

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Amendments to Minn. Rules
Pts. 7042.0030 and 7042.0040,
Low-Level Radioactive Waste
Generator Fee Rules

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of the proceeding is the proposed amendment of the rules of the Minnesota Pollution Control Agency (hereinafter "MPCA" or "Agency") governing the low-level radioactive waste generator fees. Under Minn. Rules pts. 7042.0010 and 7042.0060, Low-Level Radioactive Waste Generator Fee Rules, effective on May 20, 1985, all generators of low-level radioactive waste shipping 100 cubic feet or more per calendar year of low-level radioactive waste for disposal are subject to fees. These fees cover the costs incurred by the MPCA in carrying out its responsibilities under the Midwest Interstate Low-Level Radioactive Waste Compact (hereinafter "Compact"). The Compact was established pursuant to Minn. Stat. § 116C.831 and its companion legislation Minn. Stat. §§ 116C.833 - 116C.843 (1986). The proposed amendment to the rules governs the amount of the fee, the date of payment, and method of payment.

A Notice of Intent to Solicit Outside Opinion regarding the proposed rule amendments was published in the State Register on March 30, 1987. The notice provided a thirty-day comment period. The four major generators affected by the proposed rule amendment were contacted by telephone concerning the MPCA's intent to amend the rules.

A part of the statutory requirement for the rulemaking process is review and approval of the fee schedules in the rules by the Minnesota Commissioner of Finance. The approval of the Minnesota Commissioner of Finance is attached and incorporated by reference.

II. STATEMENT OF THE AGENCY'S STATUTORY AUTHORITY

These rules are proposed for amendment pursuant to the Agency's authority under Minn. Stat. § 116C.834 (1986).

The appropriation which the fees under the rule amendment are intended to cover was in the amount of \$112,900. This appropriation which is set forth in Minn. Laws 1985, ch. 13, § 26, subd. 4, was intended to cover:

1. Minnesota's contribution to the Midwest Interstate Low-Level Radioactive Waste Commission.
2. Costs incurred by the MPCA director and his staff to attend Compact Commission meetings and participate in Compact activities. Pursuant to Minn. Stat. § 116C.833 (1986), the director of the MPCA is Minnesota's voting member on the Commission.

Based on the provision of Minn. Stat. § 116C.834 and the 1985 Legislature's appropriation, the Agency has the statutory authority to adopt fees which would result in the collection of \$112,900.00.

III. STATEMENT OF NEED

In 1983, the Minnesota Legislature enacted Minn. Stat. § 116.831 (1986) by which Minnesota joined the Compact. The terms of the Compact require each party state to contribute a sum of money in order to fund the Commission's activities. In addition, funding is required for costs incurred by the State to carry out its activities under the compact. The Legislature in 1985 appropriated \$112,900 to cover Minnesota's costs of membership in the Compact as well as the other expenses of the Agency director and his staff in participating in the

Commission's activities. To meet these obligations, the following disbursements have been made during fiscal years 1986 and 1987:

Fiscal Year 1986	\$ 56,800
Fiscal Year 1987	56,100
TOTAL	<u>\$112,900</u>

Of this amount, the Agency in 1986 collected \$37,875.29. Therefore, the Agency must still collect \$75,024.71 in order to reimburse the special revenue fund for the full appropriation of \$112,900. The fees under the current rules are insufficient to collect the required amount. In order to comply with the Legislature's direction in Minn. Stat. § 116C.834 (1986) to collect these expenses from generators, there is a need to amend the rules to increase the generator fees.

IV. STATEMENT OF REASONABLENESS

Having determined the need for an increase in the low-level radioactive waste generator fees to collect an additional \$75,024.71 by September 30, 1987, the Agency then had to decide on an approach to achieve the necessary increase. The existing rules are based on volume of low-level radioactive waste shipped and establish two categories: 1) generators who ship 1,000 cubic feet or more of low-level radioactive waste per year to a facility for disposal; and 2) generators who ship at least 100 cubic feet but less than 1,000 cubic feet of low-level radioactive waste per year to a facility for disposal. The former category of generators are charged a fee of 85 cents per cubic foot of low-level radioactive waste shipped per year. The latter category of generators are charged a fee of \$100 per year.

There are only four generators in Minnesota who ship 1,000 cubic feet or more of low-level radioactive waste per year: Honeywell, Northern States Power Company (NSP), the University of Minnesota, and Minnesota Mining and Manufacturing Company (3M). The Agency decided to increase the fees for this category of generators from 85 cents to \$2.65 per cubic foot of low-level radioactive waste shipped per year. This means that all of the increase in fees will be borne by the four major generators. This is reasonable because those who generate and ship the large volumes of low-level radioactive waste are contributing the most to the need to manage, dispose of, and regulate these wastes. The four generators were contacted regarding the proposed rule amendment and they do not oppose the fee increase.

The level of the fee increase is reasonable because it will generate enough additional revenue so that the needed \$75,024.71 will be collected by September 30, 1987. The breakdown of the revenue estimated to be generated from the four major generators is as follows:

Table 1: Estimated Revenues

<u>Major Generators/ Shippers</u>	<u>Reported Volume Shipped (in ft.³)*</u>	<u>Estimated Fee</u>
Northern States Power Co.	14,800	\$39,220.00
Honeywell	7,965.5	21,108.58
University of Minnesota	4,050	10,732.50
3M	1,260	3,339.00
TOTAL	<u>28,075.5</u>	TOTAL <u>\$74,400.08</u>

* Volume of waste shipped in calendar year 1986 as reported in a telephone survey conducted by the Agency's Division of Solid and Hazardous Waste.

The additional amount needed to make up the full \$75,024.71 is expected to be collected from the second category of generators who pay the \$100 per year flat fee.

The following discussion addresses the specific provisions of the proposed amendments to Minn. Rules pts. 7042.0030 and 7042.0040.

Part 7042.0030, subp. 2, item A, Amount of Fees

The Agency proposes to amend Minn. Rules pt. 7042.0030, subp. 2, item A to increase fees for generators who ship 1,000 cubic feet or more of low-level radioactive waste per year to a facility for disposal. The proposed amendment increases the fee from 85 cents per cubic foot of low-level radioactive waste shipped per year to \$2.65 per cubic foot of low-level radioactive waste shipped per year. As previously discussed, the proposed fee increase is reasonable because it will raise the necessary amount of revenue and because it imposes the fee increases on the generators whose low-level radioactive wastes are contributing the most to the need to manage, dispose of, and regulate these wastes.

Part 7042.0040, Payment of Fees

The Agency proposes to amend the existing rule to change the due date for submittal of fees and appropriate documentation from June 10 of each year to September 30 of each year. The Agency also proposes to amend the rule to provide that fees for waste shipped in the previous calendar year are payable by September 30 of the next calendar year. The change in the due date is proposed in order to give the Agency enough time to complete the rulemaking process, which will enable it to increase the fees. The September 30 due date is reasonable because it provides sufficient time for major low-level radioactive waste generators to calculate the volume of waste shipped in the previous calendar year, and for the Agency based on these calculations to complete the rulemaking process to increase the amount of generator fees.

The agency proposes to number the existing rule as subpart 1 and to add a new subp. 2. The proposed subp. 2 provides that full or partial payment of the fees may be submitted at any time before September 30, and that the payment will be credited to the generators' obligation to pay the fees. It is reasonable to provide the prepayment option because generator fee payments under the existing rules are due by June 10, 1987. Under Minn. Rules pt. 7042.0060, if the generator fails to pay the generator fee by the due date, a penalty will be assessed. The fee paid on June 10 will not be the total payment due for waste shipped during the calendar year 1986, due to the proposed increases in these amendments. Therefore, the prepayment option allows the generators to pay the fees due under the existing rules on June 10, with the remainder due September 30. This proposal is reasonable because it provides a logical way for generators to stay in compliance with the fee rules.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1986) requires the Agency, when proposing rules which may affect small businesses, to consider the following methods for reducing the impact on small businesses:

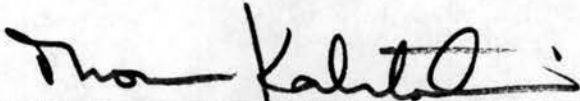
- a) the establishment of less stringent compliance or reporting requirements for small businesses;
- b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) the consolidation or simplification of compliance or reporting requirements 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.

The proposed amendment to Minn. Rule pt. 7042.0030, subp. 2, item A, affects only the four major generators; namely, Honeywell, Northern States Power Company, the University of Minnesota and 3M and therefore has no impact on small business. The proposed amendments to Minn. Rule pt 7042.0040 may help small businesses in future years by allowing them to make partial prepayments of their fees, thereby avoiding having to pay a larger sum at a later date.

VI. CONCLUSION

Based on the foregoing, the proposed amendments to Minn. Rules, pts. 7042.0030 - 7042.0040 are both needed and reasonable.

Dated: April 15, 1987



THOMAS J. KALITOWSKI
Executive Director