 Fed. Reg. 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. Under 40 C.F.R. § 271.21, an authorized state is required to enact equivalent provisions within one year of the date of promulgation of the federal requirement, unless a statutory amendment is required, in which case the time limit is two years. However, until they are adopted as state requirements, the federal requirements promulgated under RCRA do not take effect in an authorized state.

Congress enacted the Hazardous and Solid Waste Amendments of 1984 (hereinafter "HSWA") when they reauthorized RCRA. Under HSWA, EPA is directed to promulgate new hazardous waste regulations and amendments within specified time frames to address specific areas of concern. In order to address these concerns in a timely manner, Congress has directed EPA to require regulations and amendments promulgated under HSWA to become effective nationwide on the specified effective date without regard for any state's authorization status. Therefore, regulations and amendments promulgated under HSWA become effective in Minnesota prior to any amendment of state rules. However, under 40 C.F.R. § 271.21, authorized states are required, within specified time frames, to enact requirements equivalent to those self-implementing provisions promulgated under HSWA.

The amendments proposed here are in response to amendments to the federal

regulations which cause the federal regulations to be more stringent than the current State rules. The federal amendments were promulgated under HSWA.

EPA has adopted amendments to 40 C.F.R. § 261.31 to add solvent mixtures to the list of hazardous wastes from nonspecific sources. 50 Fed Reg 53315 (December 31, 1985) (Exhibit 1). These amendments make EPA's regulations listing hazardous wastes more extensive and are therefore more stringent than the Agency's existing rules. These amendments should be incorporated into the State rules to ensure correctness and consistency. The proposed amendments to Minn. Rules pt. 7045.0135 will provide for the incorporation of the additional hazardous wastes to the lists of hazardous wastes in the State rules.

These amendments are needed in order to maintain equivalency and promote consistency between federal and Agency rules regarding the listing of hazardous wastes.

B. Need to Extend Regulation to Wastes that Present a Hazard to Human Health and the Environment.

Spent solvents are currently listed as hazardous wastes because of their toxic or ignitable properties. By listing these wastes the Agency has made the determination that they present a hazard to human health and the environment. It has become apparent, at both the State and federal level, that the lists did not clearly address a major category of waste solvents which presented the same level of hazard. The current rules may be interpreted so that the lists of hazardous wastes only regulate the pure form of the listed wastes. In the case of the listed solvents, mixtures of listed solvents could then be considered unregulated even though the mixture presented the same hazards as the listed

solvents. The amendments are needed in order to clearly extend regulation to a category of hazardous wastes that presents a significant hazard.

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

The Agency is required by Minn. Stat. ch. 14 (1984) 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 the proposed amendments is discussed below:

Minn. Rules Pt. 7045.0135. The Agency is proposing to amend Minn. Rules pt. 7045.0135, subp. 2 to add mixtures of solvents to the list of hazardous wastes from nonspecific sources. The solvent mixtures being added are those that contain ten percent or more by volume of the various halogenated and nonhalogenated solvents currently listed. Also included are still bottoms from the recovery of these solvent mixtures.

Currently, Minn. Rules pt. 7045.0135, subp. 2 lists individual solvents under hazardous waste numbers F001, F002, F003, F004 and F005. The EPA and the Agency have identified a concern that these listings limit the universe of spent solvents considered hazardous waste to only single ingredient solvents of technical grade or pure form. It is reasonable to clarify the listings of solvents to reflect the intent of the Agency. Solvents that are mixtures or not in the pure form may still retain the toxic or ignitable characteristics that caused the Agency to list the pure form of the solvent. Many industries use commercial solvent mixtures for degreasing operations. In many cases solvents are deliberately mixed to achieve improved performance or special

characteristics. However, there is a concern that these mixtures of solvents are not clearly covered by the hazardous waste regulations which, to this point, were perceived as only regulating pure solvents. Because solvent mixtures that retain the properties of pure solvents clearly present similar risks to human health and the environment, it is reasonable to extend full regulation to these mixtures when they become wastes.

The amendments will extend regulations to mixtures of solvents containing ten percent or more, by volume, of any of the listed solvents. This ten percent threshold is not based on clearly defined health criteria but is based on typical solvent use patterns. The EPA has found that specific health based thresholds have not been established for all solvents and solvent mixtures. The ten percent limit represents a level which will bring the majority of solvent mixtures used in commerce into regulation. Ten percent represents a level well below the minimum concentration needed to maintain practical application as a solvent and retain desirable solvent characteristics (50 Fed Reg 5317).

The lists of hazardous wastes in the State rules were exactly the same as the lists in the federal regulations. It has been determined that it is reasonable for the State rules to parallel the federal regulations regarding the universe of wastes regulated as hazardous. Because EPA has amended the federal lists of hazardous wastes to include solvent mixtures, it is reasonable to make the same changes to the State rules to maintain consistency. These amendments promulgated under HSWA, cause solvent mixtures to be regulated as hazardous wastes in all states on January 30, 1986, even if the State hazardous waste rules have not been amended to add these wastes. It is reasonable to

incorporate this federal provision into the State rules to avoid confusion to the regulated community and to facilitate the Agency's application to EPA for authorization to conduct the hazardous waste program in lieu of the EPA.

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 (1984) 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 have minimal impact on small businesses. Minnesota's rules differ from the federal regulation in that they provide for the management of wastes which exhibit toxic characteristics but which are not listed. Solvent mixtures, though previously unlisted, may be regulated in Minnesota as a hazardous waste as a result of their toxicity. Therefore, it is likely that small businesses generating solvent mixtures will not be brought into regulation for the first time as a result of these amendments. Additionally, alternatives are limited for the management of nonhazardous solvents and in many cases the only available management option is the same as that for solvents which are hazardous wastes. In these cases, the proposed amendments will not affect the current management practices of small businesses.

V. CONCLUSION

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

VI. LIST OF EXHIBITS

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

<u>MPCA</u> <u>Ex. No.</u>	<u>Title</u>
1	<u>Federal Register, Volume 50, Number 251,</u> <u>pages 53315-53320, December 31, 1985.</u>
2	<u>Federal Register, Volume 50, Number 83,</u> <u>pages 18378-18381, April 30, 1985</u>

Dated: February 11, 1986



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Executive Director