

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
EMERGENCY RESPONSE COMMISSION

In the Matter of the Proposed
Rule of the Department of Public
Safety Governing Emergency and
Hazardous Chemical Inventory Fees

STATEMENT OF NEED
AND REASONABLENESS

GENERAL STATEMENT

The federal "Emergency Planning and Community Right-to-Know Act" requires facilities to file periodic reports on the types, quantities, and locations of their hazardous chemicals. The Emergency Response Commission receives and processes this information for the general public, emergency planners, and emergency response organizations. To facilitate the processing of this large quantity of information, the Commission is developing a centralized data management system that can be accessed through modems and the Criminal Justice Information System.

The Commission has been directed by Minnesota Statutes, Section 299K.09 to adopt rules setting fees to "...cover the costs for all data management, including administration of fees, by the Commission and regional review committees." The Commission has been appropriated \$154,900 for data management in FY 1991. Estimates for data management costs in FY 1992-93 remain constant. These proposed rules are designed to address this legislative mandate.

STATUTORY AUTHORITY

Minnesota Statutes, Section 299K.09 directs the Commission to adopt rules setting fees to "...cover the costs for all data management, including administration of fees, by the Commission and regional review committees." In addition, the following fees must be established:

"(1) a material safety data sheet fee to be paid by a facility when it submits material safety data sheets in lieu of a hazardous chemical report form as required under section 11021 of the federal act;

(2) a fee to be paid by a facility when the owner or operator submits its emergency and hazardous chemical inventory form, required under section 11022 of the federal act, for calendar year 1990 and annually afterwards; and

(3) a late fee to be paid by a facility that fails to pay a fee under clause (1) or (2) in a timely manner, not to exceed 200 percent of the original fee."

SMALL BUSINESS CONSIDERATIONS

These rules will require any facility that stores hazardous chemicals in excess of regulatory thresholds to pay fees. The amount of the processing fee will depend upon the number of chemicals subject to the reporting requirements. This graduated fee schedule reflects considerations for the costs to enter the data and the relative size of the facility. The Commission has estimated that 91 percent of all facilities would pay the lowest fee amount. In general, most small business falls in this category. Large businesses typically store the largest number of chemicals and would pay the highest fee amount. Nevertheless, the Commission has identified a number of agricultural chemical dealers that are considered small businesses but would pay a mid-range fee.

FEEES IMPOSED BY THE RULES

These rules contain a schedule of fees as required by Minnesota Statutes, Section 299K.09. The Commissioner of Finance has approved the fee schedule as required by Minnesota Statutes, Section 16A.128, Subd. 1a and copies of the notice and proposed rules were sent to the chairs of the House Appropriations and Senate Finance Committees as required by Minnesota Statutes, Section 16A.128, Subd. 2a.

FISCAL IMPACT

Adoption of these rules will require governmental facilities to pay the appropriate fee for the number of chemicals stored at facilities in excess of the regulatory threshold.

ENVIRONMENTAL EFFECTS

Adoption of these rules will have no effect on the environment.

RULE BY RULE ANALYSIS

7507.0100 SCOPE. This part specifies that the rules apply to persons required to submit reports under sections 11021 and 11022 of the federal "Emergency Planning and Community Right-to-Know Act", in addition to facilities added under Minnesota Statutes, Section 299K.08, Subd. 2. This adds public sector facilities to the facilities specified under federal law.

7507.0200 DEFINITIONS. This part specifies that the terms used in the rules have the meanings given them in Minnesota Statutes, Section 299K.01.

7507.0300 PAYMENT OF FEES. This part specifies that the fee is payable to the Minnesota Department of Public Safety and should be sent to the director of the Emergency Response Commission.

Fees are deposited in the general fund.

7507.0400 MATERIAL SAFETY DATA SHEET FEE. This part retains the \$10 per material safety data sheet fee set in the law, Chapter 315, Section 13. This fee was established to encourage the submittal of hazardous chemical report forms instead of material safety data sheets. The Commission incurs significantly larger costs to process and store material safety data sheets.

7507.0500 PROCESSING FEE. Subpart 1 specifies that an annual fee must be paid by March 1, beginning in 1991 based upon the schedule outlined in the rules. The fee is required for each facility for which an emergency and hazardous chemical inventory form must be submitted to the Emergency Response Commission. This fee is intended to cover the data management costs (Minnesota Statutes Section 299K.09 Subd. 2). This part also allows a person who normally moves operations and hazardous chemicals from one facility to another facility during the same calendar year and if the hazardous chemicals stored at those facilities are the same, then that person must pay a fee for only one facility. This particularly applies to portable asphalt plants, where a plant moves from site to site and handles the same chemicals. The forms submitted for these plants are identical except for location.

Subpart 2, Processing fee schedule, specifies the processing fees in subpart 1 that Minnesota Statutes, Section 299K.09, Subd. 1(2) authorizes the Emergency Response Commission to assess. The Commission considered the following factors before selecting the fee schedule.

- * Equity consideration may dictate establishing fees according to the ability to pay and according to the number and quantity of hazardous chemicals present in a facility.
- * Administrative costs to manage a fee program will increase program costs. In addition, a complex fee schedule that considers all equity factors will significantly increase administrative costs.
- * A complex fee schedule will make it difficult for the Commission to assess a facility's compliance with that schedule. In addition, enforcement could be a concern when fees create a disincentive for a facility to comply with reporting requirements.

The Commission also reviewed a sample of the emergency and hazardous chemical inventory forms submitted by facilities for calendar year 1988 and determined that approximately 91 percent of the facilities would pay \$25; 8 percent would pay \$100; and 1 percent would pay \$1000.

This fee schedule is reasonable because it does not establish a complex fee schedule that is costly to administer and that is difficult to verify, but it still covers the costs for all data management, including administration of fees, by the Commission and regional review committees as required by Minnesota Statutes, Section 299K.09.

7507.0600 NOTIFICATION OF ERROR. This part outlines the procedure for reconciling errors in the payment of fees. The Commission reviews the fees paid for a specific facility and will notify the facility about incorrect payment. It is consistent with the late payment fee schedule to allow the facility 60 days to submit correct payment for underpayment. After that time period, a late payment fee will be assessed. Overpayments will be refunded.


7507.0700 LATE PAYMENT FEE. This part establishes a late payment fee for the material safety data sheet fee and the processing fee. A person will not be assessed a late payment fee if payment is received within 60 days of the payment date. This allows the Commission time to process the large volume of reports and fees submitted on or about March 1. Payment received between 60 and 120 days is subject to a late payment fee of 100 percent of the payment due. This doubles the fee that a person must pay. Payment received after 120 days must pay a late payment fee of 200 percent of the payment due, the maximum allowed under Minnesota Statutes, Section 299K.09, Subd. 1(3). This triples the fee that a person must pay. It is reasonable to wait an additional 60 days before levying this additional 100 percent.

STATE OF MINNESOTA
Department of Public Safety

Emergency Response Commission

MEMORANDUM

TO: Maryanne Hruby, Director
Legislative Commission to Review Administrative Rules

FROM:  Lee Tisonler, Director
Emergency Response Commission

PHONE: 612/643-3002

DATE: September 7, 1990

RE: SONAR for proposed rules relating to fees

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Enclosed, per your request, is a copy of the Statement of Need and Reasonableness for proposed rules relating to fees for the Emergency Response Commission.

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