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10/7/91

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rule Amendments Governing Land Disposal Restrictions for Hazardous Waste, Minn. Rules Parts 7001.0520, 7001.0650, 7045.0020, 7045.0075, 7045.0131, 7045.0135, 7045.0139, 7045.0214, 7045.0292, 7045.0458, 7045.0478, 7045.0532, 7045.0534, 7045.0536, 7045.0538, 7045.0552, 7045.0564, 7045.0584, 7045.0630, 7045.0632, 7045.0634, 7045.0638, 7045.0665, 7045.1300, 7045.1305, 7045.1308, 7045.1309, 7045.1310, 7045.1315, 7045.1320, 7045.1325, 7045.1330, 7045.1333, 7045.1335, 7045.1339, 7045.1340, 7045.1350, 7045.1355, 7045.1358, 7045.1360, and 7045.1380

STATEMENT OF NEED
AND REASONABLENESS

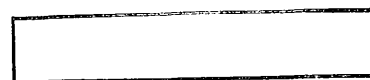
I. INTRODUCTION

The subject of this proceeding is the amendment of Minnesota Rules governing hazardous wastes. The Minnesota Pollution Control Agency (hereinafter "MPCA") proposes to incorporate federal hazardous waste program amendments restricting the land disposal of untreated hazardous wastes (hereinafter "Land Disposal Restrictions" or "LDR").

When the U.S. Congress enacted the Hazardous and Solid Waste Amendments of 1984 (hereinafter "HSWA") to the Resource Conservation and Recovery Act (hereinafter "RCRA"), it prohibited the land disposal of untreated hazardous wastes beyond specified dates. This led the U.S. Environmental Protection Agency (hereinafter "EPA") to conduct five major rulemakings. The first two rulemakings promulgated two sets of LDRs for certain high priority wastes and the overall regulatory framework for future LDRs. The MPCA incorporated these amendments into Minnesota Rules in 1988. The EPA divided the remaining wastes

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to be LDR regulated into the remaining three rulemakings called first, second, or third thirds. This rulemaking addresses these three "thirds" and the amendments and corrections thereto.

The EPA promulgated the LDR amendments under authority of HSWA except for two minor provisions dealing with permits which are under RCRA authority. Under federal law, amendments promulgated under HSWA are effective in the states under federal authority on their effective date. At this time, the LDRs are effective in Minnesota under federal authority. The effect of incorporating these LDRs into Minnesota Rules is to shift the primary enforcement authority to the state.

The MPCA applied for and received EPA authorization to administer the state's hazardous waste program as equivalent to, and in lieu of, the federal program. The EPA requires the MPCA to revise its program by adopting those federal program elements which are more stringent in order to maintain the state's hazardous waste program authorization. In this rulemaking, the MPCA is incorporating the LDR amendments as required with minor changes as needed for consistency with Minnesota Rules.

This Statement of Need and Reasonableness is divided into seven parts. Following this introduction, Part II contains the MPCA's explanation of the need for the proposed amendments. Part III discusses the reasonableness of the proposed amendments. Part IV documents how the MPCA has considered the methods of reducing the impact of the proposed amendments on small businesses as required by Minn. Stat. § 14.115 (1990). Part V discusses the economic factors the MPCA considered in adopting the amendments as required by Minn. Stat. § 116.07, subd. 6 (1990). Part VI sets forth the MPCA's conclusion regarding the amendments. Part VII contains a list of exhibits relied on by the MPCA to

support the proposed amendments. The exhibits are available for review at the MPCA's offices at 520 Lafayette Road North, St. Paul, Minnesota 55155.

Minn. Stat. ch. 14 (1990) 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.

II. NEED FOR THE PROPOSED AMENDMENTS

Need is a broad test that does not lend itself to evaluation of each proposed revision. Broadly, the need to amend Minnesota's hazardous waste rules governing LDR is based in the RCRA, as amended. The RCRA allows EPA to delegate authority to the states to administer their hazardous waste programs in lieu of the federal program when they are determined to be equivalent to EPA's program (here, equivalent means the state program is at least as restrictive and broad in scope as its federal counterpart). Program authorization facilitates shared and coordinated law enforcement between the MPCA and EPA which results in greater program effectiveness.

Through application, the EPA has determined Minnesota's hazardous waste program to be equivalent to the federal program and has authorized the MPCA to administer its program in lieu of EPA's program. Incorporating these amendments is necessary in order to maintain equivalency following changes in the EPA's program establishing the LDR regulations. The MPCA must make its program equivalent in order to maintain EPA authorization.

III. REASONABLENESS OF THE PROPOSED AMENDMENTS

The MPCA is required by Minn. Stat. ch. 14 (1990) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. The EPA promulgated the LDR regulations under due public process and they are effective in Minnesota under federal authority. Since the EPA made a presentation of facts in promulgating these regulations and, since the MPCA is incorporating these regulations without substantive change, the MPCA refers the reader to the preamble published in the Federal Register for each regulation, amendment, or correction for the presentation of need, reasonableness, and economic impact. The appropriate Federal Registers are listed below. The affected Minnesota Rule parts, also listed below, refer the reader to the applicable Federal Register(s) via the letter assigned. These Federal Registers are available for review at the MPCA and can be obtained through local libraries. The MPCA provides its own discussion of reasonableness in this document where the MPCA program differs substantively from the federal program.

In general, minor modifications to federal language which make it appropriate in the context of Minnesota Rules is reasonable to make the language clear and understandable. Where required, it is reasonable to renumber Minnesota Rule subparts, items, subitems, units, and subunits to accommodate resequencing and insertion of appropriate language in order to maintain readability and clarity. Also, Minnesota is more stringent than EPA in that it has not allowed underground injection of hazardous waste and it is reasonable that Minnesota would not adopt LDR language regarding injection since it does not apply.

FEDERAL REGISTERS GOVERNING LDR IN THE PERIOD COVERED BY THIS RULEMAKING:

<u>Volume</u>	<u>Pages</u>	<u>Date</u>	<u>Title</u>	<u>Checklist</u>
(A) 53	31138-31222	8/17/88	LDR for First Third Scheduled Wastes	50
(B) 54	8264-8266	2/27/89	LDR (Amendment)	50
(C) 54	9596-9609	3/7/89	Changes to Interim Status Facilities for Hazardous Waste Management; Modifications of Hazardous Waste Management Permits; Procedures for Post-Closure Permitting	61
(D) 54	18836-18838	5/2/89	LDR (Amendments to First Third Scheduled Wastes)	62
(E) 54	25416-25423	6/14/89	Underground Injection Control Program: Hazardous Waste Disposal Injection Restrictions, Additional Effective Dates; First Third Wastes	NA
(F) 54	26594-26652	6/23/89	LDR for Second Third Scheduled Wastes	63
(G) 54	36967-36972	9/6/89	LDR; Correction to First Third Scheduled Wastes	66
(H) 55	22520-22720	6/1/90	LDR for Third Third Scheduled Wastes	78
(J) 55	23935	6/13/90	LDR (Amendments)	66
(K) 55	33693-33694	8/17/90	Underground Injection Control Program; Hazardous Waste Injection Restrictions, LDR for Third Third Scheduled Wastes; Correction	NA
(L) 55	3864-3928	1/31/91	LDR for Third Third Scheduled Wastes; Corrections	83

Following is a sequential listing of the Minnesota Rule parts affected by this rulemaking and the corresponding Federal Register(s) from the above list (reasonableness is discussed where Minnesota differs substantially from the EPA):

A. MINNESOTA RULES CHAPTER 7001--PERMITS

1. Rules Governing Hazardous Waste Facility Permits:

a. MINN. RULES PT. 7001.0520 PERMIT REQUIREMENTS: (C).

Subpart 7 adds conditions under which the commissioner may deny permits.

b. MINN. RULES PT. 7001.0650 INTERIM STATUS: (C). Subpart 5

cites are corrected to accommodate new item F and language is clarified.

Item B incorporates conditions under which the commissioner will approve

design capacity under interim status. Item E adds conditions under which changes may be made for interim treatment, storage, or disposal under federal authority. Item F adds conditions under which reconstruction is allowed. Subpart 7 incorporates a cite correction.

B. MINNESOTA RULES CHAPTER 7045--HAZARDOUS WASTE

1. Rules Governing Definitions, References, & Other Standards:

a. MINN. RULES PT. 7045.0020 DEFINITIONS: (H). Definitions for the following terms are added: inorganic solid debris, installation inspector, nonwastewater, onground tank, and wastewater in subparts 45a, 45b, 59b, 59d, and 102c, respectively. Subpart 59b is renumbered to 59c.

b. MINN. RULES PT. 7045.0075 PETITIONS: (A) & (B). Subpart 9 and item B add requirements for monitoring plans to be provided in petitions to allow land disposal of a prohibited waste. Item C adds a requirement to report changes in conditions affecting petitions. Item D adds requirements applicable in the event of migration of hazardous constituents from a regulated unit. Subsequent items are renumbered.

2. Identification and Listing of Hazardous Waste:

a. MINN. RULES PT. 7045.0131 CHARACTERISTICS OF HAZARDOUS WASTE: (H). Subpart 1 adds a requirement that generators must use all applicable hazardous waste numbers. Subpart 2, item C deletes the previous exception to the requirement to assign hazardous waste numbers for ignitable listed wastes (wastes exhibiting the characteristic of ignitability are assigned a waste number even if listed). Subpart 3, item B deletes the previous exception to the requirement to assign hazardous waste numbers for oxidizing listed wastes. Subpart 4, item B deletes the previous exception to the requirement to assign hazardous waste numbers for corrosive listed wastes. Subpart 5, item H deletes

the previous exception to the requirement to assign hazardous waste numbers for reactive listed wastes. Subpart 6, item A, subitem (4) corrects a language error of redundancy; this is reasonable in order to provide clarity in the rules and does not change the intent of the original rule. Subpart 6, item D deletes the previous exception to the requirement to assign hazardous waste numbers for lethal listed wastes. Subpart 7, item B deletes the previous exception to the requirement to assign hazardous waste numbers for toxic listed wastes.

b. MINN. RULES PT. 7045.0135 LISTS OF HAZARDOUS WASTE: (H).

Subpart 2 incorporates a cite correction. Items T and U correct renumbering. Item V adds a new waste to the list of wastes from nonspecific sources. The newly added waste, number F039, addresses leachate resulting from more than one restricted waste.

c. MINN. RULES PT. 7045.0139 BASIS FOR LISTING HAZARDOUS WASTES:

(H). Subpart 2, item A, subitems (20) and (21) are corrected to address renumbering. Subitem (22) provides the basis for listing F039 wastes.

3. Standards Applicable to Generators of Hazardous Waste:

a. MINN. RULES PT. 7045.0214 EVALUATING OF WASTES: (H). In subpart 2, both item B and subitem (1) are clarified with improved language.

b. MINN. RULES PT. 7045.0292 ACCUMULATION OF HAZARDOUS WASTE:

(H). In subpart 1, item H adds requirements of Minn. Rules pt. 7045.1315 to the conditions for accumulating hazardous waste on-site without a permit.

4. Facility Standards:

a. MINN. RULES PT. 7045.0458 WASTE ANALYSIS REQUIREMENTS: (A), (B), & (H). Subpart 2, item H, subitem (3) is modified to prohibit the land disposal of certain residues removed annually from surface impoundments.

b. MINN. RULES PT. 7045.0478 OPERATING RECORD: (A) & (B).

Subpart 3, item M clarifies language and adds to the records required to be maintained for the certification and demonstration requirement under Minn. Rules pt. 7045.1308, along with notice requirements under Minn. Rules pt. 7045.1315 for an extension to an effective date under LDR. Items N, O, P, and Q are similarly modified to address Minn. Rules pt. 7045.1308 certification and demonstration requirement and to clarify language for off-site and on-site treatment facilities and for off-site and on-site land disposal facilities, respectively. New items R and S are added to address these requirements for off-site and on-site storage facilities.

c. MINN. RULES PT. 7045.0532 SURFACE IMPOUNDMENTS: (H).

Subpart 8 adds the requirement that the waste and the surface impoundment must meet the LDR requirements of Minn. Rules pts. 7045.1300 to 7045.1380.

d. MINN. RULES PT. 7045.0534 WASTE PILES: (H). Subpart 8 adds the requirement that ignitable or reactive wastes may only be placed in a waste pile if the waste and the pile meet the LDR requirements of Minn. Rules pts. 7045.1300 to 7045.1380.

e. MINN. RULES PT. 7045.0536 LAND TREATMENT: (H). Subpart 9 adds the requirement that ignitable or reactive wastes may only be applied to a land treatment zone if the waste and the treatment zone meet the LDR requirements of Minn. Rules pts. 7045.1300 to 7045.1380.

f. MINN. RULES PT. 7045.0538 LANDFILLS: (H). Subpart 8, item A replaces the conditions which allowed treatment of ignitable or reactive waste to remove hazardous characteristics with the LDR requirement to comply with Minn. Rules pts. 7045.1300 to 7045.1380. Item B incorporates an exception that ignitable wastes, that might otherwise be land disposed in accordance with

item B, but which are prohibited wastes subject to LDR treatment standards under Minn. Rules pts. 7045.1350 to 7045.1360, cannot be so disposed.

Subpart 12, new item F adds the requirement to dispose of lab-packs in compliance with Minn. Rules pts. 7045.1300 to 7045.1380 and adds conditions for the use of fiber drums and their incineration.

5. Interim Status Standards:

a. MINN. RULES PT. 7045.0552 FACILITIES GOVERNED BY INTERIM

STATUS: (H). Subpart 1 incorporates language clarifying that LDR requirements are considered "material conditions" for all interim status rules, Minn. Rules pts. 7045.0552 to 7045.0642.

b. MINN. RULES PT. 7045.0564 WASTE ANALYSIS REQUIREMENTS: (A) &

(B). Subpart 2, item H, subitem (3) is modified to prohibit the land disposal of certain residues removed annually from surface impoundments.

c. MINN. RULES PT. 7045.0584 OPERATING RECORD: (A) & (B).

Subpart 3, item J incorporates requirements to keep records from petition conditions under Minn. Rules pt. 7045.0075, subp. 9, certificate and demonstration records required under Minn. Rules pt. 7045.1308, and notice records required under Minn. Rules pt. 7045.1315. Items K, L, M, and N are similarly modified to address Minn. Rules pt. 7045.1308 certification and demonstration requirements and the waste analysis requirements under Minn. Rules pt. 7045.1315, and to clarify language for off-site and on-site treatment facilities and for off-site and on-site land disposal facilities, respectively. New items O and P are added to address these requirements for off-site and on-site storage facilities.

d. MINN. RULES PT. 7045.0630 SURFACE IMPOUNDMENTS: (H).

Subpart 5, item B corrects Minnesota Rule language to be gender neutral; this

is reasonable because these rules do not have a gender neutral disclaimer and should portray the gender neutrality intended in the rules. Subpart 7 adds the requirement that both the waste and the surface impoundment must meet the LDR requirements of Minn. Rules pts. 7045.1300 to 7045.1380.

e. MINN. RULES PT. 7045.0632 WASTE PILES: (H). Subpart 5 adds the requirement that ignitable or reactive wastes may only be placed in a waste pile if the waste and the pile meet the LDR requirements of Minn. Rules pts. 7045.1300 to 7045.1380.

f. MINN. RULES PT. 7045.0634 LAND TREATMENT: (H). Subpart 9 adds the requirement that ignitable or reactive wastes may only be applied to a land treatment zone if the waste and the treatment zone meet the LDR requirements of Minn. Rules pts. 7045.1300 to 7045.1380.

g. MINN. RULES PT. 7045.0638 LANDFILLS: (H). Subpart 5, item A replaces the conditions which allowed treatment of ignitable or reactive waste to remove hazardous characteristics with the requirement to comply with Minn. Rules pts. 7045.1300 to 7045.1380. Item B incorporates an exception that ignitable wastes, that might otherwise be land disposed in accordance with item B, but which are prohibited wastes subject to LDR treatment standards under Minn. Rules pts. 7045.1350 to 7045.1360, cannot be so disposed. Subpart 9, new item F adds the requirement to dispose of lab-packs in compliance with Minn. Rules pts. 7045.1300 to 7045.1380 and adds conditions for the use of fiber drums and their incineration.

6. Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities:

a. MINN. RULES PT. 7045.0665 USE CONSTITUTING DISPOSAL: (A) & (B). Subpart 1 is restructured by combining items A and B into the text of the

first paragraph. Language is also clarified by changing an out of context noun to its verb form. This is reasonable for improved clarity. The second paragraph incorporates clarifications and language requiring products containing chemically incorporated and bound recyclable materials to conform with treatment standards in Minn. Rules pts. 7045.1350 to 7045.1360 or prohibition levels in Minn. Rules pt. 7045.1330 or RCRA section 3004(d). Commercially produced fertilizers are not subject to regulation provided they meet the specified treatment or prohibition levels. The rules provide one exception. Fertilizers containing zinc from the use of K061 hazardous wastes are exempt without meeting those levels at this time.

7. Land Disposal Restrictions:

a. MINN. RULES PT. 7045.1300 LAND DISPOSAL RESTRICTIONS;

APPLICABILITY AND EXEMPTIONS: (A), (B), & (H). Subpart 2 is clarified and the word prohibited is replaced with the word "restricted". Items C, D, and E listing are deleted. Subpart 3 is added to provide the term "other exemptions."

b. MINN. RULES PT. 7045.1305 DILUTION PROHIBITED AS A SUBSTITUTE FOR TREATMENT: (H). The first paragraph is turned into item A and refers to exceptions provided in added item B which describes conditions for dilution under the U.S. Clean Water Act.

c. MINN. RULES PT. 7045.1308 LANDFILL AND SURFACE IMPOUNDMENT DISPOSAL RESTRICTIONS: (A), (B), & (H). Subpart 1 adds requirements for wastes generated prior to May 8, 1990. Subpart 2 adds requirements for the review of certification demonstrations. Subpart 3 adds requirements for facilities subject to certification demonstrations. Subpart 4 adds conditions for when land disposal is authorized.

d. MINN. RULES PT. 7045.1309 SPECIAL RULES REGARDING WASTES THAT EXHIBIT A CHARACTERISTIC: (H). Subpart 1 adds requirements for when to assign applicable waste codes. Subpart 2 adds conditions for meeting treatment standards. Subpart 3 adds conditions for land disposal. Subpart 4 adds waste analysis requirements.

e. MINN. RULES PT. 7045.1310 TREATMENT SURFACE IMPOUNDMENT EXEMPTION: (A) & (B). Subpart 1 is modified to incorporate better organization and clarifying language; this is reasonable because it clarifies the rule and makes it more understandable; language also specifies when residues must be removed annually and when they may be transferred to another surface impoundment.

f. MINN. RULES PT. 7045.1315 WASTE ANALYSIS FOR RESTRICTED WASTES: (A), (B), & (H). Subpart 1 adds and corrects language to clarify when and how this part applies. Requirements are also added for generators to develop and follow a waste management plan, when and how to retain testing records, certification for lab packs, and tolling agreements for small quantity generators. Subpart 2 is reorganized and renumbered for clarity and language is added and corrected to provide conditions for treatment facilities testing their wastes. Notice conditions and information are also clarified and corrected and a new category for certification of wastes with treatment standards expressed as concentrations in the waste is added. The newly added language extends the notice and certification requirements for generators to facilities that send a waste off-site, and provides conditions for notice and certification for recyclers. Subpart 3 similarly clarifies and corrects waste analysis conditions for land disposal facilities.

g. MINN. RULES PT. 7045.1320 WASTE SPECIFIC PROHIBITIONS; SOLVENT WASTES: (A) & (B). Subpart 1 clarifies the dates of applicability and extends applicability to solids that contain solvent. Subpart 2 incorporates updated conditions and effective dates for F001-F005 solvent contaminated waste corrective actions under CERCLA or RCRA. Subpart 3 corrects and clarifies language governing exceptions to prior subparts.

h. MINN. RULES PT. 7045.1325 WASTE SPECIFIC PROHIBITIONS; DIOXIN CONTAINING WASTES: (A) & (B). Subpart 1 corrects punctuation. Subpart 2 adds an exception to applicability for certain wastes generated from CERCLA or RCRA corrective actions. Subpart 3 updates conditions and corrects cites and language regarding effective dates.

i. MINN. RULES PT. 7045.1330 WASTE SPECIFIC PROHIBITIONS; CALIFORNIA LIST WASTES: (A) & (B). Subpart 1 incorporates an effective date, and adds two categories of wastes containing halogenated organic compounds to the categories of wastes prohibited from land disposal. Subpart 2 clarifies and updates conditions and effective dates for exceptions to subpart 1.

j. MINN. RULES PT. 7045.1333 WASTE SPECIFIC PROHIBITIONS; FIRST THIRD WASTES: (A) & (B). Subpart 1 adds lists of hazardous waste numbers (waste codes) which are prohibited from land disposal under the first one-third of wastes prohibited under LDR and their effective dates. Subpart 2 provides exceptions to subpart 1. Subpart 3 provides effective dates and conditions for the prohibitions between August 8, 1988, and May 8, 1990. Subpart 4 provides conditions for waste analysis.

k. MINN. RULES PT. 7045.1334 WASTE SPECIFIC PROHIBITION; SECOND THIRD WASTES: (F). Subpart 1 adds lists of hazardous waste numbers (waste codes) which are prohibited from land disposal under the second one-third of

wastes prohibited under LDR and their effective dates. Subpart 2 lists general exceptions to prohibitions. Subpart 3 provides conditions for waste analysis.

1. MINN. RULES PT. 7045.1335 WASTE SPECIFIC PROHIBITIONS; THIRD THIRD WASTES: (H). Subpart 1 adds lists of hazardous waste numbers (waste codes and wastes) which are prohibited from land disposal under the third one-third of wastes prohibited under LDR and their effective dates as of August 8, 1990. Subpart 2 similarly explains the applicability of the LDR as of November 8, 1990. Subpart 3 similarly explains LDR applicability as of May 8, 1992. Subpart 4 addresses mixed radioactive and hazardous wastes. Subpart 5 addresses contaminated soil or debris. Subparts 6 to 8 list conditions for exceptions to prohibitions for the wastes in subparts 1 to 5. Subpart 9 lists general exceptions to prohibitions. Subpart 10 provides conditions for waste analysis.

m. MINN. RULES PT. 7045.1339 EFFECTIVE DATES OF SURFACE DISPOSED WASTES REGULATED IN THE LAND DISPOSAL RESTRICTIONS: (H). Subpart 1 refers readers to the federal comprehensive list of effective dates of surface disposed wastes regulated in the LDR in Code of Federal Regulations, title 40, section 268, appendix VII.

n. MINN. RULES PT. 7045.1350 TREATMENT STANDARDS: (A), (B), & (H). Subpart 1 incorporates language providing conditions for land disposal of wastes identified in part 7045.1355, methods for analyzing constituent concentrations in waste extract, and exceptions to restrictions. Subpart 3 provides similar conditions for land disposal contingent on constituent concentrations in the waste itself or its treatment residue.

o. MINN. RULES PT. 7045.1355 TREATMENT STANDARDS EXPRESSED AS CONCENTRATIONS IN WASTE EXTRACT: (A), (B), (F), & (H). Subpart 1 incorporates corrections and clarifying language, provides conditions and methods for analysis, and refers to Code of Federal Regulations, title 40, part 268.41, Table for Constituent Concentration in Waste Extract (Table CCWE) for land disposal. Table CCWE is the first of several federal tables incorporated by reference in this rulemaking due to their size and configuration.

p. MINN. RULES PT. 7045.1358 TREATMENT STANDARDS EXPRESSED AS WASTE CONCENTRATIONS: (A), (B), (D), (F), & (H). Subpart 1 discusses when concentrations in waste or treatment residue, not their extract, apply for land disposal. Subpart 2 addresses combined wastes. Subpart 3 refers to Code of Federal Regulations, title 40, part 268.43, Table for Constituent Concentration in Waste (Table CCW) or waste residue for land disposal. Subpart 4 lists wastes and dates after which there may not be land disposal. Subpart 5 provides conditions for demonstrating compliance with treatment standards for organic constituents.

q. MINN. RULES PT. 7045.1360 TREATMENT STANDARDS EXPRESSED AS SPECIFIED TECHNOLOGIES: (A), (B), (F), & (H). Subpart 1 provides conditions for treating certain wastes and references the reorganized part. Item B corrects cites and adds incineration conditions. Subpart 2 provides conditions for using alternatives to specified technologies. Subpart 3 provides a list of specified technologies and their codes, and instructions for interpreting and applying sequential technologies or choosing from multiple listed technologies. Subpart 4 refers to Code of Federal Regulations, title 40, part 268.42, Table 2--Technology Based Standards by RCRA Waste Code. Subpart 5 similarly refers to Code of Federal Regulations, title 40, part 268.42,

Table 3--Technology Based Standards for Specific Radioactive Hazardous Mixed Waste. Subpart 6 adds conditions for application for alternative treatment methods. Subpart 7 provides conditions for exceptions based on the use of lab packs. Subpart 8 provides conditions for exceptions for radioactive hazardous mixed wastes. Subpart 9 lists wastes which may be placed in organometallic lab packs. Subpart 10 lists wastes which may be placed in organic lab packs. Subpart 11 refers to Code of Federal Regulations, title 40, part 268.42, appendix for a partial list of technologies which used alone or in combination may "deactivate" specified characteristics.

r. MINN. RULES PT. 7045.1380 PROHIBITIONS ON STORAGE OF RESTRICTED WASTES: (A) & (B). Subpart 4 replaces petition conditions with exemption conditions for situations of approved case-by-case extensions under part 7045.0075, subpart 6, approved petitions under part 7045.0075, subpart 8 or 9, or a national capacity variance under Minn. Rules pts. 7045.1320 to 7045.1330.

IV. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1990) requires the MPCA, when proposing amendments to existing rules which may affect small businesses, to consider the impact of the rule amendments on small business.

Generally, the federally promulgated LDRs increased the cost of managing hazardous wastes by requiring proper testing and treatment prior to land disposal. The U.S. Congress determined this additional expense was necessary to achieve the additional level of environmental protection provided by the LDRs. EPA went through elaborate rulemaking procedures and public scrutiny, which included consideration of economic factors, to promulgate the LDR regulations.

These federal amendments were promulgated under authority of HSWA. Regulations so promulgated are immediately effective in states. The LDRs are currently effective in Minnesota under federal authority. The state's assumption of primary enforcement authority will not change the applicability to the regulated community.

Neither the proposed state rules nor the federal LDR regulations make special provision for reduced regulation for the management of wastes generated from small businesses. The size of a business has no relation to the degree of environmental risk presented by the wastes generated if those wastes are mismanaged. The MPCA cannot provide less stringent regulation than is provided under the federal program and therefore is not able to provide special consideration for small businesses. Further, the MPCA believes that the LDR are reasonable conditions on the disposal of waste and that the application of less stringent regulations to small businesses that generate hazardous waste would be environmentally irresponsible.

V. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the MPCA is required by Minn. Stat. § 116.07, subd. 6 (1990) 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.

The EPA considers economic impact during the federal process for promulgating regulations. The EPA successfully promulgated these regulations under the authority of the HSWA with due public participation and consideration of the economic impact. The EPA determined this impact to be necessary and reasonable in order to have a program that was protective of human health and the environment. The rules promulgated under HSWA are immediately in effect in Minnesota. There will be no increase in numbers of regulated community or level of regulation as a result of the MPCA adopting equivalent rule language.

VI. CONCLUSION

The MPCA 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 MPCA's Statement of Need and Reasonableness for the proposed amendments to Minnesota's hazardous waste rules.

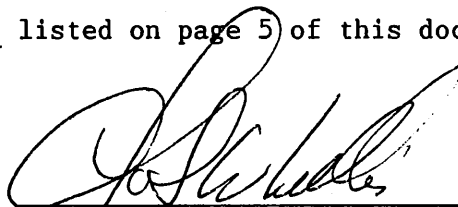
VII. LIST OF EXHIBITS

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

MPCA Ex. No.	Title
1	See <u>Federal Registers</u> listed on page 5) of this document.

Date: _____

9/13/91



Charles W. Williams
Commissioner