

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Amendments to Rules Governing
Hazardous Waste Facility and Generator
Fees, Minn. Rules Ch. 7046

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 payment of fees by owners and operators of hazardous waste treatment, storage, and disposal facilities, and by generators of hazardous waste, Minn. Rules pts. 7046.0010 to 7046.0070. These rules, which became effective February 6, 1984, were amended effective April 22, 1985, May 5, 1987, January 30, 1989 and March 26, 1990.

The statutory authority for the rules is set forth in Minn. Stat. § 116.12 (1990). The statute, together with the Agency's appropriations bill, requires the Agency to establish fees to collect funds to cover a portion of the cost of the hazardous waste regulatory program. The Agency is also required by Minn. Stat. § 16A.128, subd. 1.a. (1990) to review the fees each fiscal year. As a result of its most recent review of the fees, the Agency is amending the rules.

The amendments, if adopted, will better reflect the costs of regulating various activities of the hazardous waste program relative to the amount of administrative effort involved, and the changes will make the fees more equitable by revising their effect on the size of the generator. The following specific changes have been made.

1. The amendments modify the existing fee structure by providing a percentage increase for the fees for all hazardous waste facilities as well as adding a fee category for major permit modifications.

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2. The amendments allow the commissioner to adjust the fee if the generator's status changes so that the assessed fee is no longer appropriate for its size category.
3. The amendments increase the quantity fee which is based on the total quantity of waste generated and the method used for management or disposal of the waste. Regarding the quantity fee, the amendments clarify that sewerer wastes are not assessed a volume fee.
4. The amendments exempt very small quantity generators from the volume fee.
5. The amendments to the base fee better reflect the costs of regulating the different sizes of generators.
6. The amendments eliminate the follow-up action fee that was charged if a generator refused to submit required information to the Agency.
7. The amendments modify the language for submittal of fees to the Agency by decreasing the time period allowed for generators to submit fees.
8. The amendments create a late fee penalty for very small quantity generators if they fail to pay their fees by the due date.
9. The amendments reduce the statewide program fee charged to all generators.
10. The amendments create a new part that increases the payment of retroactive fees from two to three years. The new part also changes the practice of retroactive fees assessment to very small quantity generators.
11. The amendments eliminate the flat fee for hazardous waste generators who qualified for the maintenance agreement.
12. The amendments create a generator fee exemption for hazardous wastes collected as a result of a very small quantity generator hazardous waste collection program as well as wastes collected under the Department of Agriculture's Waste Pesticide Collection Program.

A Notice of Intent to Solicit Outside Opinion was published in the State Register on July 29, 1991. No comments were received regarding this notice. Two public informational meetings in which public comment was received on the proposed amendments were held August 13, 1991, and August 20, 1991. In addition to oral comments, a letter of comment was presented to the Agency

staff at the meeting on August 13, 1991, by Bill Clark Oil Co., Inc. This letter is referenced as Exhibit 2. A brief overview of the hazardous waste generator fee rules was provided to the Agency Board's Hazardous Waste Committee at a meeting on August 26, 1991.

An administrative requirement for the rulemaking process is review and approval of the fee schedule in the rules by the Minnesota Commissioner of Finance. This approval is referenced as Exhibit 1.

This Statement of Need and Reasonableness is divided into eight parts. Following this introduction, Part II contains the Agency's statement of its statutory authority to adopt the amendments. Part III contains the Agency's explanation of the need for the amendments. Part IV discusses the reasonableness of the amendments. Part V documents how the Agency has considered the methods of reducing the impact of the amendments on small businesses as required by Minn. Stat. § 14.115 (1990). Part VI documents the economic factors the Agency considered in drafting the amendments as required by Minn. Stat. § 116.07, subd. 6 (1990). Part VII sets forth the Agency's conclusion regarding the amendments. Part VIII contains a list of the exhibits relied on by the Agency to support the amendments. The exhibits are available for review at the Agency's offices at 520 Lafayette Road North, St. Paul, Minnesota 55155.

II. STATEMENT OF THE AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority for the rule amendments is set forth in Minn. Stat. § 116.12 (1990), which provides:

Subdivision 1. Fee Schedules. The agency shall establish the fees provided in subdivisions 2 and 3 in the manner provided in section 16A.128 to cover the amount appropriated from the special revenue account to the agency for permitting, monitoring, inspection and enforcement expenses of the hazardous waste activities of the agency.

The legislature may appropriate additional amounts from the general fund that need not be covered by fees, in order to assure adequate funding for the regulatory and enforcement functions of the agency related to hazardous waste. All fees collected by the agency under this section shall be deposited in the special revenue account.

Subd. 2. Hazardous waste generator fee. Each generator of hazardous waste shall pay a fee on the hazardous waste generated by that generator. The agency shall compute the amount of the fee due based on the hazardous waste disclosures submitted by the generators and other information available to the agency. The agency shall annually prepare a statement of the amount of the fee due from each generator. The fee shall be paid annually commencing with the first day of the calendar quarter after the date of the statement.

The agency may exempt generators of small quantities of hazardous wastes otherwise subject to the fee if it finds that the cost of administering a fee on those generators is excessive relative to the proceeds of the fee. The fee shall consist of a minimum fee for each generator not exempted by the agency and an additional fee based on the quantity of wastes generated by the generator.

If any metropolitan counties recover the costs of administering county hazardous waste regulations by charging fees, the fees charged by the agency outside of those counties shall not exceed the fees charged by those counties. The agency shall not charge a fee in any metropolitan county which charges such a fee. The agency shall impose a fee calculated as a surcharge on the fees charged by the metropolitan counties and by the agency to reflect the agency's expenses in carrying out its statewide hazardous waste regulatory responsibilities. The surcharge imposed on the fees charged by the metropolitan counties shall be collected by the metropolitan counties in the manner in which the counties collect their generator fees. Metropolitan counties shall remit the proceeds of the surcharge to the agency by the last day of the month following the month in which they were collected.

Subd. 3. Facility fees. The agency shall charge an original permit fee, a reissuance fee and an annual operator's fee for any hazardous waste facility regulated by the agency. The agency may include reasonable and necessary costs of any environmental review required under Chapter 116D in the original permit fee for any hazardous waste facility.

The rationale behind the legislature's enactment of the statute was that persons generating and handling hazardous waste should pay a portion of the administrative costs of regulating hazardous waste activities.

The hazardous waste fees are intended to cover the amount of \$4,122,000 which is the biennial target for Fiscal Years (FY's) 1992 and 1993.

The Agency's obligation to review and, if necessary, to adjust the amount of the fees is set forth in Minn. Stat. § 16A.128, subd. 1.a. (1990), which provides:

Subd. 1.a. Approval. Fees for accounts for which appropriations are made may not be established or adjusted without the approval of the commissioner. If the fee or fee adjustment is required by law to be fixed by rule, the commissioner's approval must be in the statement of need and reasonableness. These fees must be reviewed each fiscal year. Unless the commissioner determines that the fee must be lower, fees must be set or fee adjustments 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.

Based on the foregoing statutes, the Agency has the statutory authority to adopt the proposed rule amendments.

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1990) requires the Agency to make an affirmative presentation of facts establishing the need for and reasonableness of the amendments as proposed. In general terms, this means that the 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 the Agency is appropriate.

By statute, the legislature establishes the amount that the Agency shall collect through fees for each biennium. This amount is known as the "biennial target." The Agency is required by Minn. Stat. § 16A.128, subd. 1.a. (1990) to review its fees each fiscal year to determine whether revenues from fee collection will nearly equal the established biennial target. If the Agency

determines that biennial fee revenues will either exceed or fall short of the biennial target, the Agency is required to amend the fee rules accordingly.

The need to adopt the amendments arises from the fact that the current collection of fees will not meet the biennial target for FY 1992 and FY 1993. The fee revenue target established for the FY 1992 and 1993 biennium is \$4,122,000. This represents approximately a 37.2 percent increase from the target for the FY 1990 and 1991 biennium.

In 1991, the Minnesota State Legislature increased the amounts appropriated to the Agency from the Environmental Fund and thus increased the amounts that the Agency is required to collect through hazardous waste facility and generator fees. The legislature decreased the amount of money appropriated to the Agency from the General Fund and replaced this funding by increasing the amount appropriated to the Agency from the Environmental Fund. The FY 1992 and 1993 biennial target reflects the addition of these costs. Without any fee rate change, fee collections for the biennium would total approximately \$3,729,000. The total amount of revenue that the Agency is required to collect to meet the biennial target for FY's 1992 and 1993 is \$4,122,000. This would result in a shortfall of about \$393,000 for the biennium. Therefore, the Agency is increasing the fees in order to collect the amounts required by the legislature. This information is referenced in Exhibit 3.

Previously, the Agency was appropriated money from the Special Revenue Fund to cover the costs for regulating hazardous waste activities. However, the 1989 legislature abolished this fund and, beginning in FY 1990, the Agency has received funds out of the Environmental Fund to operate the Agency's hazardous waste program.

Need is a broad test that does not easily lend itself to evaluation of each proposed revision. In the broad sense, the need for the proposed

amendments to the hazardous waste fee rules has two bases: (a) the need to comply with the legislative mandate to annually review the fee revenue and adjust the fees as needed; and (b) the need to provide an equitable distribution of the fees. The two bases are discussed below.

A. Annual Review of Fee Targets

The Agency's obligation to review and, if necessary, to adjust the amount of the fees is set forth in Minn. Stat. § 16A.128, subd. 1.a. (1990).

The biennial target for FY's 1992 and 1993 is \$4,122,000. The Agency had originally projected hazardous waste fee revenues for FY 1992 and 1993 to be \$3,729,000. This projection was based on the current fee schedule and on an anticipated increase in the number of waste generators identified as a result of the waste certification process that began in the fall of 1990 that significantly increased the number of hazardous waste generators who have properly disclosed their wastes. However, because the biennial target has increased, the Agency must revise the fee schedules so that the Agency will collect the target amounts.

B. Fee Distribution

Minn. Stat. § 116.12 (1990) requires the Agency to assess fees on hazardous waste facilities and generators to cover the amount appropriated to the Agency from the Environmental Fund for permitting, monitoring, inspection, and enforcement expenses of the hazardous waste activities of the Agency. The fees already established in the rules were apportioned to reflect the amount of time necessary during FY 1990 and 1991 to regulate hazardous waste facilities and generators.

The Agency needs to amend the rules so that the fees for nonmetropolitan area generators reflect the Agency staff's actual current administrative effort

to regulate each category of generator specified in the rules: 49 percent related to very small quantity generators, 26 percent related to small quantity generators, and 25 percent related to large quantity generators. The numbers of very small quantity generators and their unfamiliarity with the hazardous waste program requires a great deal of Agency staff time and effort. Agency staff work efforts for each category of generators will be different in the FY 1992 to 1993 biennium because of the significant increase in the number of very small quantity generators.

IV. REASONABLENESS OF THE PROPOSED AMENDMENTS

The Agency is required by Minn. Stat. ch. 14 (1990) to make an affirmative presentation of facts establishing the reasonableness of the proposed rule amendments. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Agency's action.

Because there would have been a revenue shortfall of approximately \$400,000, the Agency must raise its hazardous waste facility and generator fees to generate \$4,122,000 during the FY 1992 and 1993 biennium. Therefore, it is reasonable to revise the fee schedules in the rules to collect this amount during the FY 1992 and 1993 biennium because the Agency's action is aimed at the legislature's objective that the Agency collect the target amount.

The Agency believes that the following steps are reasonable and would result in the collection of enough money to meet the \$4,122,000 target by the end of the FY 1992 and 1993 biennium:

1. Collect 26.1 percent of the necessary fees from hazardous waste facilities;
2. Increase the nonmetropolitan area generator fees and adjust them to reflect the administrative effort involved in various aspects of the regulation of hazardous waste as well as the quantity of hazardous waste generated. The increase may not exceed the fees charged by the metropolitan counties as allowed by statute; and

3. Decrease the statewide program fee for all Minnesota generators (billed as a surcharge) from 68 percent to 52 percent.

The Agency has projected revenues based on the fee schedule contained in the proposed amendments. These figures are shown below.

PROJECTED REVENUE BILLINGS FOR FY 1992-1993 IF AMENDMENTS ARE ADOPTED

Facility Fees	\$1,075,388
Non-metropolitan Generator Fees	\$1,958,966
Metropolitan Generator Statewide Program Fee	\$1,089,966
TOTAL	\$4,124,320

The estimated revenue billings from hazardous waste facility fees and the estimated revenue billings from hazardous waste generator fees total \$4,124,320.

The projected revenues are very difficult to predict with great accuracy. If the actual fees collected fall within five percent of the projections, the Agency staff considers the projections to be highly successful. Also, experience has shown that not all fee payments are received in a timely manner. Thus, given the fact that there are several uncertainties involved in the estimates, and given the possibility that not all the fees will successfully be collected, it is reasonable to set the fees at the levels established in the

The Agency has apportioned its fees according to the relative amount of administrative effort involved in various aspects of the regulation of hazardous waste as well as the quantity of hazardous waste generated.

The current fee rates were established to reflect the fact that the amount of time necessary to review documents, conduct inspections, perform permitting activities, and initiate enforcement actions relating to hazardous waste facilities and generators varies according to the complexity of the facilities or wastes involved. The fees established in the rules have been modified to reflect the large volume of very small quantity generators that are now a part

of the hazardous waste system. These facts make it reasonable to establish different fee levels for different types of facilities and generators. Therefore, the Agency has not simply taken the amount of money to be collected and divided it by the number of expected administrative actions. Rather, the Agency has apportioned the fees according to the estimated amount of administrative attention each action must be given, as well as the quantity of waste generated. This approach is reflected in the fee schedules established in the amendments.

With respect to the fees for hazardous waste facilities, the Agency has made a minimal change in the percentage distribution of the biennial target between facilities and generators. The Agency is also increasing the amount of the hazardous waste facility fee and adding a fee category for major permit modifications. No other changes have been made to the format of the hazardous waste facility fee structure.

The following discussion addresses the reasonableness of the specific provisions of the amendments to Minn. Rules pts. 7046.0010 to 7046.0070.

A. Minn. Rules pt. 7046.0010, Definitions

The Agency is amending the definitions for the fee rules to reflect the changes made to the actual content of the rules.

Subpart 5 is amended to clarify what is meant by "by site" as it is used in the definition of "generator". The previous definition has caused confusion and has been revised to more clearly describe what is meant by the phrase "by site". It is reasonable to simply define each generation site by the use of identification numbers. Identification numbers are a very basic component of the hazardous waste program and their applicability is readily understood by the regulated community. It is therefore reasonable to clarify the definition by citing a simpler concept.

Subparts 10a, 18a, and 24a are added to provide a definition for "large quantity generator," "small quantity generator," and "very small quantity generator," respectively. Generators are regulated according to the volume of hazardous waste generated. This system of classifying generators is well established in the hazardous waste rules, Minn. Rules ch. 7045. However, the specific rules that establish these size categories are currently being amended, and it is not possible at this time to cross-reference to an actual rule citation. Therefore this definition cites the provision for determining generator size as it is proposed in the State Register. When that proposed amendment to Minn. Rules ch. 7045 is adopted and becomes effective, it will be readily available to the regulated community and will be a reasonable definition for purposes of the fee rules.

Subpart 17 is amended to delete the entire definition of "project estimated cost". This term is only used in Minn. Rules pt. 7046.0020, subp. 4. The Agency believes it is reasonable to define the term at that point and delete it from the definitions applicable to the entire chapter. This amendment only moves the location of the definition and does not change the effect of the term.

Subpart 17a is amended to delete the entire definition of "response action". This term is only used in Minn. Rules pt. 7046.0050, subp. 3. The Agency believes it is reasonable to define the term at that point and delete it from the definitions applicable to the entire chapter. This amendment only moves the location of the definition and does not change the effect of the term.

Subpart 24 is the definition for "unsewered liquid wastes" and is amended to delete a redundant use of the term "liquid wastes". This amendment is reasonable to make the definition more grammatically correct.

Subpart 25 is the definition of "waste stream". This definition is amended to delete a phrase which has caused confusion in the implementation of the rules. The previous definition defined waste streams as wastes of a particular composition but did not provide further information as to what this meant. This previous definition implied that some waste streams that were not of a "particular," though unspecified, composition would not be considered a waste stream. This was not the case. The Agency has always intended that all hazardous waste streams be subject to regulation. The amended definition removes the confusion resulting from the use of the term "particular composition" without altering the actual applicability of the definition and is therefore reasonable.

B. Minn. Rules pt. 7046.0020, Hazardous Waste Facility Fee

The Agency is amending the fee rates contained in subparts 1 and 3 of the hazardous waste facility fee rules to increase the fees. This increase is based on the level of effort expended by the Agency staff. By Minn. Stat. § 116.12, subd. 2 (1990), the Agency is required to charge an original permit fee, a reissuance fee, and an annual operator's fee for any hazardous waste facility regulated by the Agency. The fees are based on the Agency's permitting, monitoring, inspection, and enforcement expenses for these facilities.

Based on past experience, the Agency estimates that of the work years involved in the hazardous waste program effort, a little more than one-fourth are devoted to hazardous waste facility permitting and permit enforcement. Therefore, the Agency's objective in setting the fees was to collect approximately one-fourth of the \$4,122,000 from hazardous waste facility fees and to collect the remainder from hazardous waste generator fees. This represents a target increase in the hazardous waste facility fees of 11.6 percent.

In the amendments, the Agency will add a fee category for major permit modifications. The Agency believes it is reasonable to assess a fee for major modifications to facility permits to offset staff time and public notice costs. Major modifications to a facility permit require staff review and public notification procedures similar to those required for permit issuance or reissuance. Major permit modifications would include any of the following: an increase in the volume of hazardous waste received at a facility; facility additions or structural changes; or the adoption of new performance standards by the Agency or Environmental Protection Agency. Based on the present fee schedule a fee equal to 50 percent of the original permit application fee is assessed for reissuance of an expired permit. Considering the staff review time and public notice costs for a major permit modification as compared to a permit reissuance, the Agency has determined that assessing a major modification fee equal to 33 percent of the original permit application fee is reasonable. For combination facilities, the Agency determined that it is reasonable to calculate the major modification fee as 33 percent of the application fee for only that component (storage, treatment, etc.) to which the modification applies.

The permit, reissuance, and annual operator fee for each type of hazardous waste facility fee will be increased by 11.6 percent and then rounded to the nearest \$10.00.

Under Subpart 4, the definition of "project estimated cost" formerly located under Minn. Rules pt. 7046.0010, subp. 17 has been incorporated. Since this definition is only used in this subpart, the Agency believes it is reasonable to include the definition under this subpart.

Other than the addition of a fee category for major permit modifications, the Agency is not making any format changes to the hazardous waste facility fee structure.

C. Minn. Rules pt. 7046.0031, Nonmetropolitan Area Generator Fees

Throughout this part, the Agency has made modifications and language changes to clarify rule language. Clarification is reasonable in order to enhance readability. The reasonableness of each of the amendments to Minn. Rules pt. 7046.0031 is discussed below.

Subpart 1 is being amended to incorporate language formally located under subpart 2 of this part. It is reasonable to incorporate a discussion of conversion factors under subpart 1 in order to clarify exactly how fees are calculated. Additional minor grammatical amendments are also reasonably made to this part.

Subpart 2 is being revised to make minor grammatical changes and to reflect the change proposed in subpart 1. This is reasonable because it eliminates duplicative language.

Subpart 2a is being added to reflect changes in the licensing and reporting requirements of Minn. Rules ch. 7045 as proposed in the August 19, 1991, State Register. Since generators' annual license reports will be submitted at the same time that fees are paid, it is possible that very small quantity generators may change their size during the year. If the generator's size changed, the fee amount remitted to the Agency would be incorrect. Therefore, it is reasonable to include a provision that allows the Agency to adjust the fee.

Subpart 3 has been deleted to reflect the addition of Minn. Rules pt. 7046.0045 regarding retroactive fees. This deletion is reasonable because it eliminates duplicative language.

Subpart 4 sets forth the annual fees, which consist of the sum of the quantity fees and the base fee, to be paid by nonmetropolitan area hazardous waste generators. These fees are discussed below.

Item A. A sentence was added to this item stating that a volume fee is not assessed for sewerage waste. This sentence was added for clarification purposes only and is not a change to the actual application of this part. A sentence was also added exempting very small quantity generators from the volume fees. Instead, the volume-related aspect of their fee is limited to the base fee. Unlike large and small quantity generators whose fees will change annually based on volume, the very small quantity generators will have a fixed annual fee and will be able to budget accordingly. In addition, the amount of information gathered from very small quantity generators will be reduced in the future. Agency staff does not anticipate collecting extensive management method information. Since the volume fee is based on the total quantity of waste generated and the management method, it is reasonable to exclude very small quantity generators from a separate volume fee.

Also, under Item A, the volume fee based on the amount of waste generated has been revised. In the past, Agency staff has attempted to assess volume-based fees by establishing a single fee per gallon and per pound. This is not possible because Minn. Stat. § 116.12 (1990) requires the Agency's fees for nonmetropolitan area generator fees to not exceed fees charged by the metropolitan counties, and retaining current language would cause the fees charged to nonmetropolitan county generators to exceed those of the metropolitan county generators. Because of this statute, the Agency had to adopt a two-part volume fee. The two-part volume fee has been retained in the amendments. The net result of the revised volume fee is that the total volume fee paid by all nonmetropolitan area generators will increase.

The volume fee for the first 2,639 gallons or 26,399 pounds of each waste stream produced is \$.18 cents per gallon and \$.018 cents per pound.

The volume fee for over 2,639 gallons or 26,399 pounds produced is \$.05 per gallon and \$.005 per pound, respectively. The volume fee is then multiplied by the management method factor specified in the rules to give the total volume fee.

The volume fee is reasonable since Minn. Stat. § 116.12 (1990) specifies that a fee for hazardous waste generators shall consist of a minimum fee per generator and an additional fee based on the quantity of wastes generated. In addition, the Agency is charged with the responsibility of meeting the biennial target determined by the legislature. Therefore, it is reasonable to amend the fees as calculated in order to meet the biennial target.

Item B. This item comprises the base fee which is paid by all nonmetropolitan area generators based on the volume of hazardous waste generated per month.

The base fees are apportioned according to the relative amount of administrative effort involved in various aspects of the regulation of hazardous waste, and are therefore reasonable. The last time the fee rules were amended, the Agency estimated that it spent approximately 32 percent of its time regulating very small quantity generators, 37 percent of its time regulating small quantity generators, and 31 percent of its time regulating large quantity generators. The revised time estimates are now 49, 26, and 25 percent, respectively. The sum of the base fees plus quantity fees for each size category follow these percentages.

As part of the process of developing the fee amendments, Agency staff reassessed the amount of effort spent on hazardous waste facilities and metropolitan and nonmetropolitan generators. Agency staff has determined that 26.1 percent of the Agency hazardous waste program costs are attributable to

hazardous waste facilities and the remainder to hazardous waste generators. Accordingly, fees assessed to hazardous waste facilities should raise 26.1 percent of the necessary revenue. Currently, fees from hazardous waste facilities raise 26.4 percent of the necessary revenue. Thus, a minimal change in distribution is reasonable at this time.

The existing hazardous waste generator fee rules require an annual fee comprised of a base fee and a volume fee. At the time this system of collecting nonmetropolitan area generator fees was established, the fees were based on Agency staff work efforts associated with these generators. As part of the process of developing the proposed amendments, Agency staff reassessed the current work effort and the volume-based fee structure for various types of nonmetropolitan area generators to determine whether the current fee system still equitably assessed fees. Agency staff found that the number and types of generators has changed since the existing fee system was established. Based on the assessment, the Agency has determined that the existing fee distribution must be changed to ensure that the administrative and volume-based fees remain equitable for FY 1992 and 1993 generators.

The Agency is required by statute to assess fees to nonmetropolitan area generators in the form of a minimum fee and an additional fee based on the quantity of wastes produced by the generator. To meet this requirement, the Agency has previously collected 50 percent of the needed revenue from generators from the volume fee and the remaining 50 percent from the base fee.

If the above percentage split was strictly followed in establishing the volume fees, the volume fees for nonmetropolitan area small and large quantity generators would exceed fees established by the metropolitan counties. Minn. Stat. § 116.12 (1990) establishes that the Agency's

nonmetropolitan area generator fees may not exceed fees charged by the metropolitan counties. Therefore, the percentage of revenue that will be collected from the volume fee will not reach the 50 percent Agency goal.

In order to assess base fees, the Agency has made a distinction among those generators who produce less than 100 kilograms of hazardous waste per month (kg/mo.), those who produce 100 to 1000 kg/mo, and those who produce greater than 1000 kg/mo. These generators are known as "very small quantity" "small quantity," and "large quantity" generators, respectively. The Agency projects for FY 1992 that there will be 118 large quantity generators, 699 small quantity generators, and 5,008 very small quantity generators in the nonmetropolitan areas of the State.

Large quantity generators are required to comply with more technical and reporting requirements than generators in the other two categories, and small quantity generators are required to comply with more technical and reporting requirements than very small quantity generators. However, the sheer volume of very small quantity generators requires a much greater amount of Agency staff time and effort. Therefore, Agency staff work efforts for each category of generators has changed. The Agency now spends approximately 49 percent of its time regulating very small quantity generators; 26 percent of its time regulating small quantity generators; and 25 percent of its time regulating large quantity generators.

The revised base fees are as follows:

1. Very small quantity generators who produce less than 100 kg/mo of hazardous waste, which is approximately 264 gallons per year or 2,640 pounds per year - \$62.00
2. Small quantity generators who produce equal to or greater than 100 but less than 1000 kg/mo, which is approximately 2,640 gallons per year or 26,400 pounds per year - \$130.00
3. Large quantity generators who produce greater than or equal to 1000 kg/mo - \$350.00.

Subpart 5 previously described the follow-up action fees to be assessed in the event a nonmetropolitan area generator failed to respond to certain reporting requirements. Through legislative action, the Agency has been granted the authority to use enforcement tools such as the Administrative Penalty Order to compel generators to submit required information. The use of such enforcement tools has made this subpart obsolete. Therefore, the Agency is repealing this subpart. It is reasonable to repeal language that the Agency does not use.

Subpart 6 describes when the fees need to be paid to the Agency. The combined effect of the existing statute and rules was to require that the fees be paid within 60 days from the date that the Agency sent the bill, or by the first day of the following quarter, whichever was later. The requirement for payment by the first day of the following quarter is based on Minn. Stat. § 116.12 (1990). The Agency is amending the provision which allowed a generator to wait for a full 60 days beyond the billing date to pay the fees, even if that extended the payment time to beyond the first day of the quarter. It is reasonable to give generators a certain time to respond to the Agency's fee billings. For example, if the Agency notifies generators of their fees at a time that is close to the end of a quarter, it is not reasonable to expect them to pay by the first day of the next quarter. The rules formerly provided up to 60 additional days to respond to the notification of fees due. The Agency is amending this time period to 30 days. The Agency believes that 30 days is a reasonable time period to allow generators to respond to a billing. It is consistent with the time periods allowed for other types of billings and the shorter response time will be administratively more efficient.

Subpart 7 establishes when a fee is considered late. The amendments change the name of the title of this subpart for clarification purposes only.

The title change does not imply a change to the actual requirements of this subpart. Additional language in this subpart will assess a late fee penalty of 50 percent of the annual fee to very small quantity generators if they fail to pay their fees by the due date. The penalty is reasonable because it represents the Agency's estimated cost of carrying out activities when a generator fails to submit the fees. Also, a single late fee simplifies administration of the fee collection activities.

D. Minn. Rules pt. 7046.0040, Generator Statewide Program Fee

The Agency is amending subpart 1 of this part to reduce the statewide program fee charged to all generators from 68 percent to 52 percent of the annual fee. As part of the process of developing the fee amendments, Agency staff reassessed the amount of effort spent on generators in the metropolitan and nonmetropolitan areas. Agency staff has determined that 73.9 percent of the Agency's hazardous waste program time is attributable to hazardous waste generators. Further, 35.3 percent of this total is time spent by Agency staff on metropolitan area issues. This number is derived from the portion of all generator time that is spent by Agency staff in the metropolitan area which is equal to 31.5 percent plus a regional economy factor of 11.76 percent of 31.5 percent. Agency staff developed the regional economy factor because of the difference in the cost of living between the metropolitan and nonmetropolitan areas. Agency staff believes the regional economy factor is reasonable for the following factors: the volume of potential customers in the nonmetropolitan versus metropolitan areas; the accessibility and cost of hazardous waste services in the nonmetropolitan and metropolitan areas; and the wages in the nonmetropolitan versus metropolitan areas.

To determine the statewide program fee, Agency staff multiplied 35.3 percent times \$1,497,437, which is the total target amount for all generators,

to get the amount attributable to the metropolitan area, or \$528,595. This amount was then divided by \$1,023,382 which is the amount of the metropolitan area base fees to get the statewide program fee of 52 percent. A reduction is reasonable because it will keep the statewide program fee within the general estimate of the Agency's workload attributable to metropolitan area generators. These calculations can be displayed as follows:

$$\begin{aligned} \$1,497,437 \times 35.3\% &= \$528,595 \\ \$528,595 / \$1,023,382 &= 0.516 = 51.6\% \\ \text{Rounding this to the next highest whole percentage} &= 52\% \end{aligned}$$

35.3% = the time spent by Agency staff on metropolitan area issues.

\$1,497,437 = the total annual target amount for fees collected from all generators.

\$528,595 = the amount of fees that must be collected annually from the metropolitan area generators.

\$1,023,382 = the amount of the metropolitan area annual base fees.

Under subparts 1, 2, and 3, there are also language changes for clarification purposes only. The language changes do not represent changes to the actual requirements of this part.

E. Minn. Rules pt. 7046.0045, Retroactive Fee

The Agency is adding a new part to the fee rules regarding retroactive fees. This part incorporates the language formerly located in Minn. Rules pt. 7046.0031, subpart 3.

Subpart 1 of this part is added to illustrate who will be assessed retroactive fees. Retroactive fees will be assessed to persons generating hazardous waste without a license and to small and large quantity generators producing a waste that was not included on the initial license application. It is reasonable to assess retroactive fees to generators who have been producing hazardous waste but have failed to pay fees on that waste.

Subpart 2 is the schedule on how retroactive fees will be assessed.

Subpart 2a clarifies that retroactive fees will be assessed to small and large quantity generators. This subpart is consistent with the past practice of retroactive fee assessment. Very small quantity generators will be assessed retroactive fees differently than for small and large quantity generators. This reasoning, as well as the change in assessing retroactive fees from two to three years, is discussed below.

Subpart 2b of this part places a one year moratorium on the payment of retroactive fees by very small quantity generators who file license applications by July 1, 1992. This is reasonable because it is based on the concerted effort that the Agency began in August 1990 to identify all remaining hazardous waste generators located in the nonmetropolitan area.

Over 31,000 businesses with Standard Industrial Classification (SIC) Codes matching those of known generators were sent forms requesting basic information regarding type of business, types of waste, and annual amounts of waste produced. The Agency has used this information for several purposes: to identify hazardous waste generators and to initiate their compliance with the Minnesota Hazardous Waste Rules; to enable the Agency to provide large numbers of generators with hazardous waste management assistance; and to ensure the proper management of hazardous waste. The Agency anticipates that this effort will be completed prior to July 1, 1992.

Since the Agency has gone to great lengths to educate businesses regarding the hazardous waste requirements through mailings and newspaper articles, it is reasonable that retroactive fees be assessed to those generators who still have not complied with the rules. This subpart will only affect generators who were producing hazardous waste prior to July 1, 1992 and who failed to report to the Agency by that date.

Under this subpart, the Agency will increase the payment of retroactive fees from two to three years. Historically, the original fee rules provided for the collection of retroactive fees for an unlimited number of years. The purpose of this "unlimited" retroactive fee was to eliminate the economic advantage derived by companies which did not pay any fee because they did not comply with Minn. Rules pt. 7045.0240, which requires that they submit a hazardous waste disclosure (now called a license) to the Agency. In 1986, two opposing forces confronted Agency staff regarding the application of retroactive fees. The first was the financial difficulty for a small company to pay a fee for what could be "unlimited" years of waste production (and the ability of the Agency to collect such a fee). The second was the question of fairness to generators complying with the disclosure requirements and paying annual fees if no retroactive fee could be collected from noncompliant generators.

The Agency sought the opinions of the generators themselves to help resolve this dilemma. In 1986, the Agency staff surveyed the generators located in the nonmetropolitan area about the fee rule and fee program. The majority of respondents were in favor of retroactive fees. Those in favor of retroactive fees indicated that fees should not be assessed for more than two or three previous years of waste production. Since the statute of limitations on certain enforcement actions for the Agency was two years, the Agency amended the fee rules in 1987 to assess two years of retroactive fees where appropriate.

During the 1990 legislative session, the statute of limitations was raised from two to three years. This, coupled with the Agency's effort to identify all remaining hazardous waste generators in the nonmetropolitan area,

has lead to the proposal in the rules to increase the retroactive period from two to three years.

The above is reasonable because it accomplishes the objective of retroactive fees (i.e., removing most of the economic advantage unlicensed generators have enjoyed over generators who are in compliance) without being so overly burdensome that it constitutes a disincentive for disclosure (licensing) of waste generation.

Subpart 3 defines how retroactive fees are calculated. The language in this subpart is consistent in format and in substance to the process previously provided under Minn. Rules pt. 7046.0031, subp. 3. It is reasonable to incorporate a process that is already in place and with which the public and the Agency is familiar.

Also under this subpart, revisions have been made to reflect the fact that in the hazardous waste rules a disclosure is now called a license. Language has also been deleted that refers to the "flat annual fee". Since the Agency is eliminating the flat annual fee category from the fee rules, this language is no longer needed.

F. Minn. Rules pt. 7046.0050, Generator Fee Exemptions

Subpart 3 is being amended to include the definition of "response action" formerly located under Minn. Rules pt. 7046.0010, subp. 17a. Since this definition is only used in this subpart, Agency staff believes it is reasonable to incorporate the definition into this subpart.

Subpart 4 exempts certain generators from annual fees if they meet specific conditions and requirements and instead subjects them to a flat fee. When this subpart was added to the fee rules in 1987, the Agency believed that certain categories of generators required less regulatory oversight and assistance. The Agency believed at that time that generators whose sole

hazardous wastes were degreasing or dry-cleaning solvent related wastes reclaimed off-site under a maintenance agreement, lead acid batteries, gasoline tank bottoms, and scrap metal were types of generators who generally required less regulatory effort by Agency staff than did other types of generators. This is no longer the case. The Agency has now found that staff expend a considerable amount of time and effort on these types of generators.

The following are the reasons why Agency staff spends more time and effort on these types of generators.

First, only small and very small quantity generators qualify for the exemption. The Agency's effort, begun in August 1990, to identify all remaining hazardous waste generators located in the nonmetropolitan area, added approximately 3,000 small and very small quantity generators to the hazardous waste system. Because of the significant increase in the number of generators in these two categories, the amount of time and effort expended by Agency staff to deal with paperwork, answer telephones, make waste determinations, and visit businesses will increase.

Second, because of the manner in which hazardous waste from these types of businesses is managed, many hazardous waste generators do not believe they generate a hazardous waste. Thus, Agency staff is required to spend a great deal of time (through letters and telephone conversations) convincing the generators that they are required to meet the hazardous waste requirements, including the requirement to pay fees.

Third, the Agency recently negotiated and approved stipulation agreements to resolve their manifest violations with two of the three companies that currently qualify as managing waste under a maintenance agreement. Both companies prepare the manifests for their customers. Common manifest violations included: failure of their customers to obtain U.S. Environmental

Protection Agency identification numbers, incomplete manifests, missing or illegible generators' signatures on the manifests, and failure to send copies of the manifests to their customers and the Agency. Because of these ongoing problems, the Agency does not see an administrative benefit to maintenance agreements. The Agency is still required to expend significant effort to enforce compliance with the companies benefitting from maintenance agreements.

Fourth, with the replacement of the test that determines whether or not a waste is considered hazardous (Toxicity Characteristic Leaching Procedure test) more wastes are considered hazardous. Because the universe of hazardous waste has increased, generators whose waste types previously qualified for the exemption may now have waste types that make them ineligible for the flat fee.

Finally, there are some new products on the market that would not qualify as a waste type eligible for the exemption. For instance, aqueous-based cleaners perform the same function as solvent-based cleaners. However, current rule language would not allow companies using aqueous-based cleaners to qualify for the exemption.

For the above reasons, the Agency is reasonably repealing this subpart.

The Agency is adding a new subpart 6. This new subpart would exempt hazardous waste collected as a result of a very small quantity generator hazardous waste collection program from annual fees. This is reasonable since each generator sending waste to the collection program is required to pay fees as well as the generator who is coordinating the collection program. Thus, if fees were assessed on wastes collected from the program, fees would be assessed twice on the same waste. This is not reasonable. Therefore, the Agency is adding this subpart.

G. Minn. Rules pt. 7046.0070, Appeal Procedure

This rule is being amended to change the term "late fee penalty" to "late fee". This change is consistent with the changes discussed in Section C of this document and is therefore reasonable.

V. **SMALL BUSINESS CONSIDERATIONS IN RULEMAKING**

To comply with Minn. Stat. § 14.115 (1990), the Agency has considered the statutory methods for reducing the impact of the amendments on small businesses. The statute requires that each of the following methods be considered:

1. The establishment of less stringent compliance or reporting requirements;
2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements;
3. The consolidation or simplification of compliance or reporting requirements;
4. The establishment of performance standards for small businesses to replace design or operational standards in the rule; and,
5. The exemption of small businesses from any or all requirements of the rule.

In drafting the amendments, the Agency considered whether it could reduce the impact of the rules on small businesses and yet attain the statutory requirement to collect the legislatively mandated biennial target. However, the important consideration in the regulation of hazardous waste is the quantity of hazardous waste generated, stored, treated or disposed of, not the size of the business. Differentiations based on business size may or may not reflect the quantity of hazardous waste under regulation. Therefore, it is not reasonable to assess fees on the basis of business size as this may have little relation to the efforts the Agency expends regulating hazardous waste activities.

The amendments increase facility fees by 11.6 percent. It is unlikely that any of the disposal, treatment, or storage facilities qualify for small business status.

Many generators of hazardous waste may qualify for small business status. It is reasonable to provide for some consideration of very small quantity generators, and in many cases these very small quantity generators will also be small businesses. The fee exemption provided in the existing rules for generators who generate less than 10 gallons or 100 pounds of hazardous waste in a year has been retained in the proposed amendments.

In addition, generators producing less than approximately 264 gallons or 2640 pounds of hazardous waste in a year (very small quantity generators under Minn. Rules pt. 7045.0206, as proposed at 16 State Register, pages 330-331, August 19, 1991) will not be assessed a separate volume fee. Instead, the volume-related aspect of their fee is limited to the fixed fee for generators who produce less than 100 kg/mo of hazardous waste. Their base fee of \$62 in addition to the 52 percent statewide program fee will equal a total of \$94.24. Unlike larger generators, whose fees will change annually based on volume, the very small quantity generator will have a stable annual fee and will be able to budget accordingly.

A third consideration applied to very small quantity generators relates to the retroactive fees assessed under Minn. Rules pt. 7046.0031, subp. 3. The amendments establish that the retroactive fee not be assessed for very small quantity generators until after July 1, 1992, allowing this size generator to enter the hazardous waste management system during this period without the automatic assessment of unpaid previous fees. After July 1, 1992, retroactive fees for very small quantity generators may only be assessed back to January 1, 1991, or three years maximum, whichever is shorter. Retroactive fees will only

be assessed to very small quantity generators who enter the hazardous waste management system after July 1, 1992 and who have generated hazardous waste prior to the most recent calendar year. To the extent that these very small quantity generators are also small businesses, this retroactive fee exemption will provide a reduction in their overall cost of managing hazardous waste.

For the above mentioned reasons, the Agency believes that the increase in the hazardous waste fee rates does not present an unreasonable burden to small businesses that are subject to these requirements.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency 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, and practical under the circumstances.

In proposing these amendments, the Agency has given due consideration to available information as to the economic impacts of the proposed amendments, and has determined that they will have an economic impact on the regulated community. However, due consideration was given to information provided to the Agency since the hazardous waste fee rules were first enacted. The Agency assessed this information and has attempted in these rule amendments to proportionally distribute the hazardous waste fees among all business within the requirements established by Minn. Stat. § 116.12 (1990).

VII. CONCLUSION

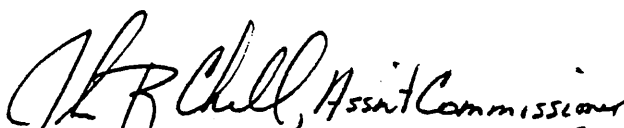
The Agency has, in this document and its exhibits, made its presentation of facts establishing the need for and reasonableness of the proposed amendments to Minnesota's hazardous waste fee rules. This document constitutes the Agency's Statement of Need and Reasonableness for the amendments to Minnesota's hazardous waste fee rules.

VIII. LIST OF EXHIBITS

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

<u>MPCA Ex. No.</u>	<u>Title</u>
1	Commissioner of Finance Approval
2	Comment Letter from Bill Clark Oil Company, Inc. dated August 13, 1991.
3	Analysis of Fee Data by Agency Staff.
4	Minnesota Employment and Wages by Economic Region and County, Fourth Quarter, 1990. A report by the Research and Statistics Office, Minnesota Department of Jobs and Training.

Date: September 11, 1991


Charles W. Williams
Commissioner *for:*