

STATE OF MINNESOTA  
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of Proposed  
Amendments to Rules Governing  
Standards for Owners and Operators  
of Hazardous Waste Treatment, Storage,  
and Disposal Facilities,  
Minn. Rules Pts. 7045.0075, 7045.0532,  
7045.0534, 7045.0538, 7045.0630,  
7045.0632, and 7045.0638

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 standards for owners and operators of hazardous waste treatment, storage, and disposal facilities. These amendments to the state hazardous waste rules will bring state rules into conformance with existing federal regulations found in Title 40, Code of Federal Regulations (hereinafter "CFR") Parts 264.221, 264.301, 265.221, 265.254, and 265.301. The proposed amendments pertain to the following:

- A. Surface Impoundments (Facility Standards). Imposes a requirement for an impermeable top liner for new or replacement units.
- B. Landfills (Facility Standards). Imposes a requirement for an impermeable top liner for new or replacement units. Also adds the requirement for a leak detection, collection, and removal system above and between the double liners.
- C. Surface Impoundments (Interim Status Standards). Subjects owners or operators to the design requirements (double liners and leak detection, collection, and removal system) of permitted facilities.
- D. Waste Piles (Interim Status Standards). Subjects owners or operators to the design requirements (single liner and leak detection, collection, and removal system) of permitted facilities.
- E. Landfills (Interim Status Standards). Subjects owners or operators to the design requirements (double liners and leak detection, collection, and removal system) of permitted facilities.

- F. Petitions for Alternate Design and Operating Practices. Allows the above cited facilities the option of petitioning the Commissioner for alternate design and operating practices.

All of the above amendments serve to bring state rules regarding minimum technology standards into conformity with federal regulations. Federal regulations governing minimum technology standards were promulgated by the U.S. Environmental Protection Agency (hereinafter "EPA") under the authority of the Hazardous and Solid Waste Amendments of 1984 (hereinafter "HSWA"). The federal amendments were published in the Federal Register on July 15, 1985 (see Exhibit 1). A subsequent amendment was published in the May 9, 1990, Federal Register (see Exhibit 2). Amendments promulgated under HSWA, such as the minimum technology rule, are immediately effective in Minnesota on the effective date of the rule. The effective date for the minimum technology rule was July 15, 1985.

The Statement of Need and Reasonableness (hereinafter "Statement") is divided into eight parts. Following this introduction, Part II contains the Agency's statutory authority for the amendments. Part III contains the Agency's explanation of the need for the proposed amendments. Part IV discusses the reasonableness of the proposed amendments. Part V 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 VI discusses the economic factors the Agency considered in drafting the amendments as required by Minn. Stat. § 116.07, subd. 6 (1988). Part VII sets forth the Agency's conclusion regarding the amendments. Part VIII 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.

## II. STATUTORY AUTHORITY

The Agency's statutory authority to adopt the rules is set forth in Minn. Stat. § 116.07, subd. 4 (1988). Under this statute the Agency has the necessary authority to adopt the proposed rules.

## III. NEED FOR THE PROPOSED AMENDMENTS

Minn. Stat. ch. 14 (1988) 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 is based on the need for consistency with the federal hazardous waste regulations.

In 1976, Congress adopted the Resource Conservation and Recovery Act (hereinafter "RCRA") to regulate the management of hazardous waste. 42 U.S.C. § 6901 et seq. In adopting RCRA, Congress provided for eventual state control of the hazardous waste program and established the mechanism for the EPA to grant authority to states to operate the program. States that receive EPA authorization administer the state hazardous waste program in lieu of the federal program. To receive and maintain authorization, the state must adopt rules that are "equivalent" to the federal regulations and consistent with federal or state programs applicable to other states. The EPA has defined equivalent to mean that state requirements are no less restrictive than federal requirements. In terms of consistency, the 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 the EPA for its hazardous waste program pursuant to RCRA effective February 11, 1985. See 50 FR 3756 (January 28, 1985). In order to maintain authorization, the state must enact equivalent requirements within specific time frames when new, more stringent federal requirements are promulgated by EPA. Federal regulations promulgated under RCRA are not in effect in Minnesota until the state rules are amended to incorporate the federal changes. However, federal regulations promulgated under HSWA (1984), become effective nationally regardless of state authorization and subsequently are enforced by EPA until the states modify their programs by adopting HSWA amendments. Thus, Minnesota must modify its hazardous waste program by adopting HSWA amendments and apply for and receive authorization under HSWA in order to enforce HSWA provisions in lieu of EPA as part of its authorized state program. Since the Minimum Technology rule is promulgated under HSWA, the Agency proposes adopting these amendments in order to be consistent with federal regulations and to remain authorized by the EPA to administer Minnesota's hazardous waste program.

#### IV. REASONABLENESS OF THE PROPOSED AMENDMENTS

The Agency is required by Minn. Stat. ch. 14 (1988) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules or amendments. The Agency proposes to incorporate specific federal regulations as part of this rulemaking. A complete discussion of the reasonableness of the federal regulations is presented in Exhibits 1 and 2, Part VIII of this document, which is hereby incorporated by reference. The reasonableness of each of the proposed amendments to the state hazardous waste rules is discussed below.

A. Minn. Rules pt. 7045.0075 - Petitions.

Minn. Rules pt. 7045.0075 establishes conditions for petitioning the agency for regulatory treatment different from that prescribed in the main body of the rules. The proposed revision provides the opportunity for owners or operators of surface impoundments, waste piles, and landfills (interim status and those seeking permits) to petition the Commissioner for approval of alternative design and operating standards.

Providing this alternative in rule is reasonable because the design and operating standards provided in Minn. Rules pts. 7045.0532, 7045.0534, 7045.0538, 7045.0630, 7045.0632, and 7045.0638 were developed on a state and federal level to provide a consistent technical basis for meeting broader environmental standards. The consulting and engineering community is most often able to use the specific parameters set forth in the rules, thus expediting the regulatory process. Nevertheless, it is reasonable to make provision for the exception, which is what the petition process does. The Agency's goal is to have facilities meet the environmental standard while not impeding possible technological developments or innovations. Several other areas of environmental regulation, as can be ascertained by reviewing the existing subparts of 7045.0075, allow for alternate approaches to regulation.

B. Minn. Rules pt. 7045.0532 Surface Impoundments (Facility Standards).

Minn. Rules pt. 7045.0532 establishes conditions for owners and operators of permitted surface impoundments. These conditions must be met in order to obtain a permit under Minn. Rules pt. 7001.0590. All of the existing conditions in the rule remain unchanged except subpart 3 which addresses design and operating requirements.

The existing rule requires facilities to have two liners with a leak detection, collection, and removal system between the liners. Either or both of

the liners may allow waste to migrate into the liner but not through the liner. The proposed revision continues to require a double liner with leak detection, collection, and removal system. The difference is that the top liner must prevent wastes from migrating into the liner. The lower liner and leak detection, collection, and removal system requirements remain the same.

The revisions apply to new facilities, new units at existing facilities, replacement units, and lateral expansions, thereby negating the need for retrofitting of existing facilities due solely to these amendments. (There are existing provisions in state and federal law that give the authority for requiring retrofitting if a liner system is leaking or otherwise experiencing failure.) The regulations (existing federal and proposed state) are applied to facility owners and operators submitting Plan B of a permit application after November 8, 1984.

The revisions to this provision are reasonable in order to provide consistency between state and federal law. The federal regulations (40 CFR Part 264.221) are the legal authority in this matter and should be thus reflected in Minnesota rules language to avoid confusion. The proposed revisions incorporate federal language nearly verbatim except for minor modifications due to the difference in format between the CFR and Minnesota rules.

In addition, subp. 3, item F, has been added to allow the owner or operator to petition for alternate design and operating practices under Minn. Rules pt. 7045.0075. The reasonableness of such an option is discussed in Item A (Minn. Rules pt. 7045.0075) of this Statement.

C. Minn. Rules pt. 7045.0534 Waste Piles (Facility Standards).

Minn. Rules pt. 7045.0534 establishes conditions for owners and operators of permitted waste piles. These conditions must be met in order to obtain a permit under Minn. Rules pt. 7001.0600. All of the existing conditions

in rule remain unchanged except for the addition of subp. 3, item H, which allows for the owner or operator to petition for alternate design and operating practices under Minn. Rules pt. 7045.0075. The reasonableness of such is discussed in Item A of this Statement.

D. Minn. Rules pt. 7045.0538 Landfills (Facility Standards).

Minn. Rules pt. 7045.0538 establishes conditions for owners and operators of permitted landfills. These conditions must be met in order to obtain a permit under Minn. Rules pt. 7001.0620. All of the existing conditions in rule remain unchanged except subpart 3 which addresses design and operating requirements.

The existing rule requires facilities to have two liners with a leak detection, collection, and removal system between the liners. One of the liners may allow waste to migrate into the liner but not through the liner. One of the liners, either top or lower, must prevent wastes from migrating into the liner. The proposed revision continues to require a double liner with leak detection, collection, and removal system. There are two differences. One is that it must be the top liner that is constructed to prevent wastes from migrating into the liner. The second change is that there must be a leak detection, collection, and removal system above and between the liners as opposed to just between the liners.

40 CFR Part 264.301 is the federal legal citation for design requirements for permitted landfills. Applicability of and reasonableness of this provision are identical to that found in the discussion of permitted surface impoundments (item B of this Statement). Similarly, the option to petition is proposed.

E. Minn. Rules pt. 7045.0630 - Surface Impoundments (Interim Status Standards).

Minn. Rules pt. 7045.0630 establishes conditions for owners and operators of interim status surface impoundments. All of the existing conditions remain unchanged except for the addition of design and notification requirements for each new unit, replacement unit, or lateral expansion at an existing interim facility.

The existing rule does not impose design requirements (liners or leak detection, collection, and removal systems) on interim status facilities. The proposed revision requires that the design requirements of Minn. Rules pt. 7045.0532, subp. 3 (as proposed) be met for each new unit, replacement unit, or lateral expansion at an existing interim facility. The regulations (existing federal and proposed state) are applied to facilities receiving wastes after May 8, 1985.

40 CFR Part 265.221 is the federal legal citation for design requirements for interim status surface impoundments. The reasonableness of this provision is identical to that found in the discussion of permitted surface impoundments (item B of this Statement).

F. Minn. Rules pt. 7045.0632 - Waste Piles (Interim Status Standards).

Minn. Rules pt. 7045.0632 establishes conditions for owners and operators of interim status waste piles. All of the existing conditions remain unchanged except for the addition of design and notification requirements for each new unit, replacement unit, or lateral expansion at an existing interim facility. The proposed revision requires that the design requirements of Minn. Rules pt. 7045.0534, subp. 3 be met.

40 CFR Part 265.254 is the federal legal citation for design requirements for interim status waste piles. Applicability of and



reasonableness of this provision are identical to that found in the discussion of interim status surface impoundments (item E of this Statement).

G. Minn. Rules pt. 7045.0638 - Landfills (Interim Status Standards).

Minn. Rules pt. 7045.0638 establishes conditions for owners and operators of interim status landfills. All of the existing conditions remain unchanged except for the addition of design and notification requirements for each new unit, replacement unit, or lateral expansion at an existing interim facility. The proposed revision requires that the design requirements of Minn. Rules pt. 7045.0538, subp. 3 (as proposed) be met.

40 CFR Part 265.301 is the federal legal citation for design requirements for interim status landfills. Applicability of and reasonableness of this provision are identical to that found in the discussion of interim status surface impoundments (item E of this Statement).

**V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING**

Minn. Stat. § 14.115, subd. 2 (1988) 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. In proposing these amendments, the Agency has given due consideration to available information as to any impacts the proposed amendments would have on small businesses. The amendments impose no requirements on the regulated community, small businesses included, above and beyond those already required by federal regulation. Therefore, the inclusion of such requirements in the state hazardous waste rules will not impose any additional burden.

**VI. 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, 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 have. The amendments impose no requirements on the regulated community above and beyond those already required by federal regulation. Therefore, the inclusion of such requirements in the state hazardous waste rules will not impose any additional economic burden.

#### VII. 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.

#### VIII. EXHIBITS

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

<u>Agency Ex. No.</u>	<u>Title</u>
1	<u>Federal Register</u> , Vol. 50, No. 135, pages 28702-28755, July 15, 1985.
2	<u>Federal Register</u> , Vol. 65, No. 90, pages 19262-19264, May 9, 1990.

Date: September 12, 1990

*for Ann M. Hummel*  
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Gerald L. Willet  
Commissioner