

STATE OF MINNESOTA  
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment  
of Rules Governing the Management,  
Storage, Treatment and Disposal  
of Hazardous Waste; Minnesota Rules,  
Parts: 7001.0520, 7045.0020, 7045.0075,  
7045.0120, 7045.0121, 7045.0255, 7045.0290,  
7045.0292, 7045.0454, 7045.0526, 7045.0558,  
7045.0574, and 7045.0626

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. The rulemaking incorporates various clarifications, corrections, and revisions into existing state rule language and incorporates one set of federal hazardous waste regulations promulgated by the United States Environmental Protection Agency (hereinafter "EPA"). The rule parts affected by these proposed amendments and the subjects of those parts are listed below in order of their part numbers:

7001.0520 PERMIT REQUIREMENTS: clarifies existing permit provisions respecting post-closure care.

7045.0020 DEFINITIONS: incorporates the federal definition of "treatability study."

7045.0075 PETITIONS: incorporates a federal rule governing petitions to increase quantities of waste for treatability studies, and clarifies existing rules governing petitions to exclude from regulation certain tested wastes.

7045.0120 EXEMPT WASTES: corrects existing provisions affecting disposition of spilled wastes.

7045.0121 TREATABILITY STUDY EXEMPTIONS: incorporates the federal rule provisions governing such studies.

7045.0255 ONE TIME DISPOSAL REQUIREMENTS: corrects existing provisions governing the exemption of one time disposal of wastes.

7045.0290 HAZARDOUS WASTE MANAGEMENT: adds provisions which prescribe proper management of hazardous waste.

7045.0292 ACCUMULATION OF HAZARDOUS WASTE: revises and clarifies existing provisions which govern container management, labeling, containment surfaces, storage of special wastes, and hazard labeling.

7045.0454 PERSONNEL TRAINING: revises existing language governing the documentation of training.

7045.0526 USE AND MANAGEMENT OF CONTAINERS: revises existing language governing storage of ignitable or reactive wastes.

7045.0558 PERSONNEL TRAINING: (see 7045.0454 for identical revision)

7045.0574 EMERGENCY PROCEDURES: corrects error in existing rules governing reporting of emergencies.

7045.0626 USE AND MANAGEMENT OF CONTAINERS: revises existing language governing inspections and their documentation, and revises language which governs the storage of ignitable or reactive wastes (see 7045.0526 for identical revision).

The federal rule governing treatability studies was promulgated by EPA under the authority of the Resource Conservation and Recovery Act (RCRA). The amendments to existing state rules are proposed pursuant to the Agency's authority under Minnesota Statutes § 116.07, subd. 4 (1988).

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 (1988). Part V documents the economic factors the Agency considered in drafting the amendments as required by Minn. Stat. § 116.07, subd. 6 (1988). Part VI sets forth the Agency's conclusion regarding the amendments. Part VII contains a list of 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.

Minnesota Statutes Chapter 14 (1988) requires the proposing agency to make an affirmative presentation of facts establishing the need for, and the reasonableness of, the rules or amendments proposed. In general terms, this means that the agency must state the reasons for its proposal, and the reasons must not be arbitrary or capricious. Here, need has come to mean that a problem exists which requires administrative attention, and reasonableness to mean that the solution proposed by the agency is appropriate.

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

The need for these amendments to the Agency's rules governing the management, treatment, storage, and disposal of hazardous waste is broadly satisfied in either of the following precepts: (1) the need for consistency with the federal hazardous waste program and within existing state rules; and (2) the need to update the hazardous waste regulations so they continue to be protective of human health and the environment. These are discussed below:

### 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 must adopt rules that are "equivalent" to the federal regulations to foster consistency of hazardous waste regulation among the 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 hazardous 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. Generally, the federal regulations promulgated under RCRA do not take effect in Minnesota until state rules are amended to incorporate the federal rules.

States may maintain more stringent hazardous waste regulations than those regulations either promulgated by EPA or not addressed by EPA. One effect on generators involved in interstate commerce is that they must often comply with separate sets of these regulations from various regulating authorities. The Agency, recognizing that there are benefits to providing consistency in these regulations, seeks to incorporate federally promulgated language into Minnesota's hazardous waste rules to the extent practicable.

Incorporation of the federally promulgated rule governing treatability studies was adopted verbatim except where minor changes were required in order to provide consistency with Minnesota rule format and usage, and where minor clarifying language was added. This provision was adopted into Minn. Rules



pts. 7045.0020 (Definitions), 7045.0075 (Petitions), and the new part 7045.0121 (Treatability Study Exemption).

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

The federal rule addressing treatability studies is designed by EPA to promote research and development of innovative technologies for managing hazardous waste. Human health and the environment benefit from improved hazardous waste management technologies derived as a result of the research this provision is designed to promote. The amendments to existing Minnesota rule language are based on deficiencies identified by various people who use or are affected by the existing rules. These amendments revise, clarify, and rectify the parts of the rules identified as being deficient or in error. These amendments will help regulators, generators, and facility owners and operators to insure continued protection of human health and the environment by providing clear, correct, and strong hazardous waste rule language.

III. REASONABLENESS OF THE PROPOSED AMENDMENTS

The Agency is required by Minn. Stat. § 14 (1988) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules or amendments. The Agency proposes to incorporate a federal rule promulgated by EPA as part of this rulemaking. A complete discussion of the reasonableness of the federal rule is presented in Exhibit 1 listed in Part VII of this document, which is hereby incorporated by reference. The reasonableness of the proposed amendments to the state hazardous waste rules is discussed below in the order of their Minnesota Rules part numbers.

7001.0520 PERMIT REQUIREMENTS

Existing language in subpart 1 of this part sets forth activities which require persons to obtain a hazardous waste facility permit from the agency. Item B of subpart 1 lists activities requiring a permit; namely, anyone who

would "...establish, construct, operate, or close a hazardous waste facility."

The amendment of item B reiterates that those who would "provide post-closure care" are also required to obtain permits. It is reasonable to reiterate this requirement in this list because it provides completeness to the list of activities requiring a permit. This requirement is set forth in existing language at the end of this subpart. It removes a possible source of confusion and keys the reader to read further for details of applicability.

The last paragraph of subpart 1 states, "Owners or operators...that received wastes after July 26, 1982, or that certified closure according to part 7045.0596, subpart 4, after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal as provided in subparts 5 and 6. If a post-closure permit is required, the permit must address..."

The amendment eliminates the use of the phrase "post-closure permit." The reason for this change is that in the opening paragraph of subpart 1, the subject permit is referred to as a "hazardous waste facility permit." Referring to this same permit as a "post-closure permit" in the last paragraph of this subpart could be misinterpreted to mean there are separate permits involved. The single hazardous waste facility permit includes provisions for language to reflect post-closure care. It is reasonable to eliminate a possible source of confusion which results from the existing language.

#### 7045.0020 DEFINITIONS

This rule contains the definitions of a number of words and terms that are used throughout chapter 7045. It is generally reasonable to include definitions in the proposed rules to provide a consistent interpretation of terms used by all parties. Where the intended meaning of terms can be understood differently by persons, depending on their backgrounds, it is important that one meaning be established. By defining potentially confusing

terms, the Agency provides the regulated community with an understanding of what is expected of them in order to comply with the proposed rules.

This addendum incorporates a federal definition for the term "Treatability study" into Minn. Rules pt. 7045.0020, subp. 96a, which is equivalent to the federal definition under 40 CFR § 260.10. This is a study in which a hazardous waste is subjected to a treatment process to determine amenability to the process, pretreatment requirements, optimal treatment conditions, treatment efficiencies, or the characteristics of residuals from the process. Also included in this definition, for the purposes of the exemptions of part 7045.0121, are liner compatibility studies, corrosion studies, and other material compatibility studies and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous waste.

It is reasonable to define the term treatability study to clarify what constitutes such a study and to clarify what types of related studies are exempt from regulation under the balance of the hazardous waste rules. It is also reasonable to adopt this definition for consistency among the states.

#### 7045.0075 PETITIONS

Existing language in part 7045.0075, subpart 2, sets forth provisions for petitioning the commissioner to exclude a waste from regulation under Chapter 7045. Item H of this subpart addresses the following: it provides the commissioner or the agency the right to require additional information to support a petition review; it limits the scope of the exclusion to that waste at a particular facility demonstrated to be entitled to the exemption; and it provides the agency the right to limit the exclusion to demonstrated portions of the petitioned waste when it has reason to believe that the waste may exhibit variable hazard characteristics.

The purpose of amending subpart 2.H. is to clarify those three objectives. The new language more specifically provides that the Agency will examine the variability of a waste when reviewing a petition for exemption. If the Agency is not assured that the waste is entitled to be exempt, the petition will be denied or granted only in part. This amendment does not change the existing intent of the rule.

The amendment proposed for subpart 11 of this part incorporates federal language from the treatability study provisions. This language governs petitioning for increased waste sample quantities under the treatability study provision. Item A of this subpart sets forth the conditions under which a petition may be considered. Item B sets forth the items which the petition must contain.

This provision was adopted verbatim except where revisions were made in accordance with comments provided by the Revisor's Office to correct an inconsistency with Minnesota rulewriting guidelines regarding the limiting of discretionary power. The existing federal rule gives the state decision maker excessive discretionary power. Language was made more specific in the second and third sentences of the introductory paragraph--from that of stating conditions for considering petitions to that of specifying conditions for granting petitions. Also, a non-specific requirement which would have been subitem (5) of item B, which stated that "the commissioner can require such other information as is deemed necessary," is deleted from the rule.

Adopting this portion of the federal provision governing treatability studies in this part is reasonable as it provides consistency in the way Chapter 7045 is organized. The revisions to this provision are reasonable in order to provide a level of discretionary power consistent with that of other



Minnesota rules. A discussion of the reasonableness of the federal rule is presented in Exhibit 1 as listed in Part VII of this document.

#### 7045.0120 EXEMPT WASTES

This part describes wastes which may be stored, labeled, transported, treated, processed, and disposed of without complying with the requirements of Chapter 7045. Item J governs conditions for exempting spilled wastes and how the waste is ultimately disposed of.

Existing language incorrectly cites a non-existing item and subitems. The proposed amendment cites Minn. Rule pt. 7045.0219, subpart 5, item B, subitem (8), which prescribes proper waste management. The amendment is reasonable because it retains the original intent of, and rectifies an error in, existing rule language and eliminates a potential source of confusion.

#### 7045.0121 TREATABILITY STUDY EXEMPTIONS

This new part 7045.0121 (Treatability Study Exemptions) incorporates federal provisions governing treatability studies under United States Code, title 42, section 261.4, paragraphs [e] and [f]. These provisions were published as an immediately effective final rule in the Federal Register on July 19, 1988 (see Exhibit 1). The rule exempts persons who generate or collect samples for the purpose of conducting treatability studies from regulation under the hazardous waste provisions and from the notification requirements of the Resource Conservation and Recovery Act, United States Code, title 42, section 6930.

Laboratories and testing facilities conducting treatability studies are exempted from requirements for obtaining a treatment permit; however, EPA emphasizes that the purpose of this exemption is for conducting treatability studies, not for the commercial management of hazardous waste. Facilities for which an excessively large number of studies need to be conducted, or those

having numerous treatment units on which many concurrent studies may be conducted will fall under the requirements of existing provisions for obtaining a Research, Development, and Demonstration permit under Minn. Rules pt. 7001.0712.

Incorporation of this federal provision is optional but strongly encouraged by EPA in authorized states such as Minnesota. It is beneficial and reasonable to adopt the rule for purposes of maintaining program equivalency and for the reasons EPA provides; that is, that it will facilitate evaluation of remediation alternatives for CERCLA clean ups and the RCRA Corrective Action Program and will help speed research and development for treatment alternatives to land disposal and waste minimization, recycling, and reuse.

This federal language was adopted verbatim except for minor additional language and format modifications necessary to provide clarity and consistency with existing Minnesota rules. Appropriate portions of the federal rule were placed into existing Minn. Rules pts. 7045.0020 (Definitions) and 7045.0075 (Petitions). The balance of the federal rule was placed into this new part 7045.0121 (Treatability Study Exemption). The proposed amendments meet the EPA requirement for equivalent language.

Revisions to the federal language to provide format consistency and language clarity are reasonable because they provide consistency with existing Minnesota rules and they make the rules more understandable. The federal discussion of the reasonableness of the rule is presented in Exhibit 1 as listed in Part VII of this document.

#### 7045.0255 ONE TIME DISPOSAL REQUIREMENTS

Existing language in this part erroneously includes its own part number in a range of parts from which certain one-time generators are exempted. The

amendment rectifies this condition. The amendment is reasonable because it corrects an error in the rule and eliminates potential confusion.

#### 7045.0290 HAZARDOUS WASTE MANAGEMENT

The existing part contains two subparts which address improper management and liability due to mismanagement of hazardous waste. Specifically, these parts provide that the generator must not relinquish control of waste when there is reason to believe the waste is not being properly managed and that the generator may be held liable in the event the waste is mismanaged. The amendment adds a new subpart which prescribes proper waste management.

Proposed language is consistent with related language in Minn. Rules pt. 7045.0219 (Special Requirements for Small Quantity Generators of Hazardous Waste), subp. 5, item B, subitem (8). It clarifies the responsibilities of the generator to assure that waste is managed in accordance with all applicable requirements both at on-site and off-site facilities.

The proposed amendment is reasonable because it clarifies that which constitutes proper waste management. With this amendment, the generator has a basis for determining whether waste is being properly managed, and the greater specificity of the language eliminates confusion.

#### 7045.0292 ACCUMULATION OF HAZARDOUS WASTE

Subpart 1 of part 7045.0292 lists conditions under which generators may accumulate hazardous waste on site without obtaining a permit or being regulated under interim status rules. These conditions are spelled out in items A to I of this subpart. Items B, C, F, G, H, and item I are amended in this rulemaking and are discussed in order below.

Item B of subpart 1 discusses acceptable containerization and management practices. It states that containers are to be "...managed in accordance with part 7045.0626 (Use and Management of Containers), subparts 4 to 6;..." The

amendment revises this language to require management in accordance with all the subparts of part 7045.0626. The subparts of part 7045.0626 govern:

- 1) conditions under which container provisions apply (scope);
- 2) container specifications;
- 3) requirement to use containers compatible with the types of wastes stored;
- 4) general container management;
- 5) container inspection;
- 6) requirements for separating incompatible wastes or their residues;
- 7) special storage requirements for ignitable or reactive wastes; and
- 8) requirements for closing a storage facility (closure).

It is reasonable to require compliance with the entire part 7045.0626 because the additional subparts do not appear particularly burdensome and following these provisions could significantly reduce the potential for hazard exposures and waste mismanagement.

Item C of subpart 1 governs the recording of waste transactions for wastes stored in tanks and containers and the labeling of these tanks or containers with the words "Hazardous Waste." Generators who store hazardous wastes in tanks and containers really have two unique and separable conditions to comply with. These two requirements are to maintain a record of the date the generator begins to accumulate waste in the tank or container and to label the tank or container with the words "Hazardous Waste."

Therefore, the first amendment to this item removes the language requiring tanks or containers to be labeled with the words "Hazardous Waste" from item C and places it into a separate new item I. This is reasonable since the items in this subpart constitute a list of conditions, and providing a separate item for each condition provides clarity and consistency with the rest of the subpart and removes potential confusion.

The second amendment to item C addresses the requirement for record-keeping regarding the accumulation start date of the waste. The existing



language provides that the accumulation start date must be clearly marked and visible for inspection on each container and that a record of the accumulation start date must be kept for all tanks.

The proposed amendment revises this language to clarify and affirm that the generator is responsible for maintaining these prescribed records of accumulation start dates and keeping them available for inspection. The amendment allows generators using tanks to either label the accumulation start date on the tanks in the same fashion as for containers or to keep a separate record. If a separate record for tanks is kept, the record must be in the form of a log.

It is reasonable to clarify the language in item C. This was accomplished by changing the sentence structure to use active voice, limiting the focus of the item to recording and presenting accumulation start dates, and clarifying what is expected in terms of recording and presenting these dates. It is further reasonable to allow the generator the choice of labeling tanks in the same fashion as containers when the same recordkeeping objectives are achieved.

Item F of subpart 1 states "...all containers in outdoor storage areas which hold free liquids are placed on a curbed surface which is impermeable to the wastes stored;..." The amendment removes the word 'all' in order to provide consistency with common usage in Minnesota rules. It also inserts the word 'containment' into the phrase "curbed [containment] surface" in order to clarify the purpose of the 'curbed surface.' It is reasonable to revise this item for the sake of consistency and clarity.

Item G of subpart 1 addresses special storage requirements for wastes exhibiting ignitability. Existing language provides that "...containers of hazardous waste displaying the characteristic of ignitability are shaded from

direct sunlight in outdoor storage areas..." This language is unclear respecting whether the test for ignitability applies to the containers or to the hazardous waste they may contain. The proposed amendment clarifies that it is the characteristics of the waste that are of concern. Also, the Agency has found during inspections that the waste's potential for reactivity and its potential for developing high vapor pressures may also be affected by shading. The tendency of these waste characteristics to cause a container to fail is exacerbated by the heating effects of exposure to direct sunlight. The rule is proposed to be changed to include wastes with these characteristics as well. Comprehensive codes exist under various auspices which also govern storage of these wastes.

The amendment first clarifies that the storage requirement is for containers that hold wastes which exhibit specified characteristics. Next, the amendment extends this requirement to include those wastes which exhibit the characteristic of reactivity, or which exhibit the potential for creating vapor pressures capable of causing a container to fail if not shaded. Finally, the amendment adds language which clarifies that this provision does not relieve facilities from having to comply with fire, building, or other applicable codes established by other governmental bodies, such as a municipality or the State Fire Marshal, with jurisdiction in this area.

The amendment is reasonable in that it clarifies language in this item. It is reasonable, and consistent with the original intent of the provision, to extend this provision to wastes exhibiting characteristics for which the capacity to damage their container can be diminished by shading. Finally, it is reasonable to provide clarification that this provision does not relieve the facility from complying with other applicable codes which might regulate storage of these materials.

Item H of subpart 1 is amended in order to accommodate the addition of item I in this subpart. The amendment replaces existing ending punctuation with "; and" to accommodate the new item I. This is reasonable in that it prevents a punctuation error.

Item I of subpart 1 is created by relocating a provision--that of labeling containers with the words "Hazardous Waste"--from existing language in item C of this subpart. Also, a new provision requiring generators to label containers with the identification of their contents is added to this item.

The discussion of reasonableness for relocating a condition from item C is provided in the reasonableness discussion for item C above. A provision requiring content labeling is reasonable because it does not constitute a significant burden in light of the widespread use of easily marked labels, it provides employees and emergency personnel with information important to their safe handling of these containers, and it provides generators and inspectors with a means of tracking whether certain waste streams might be more effectively managed.

Subpart 3 of part 7045.0292 governs situations in which the generator must obtain a permit due to accumulation. The amendment is reasonable as it replaces the phrase, "he or she" with the phrase, "the generator" which more clearly describes who the condition applies to.

Subpart 4 of part 7045.0292 governs accumulation of hazardous wastes at their point of generation (satellite containers). Item B of subpart 4 lists conditions generators must meet regarding container management. Existing language in subitem (1) of item B requires compliance with the Use and Management of Containers provisions set forth in part 7045.0626, subparts 2, 3, and 4.

As was done, and discussed above, for item B of subpart 1 of this same part 7045.0292, the amendment extends requirements of this provision to include all of part 7045.0626 (adding the provisions in subparts 1, 5, 6, 7, and 8).

It is reasonable to require compliance with the entire part 7045.0626 because the additional subparts do not appear particularly burdensome and following these provisions could significantly reduce the potential for hazard exposures and waste mismanagement.

Subitem B(2) of subpart 4 of this part addresses labeling of container contents. Existing language requires each container to be marked with the words "Hazardous Waste."

As provided in, and discussed for, proposed item I of subpart 1 of this part above, a new provision requiring generators to label containers with the identification of their contents is added to this item.

Also as discussed above, the Agency believes that this provision is reasonable because it does not constitute a significant burden in light of the widespread use of easily marked labels, it provides employees and emergency personnel with information important to their safe handling of these containers, and it provides generators and inspectors with a means of tracking whether certain waste streams might be more effectively managed.

A new subitem (3) for subpart 4.B. is created from a provision relocated from the final sentence in item C of this subpart. Existing language prescribes labeling containers with the date they began to hold excess waste. This language is potentially confusing. The proposed revision of this relocated provision requires labeling containers with the earliest of either the date the container becomes full or the date on which the volume limits prescribed in item A are reached.



Relocating this condition is reasonable because item B already lists conditions addressing container labeling and item C, which otherwise addresses storage limits, already references the conditions provided in item B. The amendment is reasonable in that it provides clarity to language which is otherwise potentially confusing.

Existing language in the first sentence of item C of subpart 4 of part 7045.0292 refers the reader to another part. A clarifying phrase is added to this sentence to bring the reader back from the preceding reference. Adding this clarifying phrase is reasonable because it eliminates a possible point of confusion.

#### 7045.0454 PERSONNEL TRAINING

Subpart 6 lists types of personnel records related to hazardous waste which must be maintained at the facility. Existing language in item D requires generators to document the mandatory training of facility personnel regarding hazardous wastes with which they deal in their jobs. The existing requirement to document that appropriate personnel have completed training required under subparts 1 to 4 is erroneous and should read, "...subparts 1 to 5." The amendment is reasonable because it corrects an apparent error and retains the intent of the rule. This amendment will not result in a significant burden to the regulated community.

#### 7045.0526 USE AND MANAGEMENT OF CONTAINERS

Subpart 7 addresses special storage requirements for ignitable and reactive wastes. Existing language is derived from federal language which requires that containers holding these wastes must be stored at least 50 feet from the facility's property boundary. The Agency recognizes that the setback requirement is not practicable in some instances due to physical property constraints (such as for properties 100 feet wide or less). The intent of this

federally promulgated requirement is the protection of public safety. There are existing laws under other authorities which address this same intent regarding storage of these wastes in Minnesota.

For example, in Minnesota the Uniform Fire Code addresses storage of both hazardous materials and of flammable and combustible liquids. It regulates containers and their storage both inside and outside of buildings everywhere in the state. The Uniform Building Code works in conjunction with these fire codes to regulate quantities and storage conditions statewide when containers are stored under a roof (enclosed or non-enclosed structures). There is an established inspection and enforcement capability associated with these codes.

The intent of the setback provision to protect public safety is comprehensively addressed by existing law in Minnesota. While Minnesota is not proposing at this time to replace or substitute existing law regarding the federal setback requirement, it is reasonable to amend existing language to make it clear that the ability to comply with the setback requirement does not relieve facility owners and operators from having to comply with other applicable local, state, or federal laws. This provides facility owners and operators a clear understanding that the setback is not the only requirement regulating storage of these wastes.

#### 7045.0558 PERSONNEL TRAINING

See the discussion under part 7045.0454 for an identical revision proposal.

#### 7045.0574 EMERGENCY PROCEDURES

The 24-hour telephone number listed in subparts 5 and 6 for reporting to the agency's emergency response unit is erroneous. The amendment replaces the erroneous (612) 296-7373 number with the correct (612) 296-8100 number. The amendment reasonably provides the correct telephone number.

7045.0626 USE AND MANAGEMENT OF CONTAINERS

First, existing language in subpart 5 of this part provides for inspections of areas where hazardous waste containers are stored. The proposed amendment provides that the hazardous waste containers themselves must also be inspected, and that the dates and findings of these inspections must be documented.

The amendment is reasonable because it clarifies the original intent of the provision, namely, that inspections are conducted to identify container failures. This intent is evidenced by existing language in this subpart requiring visual inspection for "leaks and for deterioration caused by corrosion or other factors." It is also reasonable to require documentation of these mandatory inspections. This provides evidence that the inspections are being conducted and of their results.

Second, see discussion for subpart 7 of part 7045.0526 of this rulemaking for an identical proposed amendment of subpart 7 of part 7045.0626 pertaining to the existing setback requirement.

IV. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1988) requires the Agency, when proposing amendments to existing rules, to consider the impact the rules may have on small business. However, the goal of Minn. Stat. § 116 (1988) is to protect the public health and welfare and the environment from the adverse effects which might result when hazardous waste is mismanaged. Application of less stringent standards to the hazardous waste generated or managed by small businesses would be contrary to the Agency's mission 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 necessarily proportional to the size of the business. The size of the business may have little relation to its potential for mismanagement or for potential adverse effects on human health and the environment. A large business may generate little hazardous waste and, conversely, a small business may generate large amounts of hazardous waste. Therefore, while it is reasonable to weigh the effects of rules on small businesses, it may not be reasonable to base hazardous waste regulations simply on the size of a business.

The federal rule governing treatability studies was promulgated by EPA under the authority of RCRA. This federal rule must be incorporated into Minnesota rules and EPA must authorize the state to administer it before it takes effect in Minnesota. EPA strongly encourages adoption of this optional rule. Other existing rule language amended in this rulemaking was originally promulgated by EPA pursuant to RCRA and/or HSWA. The amendments meet the EPA requirement for equivalency.

Proposed incorporation of the federal rule and amendments to existing state hazardous waste rules will impose equivalent and nearly identical requirements on small businesses as would be in effect if the federal program were in effect in lieu of the state program. Therefore, the agency believes these amendments are justifiable and do not present an unreasonable burden to small businesses.

#### V. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. § 116.07, subd. 6 (1988) 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 that may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances."

In proposing these amendments, the agency has given due consideration to available information as to any economic impacts the proposed amendments would impose. The federally promulgated treatability study exemption will reduce the financial burden to those conducting such studies and may result in new, more cost-effective hazardous waste management technologies. Further, the state hazardous waste program is substantially equivalent to the federal hazardous waste program. The federal regulations promulgated under RCRA and HSWA would govern in the absence of an equivalent state program. Where proposed amendments make additional reasonable requirements, the associated burdens are not significant in nature. Therefore, incorporating and correcting these federally based provisions in the state rules will not impose significant additional burdens to the regulated community.

#### 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. EXHIBITS

1. Federal Register (Vol. 53, No. 138, dated Tuesday, July 19, 1988) entitled:  
Identification and Listing of Hazardous Waste Treatability Studies Sample  
Exemption.

Date:

October 13, 1989

for Ann M. Humac  
Gerald L. Willet  
Commissioner