STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments of Rules Governing the Management, Storage, Treatment, and Disposal of Hazardous Waste, Minn. Rules Pts. 7001.0640, 7045.0135, 7045.0141, 7045.0143, 7045.0484, 7045.0494, 7045.0518, 7045.0524, 7045.0602, 7045.0610, 7045.0620, and 7045.0630

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The subject of this proceeding is the amendment of the rules of the Minnesota Pollution Control Agency (hereinafter "Agency") governing the management, treatment, storage, and disposal of hazardous waste. These amendments to the State hazardous waste rules will incorporate five sets of amendments to the federal hazardous waste regulations promulgated by the U.S. Environmental Protection Agency (hereinafter "EPA"). The proposed amendments pertain to the following:

A. Ground water monitoring with regard to analyzing for contamination from regulated units at land-based hazardous waste treatment, storage, and disposal facilities. The proposed amendments would replace current ground water monitoring requirements to analyze for the general list of all constituents set out in Minn. Rules pt. 7045.0141 with new requirements to analyze for a specific ground water monitoring list of chemicals.

B. Financial responsibility requirements concerning liability coverage for owners and operators of hazardous waste treatment, storage, and disposal facilities. The proposed amendments allow the use of one additional financial mechanism for liability coverage: a corporate guarantee.

C. Interim status regulations for closing and providing post-closure care for hazardous waste surface impoundments. The proposed amendments

provide conformance between certain interim status requirements for surface impoundments and those requirements contained in the permitting rules.

D. Information requirements for Part B permit applications. The proposed amendments allow owners and operators of facilities that treat, store, or dispose of hazardous waste to conduct certain activities related to ground water corrective action after issuance of the permit if the owner or operator obtains such authorization from the Agency Commissioner.

E. The identification and listings of hazardous wastes. The proposed amendments correct the chemical nomenclature for a number of chemicals existing on the lists and adds Chemical Abstract Service (CAS) registry numbers to all chemicals listed.

EPA's version of these amendments were promulgated and published in the Federal Register on July 9, 1987 (see Exhibit 1); July 11, 1986 and November 18, 1987 (see Exhibits 2 and 3); March 19, 1987 (see Exhibit 4); June 22, 1987 (see Exhibit 5); and August 6, 1986 (see Exhibit 6), respectively. These requirements were promulgated by EPA under the authority of the Resource Conservation and Recovery Act (RCRA).

These State rule amendments are proposed pursuant to the Agency's authority under Minn. Stat. § 116.07, subd. 4 (1986).

This Statement of Need and Reasonableness is divided into seven parts. Following this introduction, Part II contains the Agency's explanation of the need for the proposed amendments. Part III discusses the reasonableness of the proposed amendments. Part IV documents how the Agency has considered the methods of reducing the impact of the proposed amendments on small businesses as required by Minn. Stat. § 14.115 (1986). Part V documents the economic factors the Agency considered in drafting the amendments as required by

Minn. Stat. § 116.07, subd. 6 (1986). Part VI sets forth the Agency's conclusion regarding the amendments. Part VII contains a list of the exhibits relied on by the Agency to support the proposed amendments. The exhibits are available for review at the Agency's offices at 520 Lafayette Road North, St. Paul, Minnesota 55155.

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

Minn. Stat. ch. 14 (1986) 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 an agency is appropriate.

Need is a broad test that does not easily lend itself to evaluation of each proposed revision. In the broad sense, the need for amendments to the Agency's rules governing the management, treatment, storage, and disposal of hazardous waste has two bases: (1) the need for consistency with the federal hazardous waste regulations; and (2) the need for rules which provide protection of human health and the environment without unduly restricting normal commerce.

A. Need for Consistency with Federal Regulations.

In 1976, Congress adopted 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 EPA to grant authority to states to operate the program. In states that receive authorization, the state environmental agency administers the state program in lieu of the federal program. To receive and maintain authorization,

the state program must be "equivalent" to the federal program and consistent with federal or state programs applicable to 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 from EPA for its hazarous waste program pursuant to RCRA effective February 11, 1985. See 50 FR 3756 (January 28, 1985). A state with final authorization administers its hazardous waste program in lieu of the EPA program for those regulations which were promulgated pursuant to RCRA as adopted in 1976 and as amended in 1980. Federal regulations promulgated under RCRA are not in effect in Minnesota until the State rules are amended to incorporate the federal changes.

In order to maintain authorization to run the State program in lieu of the federal program, the State must enact equivalent requirements within specific timeframes when new, more stringent federal requirements are promulgated by EPA. The federal amendments pertaining to the ground water monitoring list, the interim status requirements for hazardous waste surface impoundments and the corrections to the hazardous waste lists are more stringent than the requirements in Minnesota's current hazardous waste rules and must be incorporated into the State program in order to maintain authorization. The federal amendments pertaining to corporate guarantees for liability coverage and corrective action information in the Part B permit application represent a less stringent level of regulation than provided by previous federal regulations and current State rules.

Although a state program may be more stringent than the federal requirements and states are not required to adopt less stringent federal standards, the Agency believes it is important to maintain as much consistency as possible between Minnesota's rules and the federal program. 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 many generators must be knowledgeable about requirements of both the State and federal hazardous waste programs. The need to comply with multiple sets of rules makes compliance difficult. Therefore, to the extent it can be accomplished without posing a threat to human health and the environment, amendment of Minnesota's hazardous waste rules to incorporate EPA's amendments is desirable.

B. Need for Rules Protective of Human Health and the Environment.

The proposed amendments to the Minnesota hazardous waste rules provide protection of human health and the environment. The proposed amendments provide an appropriate level of protection of human health and the environment considering scientific evidence and technological factors.

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

The Agency is required by Minn. Stat. ch. 14 (1986) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules or amendments. The Agency proposes to incorporate the federal amendments promulgated by EPA. A complete discussion of the reasonableness of the federal amendments is presented in Exhibits 1 to 7 listed in Part VII of this document, which are hereby incorporated by reference. The reasonableness of each of the proposed amendments is discussed below.

A. Minn. Rules Pt. 7001.0640 (Additional Part B Information Requirements for Surface Impoundments, Waste Piles, Land Treatment Units, and Landfills).

Minn. Rules pt. 7001.0640, subp. 1 is entitled "Ground Water Protection" and sets forth specific ground water information to be submitted with Part B of the permit application by owners or operators of hazardous waste surface impoundments, waste piles, land treatment units, and landfills. Item D, subitem 2 of subpart 1 requires the owner or operator to identify the concentration of each constituent listed in Minn. Rules pt. 7045.0141 in any plume of contamination that has entered the ground water from the regulated units. Minn. Rules pt. 7045.0143 entitled "Ground Water Protection Hazardous Constituents List" is being added to the hazardous waste rules, as discussed in section D, specifically for the purpose of being used for ground water protection requirements. Therefore, the Agency is amending subitem 2 to require the owner or operator to use the new core list of ground water constituents in Minn. Rules pt. 7045.0143, instead of the Minn. Rules pt. 7045.0141 list, for purposes of identifying the concentration of contaminants in any plume of contamination in the ground water. This amendment is reasonable because it addresses the addition of Minn. Rules pt. 7045.0143 which sets forth the constituents list to be used for ground water protection requirements specified in the rules. This amendment is equivalent to 40 Code of Federal Regulations (CFR) § 270.14(c)(4)(ii). The reasonableness of adding the Minn. Rules pt. 7045.0143 ground water constituents list to the rules is discussed in section D.

Minn. Rules pt. 7001.0640, subp. 2 is entitled "Corrective Action Program" and sets forth specific corrective action planning information to be submitted with Part B of the permit application by owners and operators of

hazardous waste surface impoundments, waste piles, land treatment units, and landfills. The required corrective action information is specified in items A through F of subpart 2. Item C requires the submittal of detailed plans and an engineering report describing the corrective action to be taken. Item D requires the submittal of a description of how the ground water monitoring program will assess the adequacy of the corrective action to be taken. The Agency is amending subpart 2 to allow the owner or operator to submit the information required in Items C and D, and described above, after permit issuance through schedules of compliance included in the permit. The amendment requires owners or operators to obtain advance written authorization from the Commissioner waiving these requirements if the information is to be submitted through a permit schedule of compliance.

Requiring detailed plans and engineering reports for a corrective action program in the Part B permit application many times creates delays in the timely issuance of land disposal permits due to the lengthy process of drafting and reviewing such studies and plans. These requirements can also cause inconsistencies in the timing and approach for corrective action for various units at the same facility because corrective action for other hazardous waste management units is normally undertaken after issuance of the permit. The Agency believes the amendment is reasonable because it provides for the timely issuance of land disposal permits and consistency in the approach for corrective action for various units at the same facility.

The amendments correspond to the federal amendments to 40 CFR § 270.14(c)(8)(v) with one exception. Existing Minn. Rules pt. 7045.0640, subp. 2 also requires an owner or operator to demonstrate feasibility of corrective action by submitting supporting information. This requirement

corresponds to the federal regulations. However, the federal amendments allowed owners or operators to submit the feasibility study after permit issuance if so authorized. The State amendments being proposed do not allow submittal of this information after permit issuance, and the State rules continue to require the feasibility information in the Part B permit application. The Agency has always required the corrective action feasibility information as a prerequisite for obtaining a permit. The Agency believes it is reasonable and appropriate to continue to receive the feasibility information in the Part B permit application in order to receive basic corrective action information before permit issuance.

B. Minn. Rules Pt. 7045.0135 (Lists of Hazardous Wastes).

Minn. Rules pt. 7045.0135 is entitled "Lists of Hazardous Wastes." The Agency is amending subpart 4 of this rule.

Subpart 4 lists chemicals which are hazardous wastes when they are discarded or intended to be discarded. In the August 6, 1986, Federal Register (51 FR 28296-28310) (Exhibit 6), the EPA published a number of corrections to the federal hazardous waste listings which included corrections to the listings of hazardous wastes when they are discarded or intended to be discarded. The Agency is amending subpart 4 to provide these corrections in Minnesota's hazardous waste rules. Minnesota's hazardous waste rules have always contained the same lists of wastes as the federal regulations, and when EPA adds or deletes a waste from the lists, the Agency has amended Minnesota's rules accordingly. No wastes are being added or deleted due to this amendment, but a number of existing entries are being changed to reflect the correct chemical nomenclature where previous errors existed.

In addition, the EPA has added CAS registry numbers for all listed wastes as part of the on-going review of the clarity and accuracy of the hazardous waste lists. The Agency is amending subpart 4 to add the CAS registry numbers in response to EPA's additions. The added CAS registry numbers do not change the effect of the rules, but provides an additional source of information regarding specific wastes for the regulated community.

The Agency believes it is reasonable to correct the chemical nomenclature of the existing listed hazardous wastes and to add their corresponding CAS registry numbers in order to provide clarity and accuracy in the hazardous waste rules. The corrections and additions provide equivalency with 40 CFR § 261.33.

C. Minn. Rules Pt. 7045.0141 (Hazardous Constituents).

Minn. Rules pt. 7045.0141 is a listing of hazardous constituents. The amendment to this part is the same, in effect, as the amendment to Minn. Rules pt. 7045.0135, subp. 4 (see section B). As was discussed in section B, on August 6, 1986, the EPA published a number of corrections to its listings of hazardous wastes and added the corresponding CAS registry numbers to all wastes listed. The amendment to Minn. Rules pt. 7045.0135, subp. 4 incorporated EPA's corrections and added the CAS registry numbers to all listed wastes.

In the August 6, 1986, publication, EPA also made corrections to its list of hazardous constituents and added the corresponding CAS registry numbers to all constituents listed. The Agency is amending Minnesota's hazardous waste rules to include both the corrections to the list of hazardous constituents and the CAS registry numbers for all listed constituents. This amendment is reasonable for the reasons presented in section B regarding the amendment to

Minn. Rules pt. 7045.0135, subp. 4. This amendment is equivalent to Appendix VIII of 40 CFR § 261.

D. Minn. Rules Pt. 7045.0143 (Ground Water Protection Hazardous Constituents List).

The Agency is amending the hazardous waste rules to provide a new part, Minn. Rules pt. 7045.0143, entitled "Ground Water Protection Hazardous Constituents List." This part provides a list of hazardous constituents to be used solely for ground water monitoring at hazardous waste facilities.

Under the existing rules, owners or operators of hazardous waste facilities are required to analyze their ground water to screen for contamination as part of their detection monitoring and compliance monitoring programs. The rules require the analysis of all hazardous constituents listed in Minn. Rules pt. 7045.0141.

While appropriate for hazardous waste listing purposes, the Minn. Rules pt. 7045.0141 hazardous constituents list has presented a number of problems when used for purposes of ground water monitoring. The Minn. Rules pt. 7045.0141 list contains some listings which are ambiguous and others which represent indefinitely large classes of compounds which do not normally appear in ground water as such. Also, many of the constituents listed in Minn. Rules pt. 7045.0141 dissociate or decompose when placed in water. Further, no analytical standards or analytical screening methods exist for many of the Minn. Rules pt. 7045.0141 constituents.

Because of the problems associated with the use of the existing hazardous constituents list for ground water monitoring purposes, EPA conducted several meetings with members of the scientific and laboratory communities to define an appropriate constituents list for purposes of ground water monitoring.

The ground water protection hazardous constituents list is the list they defined. The new ground water protection hazardous constituents list is made up of those constituents in Minn. Rules pt. 7045.0141 for which EPA has determined it is analytically feasible to analyze in ground water samples, plus 17 chemicals routinely monitored for in the Superfund program. The new core list is the product of extensive analytical testing of the constituents listed in Minn. Rules pt. 7045.0141 by the scientific and laboratory communities.

The new constituents list for ground water monitoring purposes is reasonable because it consists of those constituents for which it is analytically feasible to analyze in ground water. Also, the new list will allow owners or operators of hazardous waste facilities to better screen for ground water contamination by providing a more appropriate list of constituents for which to analyze. The addition of the ground water protection hazardous constituents list is equivalent to Appendix IX of 40 CFR § 261.

E. Minn. Rules Pt. 7045.0484 (Ground Water Protection).

Minn. Rules pt. 7045.0484, subp. 12 requires an owner or operator of a hazardous waste facility to establish a detection monitoring program by performing the activities specified in items A to K. Item H requires an owner or operator to perform the activities set out in subitems 1 to 5 if the owner or operator determines there is a statistically significant increase for monitoring parameters or hazardous constituents at any monitoring well at the compliance point. The Agency is amending subitems 2, 3, and 5(a) of item H.

Subitem 2 requires the owner or operator to sample the ground water in all monitoring wells and determine the concentration of all hazardous constituents present. As discussed in section B of this statement, a new ground water protection hazardous constituents list is being added to the

hazardous waste rules as a result of these amendments for the purposes of ground water protection requirements. The new list is set out in proposed Minn. Rules pt. 7045.0143. Therefore, the Agency is amending subitem 2 to require an owner or operator to sample the ground water and determine the concentration of the constituents listed in Minn. Rules pt. 7045.0143. The amendment is reasonable because it addresses the addition of proposed Minn. Rules pt. 7045.0143 which sets forth the constituents list to be used for ground water protection requirements specified in the rules. The amendment is equivalent to 40 CFR § 264.98(h)(2).

Subitem 3 requires an owner or operator to determine background values for all hazardous constituents present in monitoring wells at the compliance point. Subitem 3 is amended to reference the hazardous constituents identified in subitem 2 and discussed above. The amendment clarifies that background values are required for the hazardous constituents identified at the compliance point in subitem 2. Providing the reference to subitem 2 is reasonable because it assists the regulated community in locating applicable requirements in the rules and ensures that the Agency receives the relevant information pertaining to ground water monitoring. The amendment is equivalent to 40 CFR § 264.98(h)(3).

Subitem 5(a) specifies information an owner or operator is required to submit in a permit modification application. Subitem 5(a) requires an owner or operator to identify in the application the concentration of <u>any</u> hazardous constituent found in the ground water at each monnitoring well at the compliance point. Subitem 5(a) is amended to replace the word "any" with the word "each." The continued use of the word "any" in this requirement is inappropriate because an owner or operator is required under subitem 2, as

discussed above, to analyze their monitoring wells for the specific constituents set out in proposed Minn. Rules pt. 7045.0143. The use of the word "each" in this case is appropriate in this requirement. The amendment is reasonable because it clarifies the meaning of the requirement. The amendment is equivalent to 40 CFR § 264.98(h)(4)(i).

Minn. Rules pt. 7045.0484, subp. 13 requires an owner or operator of a hazardous waste facility to establish a compliance monitoring program by performing the activities specified in items A to K. Item E requires an owner or operator to sample the ground water in all monitoring wells and determine the concentration of all hazardous constituents present. The owner or operator is required to analyze the ground water annually thereafter to determine if additional constituents are present. As discussed in section B of this statement, a new ground water protection hazardous constituents list is being added to the hazardous waste rules as a result of these amendments for the purposes of ground water protection requirements. The new list is set out in proposed Minn. Rules pt. 7045.0143. The Agency is amending item E to require an owner or operator, when analyzing the ground water, to determine the concentration of the constituents listed in Minn. Rules pt. 7045.0143. The amendment is reasonable because it addresses the addition of proposed Minn. Rules pt. 7045.0143 which sets forth the constituents list to be used for ground water monitoring requirements specified in the rules. The amendment is equivalent to 40 CFR § 264.99(f).

F. Minn. Rules Pt. 7045.0494 (Notice to Local Land Authority).

Minn. Rules pt. 7045.0494, subp. 2 requires an owner or operator of a hazardous waste facility to submit postclosure notices to the local zoning authorities and the Commissioner within 60 days after certification of closure

of each hazardous waste disposal unit. Because of an editing oversight when adopting the existing rule, the word "days" does not appear in the "60 days" requirement to submit the notices. The amendment provides the word "days" to correct this error. The amendment is reasonable because it clarifies the language of the requirement.

G. Minn. Rules Pt. 7045.0518 (Liability Requirements).

Minn. Rules pt. 7045.0518 sets forth the liability coverage an owner or operator of a hazardous waste facility is required to demonstrate during the operating life of the facility for bodily injury and property damage to third parties resulting from facility operations.

Minn. Rules pt. 7045.0518, subp. 1 establishes the liability coverage an owner or operator is required to demonstrate for sudden accidental occurrences arising from the operations of their facility or facilities. The Agency is amending items B and C of subpart 1.

Item B of subpart 1 allows an owner or operator to demonstrate liability coverage for sudden accidental occurrences by passing the financial test for liability coverage set out in subpart 6. The Agency is amending subpart 1 to also allow the use of a corporate guarantee to demonstrate liability coverage for sudden accidental occurrences. Allowing the use of a corporate guarantee to demonstrate liability coverage for sudden accidental occurrences is reasonable because it facilitates compliance with the liability requirements by providing an additional mechanism by which to comply. Also, allowing the use of the corporate guarantee in this requirement is consistent with the existing financial assurance requirements for closure/postclosure care and corrective action, which allow the use of the corporate guarantee to fulfill

those requirements. The amendment is equivalent to 40 CFR § 264.147(a)(2). The reasonableness of the actual corporate guarantee requirements for liability coverage is discussed below in the discussion of proposed subpart 7 of this part.

Item C of subpart 1 allows an owner or operator to demonstrate liability coverage for sudden accidental occurrences by using a combination of the financial test and liability insurance. The Agency is amending item C to allow the owner or operator to also use a combination of a corporate guarantee and liability insurance. Allowing the use of a combination of a corporate guarantee and liability insurance is reasonable because it facilitates compliance with the liability requirements by providing an additional mechanism by which to comply. Also, allowing the combination is consistent with the existing financial assurance requirements for closure/postclosure care and corrective action, which also allow the combination. The amendment is equivalent to 40 CFR § 264.147(a)(3).

As discussed above, subpart 1 of Minn. Rules pt. 7045.0518 governs liability coverage for sudden accidental occurrences at hazardous waste facilities. Subpart 2 of Minn. Rules pt. 7045.0518 governs liability coverage for nonsudden accidental occurrences but is specific to owners or operators of surface impoundments, landfills, and land treatment facilities. The Agency is amending items B and C of subpart 2 in the same manner items B and C of subpart 1 are being amended. Item B is amended to allow the use of a corporate guarantee to demonstrate liability coverage for nonsudden accidental occurrences. Item C is amended to allow the use of a combination of a corporate guarantee and liability insurance to demonstrate liability coverage for nonsudden accidental occurrences. The reasonableness of these amendments is the same as that discussed above for the amendments to items B and C of subpart 1. The amendments to items B and C of subpart 2 are equivalent to 40 CFR § 264.147(b)(2) and (b)(3).

The Agency is also amending Minn. Rules pt. 7045.0518 to add subpart 7. Subpart 7 establishes the requirements for using a corporate guarantee for liability coverage.

Item A of proposed subpart 7 specifies several requirements. First, the guarantor must be the parent corporation of the owner or operator. This requirement is reasonable because such a guarantee would then be enforceable under State law, and because a guarantee by a third party, i.e. insurance, is already allowed under the rule. The requirement that a parent guarantee for its subsidiary is also reasonable because the parent corporation is interested in its subsidiaries' performance, and is in a better position than other corporate entities to ensure that the subsidiaries' facilities are being operated in conformance with the hazardous waste rules. Second, the guarantor (parent corporation) must pass the financial test specified in the rules. This amendment is reasonable because it will ensure that the parent corporation is financially able to execute its obligation to provide payment to third parties for injury or property damage should its subsidiary (facility owner or operator) default on making payment. Third, the wording of the corporate guarantee must be identical to the wording specified in the rules (proposed Minn. Rules pt. 7045.0524, subp. 8a). This requirement is reasonable because the wording of the corporate guarantee for liability coverage set out in proposed Minn. Rules pt. 7045.0524, subp. 8a is such that the corporate guarantee would be a legally valid and enforceable obligation. The reasonableness of the actual wording of a corporate guarantee for liability coverage is discussed in section H of this statement. Fourth, the guarantee must be signed by two corporate officers of the parent corporation, and a copy of a corporate resolution authorizing the parent corporation to enter into the guarantee must

be attached to the guarantee. These amendments are reasonable because the requirements ensure that the corporate guarantee is being executed with the knowledge and approval of the corporation as a whole and will be legally enforceable against the parent corporation. Lastly, a certified copy of the guarantee must be sent to the Agency Commissioner. This requirement is reasonable because it allows the Commissioner to assess the adequacy of the corporate guarantee and to determine compliance with the liability requirements. The amendments, excluding the amendments requiring two corporate officers to sign the guarantee and the attachment of the corporate resolution, are equivalent to 40 CFR § 264.147(g)(1).

Item A, subitem 1 of proposed subpart 7 requires that the corporate guarantee must provide that if the subsidiary (facility owner or operator) defaults on its primary obligation to provide payment to third parties who have sustained or may sustain bodily injury or property damage caused by sudden and/or nonsudden accidental occurrences arising from the operation of the subsidiary's facility, then the parent corporation (guarantor) is liable to the third parties for the obligation created by the guarantee. The requirement allows use of the corporate guarantee to fulfill liability requirements. The requirement reasonably allows a parent corporation to enter into a corporate guarantee by its own choice and specifies the consequences should its subsidiary default on payments to third parties for bodily injury or property damage. The amendment is equivalent to 40 CFR § 264.147(g)(1)(i).

Item A, subitem 2 of proposed subpart 7 establishes that the corporate guarantee will remain in force unless the guarantor (parent corporation) sends notice of cancellation to both the facility owner or operator and the Agency Commissioner and until the Agency Commissioner approves alternate liability

coverage. The amendment is reasonable because it will give notice to the facility owner or operator that a different means for complying with the liability requirements must be established. Also, the amendment ensures there will not be a lapse in liability coverage for the owner or operator. The amendment is equivalent to 40 CFR § 264.147(g)(1)(ii).

Item B of proposed subpart 7 specifies two additional criteria (subitems 1 and 2) to be met in order to use the corporate guarantee to demonstrate liability coverage. Item B, subitem 1 pertains to corporations incorporated in the United States. Subitem 1 establishes that a corporate guarantee may be used to demonstrate liability coverage only if the Attorney General or Insurance Commissioner of the state in which the parent corporation is incorporated and of each state in which a facility covered by the guarantee is located has submitted a written statement to the Agency Commissioner and EPA that a corporate guarantee for liability coverage, executed as required, is a legally valid and enforceable obligation in that state. Since the goal of the liability requirements is to provide the appropriate means for third parties to collect judgements for personal injury or property damage sustained, the amendment is reasonable because it provides the means for third parties to collect liability judgements by providing a financial responsibility mechanism which is binding and legally enforceable.

Item B, subitem 2 pertains to corporations incorporated outside the United States. Subitem 2 requires the foreign corporation to identify a registered agent in each state in which a facility covered by the guarantee is located and in the state in which its principal place of business is located. The Agency believes that under current case law the presence of the corporation's agent in combination with the activities of the corporation in the State will

subject it to the jurisdiction of the State's courts. Therefore, the requirement reasonably ensures that corporate guarantees for foreign corporations are enforceable. Subitem 2 also provides that the corporate guarantee may be used by foreign corporations only if the Attorney General or Insurance Commissioner of each state in which a facility covered by the guarantee is located and the state in which the foreign corporation has its principal place of business has submitted a statement to the Agency Commissioner and EPA that the guarantee, executed as required, is a legally valid and enforceable document in that state. This requirement reasonably ensures that third parties may collect judgements for personal injury or property damage sustained by providing an enforceable obligation.

H. Minn. Rules Pt. 7045.0524 (Wording of Instruments).

Minn. Rules pt. 7045.0524 specifies the wording that must be used by facility owners or operators and guarantor corporations in financial assurance instruments required to be submitted to the Agency. The Agency is amending subparts 6 and 7 and adding a subpart (subpart 8a). The amendment to subpart 6 corrects a typographical error existing in the rules. The amendment to subpart 7 and the addition of subpart 8a is being proposed in order to address the addition of the use of the corporate guarantee for liability coverage as discussed in section G of this statement.

Subpart 6 sets forth the language that a chief financial officer of a firm must include in the letter required to be submitted as part of the financial assurance requirements for corrective action, closure, and/or postclosure care at hazardous waste facilities. The chief financial officer is required to complete one of two financial worksheet alternatives for proving financial assurance and provide this information in the letter. The Agency has identified

a typographical error existing in worksheet Alternative II. Number 1 of Alternative II requires the chief financial officer to provide a figure for the sum amount of current corrective action, closure, and postclosure cost estimates. The existing rule language states that this amount is the sum of all cost estimates shown in the previous "four" paragraphs. The word "four" is in error. The proposed amendments change "four" to "five" which is the correct number of paragraphs the chief financial officer should consider in determining the sum total. The amendment is reasonable in order to provide correct information in the rules.

Subpart 7 sets forth the language that a chief financial officer of a firm must include in the letter required to be submitted to the Agency for liability coverage. As discussed in section G of this statement, the Agency is proposing to allow the use of the corporate guarantee to demonstrate liability coverage. In order to address the allowance of corporate guarantees for liability coverage, the appropriate financial instruments need to be amended accordingly. Therefore, subpart 7 is amended to provide the additional wording to be included in the chief financial officer's letter in order to address corporate guarantees for liability coverage. The amendment is reasonable because it ensures that the Agency will receive the appropriate information for assessing the adequacy of a corporate guarantee to meet the liability requirements. Also, the amendment corresponds to 40 CFR § 264.151(g).

Subpart 8a is being added to Minn. Rules pt. 7045.0524 as a result of these amendments. Subpart 8a sets forth the wording to be used in a corporate guarantee for liability coverage. The wording provides the terms of the guarantee including the recitals and exclusions. Providing the wording for the corporate guarantee for liability coverage is reasonable because it enables the regulated

community to understand the exact terms of choosing the corporate guarantee to fulfill liability requirements. Also, the wording is such that the corporate guarantee would be a legally valid and enforceable obligation for those using this mechanism. The wording is also equivalent to that provided for corporate guarantees for closure/postclosure care and corrective action currently set out in subpart 8 of this part, except that the corporate guarantee for liability coverage specifies exclusions specific to this type of guarantee. The wording coresponds to that provided in the federal regulations in 40 CFR § 264.151(h)(2) with one exception. The wording also requires the guarantee to be signed by two corporate officers of the parent corporation and a copy of a corporate resolution authorizing the parent corporation to enter into the guarantee to be attached to the guarantee. The reasonableness of these additions is discussed in section G of this statement.

I. Minn. Rules Pt. 7045.0602 (Postclosure Care and Use of Property).

Minn. Rules pt. 7045.0602, subp. 3 requires that the use of property in which hazardous wastes remain after closure must never disturb the containment system or the monitoring systems, unless the owner or operator can demonstrate in the postclosure plan or by petition that the disturbance meets the requirements specified. The existing language of this subpart erroneously provides the word "protection" instead of "petition." Therefore, the amendments replace the word "protection" with "petition." The amendment reasonably provides clarity in the requirement.

J. Minn. Rules Pt. 7045.0610 (Cost Estimate for Facility Closure).

Minn. Rules pt. 7045.0610, subp. 1 requires a facility owner or operator to prepare a closure cost estimate. Item B of subpart 1 disallows the owner or operator from including in the closure cost estimate any salvage value that

may be realized from the sale of specific items. The existing language of item B erroneously provides the word "scale" instead of "sale." The Agency is amending item B to replace the word "scale" with "sale." The amendment is reasonable because it provides clarity in the requirement by correcting a typographical error.

K. Minn. Rules Pt. 7045.0620 (Liability Requirements).

Minn. Rules pt. 7045.0620 establishes the liability requirements for owners and operators of hazardous waste facilities that are not permitted and are regulated under interim status. The amendments to this part are identical to the amendments to Minn. Rules pt. 7045.0518 which are discussed in section G of this statement. Minn. Rules pt. 7045.0518 governs permitted facilities.

Subpart 1, item B is amended to allow the use of a corporate guarantee to demonstrate liabilty coverage for sudden accidental occurrences arising from facility operations. This amendment directly corresponds to 40 CFR § 265.147(a)(2). A discussion of the reasonableness of this requirement is provided in section G of this statement.

Subpart 1, item C is amended to allow the use of a combination of the corporate guarantee and liability insurance to demonstrate liability coverage for sudden accidental occurences arising from facility operations. This amendment corresponds to 40 CFR § 265.147(a)(3). A discussion of the reasonableness of this requirement is provided in section G of this statement.

Subpart 2, item B is amended to allow the use of a corporate guarantee to demonstrate liability coverage for nonsudden accidental occurrences arising from facility operations. This amendment corresponds to 40 CFR § 265.147(b)(2). The reasonableness of this amendment is provided in section G of this statement.

Subpart 2, item C is amended to allow the use of a combination of the corporate guarantee and liability insurance to demonstrate liability coverage for nonsudden accidental occurrences arising from facility operations. This amendment corresponds to 40 CFR § 265.147(b)(3). The reasonableness of this amendment is provided in section G of this statement.

Subpart 7 is added to Minn. Rules pt. 7045.0620 to establish the requirements for using a corporate guarantee to demonstrate liability coverage. Since the requirements added by this amendment are identical to the amendments to Minn. Rules pt. 7045.0518, subp. 7 which are discussed in section G of this statement, a discussion of the requirements being added by this amendment is provided in section G of this statement. The amendment is equivalent to 40 CFR § 265.147(g)(2).

L. Minn. Rules Pt. 7045.0630 (Surface Impoundments).

Minn. Rules pt. 7045.0630, subp. 6 establishes interim status requirements for closing and providing postclosure care for hazardous waste surface impoundments. At closure, subpart 6 requires owners and operators of surface impoundments to choose between removing hazardous wastes and waste residues (and thus terminating responsibility for the unit) or retaining wastes and managing the unit as a landfill by conducting the necessary postclosure care specified.

Subpart 6 is amended to add six additional postclosure care requirements to be complied with by an owner or operator of a surface impoundment should they choose at closure to retain the hazardous wastes and manage the unit as a landfill. The additional requirements are proposed in item C, subitems 1, 2, and 3 and Item D, subitems 1, 2, and 3. The amendments provide that the owner or operator must: (1) eliminate free liquids by either removing or solidifying

them; (2) stabilize the remaining waste to support a final cover; (3) install a final cover to provide long-term minimization of infiltration into the closed impoundment; (4) maintain the integrity and effectiveness of the final cover; (5) maintain and check the ground water monitoring system; and (6) prevent run-on and run-off from eroding or damaging the final cover. The additional requirements are equivalent to 40 CFR § 265.228(a)(2) and (b). The addition of these requirements is reasonable because it is consistent with the overall closure performance standard requiring units to close in a manner that eliminates or minimizes the postclosure escape of hazardous constituents.

Subpart 6 is also being amended in another respect. As discussed above, subpart 6 allows a surface impoundment owner or operator at closure to choose to remove all hazardous waste and waste residues and thus terminate responsibility for the unit. Existing subpart 6 also allows the owner or operator to cease removal of hazardous wastes and contaminated soils if they can demonstrate that the materials remaining at any stage of the removal are no longer a hazardous waste. The Agency believes that allowing an owner or operator to cease removal once they have made such a demonstration allows significant and potentially harmful levels of hazardous constituents to remain in surface impoundments without subjecting the units to needed closure, postclosure, and monitoring requirements. For example, the existing rules allow residues from wastes that originally exhibited the characteristic of extraction procedure (EP) toxicity to remain in place if the residue was no longer EP toxic. This allows an environmentally significant quantity of hazardous constituents to remain that will receive no further monitoring or management. This is because EP toxicity criterion would preclude only a concentration that exceeds 100 times the drinking water standard. Therefore, constituents may remain at levels

significantly above the drinking water standards. If such constituents are close to the saturated zone, they may contaminate ground water at levels exceeding the ground water protection standard. Also, the residues may contain significant levels of other listed hazardous constituents not found through EP testing.

Therefore, the Agency is amending subpart 6, item B to no longer allow a surface impoundment owner or operator to cease removal of contaminated wastes by demonstrating what remains is no longer hazardous. The amendment is reasonable because it is consistent with the overall closure performance standard requiring units to close in a manner that eliminates or minimizes the post-closure escape of listed hazardous constituents. The amendment ensures that no listed constituent presents any threat to human health and the environment. The amendment is equivalent to 40 CFR § 265.228(a)(1).

IV. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1986) requires the Agency, when proposing amendments to existing rules which may affect small businesses, to consider the impact of the rule amendments on small business. However, the goal of Minn. Stat. ch. 116 (1986) is to protect the public health and welfare and the environment from the adverse effects which will result when hazardous waste is mismanaged. Application of less stringent standards to the hazardous wastes generated or managed by small businesses would be contrary to the Agency's mandate since small businesses' hazardous wastes can cause the same environmental harm as that of larger businesses.

The volume of hazardous waste generated by a business is not directly proportional to the size of the business. Many large businesses generate very small quantities of hazardous waste and conversely, a small business may generate a very large volume of hazardous waste. Therefore, it is not

reasonable to impose regulations based on the size of the business because this may have little relation to the potential for mismanagement or the extent of the adverse effects on human health and the environment if the waste is mismanaged.

The amendments are based on federal regulations promulgated under RCRA. The amendments pertaining to corporate guarantees for liability coverage and corrective action represent a less stringent level of regulation than currently exists in the rules. Therefore, these amendments provide a less stringent form of regulation for small businesses than currently exists. The amendments pertaining to ground water monitoring, interim status surface impoundment requirements, and corrections to the lists of hazardous wastes are considered to be more stringent than the regulations that currently exist. While these more stringent amendments are not yet in effect in Minnesota, the amendments must eventually be incorporated into the State rules and must be equivalent to the federal level of regulation. Incorporation of these requirements into the State rules will not impose any additional requirements on small businesses that would not be imposed under the federal program.

Therefore, the Agency believes that these additional regulations are justifiable and do not present an unreasonable burden to small businesses that may be subject to these requirements.

V. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. § 116.07, subd. 6 (1986) to give due consideration to economic factors. The statute provides:

> In exercising all its powers the Pollution Control Agency shall give due consideration to the establishment, maintenance, operation, and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

In proposing the requirements of these amendments, the Agency has given due consideration to available information as to any economic impacts the proposed amendments would have. Since the amendments pertaining to corporate guarantees for liability coverage and corrective action represent less stringent regulation than currently exists, these particular amendments will not place any additional economic burden on the regulated community. The amendments pertaining to ground water monitoring and corrections to the hazardous wastes lists will also place no additional economic burden on the regulated community, since these amendments are provided to instill clarity and applicableness in the rules. The amendments pertaining to interim status surface impoundments will have some economic impacts for owners and operators of these hazardous waste units. The amendments are based on federal regulations promulgated under RCRA. Incorporation of these provisions into the State rules will not impose any additional requirements on the owners and operators of interim status hazardous waste surface impoundments that would be imposed if Minnesota's rules were not equivalent.

VI. CONCLUSION

The Agency 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 Agency's Statement of Need and Reasonableness for the proposed amendments to the hazardous waste rules.

VII. LIST OF EXHIBITS

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

Agency Ex. No.	Title
1	Federal Register, Vol. 52, No. 131, Pages 25942-25953, July 9, 1987.
2	Federal Register, Vol. 51, No. 133, Pages 25350-25356, July 11, 1986.
3	Federal Register, Vol. 52, No. 222, Pages 44314-44321, November 18, 1987.
4	Federal Register, Vol. 52, No. 53, Pages 8704-8709, March 19, 1987.
5	Federal Register, Vol. 52, No. 119, Pages 23447-23450, June 22, 1987.
6	Federal Register, Vol. 51, No. 151, Pages 28296-28310, August 6, 1986.
7	Memorandum to Minnesota Pollution Control Agency staff from the Minnesota Attorney General's staff dated March 24, 1988.

DATE: April 15,1988

for Barbara Lindsay Sims
Gerald L. Willet
Commissioner