

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of Proposed
Amendments to Rules Governing
Financial Assurance for Solid
Waste Land Disposal Facilities

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The amendments proposed all relate to financial assurance for solid waste land disposal facilities. Specifically, the amendments change parts of Minn. Rules pt. 7035.2685 COST ESTIMATES FOR CLOSURE, POSTCLOSURE CARE AND CORRECTIVE ACTION. This rule sets procedures for calculating the present value of estimated costs. The estimates are used to determine the levels of financial assurance that must be met by solid waste facility owners and operators. This was a part of amendments to a group of regulations generally referred to as the solid waste rules. This entire body of rules sets requirements for the location, design, construction and operation of solid waste management facilities.

This statement is divided into eight parts. After this introduction, Part 2 presents the legal and historical background of the financial assurance rules. Part 3 presents the Minnesota Pollution Control Agency's (hereinafter "Agency") explanation of the need for the proposed rule amendments. Part 4 presents the Agency's explanation of the reasonableness of the proposed rules. Part 5 presents the Agency's considerations of small business impacts, pursuant to Minn. Stat. § 14.115 (1988), Small Business Considerations in Rulemaking. Part 6 presents the Agency's analysis of the economic impacts of the proposed rule amendments, pursuant to Minn. Stat. § 116.07, subd. 6 (1988), Pollution Control Agency, Exercise of Powers. Part 7 presents the Agency's analysis of the impacts of the proposed rule amendments on agricultural lands, pursuant to Minn. Stat. § 14.11 (1988), Agricultural Land. Part 8 presents the Agency's conclusion regarding adoption of the rule amendments.

II. LEGAL AND HISTORICAL BACKGROUND OF THE FINANCIAL ASSURANCE RULES

The Minnesota legislature in 1969 amended the Agency's powers to add control of solid waste disposal methods and practices. Minn. Laws 1969, ch. 1046. The legislature directed the Agency to adopt standards and regulations regarding solid waste. Minn. Laws 1969, ch. 1046, section 6 (amending Minn. Stat. § 116.07, subd. 4). This solid waste authority in chapter 116 was added to the Agency's previous, more general, powers under chapter 115, the Water Pollution Control Act. The Agency's general powers encompass administration and enforcement of all laws relating to the pollution of any of the waters of the state and the establishment or amendment of standards and regulations designed to prevent, control, or abate water pollution. Minn. Stat. § 115.03, subd. 1.

Minn. Stat. § 115.03, subd. 1(e) grants the Agency the following powers:

To adopt, issue, reissue, modify, deny, or revoke, enter into or enforce reasonable orders, permits, variances, standards, rules, schedules of compliance, and stipulation agreements, under such conditions as it may prescribe, in order to prevent, control or abate water pollution, or for the installation or operation of disposal systems or parts thereof, or for other equipment and facilities;. . .

The power to adopt rules governing solid waste is given in Minn. Stat. § 116.07, subd. 4 (1988), as follows:

Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1969, chapter 1046, for the collection, transportation, storage, processing, and disposal of solid waste and the prevention, abatement, or control of water, air, and land pollution which may be related thereto, and the deposit in or on land of any other material that may tend to cause pollution. . . . Any such rule or standard may be of general application throughout the state or may be limited as to times, places, circumstances, or

conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to collection, transportation, processing, disposal, equipment, location, procedures, methods, systems or techniques or to any other matter relevant to the prevention abatement or control of water, air, and land pollution which may be advised through the control of collection, transportation, processing, and disposal of solid waste . . . and the deposit in or on land of any other material that may tend to cause pollution.

The 1984 legislature passed a law that related specifically to financial assurance:

The agency shall adopt rules requiring the operator or owner of a solid waste disposal facility to submit to the agency proof of the operator's or owner's financial capability to provide reasonable and necessary response during the operating life of the facility and for 20 years after closure, and to provide for the closure of the facility and postclosure care required under agency rules. Proof of financial responsibility is required of the operator or owner of a facility receiving an original permit or a permit for expansion after adoption of the rules. Within 180 days of the effective date of the rules, proof of financial responsibility is required of an operator or owner of a facility with a remaining capacity of more than five years or 500,000 cubic yards that is in operation at the time the rules are adopted. Compliance with the rules is a condition of obtaining or retaining a permit to operate the facility.

Minn. Stat. § 116.07, subd. 4h (1984).

The Agency in 1984 began work on development of the required rules. Draft rules were distributed for review and comment to a list of interested persons. The rule development period continued for the next three and a half years. The proposed rules were finalized in the winter of 1987 and published in the State Register on March 7, 1988. Administrative hearings on the rules were conducted throughout the state during May and June of 1988. The Agency Board adopted

final rules in September of 1988. The final rule publication was November 7, 1988.

The 1989 legislature passed a law that had an effect on both rule administration and on development of new rules.

A mixed municipal solid waste disposal facility that is open to the public and stops accepting waste before July 1, 1990, is exempt from Minnesota Rules, parts 7035.2665 to 7035.2805, relating to financial assurance requirements. . . .

The pollution control agency shall study additional alternatives within the financial assurance requirements in Minnesota Rules, parts 7035.2665 to 7035.2805, and report to the legislative commission on waste management by January 1, 1990.

Minn. Laws ch. 70 (1989).

The report that followed recommended the changes that are proposed in this rulemaking:

All proposals for change have in common some feature that lessens current local financial impact. Some proposals recommend lessening impacts only to the point at which all facility users share equally in the burden of long-term care. Other proposals go beyond this point, lowering short-term costs so much that there is an implicit increase in long-term costs. These proposals do not meet equity criteria. The MPCA finds that decreasing local financial impacts is an acceptable goal, so long as the pattern of cost incidence remains equitable.

The MPCA proposes a rule amendment that would further lower financial impacts. The financial assurance rules require that cost estimates be made in current dollars. That is, estimates must assume that future dollars have value numerically equal to present dollars. This requirement derives from the financial assurance rules that apply to hazardous waste facilities, rules which were developed

by the EPA. The EPA's recently proposed performance standards . . . allow cost estimates (to be) made in present value terms. That is, costs estimated for future periods can be discounted so that their values (are) economically equal to those of present dollars. The MPCA proposes to begin work on a rule amendment requiring that cost estimates be made in present value terms. This change would lower the local financial impact of the financial assurance rules.*

*"Alternatives within the Financial Assurance Rules," a report submitted by the Minnesota Pollution Control Agency to the Legislative Commission on Waste Management, January 1990, p. 83.

The rule amendments proposed here are the direct result of the findings of the January report. The proposed rules were drafted in July of this year. The proposed rule amendments were distributed for review and comment to a list of interested persons. Members of the Agency staff discussed the proposed rule amendments in meetings held throughout the state in September.

III. NEED FOR THE PROPOSED RULES

Minn. Stat. § 14.14, subd. 2 (1988) requires an agency to make an affirmative presentation of the facts establishing the need for and the reasonableness of the proposed rules. In general terms, this means that an agency must set forth the reasons for proposing rules 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 and requires administrative attention and reasonableness means that the solution proposed by the Agency is a proper one. The Agency will first address need.

The need for the proposed rule amendments arises from two sources:

1. Time has removed an important reason for requiring that cost estimates be made in terms of current dollars. Many provisions of the financial assurance rules were taken directly from established federal regulations for hazardous waste facilities. The practice of borrowing from federal regulation is a sensible one because it saves time. Borrowing from federal sources also develops state programs in close concert with federal programs. This makes it

easier for state programs to be certified by federal authorities. Federal certification allows states directly to administer programs, which often saves cost.

The U.S. Environmental Protection Agency (EPA) published proposed regulations for "Subtitle D" (solid waste) facilities in August of 1988. The proposed financial assurance provisions differed somewhat from the financial assurance rules for hazardous waste facilities (Federal Register, 8-30-1988, pp. 33347 - 51). The difference that matters most for this rulemaking involves the change to performance-based criteria for financial assurance regulations.

The hazardous waste facility rules are very specific in their requirements for financial assurance instruments. The rules include models that must be followed literally. No variation is allowed. In contrast, the proposed solid waste facility rules require that financial assurance regulations: 1) ensure coverage of identified costs, 2) ensure timely action, and 3) ensure continuous coverage from the time when the rules take effect or before a new facility first receives waste until the owner or operator is released from financial assurance responsibilities.

Discounted cost estimates for closure and postclosure care fall within the proposed federal criteria. Current rules require annual review and revision for plans and cost estimates (Minn. Rules pt. 7035.2685, subp. 2). As the date on which money will be needed approaches, the permittee and the Agency will be able to make more precise judgments on the adequacy of funds and the need for change in accrual rates. The entire process is designed to make sure that funds are adequate to meet estimated needs according to a planned schedule.

The change in EPA's financial assurance criteria eliminates the need for current dollar cost estimates.

2. The current dollar cost estimate distorts service prices. Landfill prices (usually called tipping fees) nearly always have to increase in order to get the added revenues needed for trust fund deposits. Landfill owners or operators base their price increases on the cost estimates made according to the requirements of the financial assurance rules.

Current dollar cost estimates overstate the value of future costs. A dollar received or spent in the future is worth less than a dollar received or spent today. The difference occurs because inflation changes the value of money and funds can be saved, invested and increased through interest earnings.

There is generally some amount of upward pressure on prices during any period. The economy has had very few times of deflation. This nearly constant price inflation means that a fixed amount of money saved now will buy less in the future. Interest compensates lenders and savers for potential inflationary losses and the risk of nonpayment. The presence of inflation and interest means that a person can always earn at least a minimal amount on a saved dollar. So a saved dollar alone is not worth as much as a current dollar. Interest earnings must be added to the saved dollar in order to make it equal in value to the current dollar.

Basing current accruals on current-valued cost estimates says, in effect, that future dollars and current dollars have equal values. When prices are set according to the current-valued cost estimate, current land disposal services are over-valued, or priced too high.

The proposed rule amendment is needed to correct this distortion in market prices.

IV. REASONABLENESS OF THE PROPOSED RULES

The Agency is required to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Minn. Stat. § 14.14, subd. 2 (1986). Reasonableness is the opposite of arbitrariness and capriciousness and means that there is a rational basis for the Agency's proposed action. The purpose of this section is to demonstrate that each provision is a reasonable approach to its defined function.

The discussion below addresses the reasonableness of the provisions of the rules that the Agency proposes to adopt or amend.

A. GENERAL DISCUSSION

The practice of adjusting future dollar values so that they are equivalent in value to present dollars is well established in the analytical methods used by engineers, accountants, financial analysts and economists:

The concept that payments that differ in total magnitude but that are made at different dates may be equivalent to one another is an important one in engineering economy. . . .

The meaning of equivalence may be explained by using an analogy from algebra: If a number of things are equal to one thing, then they are equal to each other. Given an interest rate, we may say that any payment or series of payments that will repay a present sum of money with interest at that rate is equivalent to that present sum. Therefore, all future payments or series of payments that would repay the present sum with interest at the stated rate are equivalent to each other.

Eugene L. Grant & W. Grant Ireson, Principles of Engineering Economy, 5th ed., 1970, pp. 29 - 31.

Discounting techniques are clearly not foreign to accounting as it is practiced today. Applications of discounting in practice include:

Notes Receivable and Payable -- Measuring the amount to be recorded initially for receivables and payables that have no stated interest rate or whose interest rate is different from the market rate, in the absence of established exchange prices for the related property, goods or service or evidence of the market value of the note.

Leases -- Measuring the initial value of assets to be recorded under long-term leases and measuring the amount of lease payments and amortization of leaseholds.

Business Combinations -- Measuring the initial value of receivables, payables, liabilities, accruals, and commitments acquired or assumed in a purchase business combination. Measuring the consideration given if the consideration is in the form of long-term liabilities.

Capital assets -- Measuring the initial value of assets acquired under deferred payment contracts.

Pensions -- Measuring the actuarially computed value of the obligation to provide future pension benefits.

Insurance Reserves -- Measuring the actuarially computed value of certain future policy and claim liabilities of insurance enterprises.

Capitalized Costs -- Measuring the value of future net revenues from estimated production of oil and gas reserves to be included in the full cost ceiling test.

Admittedly, those examples do not encompass all examples of the use of discounting in the current accounting literature. In fact, a NAARS search of the accounting literature revealed many references to circumstances in which the concepts of discounting are used. The common characteristic that exists in all instances in which discounting currently is used in accounting practice is that the present value of future cash flows is considered the relevant attribute, or a surrogate therefor, in determining the amount to be initially recorded in the financial statements.

"The Use of Discounting in Financial Reporting for Monetary Items with Uncertain Terms Other than Those Covered by Existing Authoritative Literature," Issues Paper Presented by the Task Force on Discounting Applications, Accounting Standards Division, American Institute of Certified Public Accountants, No. 2439A.DA, September 9, 1987, pp. 10 - 12.

In its simplest expression, a dollar currently in hand has a higher present worth than one promised to be available only after a time lapse. Similarly, the present value of benefits today is greater than equivalent benefits, reckoned in constant dollars, expected to be received in the future. The recognized method of obtaining the present value at any moment in time is to weight the net returns from an investment by a discount factor. The discounted value per dollar should ordinarily be larger for near term returns and smaller for those more distant.¹

John V. Krutilla & Anthony C. Fisher, The Economics of Natural Environments, 1975, p. 60.

Landfill closure and postclosure care cost estimates fit in well with criteria developed through conventional practice. These costs will be incurred at a future date that can be predicted with acceptable reliability. The value of those future costs should be discounted according to standard practice.

7035.2685 COST ESTIMATES FOR CLOSURE, POSTCLOSURE CARE AND CORRECTIVE ACTION.

Subpart 1. Cost estimate requirements.

This subpart sets standard methods for estimating the costs described. The subpart is now organized into three items that deal, respectively, with estimates for closure, postclosure care and corrective action. The proposed changes amend subitems A (closure) and B (postclosure care).

¹The terms "discounting" and "present value" are often used interchangeably. The terms should not strictly be considered as the same. "Discounting" is the procedure that is used to calculate the future value that makes a pending cost/payment equivalent to a current cost/payment. "Present value" is the term used to describe the result of discounting, e.g., "The present value of future costs is \$X." However, although the two terms do not mean the same thing, a number of practitioners will use the terms interchangeably.

The proposed changes do not extend to cost estimates for corrective action. This is because the date on which corrective action will be needed cannot be estimated. Future values cannot be calculated unless there is a reference to the time period in which costs will be incurred. Corrective action costs may be incurred at any time during a landfill's operating life or during the postclosure care period. Therefore, it is not reasonable to discount corrective action cost estimates.

Item A. Closure costs.

The proposed amendment reorganizes this item and adds language to the item. An existing requirement relating to basic estimating assumptions is placed in its own subitem (1).

Subitem (2) sets standards for discounting closure cost estimates. The discounting step is only allowed to permittees who accrue cash reserves that earn interest. Permittees whose financial assurance programs do not earn interest have to work with current dollar cost estimates. The exclusion is made because the permittees excluded have chosen to account for future costs on a current dollar basis. They have either secured bonds or letters of credit that extend current dollar coverage or they have decided to use interest earned on cash accruals for purposes other than landfill closure. It is reasonable to exclude permittees who do not accrue interest earnings because the availability of interest earnings is the basis for discounting. Without that basis, discounting is invalid.

The method used to calculate present values is described in the form of an equation:

$$P = \frac{F}{(1 + i)^n}$$

in which: P = the present value,
F = the estimated cost of facility closure,
i = the interest rate, and
n = the time period in which the cost will be incurred, expressed as the number of years in the future.

An example will help demonstrate the reasons for the equation's form. Assume that Oliver wants a \$100 loan from Stanley and promises to pay Stanley ten percent interest. The interest rate is the factor that equates the \$100 Stanley lends today with the \$110 Oliver repays next year. In this example, $P = \$100$, $F = \$110$, $i = 0.10$, and $n = 1$:

$$\$100 = \frac{\$110}{(1.1)^1} = \frac{\$110}{1.1}$$

If Oliver wants the loan to last for two years, he will have to promise to repay \$121:

$$\$100 = \frac{\$121}{(1.1)^2} = \frac{\$121}{1.21}$$

This particular specification for the discounting calculation was taken from a standard engineering textbook (Eugene L. Grant & W. Grant Ireson, Principles of Engineering Economy, 5th ed., 1970, p. 34).

It is reasonable to specify the form for present value calculations so that all permittees will use the same method when discounting estimated closure costs. It is reasonable to use a form from a standard engineering text because this ensures that the method conforms with standard practice and most of the people who will make these calculations are engineers.

This subitem also specifies the source to be used in specifying a discount rate. The source is the Federal Reserve System, which sets interest rates for loans to member banks. This rate is usually referred to as "the discount rate" and it is published monthly in the Federal Reserve Bulletin.

The Federal Reserve System, usually known as the Fed, sets the nation's monetary policy. The Fed's control over policy is exercised through its control of the supply of money. The discount rate influences the money supply through its effect on interest rates charged throughout the economy. When the Fed changes the discount rate, member banks' borrowing costs change. These changes are reflected in consumer and business loans, as member banks either pass

through increased costs or pass on savings to their customers. The "ripple effect" reaches nearly all sectors of the national economy. The Fed is rather conservative in its exercise of monetary control, in large part because the effects of change are so extensive. This means that the discount rate set by the Fed does not change very often. This stability is one reason the Agency chooses to rely on the Fed's discount rate as the discount rate to be used in applying the proposed rule amendments.

Another reason for choosing the Fed's discount rate is the unsettled state of ~~state~~ of the debate over federal discount rate policy. Although the debate focuses on the correct rate to be used in evaluating federal projects, the issues raised are directly applicable to the matter of concern in this rulemaking. The reader is referred to a special issue of the Journal of Environmental Economics and Management (Volume 18, No. 2, 1990), which was devoted exclusively to the discount rate debate. Two authors provide good summaries of the status of the debate:

All agree that discount rates, like all other prices, must be tailored to particular times, locations, types of projects and methods of financing. There seems to be general consensus that the benefit-cost procedures implied by the "shadow price of capital" approach are most defensible theoretically. While the complexities and sensitivities of that approach are intimidating, the derivation of special, simplified cases seems hopeful. Under current U.S. conditions, a real rate of about 2% seems to have support, but analysts must remain sensitive to the effects of methods of financing and type of project on this figure. A defensible philosophical basis for long term, intergenerational discounting has yet to be found.

Charles W. Howe, p. S-2.

Despite an extensive literature, a consensus does not yet exist on an appropriate procedure for discounting the costs and benefits of government programs and regulations, nor on the choice of discount rates for use with any particular procedure.

Joel D. Scheraga, p. S-66.

The single correct discount rate cannot be defined for a number of reasons having to do with the variety of enterprises in the economy, the mobility of capital in international markets, current federal fiscal policies, and the multiplicity of capital markets. Absent clear guidance on a single, best rate, the Agency proposes to require permittees to use a standard rate that is both conservative and stable. The conservative rate is preferred because estimates may undervalue costs. The stable rate is preferred because price stability in the solid waste management service sector will promote orderly sectorial development.

The Fed discount rate is a reasonable choice for a standard rate because conservation and stability are reasonable criteria to use in the absence of authoritative evidence in favor of an optimal rate.

The period ("n") to be used in calculating present values is determined by the facility's design capacity. This requirement will ensure that accrued reserves closely match the demand for funds. Money to pay for final closure will not be needed until the facility uses up its permitted capacity. Annual closure plan review and adjustment will also help to match need and availability. This requirement is reasonable because it will help to make sure that accruals and prices are neither too high nor too low.

Item B. Postclosure care costs.

The provisions of the proposed amendments to this item are virtually the same as the provisions amended in item A. The rationale for these provisions is also the same.

The exception involves the specification of the discount period ("n"). This period was specified for closure costs in item A. The specification is unnecessary in this item because the postclosure care period begins right after closure. Once the date of closure is set, the date for beginning postclosure care is also set. It is reasonable to omit specification of the discount period for postclosure care costs because the specification is unnecessary.

V. SMALL BUSINESS IMPACTS

The Agency is required to consider the impacts of the proposed rules on small businesses:

Subd. 1. Definition. For purposes of this section, "small business" means a business entity, including its affiliates, that (a) is independently owned and operated; (b) is not dominant in its field; and (c) employs fewer than 50 full-time employees or has gross sales of less than \$4,000,000. For purposes of a specific rule, an agency may define small business to include more employees if necessary to adapt the rule to the needs and problems of small businesses.

Subd. 2. Impact on small business. When an agency proposes a new rule, or an amendment to an existing rule, which may affect small businesses as defined by this section, the agency shall consider each of the following methods for reducing the impact of the rule on small businesses:

- (a) the establishment of less stringent compliance or reporting requirements for small businesses;
- (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (c) the consolidation or simplification of compliance or reporting requirements for small businesses;
- (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
- (e) the exemption of small businesses from any or all requirements of the rule.

In its statement of need and reasonableness, the agency shall document how it has considered these methods and results.

Subd. 3. Feasibility. The agency shall incorporate into the proposed rule or amendment any of the methods specified under subdivision 2 that it finds to be feasible, unless doing so would be contrary to the statutory objectives that are the basis of the proposed rulemaking.

Minn. Stat. § 14.115 (1988).

Nearly all privately-owned solid waste management facilities in Minnesota qualify as small businesses under the definition in subdivision 1. Because few firms are disqualified, the Agency considers that the proposed amendments affect primarily small businesses. Because of this, small businesses cannot be exempted from some or all of the proposed amendments.

The net effect of the proposed amendments will be to lower operating costs. Discounted cost estimates will be lower than current-valued cost estimates. This means lower cash accruals for trust funds which can be translated into lower service prices or higher profits. The lowering of service prices is the expected outcome because competition and local government vigilance are likely to cause savings to be passed on to customers.

There is no justification in either the theory of discounting or in standard practice to justify a discount rate difference between small and large businesses. The proposed amendments will require permittees to demonstrate that they have applied correctly the discounting procedures set in the rule. This will require some extra work, but the added cost will be only a small fraction of the cash savings realized from discounting.

The Agency believes that the proposed rule amendments meet the requirements of Minn. Stat. § 14.115. The rules accommodate small business concerns without compromising the environmental values that are the rules' policy foundation.

VI. ECONOMIC CONSIDERATIONS

The Agency is required to take economic matters into account in its rulemaking activities:

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.

Minn. Stat. § 116.07, subd. 6.

This law has general applicability to all actions of the Agency. In the rulemaking context, this law has been interpreted by the Agency to mean that, in determining whether to adopt proposed rules or amendments, the Agency must consider, among other evidence, the impact which economic factors may have on the feasibility and practicability of the proposed rules or amendments. In the Proposed Revision to Minn. Rule APC 1, 6 MCAR § 4.0001. Relating to Ambient Air Quality Standards, the Agency discussed the requirements of Minn. Stat. § 116.07, subd. 6 as follows:

In order for the Agency to duly consider economic factors when it determines whether to adopt the amendments to Minn. Rule APC 1, the record upon which the Agency will make its determination must include data on the economic impacts of those amendments. These economic impacts, however, need not be quantified with absolute certainty in order to be considered. Further, these economic impacts may include costs other than the cost of complying with a proposed rule. For instance, material losses, crop losses, health costs, and impacts on tourism are also economic factors that should be duly considered by the Agency in determining whether to adopt the amendments to Minn. Rule APC 1.

Public policy decisions must weigh the values of competing goals. The law and the administrative interpretation cited show that the legislature and the Agency recognize the need to take into account different, sometimes competing, goals when setting environmental policy. Budget constraints in all economic sectors and at all income levels require decision makers to choose among

programs and projects that compete for scarce budget resources.

The order is a cautionary note telling the Agency to be mindful of economic and financial limits. The Agency's daily business is to serve the public in the protection and improvement of Minnesota's air, water and land resources by: assessing the state's environmental status; regulating the quality of these resources; assisting local government, industry and individuals in meeting their environmental responsibilities; and implementing strategies that will protect and enhance public health and the State's environment.

This work is not done without cost. Environmental laws and regulations impose costs on people, businesses and other institutions. Some of the state's economic capacity must be devoted to environmental protection. The Agency is directed to take care that environmental regulations do not strain the limits of available economic resources. The Agency generally takes this directive a step further, seeking least-cost regulatory solutions over affordable ones if the least-cost solution does not compromise environmental goals.

The proposed amendments are presented in this spirit. The change in federal position on financial assurance made possible the proposed change in cost estimating methods. This proposed change should be unambiguously beneficial for regulated firms and governments. The discounted cost estimates will be lower than current-valued cost estimates. This should lead, in most cases, to lower prices for landfill services. As noted in the previous section, the savings are expected to be passed on to waste generators. The resulting increase in disposable income should prove beneficial to regional economies.

It should be noted that the proposed amendments will not stimulate an economic boom. The likely beneficial impacts are not expected to be great enough to cause a noticeable increase in output or employment.

VII. IMPACTS ON AGRICULTURAL LANDS

The Agency is required to consider the impacts of proposed rules on agricultural lands:

If the Agency proposing the adoption of the rule determines that the rule may have a direct and substantial adverse impact on agricultural land in the state, the Agency shall comply with the requirements of sections 17.80 to 17.84.

Minn. Stat. § 14.11, subd. 2 (1988).

The definition of adverse impact which applies in this case is:

"Action which adversely affects" means any of the following actions taken in respect to agricultural land which have or would have the effect of substantially restricting the agricultural use of the land: (1) acquisition for a nonagricultural use except acquisition for any unit of the outdoor recreation system described in section 86A.05, other than a trail described in subdivision 4 of that section; (2) granting of a permit, license, franchise or other official authorization for nonagricultural use; (3) lease of state-owned land for nonagricultural use except for mineral exploration or mining; or (4) granting or loaning of state funds for purposes which are not consistent with agricultural use.

Minn. Stat. § 17.81, subd. 2 (1988).

The legislature has set agricultural land policies that guide administrative agencies' rulemaking efforts and determinations of adverse impact:

It is the policy of the state to preserve agricultural land and conserve its long-term use for the production of food and other agricultural products by:

- (a) Protection of agricultural land and certain parcels of open space land from conversion to other uses;
- (b) Conservation and enhancement of soil and water resources to ensure their long-term quality and productivity;
- (c) Encouragement of planned growth and

development of urban and rural areas to ensure the most effective use of agricultural land, resources and capital; and

(d) Fostering of ownership and operation of agricultural land by resident farmers.

Minn. Stat. § 17.80, subd. 1 (1988).

The Agency finds that the proposed rules will not cause any adverse impacts on agricultural lands. The proposed rule amendments apply to cost estimates made by owners or operators of mixed municipal solid waste land disposal facilities. Some farm firms may realize slight decreases in solid waste disposal costs, but the impact should not be great enough to affect the amount of land in farms or any of the other measures defined by law.

VIII. CONCLUSION

The Agency staff has in this document made its presentation of facts establishing the need for and reasonableness of the proposed rule amendments governing the estimation of closure and postclosure care costs at mixed municipal solid waste land disposal facilities. This document constitutes the Agency's statement of need and reasonableness for the proposed rule amendments.

Based on the foregoing, the proposed changes to Minn. Rules pt. 7035.2685 are both needed and reasonable.

Dated: October 12, 1990

for Barbara Lindsey Sims
Gerald L. Willet
Commissioner