

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments
to the Rule Governing Water Quality Permit
Fee Amounts, Minn. Rules pt. 7002.0310

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 referred to MPCA, or "Agency") that govern Water Quality Permit Fees. Water Quality Permit Fees are established under Minn. Stat. § 116.07 subd 4d. (1990), Minn. Rules. ch. 7002 are for the administration of the Water Quality Permit Fees.

The goal for having water quality permit fees is to have the regulated community participate with paying the costs of operating the water quality program. Proposed amendments are being made based on legislative directive and the need for an improved fee schedule.

Background:

In 1985 the Legislature required the MPCA to begin collecting money through water quality permit fees. The Agency was directed to cover reasonable costs of administration, enforcement, and regulation of permittees and permit applicants. Minn. Laws 1985, First Special Session, ch. 13 required the Agency to collect \$750,000 annually for the Water Quality Division. Based on this mandate the Agency adopted Minn. Rules pts. 7002.0210 to 7002.0310 which relate to water quality permit fees. The effective date of the rules was April 7, 1986.

In 1987 the Legislature increased the required amount of fee collection. Minn. Laws 1987, ch. 404 required the Agency to collect \$2,115,585 for the 1987-1989 biennium. Based on this mandate the Agency revised the water quality

permit fee rules in January, 1988, increasing fee amounts to collect additional revenue as required by the Legislature.

In 1989 the Legislature increased the required amount of fee collection. Minn. Laws 1989, ch. 335 required the Agency to collect \$2,667,900 for the 1989-1991 biennium. Based on this mandate the Agency revised the water quality permit fee rules in July 1989, increasing fee amounts to collect additional revenue as required by the Legislature.

The 1991 Legislature increased the required amount of permits fees to be collected. Minn. Laws 1991, ch. 254 article 2 section 37, and ch. 347, article 1, section 8. required the Agency to collect \$3,842,000 for the 1992-1993 biennium. Based on this mandate the Agency has proposed the following rule amendments.

The proposed fee increases are the result of Legislative directive to replace a portion of the general fund revenue with permit fee revenue in the Water Quality Division, Minn. Laws 1991, ch. 254, part I, section 2, subdivision 2. Additional permit fee revenue will be used to maintain existing service levels, and not used used to increase program services. Permit fee revenues pay for existing agency activities that administer, enforce, and regulate water quality permits. If fee revenues do not increase, the agency would have to reduce services because general fund appropriations have been reduced for the 1992-1993 biennium.

This document contains the Agency's affirmative presentation of facts on the need for, and the reasonableness of the proposed amendments. Section II identifies the Agency's statutory authority for rulemaking. Section III describes the need for amendments to rules. Section IV describes the reasonableness of the proposed amendments.

II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority to adopt permit fee rules is established in Minn. Stat. § 116.07, subd. 4d (1990):

The agency may collect permit fees in amounts not greater than those necessary to cover the costs of reviewing and acting upon applications for agency permits and implementing and enforcing the conditions of permits pursuant to agency rules. Permit fees shall not include the costs of litigation. The agency shall adopt rules under section 16A.128 establishing the amounts and methods of collection of any permit fees collected under this subdivision. Any money collected under this subdivision shall be deposited in the special revenue fund.

As required, permit fee rules were adopted in accordance with Minn. Stat. § 16A.128, subd. 1a, which requires fees to be reviewed regularly and, if necessary, adjusted. The statute specifies, in a relevant part:

These fees must be reviewed each fiscal year. Unless the commissioner determines that the fee must be lower, fees must be made so the total fees nearly equal the sum of the appropriation for the accounts plus the agency's general support costs, statewide indirect costs, and attorney general costs attributable to the fee function.

Under these statutes the Agency has the necessary authority to adopt the proposed rule amendments.

III. NEED FOR RULE AMENDMENTS

Minn. Stat. ch. 14 (1990) requires the Agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rule amendments as proposed. In general terms, this means that the Agency must set forth 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 has to come to mean that the solution proposed by the Agency is appropriate. The need for the rule amendments is discussed below.

Proposed rule amendments were developed based on Legislative directive from Minn. Law 1991 ch. 254, art. I, section 2, subdivision 2. The Legislature has required the Agency's Water Pollution Control Program to collect sufficient

permit fees to match the Special Revenue Appropriation, and salary supplement as described in attachment (fiscal note).

Proposed amendments will increase water quality fees approximately 40 percent. The 1991 Legislature appropriated \$1,887,000 for fiscal year 1992, and \$1,955,000 for fiscal year 1993, or \$3,832,000 for the 1991-1993 biennium to the Water Quality Division. This appropriation is from the Special Revenue Fund for direct salary, fringe, supply, and expense costs. Minn. Laws 1991, ch. 254, art. I, section 2, subdivision 2. Of this amount, \$1,515,000 for fiscal year 1992 and \$1,511,000 for fiscal year 1993, or \$3,026,000 for the 1992-1993 biennium is a "base" appropriation to cover established ongoing activities associated with water quality permits. In addition, the Division has reallocated six positions from general fund appropriation funding to special revenue funding.

The 1991 Legislature authorized \$296,000 for fiscal years 1992 and 1993, or \$592,000 for the 1992-1993 biennium to the Water Quality Division from the Special Revenue Fund for indirect costs. Minn. Laws 1991, ch. 254, art. I, section 2, subdivision 2. Indirect costs are for general operations such as personnel and fiscal services, office space rent, etc.

In addition, the 1991 Legislature appropriated \$70,000 for fiscal year 1992 and \$144,000 for fiscal year 1993, or \$214,000 for the 1992-1993 biennium as an open appropriation for salary supplement. Minn. Laws 1991, ch. 254, art. I, section 2, subdivision 2. The Legislature followed a traditional practice of appropriating funding for salary and fringe benefits based on costs of approved staff complement at the end of the current biennium.

The Legislature does not attempt to predict salary and fringe increases between the state and collective bargaining units representing state employees. Instead, the Legislature establishes an open appropriation for the future salary and fringe increases.

The appropriation of permit fee requirements for the Division of Water Quality are summarized below:

	FY 1992	FY 1993	Biennium
Direct appropriation	\$1,515,000	\$1,511,000	\$3,026,000
Indirect appropriation	\$296,000	\$296,000	\$592,000
Salary supplement	\$70,000	\$144,000	\$214,000
Total	\$1,881,000	\$1,915,000	\$3,832,000

The Division is authorized to collect \$3,842,000. The authorized number includes loan fees and does not include indirect costs. The listed total -- \$3,832,000 -- includes indirect costs, minus loan fees which are not part of this program.

This amount is greater than the previous 1989-1991 biennium total of \$2,667,900 which was required to be collected under Minn. Laws 1989, chapter 335. Therefore, based on Legislative directive, it is necessary for the Agency to increase permit fee revenues in the 1992-1993 biennium. The proposed changes are needed to provide the Agency's Water Quality Program sufficient permit revenue as specified in the Minn. Law ch. 254, art. I, section 2, subdivision 2.

Proposed amendments will change the water quality permit fee schedule in part 7002.0310 by combining the processing fee and the annual fee. The current fee schedule has three separate types of fees, an application fee, processing fee, and annual fee. The application fee is paid when a proposed permittee is requesting a permit. The processing fee is paid once every five years and it is intended to cover agency costs of permit processing. The annual fee is paid once annually, and it is intended to cover costs of permit regulation.

The proposed rule amendments would eliminate the processing fee as a separate fee. The new annual fee would be combined with one fifth of the processing fee, and the combined fee would be increased approximately 40 percent. Proposed changes will provide more efficient billing for the agency by having only one annual fee. The "new" annual fee will include processing charges.

The current processing fee is billed to permittees once every five years and the billed amount can be considerably large relative to a permittees annual fee. Agency staff involved with billing have received comments that describe financial hardships brought on by the processing fee billed once every five years. With a combined fee the agency would have to manage only two fee types, an application fee and the annual fee. The proposed changes would simplify the billing process by combining processing charges and annual charges in to one fee.

Another advantage to the proposed changes will be a consistent cash flow in the Water Quality Division's special revenue fund. The special revenue fund receives permit fee revenues and there has been a degree of oscillation with the fund balance because of irregular revenue cycles. Because the processing fee is paid once every five years, and not all permittees and proposed permittees are issued permits on a regular time schedule, revenue enters the fund in unequal cycles.

The proposed changes are needed to provide more efficient billing, consistent cash flow, and simplified billing for permittees and proposed permittees.

Proposed amendments will add the general storm water permit to the fee schedule. The United States Environmental Protection Agency (EPA) is requiring certain municipalities and industries to obtain permits for discharging storm

water. Based on EPA regulations the Agency is responsible for administering storm water permits. The Agency has estimated that 4000 public and private entities will be required to obtain a permit for storm water discharge. Because of the large number of potential permittees, the majority of storm water dischargers will be regulated through general permits. The inclusion of the storm water permit fee is needed to comply with EPA regulations.

IV. REASONABLENESS OF PROPOSED RULE AMENDMENTS

The Agency is required by Minn. Stat. ch. 14 to make an affirmative presentation of facts establishing the need and reasonableness of proposed rule 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 rules is discussed below.

A. Reasonableness of the Rules as a Whole: The proposed rules are reasonable because the Legislature has determined that permittees, and proposed permittees are to pay a larger share of the Agency's costs for administering, regulating, and enforcing water quality permits. The proposed rules that change the water quality fee schedule are reasonable because the changes improve efficiency of fee billing for the Agency and the regulated community. The proposed rules that change administration of water quality fees are reasonable because the rules assist the regulated community with a more equitable system of billing fees.

B. Reasonableness of Individual Rules: The following discussion addresses the specific provisions of the proposed rules.

Part 7002.0210 SCOPE.

The Agency proposes to eliminate item H. Item H has been deleted because the fee schedule no longer includes application fees for liquid storage. This change is reasonable because liquid storage fees will be administered by the

Hazardous Waste Division and there is no need for the Water Quality Division to have this fee listed in its fee schedule.

Part 7002.0220 DEFINITIONS.

The Agency proposes to add the following subparts.

Subpart 4 and 5.

The Agency proposes to delete the word "definition." This proposal is reasonable because the word definition is used as a title for part 7002.0220, and there is no need to duplicate the word in each subpart.

Subpart 3a. General Storm Water Permit.

The Agency proposes to add a definition to define "general storm water permit." This proposal is reasonable because the term is used in part 7002.0270 and in part 7002.0310, subpart 3. The definition is reasonable because it is used in the rule, and the term "storm water permit" is not defined anywhere else in the chapter.

Subpart 3b. Individual Storm Water Permit.

The Agency proposes to add a definition to define "individual storm water permit." This proposal is reasonable because the term is used in part 7002.0270 subpart 5 and in part 7002.0310, subpart 2. The definition is reasonable because it is used in the rule, and the term "individual storm water permit" is not defined anywhere else in the chapter.

Subpart 6a. Sanitary Sewer Extension Permit.

Sanitary Sewer Extension Permit. The Agency proposes to add a definition to define "sanitary sewer extension permit." This proposal is reasonable because the term is used in part 7002.0310, subpart 3. The definition is reasonable because it is used in the rule, and the term "sewer extension permit" is not defined anywhere else in the chapter.

Part 7002.0230 FEE DETERMINATION.

The Agency proposes to add language that indicates the location of the additional fee schedule in the proposed rule amendments. This proposal is reasonable because this rule has two schedules. It is reasonable to direct the reader to the appropriate table.

Part 7002.0240 PAYMENT OF FEES.

The Agency proposes to change rule language which identifies the name of the Water Quality Division. Prior to this rule amendment the official name of the Water Quality Division was changed from Division of Water Quality to Water Quality Division. This proposal is reasonable because it formulates consistent and current title language throughout the rules. The previous rule language referred to the Water Quality Division with its old title.

Part 7002.0260 PROCESSING FEE.

The Agency proposes to delete rule language detailing the processing fee. This proposal is reasonable because the former processing fee has been combined with the annual fee in part 7002.0310. The current processing fee has been billed to permittees and permit applicants once every five years. As a method of reducing the burden of the processing bill on permittees the processing fee was divided by five, and added to the annual fee. The combined processing and annual fee will give permittees and permit applicants a combined bill once a year. This section of the rules is no longer necessary because the processing fee has been combined with the annual fee, and it is therefore reasonable to delete it.

Part 7002.0270 ANNUAL FEE.

The Agency proposes to add language which specifies that the annual fee will contain costs associated with permit processing. This proposal is reasonable because the added language specifies that the annual fee includes

costs associated with permit processing. The proposed language also clarifies what the annual fee is.

The Agency proposes to add the following parts.

A.

The Agency proposes to add language that describes who pays fees established in part 7002.0310, and who pays fees established in part 7002.0305. All permits issued after the adoption of these rules will be subject to the fee schedule in part 7002.0310. All unexpired permits will be subject to the fee schedule in part 7002.0305, until the permit expires. This proposal is reasonable because the added language specifies who will use the fee schedule in part 7002.0310; and who will use the fee schedule in part 7002.0305. Permit fees are reasonable because fees pay for Agency costs of administering permits.

B.

The Agency proposes to add language that describes how the fee for a permit modification will be determined. This proposal is reasonable because the added language provides a simple and concise explanation of how the modification fee will be determined for permittees. Major modifications require additional staff time for review, public notice, and administration. Agency costs attributed to issuance of a major modification are similar to the costs of issuing a new permit. The cost of processing a permit on a routine schedule is addressed within the context of an annual fee. The cost of a permit modification is an additional cost to the Agency, and beyond routine permit processing costs. The proposal is reasonable because the fees pay for Agency costs of processing a major permit modification.

C.

The Agency proposes to add language that identifies the fee for major permit modifications for permittees who have paid a five year processing fee, and have unexpired permits. The former rule language had separate processing and annual fees, and the fee for processing of a major permit modification was based on a percentage of the permit processing fee. This set of rule amendments combines the processing and annual fees which eliminates the need for identifying a permit processing fee in the fee schedule tables. The new "modification processing fee" is based on the old the formula. This subpart identifies the fee which is billed to a permittee with an unexpired permit who requests a permit modification. If a permittee has an unexpired permit, and requests a permit modification, the permittee shall pay the modification fee set in part 7002.0305. In addition, the proposed rule language establishes a payment time frame for paying the modification fee; paid within 30 days of receipt of an invoice from the agency. This is reasonable because the time frame has not been changed from the previous rule as it had been set forth in 7002.0260.

D.

The Agency proposes to add language which specifies that after an existing permit expires, the permittee must begin paying fees as specified in 7002.0310. This proposal is reasonable because the permit term for which the processing fee had already been paid would have passed. The proposed subpart is reasonable because it establishes consistent application of part 7002.0310 as individual unexpired permits expire. When all unexpired permits have expired all permit fees will be based from one schedule; part 7002.0310.

E.

The Agency proposes to add language that specifies the fees for individual storm water permits. The language states that fees set forth in part 7002.0310, subpart 2b, other nonmunicipal, are for individual storm water permittees and applicants. Current individual permits regulating storm water discharges fall into this category. The subpart was added to the rules for two reasons: 1) There is a new storm water permit program which will require more municipalities and industries to apply for storm water permits; and 2) A separate category for general storm water permits was established. It was necessary to distinguish between general permits and individual permits in order to avoid confusion. This part of the rule is reasonable because it clarifies, to the reader, which fee category applies to his permit.

F.

The Agency proposes to add language specifying that permittees under a general storm water permit, not required to submit reports, are exempt from paying the annual fee as defined in part 7002.0310, subpart 3. This is reasonable because the purpose of a general storm water permit annual fee is to recover the Agency's cost of reviewing reports submitted to the Agency, and assess permit compliance. The Agency has estimated that there will be more than 4000 water permit applicants. However, the agency will only assess compliance of permittees who are required to submit reports. Therefore it is reasonable to assess fees only on permits which require compliance monitoring activity by the agency.

Part 7002.0280 NOTIFICATION OF ERROR.

The Agency proposes to delete language that references the basic processing fee which will not exist with the amendment of these rules. This proposal is reasonable because the former statement is no longer true with these rule amendments.

Part 7002.0300 WATER QUALITY PERMIT FEE SCHEDULE.

The Agency proposes to add language which states the existence of two fee schedules. Part 7002.0305 is a fee schedule for permittees holding unexpired permits. Part 7002.0310 is for new or reissued permits. This proposal is reasonable because it is necessary to have a fee schedule for unexpired permits along with a fee schedule for new and reissued permits. This proposal is reasonable because holders of unexpired permits have paid a separate processing fee pursuant to previous rule language prior to the 1991 amendments, and therefore, should not pay an annual fee which includes the processing fee. The amount of the permit fee increase is 40 percent on both tables. It is reasonable to have holders of unexpired permits pay the same percentage of fee increase as holders of new and reissued permits.

Part 7002.0305 TABLE WATER QUALITY PERMIT FEES PAID BY HOLDERS OF UNEXPIRED PERMITS.

Subparts 1 and 2.

The Agency proposes to add a fee schedule for holders of unexpired permits. Permittees which have paid a separate processing and annual fee will use the amended fee schedule in part 7002.0305 to pay annual fees and modification fees. The annual fee has been increased 40 percent. The modification fee covers the Agency cost of processing permit modifications as requested by a permittee. The modification fee is based on one half the former processing fee and increased by 40 percent. The current rule identifies the fee for processing a minor modification as 1/2 of the permit processing fee. The 40 percent increase is due to the "across the board" 40 percent increase in this rule. This proposal is reasonable because the processing fee and the annual fees have been combined and listed in part 7002.0310. The modification fee is reasonable because the former practice of basing the modification fees on the processing fee is invalid because there is no longer a separate processing fee. The fee increase is

reasonable because the Legislature directed the Agency to pay more permit administration costs with permit fee revenue. The Agency determined that a 40 percent increase was the adequate amount to meet the Legislative appropriation.

Subpart 3

The Agency proposes to delete this subpart because information in this subpart has been transferred to part 7002.0310 subpart 3. This proposal is reasonable because the information is not applicable, there are not holders of unexpired permits qualifying in part 7002.0305.

Part 7002.0310 WATER QUALITY PERMIT FEE SCHEDULE.

Subparts 1 and 2.

The Agency proposes to add a new fee schedule which reflects the Legislative directive to pay more permit administration costs with permit fee revenue. The fee schedule is a shell of the previous schedule with the following changes. The Processing fee has been combined with the annual fee. One fifth of the former processing fee was combined with the former annual fee. The combined fee was increased 40 percent and listed in the annual fee column. The application fee was increased 40 percent and listed in the application fee column. This proposal is reasonable because the 1991 Legislature directed the agency to collect more permit fee revenue in place of general fund appropriations. The Agency determined that a 40 percent increase was the adequate amount to meet the Legislative appropriation.

Subpart 3.

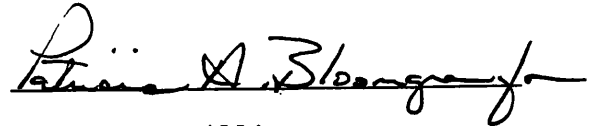
The Agency proposes to add the annual fee column. The annual fee is based on the cost to the Agency for administering the general, general storm water, and sewer extension permits. In addition, the Agency proposes to add the "General Storm Water" category. This category is based on EPA regulations concerning storm water discharge. Not all permittees will be required to paid

the annual fee; however, all permittees will be required to pay the application fee. This proposal is reasonable because the Agency has been directed by the Legislature to collect more permit administration costs through permit fees.

V. CONCLUSIONS

Based on the foregoing, the proposed amendments to Minn. Rules ch. 7002 are both needed and reasonable.

Dated: August 29, 1991



Charles W. Williams
Commissioner

DEPARTMENT : POLLUTION CONTROL AGENCY


SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DATE : August 6, 1991

TO : John Gunyou, Commissioner
Department of Finance

FROM : Charles W. Williams 
Commissioner

PHONE : 296-7301

SUBJECT : FEE SCHEDULE APPROVAL

In accordance with M.S. 16A.128, the fee schedule for the Minnesota Pollution Control Agency's proposed amendments to the water quality permit fee rules is submitted for your review and approval. The attached sheets show the proposed fees, the expected revenues, and the required revenues.

Approval to begin rulemaking procedures is expected from the Agency Board at its August 27, 1991, meeting. In light of the time consuming nature of the overall process, we ask for your prompt consideration and written approval of our request. If you have any questions on this matter, please call Scott Thompson of the Water Quality Division at 296-7223.

CWW:ach