

**STATE OF MINNESOTA  
MINNESOTA POLLUTION CONTROL AGENCY**

**In the Matter of the  
Proposed Rule Amendments  
Governing Household Hazardous  
Waste Management Plans Submitted  
by Solid Waste Management Facilities,  
Minn. Rules Parts 7001.3300, 7035.0300,  
and 7035.2535 and Proposed Rule  
Amendments Governing Treatment Methods  
for Collected Household Hazardous Waste,  
Minn. Rules Part 7045.0310.**

**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 and solid waste. Specifically, the amendments the Agency is proposing pertain to the following:

- A. Requirements for household hazardous waste management plans that are to be submitted by the operators of solid waste management facilities.
- B. Requirements regarding treatment of household hazardous waste at household hazardous waste collection sites.

In 1989 the Select Committee on Recycling and the Environment (SCORE) proposed legislation to require the operators of solid waste and resource recovery facilities to develop plans for the management of household hazardous waste. The resulting legislation required that there be three main components addressed in the plans: public education, a reduction strategy, and storage and disposal.

The goals of this legislation are to reduce solid waste in general and to prevent to the extent possible, household hazardous wastes from being disposed in landfills or incinerators where they have the potential to cause environmental damage. The Agency is proposing rules to address this goal, as mandated by the legislation.

The second amendment addressed in this rulemaking pertains to treatment methods for collected household hazardous waste. Treating household hazardous waste at the collection site can help to reduce the cost of operating a collection program. Cost is a valid reason for considering less stringent regulation of a process or operation. However, some types of treatment are more complex and have more hazards associated with them and therefore warrant more stringent regulation. The Agency is proposing amendments to address this issue and provide an acceptable standard of waste management.

This Statement of Need and Reasonableness is divided into eight parts. Following this introduction, Part II explains the Agency's statutory authority. 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 proposed amendments will provide requirements for household hazardous waste management plans submitted by the operators of solid waste disposal facilities and resource recovery facilities and will govern the treatment methods allowed at household hazardous waste collections. The Agency is given authority for these rulemakings under the Waste Reduction and Recycling Act, Article 20, Sec. 19, subd. 4.k. and Minn. Stat. § 116.07, subd. 4, respectively.

### 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 lend itself to evaluation of each proposed revision. The need for the proposed amendments is discussed below.

The 1989 SCORE legislation amended Minn. Stat. § 116.07 (see Exhibit 1). The legislation says, "the agency shall adopt rules to require the owner or operator of a solid waste disposal facility or resource recovery facility to submit a management plan for the separation of household hazardous waste from solid waste prior to disposal or processing and for the proper disposal of the waste." Agency in this context means the Minnesota Pollution Control Agency. The directive of the statute establishes the need for the amendments relating to household hazardous waste management plans.

During a previous rulemaking to establish regulations governing household hazardous waste collection programs (Minn. Rules pt. 7045.0310), the issue of treatment procedures for household hazardous waste was discussed. There was debate between the Agency staff and the regulated community as to what types of treatment should be allowed to be done on-site at the household hazardous waste collection site. This issue remained unresolved at the time of the initial rulemaking. At that time Agency staff decided that further study of treatment procedures and practices was needed in order to adequately address the issue and that the issue of waste treatment would be addressed in a future rulemaking.

The Agency feels that the proposed amendments addressing household hazardous waste management plans are needed in order to fulfill the statutory requirement. The amendments addressing acceptable treatment methods at household hazardous waste collection sites are necessary to resolve an outstanding issue from a previous rulemaking.

#### 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. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Agency's proposed action. The reasonableness of the proposed amendments is discussed below.

##### A. General Reasonableness of the Proposed Amendments

The SCORE legislation requires that the Agency adopt rules governing household hazardous waste management plans submitted by solid waste disposal facilities and resource recovery facilities. The statute requires three main components to be addressed in the plan. The Agency, in developing the rules, used those three components as guidelines. Because solid waste management facilities are not operated exactly the same, the Agency intends that the proposed rules be broad enough to allow a reasonable level of flexibility among plans. Also, since each county is required to have a household hazardous waste management plan, the Agency feels it is reasonable to require that each facility plan be consistent with the county plan. Thus, the same information would be provided to the public and compatible measures taken to achieve the goal of proper management of household hazardous waste.

Because solid waste disposal facilities are regulated by these rules, the Agency believes it is appropriate to locate them in the solid waste chapter pertaining to permit application requirements.

Household hazardous waste collection programs are expensive to operate. A major expense comes from sending the collected wastes off site to be treated. One way of reducing the cost of the operation can be through on-site treatment of wastes by collection program staff. On-site treatment may reduce the volume of waste or actually eliminate its hazardous characteristics and must be addressed as a reasonable means of reducing the cost of operating a household hazardous waste collection program. The proposed amendments are reasonable because they allow the option of treatment of household hazardous waste on site and establish appropriate regulation so as to ensure that it can be done in a manner to protect human health and the environment.

B. Minn. Rules pt. 7035.0300 - Definitions

There are four terms defined in the proposed rules. The term "household hazardous waste" has been defined previously in the Waste Management Act (Minn. Stat. § 115A.96, subd. 1.b.) and the same definition is used in this proposed rule. It is reasonable to use the same definition to maintain consistency with the Waste Management Act and the proposed rules.

The term "solid waste management facility" has been defined in the solid waste rules (Minn. Rules pt. 7035.0300, subp. 103). Although the statute refers to "solid waste disposal facilities" and "resource recovery facilities" the proposed amendments instead rely on the definition of solid waste management facility. Solid waste disposal facility and resource recovery facility are not defined in any of the current Minnesota rules. Because solid waste management facility is rather broadly defined, the Agency believes it is appropriate to modify it in these rules to incorporate both types of facilities. The Agency feels that this is a more appropriate term to use. The Agency has changed the definition so that for purposes of this proposed rule, facilities which are included in the definition of "solid waste management facility" are: landfills,

incinerators, compost, and refuse derived fuel facilities operated for the management, treatment, storage and disposal of hazardous waste. All of these types of facilities manage solid waste in some manner and are within the intent of the legislation. Both "household hazardous waste" and "solid waste management facility," although defined elsewhere, are reasonably repeated in the proposed rule for clarity of understanding.

The term "facility" simply refers to solid waste management facility and is reasonably used in this proposed rule for brevity.

The term "segregated household hazardous waste" has been defined to mean household hazardous waste that is separated or arrives at the facility separate from the solid waste. Some facilities will separate certain types of wastes that will not go through the processing machines or that should not be in the solid waste, such as carpets or large metal parts, car batteries, and oil. They will in some cases also separate household hazardous waste. Also, haulers and individuals sometimes bring in special types of wastes that are separate from the solid waste. The separated wastes may include household hazardous wastes.

The proposed amendments do not require facility operators to separate the household hazardous waste from the solid waste. The proposed amendments only require that there be an effort made to identify and prevent household hazardous waste from entering the facility. This may be achieved through education as a reduction strategy, and in the event that household hazardous waste is identified at the facility and segregated, through managing it according to the requirements of Minn. Rules pt. 7035.2535, subp. 4.

It is reasonable to define these terms so that there can be a common understanding of the subject of these rules.

C. Minn. Rules pt. 7035.2535 - General Solid Waste Management Facility Requirements

Subpart 6 establishes an entirely new rule to address household hazardous waste management. This subpart establishes the applicability of the requirements and reiterates the directive of the statute, which is that facility operators are to submit a household hazardous waste management plan. However, the statute is not clear whether these plans are to be submitted at the time of permit renewal or by June 30, 1992. Solid waste facility permits are renewed every five years. Since facilities have varying time remaining before their permit renewal date, the Agency believes that all facility operators should be required to submit these plans on a set date in order to give all facility operators an equal amount of time to prepare their plan. That date will be June 30, 1992. After that date, the statute prohibits the Agency from issuing permits which do not address the requirements of these proposed rules.

The proposed requirements for the household hazardous waste management plan have four elements, each of which is discussed below.

Item 1. Consistency with County Plans. A separate amendment in the SCORE legislation (Article 20, Sec. 16, subd. 6) requires all counties to develop a household hazardous management plan and to include that plan in each county's solid waste master plan. The counties are to submit these plans to the Office of Waste Management.

Since the SCORE legislation pertaining to county and facility household hazardous waste management plans have similar requirements, it is reasonable that rules governing these programs ensure that both the county and facility plans are similar. Each county is responsible for managing the solid waste produced in the county. For this reason the county plan is the model that should be followed by all facilities within the county. Consistency of these

plans is necessary and reasonable to ensure that conflicting information is not being given out to the public regarding household hazardous waste. In many cases, the only facilities within the county will be owned and operated by the county and there is a reasonable assurance that their activities will be coordinated with the county plan. However, many facilities will be privately owned and the rules must ensure that coordination will take place.

Item 2. Public Education. The requirement for a "reduction strategy" is intended to promote an effort on the part of facility operators and the county to take as many steps as possible to prevent household hazardous wastes from entering the facility. Because public education is the primary means of reducing household hazardous waste that enters the solid waste stream and consequently solid waste disposal facilities, a public education program constitutes a reduction strategy.

Raising public awareness as to which household products are hazardous is the main tool in preventing improper disposal of this waste. If people realize the potential environmental damage household hazardous waste can cause, and if people are provided with services for proper disposal of this waste, then the likelihood of household hazardous waste disposal in the solid waste stream is reduced. It is reasonable to provide education to facilitate the removal of household hazardous waste and prevent subsequent environmental damage. Also, it is reasonable to coordinate this educational phase with existing or planned county activities to eliminate conflict or duplicative requests.

The Agency believes there are two ways to meet the requirements of the education element of the household hazardous waste management plan. Facilities can either develop their own educational materials and implement the distribution of these materials with the concurrence of the county, or facilities can contribute funds toward the county's household hazardous waste



program. Since the county must have a plan for managing household hazardous waste and since facility household hazardous waste plans need to be consistent with the county's plan, it would be duplicating efforts to require two educational plans. As long as facility operators participate in public education regarding household hazardous waste either through contributions to the county plan or through coordinated but separate efforts, the Agency believes this meets the educational component of the household hazardous waste management plan.

There are certain pieces of information regarding household hazardous waste that the Agency feels are particularly important to include in information given out to the public.

Subitem (a) requires that information regarding the dates and times of household hazardous waste collections must be provided. In order to be able to dispose of household hazardous waste properly, people need to know where and when to bring their household hazardous wastes for collection. This information may be in any form that will convey the necessary information, for example, brochures, posters, signs or other types of public announcements.

Subitem (b) requires that information be provided to give examples of the types of household hazardous wastes that can found in the home. In developing the amendments, MPCA staff went on tours of various resource recovery facilities. In speaking with the employees of these facilities, it became clear that many of them did not know what types of materials constituted household hazardous wastes. The same situation holds for the general public. People need to know what to look for before they can deal with it correctly.

Subitem (c) requires that the information give examples of ways to reduce household hazardous waste generation. Recycling, using non-toxic substitutes, or giving away unused portions are some of the methods that will help to reduce the disposal of household hazardous wastes.

Subitem (d) requires that the information mentioned above be made available to the general public and others associated with solid waste management. Public education will only be effective if it is made available and used by those people who could have an effect on the problem.

Based on the explanations of subitem 2, and subitems (a) to (d) stated above, and the statutory requirements, the Agency believes that these requirements are reasonable and will provide an acceptable level of environmental protection.

Item 3. Storage and Disposal of Segregated Household Hazardous Waste.

This subdivision references Minn. Rules pt. 7045.0310. Part 7045.0310 establishes the special storage and disposal requirements that are part of the hazardous waste rules governing household hazardous waste collection programs. In the event that household hazardous waste is separated at a facility, operators will need to manage this waste correctly. Since the statute requires rules for storage and disposal of household hazardous waste in the plan, and rules regarding this have already been developed, the Agency feels it is necessary and reasonable to directly reference Minn. Rules pt. 7045.0310.

D. Minn. Rules pt. 7001.3300 - Permits

The SCORE legislation requires that a solid waste permit may not be renewed if a household hazardous waste management plan is not submitted. The statute makes the household hazardous waste management plan a condition of the solid waste facility permit. The Agency believes it is therefore reasonable to include this condition in the part of the solid waste rules pertaining to solid waste facility permit requirements.

E. Minn. Rules pt. 7045.0310, subp. 7. - Treatment

Household hazardous waste, once collected, is either sent to a permitted hazardous waste treatment facility or a hazardous waste disposal

facility. Household hazardous waste can be treated so as to reduce the volume, reclaim the waste, or render it nonhazardous. However, the hazardous waste rules require that anyone conducting treatment activities must obtain a hazardous waste permit. Currently, household hazardous waste collection programs are not allowed to perform any type of treatment on the collected household hazardous waste unless a permit is obtained.

County representatives who operate household hazardous waste collection programs raised the issue of allowing unpermitted on-site treatment of the collected wastes by program staff. These representatives stated that treatment methods such as bulking of similar waste types, acid-base neutralization, and solvent distillation can be done safely by trained collection staff. Allowing this would significantly reduce the costs paid by the sponsors of household hazardous waste collection programs for off-site treatment at permitted hazardous waste treatment facilities.

Agency staff studied the treatment methods that may be applied to household hazardous waste. After reviewing the procedures it became clear that some procedures, such as distillation and neutralization, had sufficient hazard associated with them to warrant some regulation.

Combining similar wastes from smaller containers into a larger container may technically be considered treatment. Combining or "bulking" household hazardous wastes is beneficial in terms of space at a collection site and in terms of ease of transport of these wastes. There are few hazards associated with bulking the same types of wastes into one container.

The proposed rule therefore allows bulking as a treatment which does not require the Commissioner's approval. Other types of treatment will be allowed on a case-by-case basis, conditional upon approval of the Commissioner.

The Agency believes this requirement to be reasonable.

#### V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1988) requires the Agency, when proposing rules which may affect small businesses to consider the following methods for reducing the impact 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.

The proposed rules will not have any effect on small businesses because there are no reporting requirements in this rule or design or operational standards. There is a deadline for compliance with regard to submitting a household hazardous waste management plan. Renewal of the solid waste facility permit is contingent upon submittal of this plan to the Agency. The deadline for submittal is July 1, 1992. This allows more than a year to comply with this requirement. The Agency feels that this is not a stringent deadline. The rule requirements allow all facility operators options for developing and implementing the plans. Considering these factors, these proposed rules will not create undue burden on small business facilities.

#### 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 the requirements of these amendments, the Agency has given due consideration to available information as to any economic impacts the proposed amendments would have. The major effect of the proposed amendments will be the cost to solid waste facilities of producing the information on household hazardous waste and possibly extra staff time for hauler and employee household hazardous waste management training. The costs of producing the public information would only be that of purchasing already developed materials from the county.

There may be costs in extra staff time and materials that would need to be provided, for the training of haulers and employees in the identification and proper management of household hazardous waste. The training could be done by in-house staff or coordinated with county staff or staff of the Minnesota Pollution Control Agency. These costs are expected to be minimal.

Certain types of treatment of household hazardous waste are allowed under the proposed rules. This represents a less stringent standard because currently all household hazardous wastes are to be treated off-site at a permitted hazardous waste treatment facility. Allowing treatment of collected household hazardous wastes on site by collection program staff results in an economic benefit, because the money that would be paid to a facility for treatment and disposal services can be reduced.

Household hazardous waste segregated at a solid waste facility has to be managed according to Minn. Rules pt. 7045.0310. Those household hazardous wastes which cannot be reused or recycled must be disposed of at a hazardous

waste disposal facility. The cost of this type of disposal can be significant and would have to be the responsibility of the facility managing the segregated household hazardous waste. However, because the separation of household hazardous waste is not required, facilities may not have to bear this cost.

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 Solid Waste and Hazardous Waste rules. This document constitutes the Agency's Statement of Need and Reasonableness for the proposed amendments to Minn. Rules pts. 7001.3300, 7035.0300, 7035.2535, and 7045.0310.

VIII. LIST OF EXHIBITS

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

<u>Agency Ex. No.</u>	<u>Title</u>
1	Waste Reduction and Recycling Legislation (SCORE legislation) 1989, Article 20, Sec. 19, Subd. 4.k.
2	Minn. Rules pt. 7045.0310

Date:

September 13, 1990

*Gerald L. Willet*  
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Commissioner