

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of Proposed Amendments Governing
Waste Management at Wood Treating Operations
and the Exemption of Recycled Chlorofluorocarbons
from Hazardous Waste Regulation, Minn. Rules
Pts. 7001.0623, 7045.0020, 7045.0120, 7045.0135,
7045.0139, 7045.0141, 7045.0145, 7045.0292,
7045.0528, 7045.0546, 7045.0628, and 7045.0644

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of this proceeding is the amendment of the rules of the Minnesota Pollution Control Agency (hereinafter "Agency") governing the management of hazardous waste. Specifically, the proposed amendments pertain to the regulation of waste management at wood treating operations and the exemption of chlorofluorocarbons (CFCs) which are recycled.

The proposed amendments contain federal amendments which were promulgated by the U.S. Environmental Protection Agency (EPA) under the authority of both the Resource Conservation and Recovery Act (RCRA) and the Hazardous and Solid Wastes Amendments of 1984 (HSWA). Federal regulations promulgated under the authority of RCRA are not effective in Minnesota until they are incorporated into state rules. The federal regulations which list creosote (Hazardous Waste Code F034) and inorganic (Hazardous Waste Code F035) wood preservative wastes as hazardous under Minn. Rules pt. 7045.0135 were promulgated under RCRA. In contrast, federal regulations promulgated under the authority of HSWA are effective in Minnesota at the time they are effective federally. The federal regulation which lists chlorophenolic (Hazardous Waste Code F032) wood preserving wastes as hazardous under Minn. Rules pt. 7045.0135 was promulgated

under HSWA. The EPA will enforce this HSWA listing until the corresponding state proposed amendment is adopted and the Agency receives authorization from EPA to enforce it. The effective dates for the proposed amendments, which establish standards for drip pads to be used to manage these wood preserving wastes, are dependent upon the specific type of waste managed on drip pads by a facility. A facility managing F034 or F035 wastes, for which listings were promulgated under RCRA, do not have to comply with the drip pad standards until the proposed amendments become effective. However, facilities managing F032 wastes, for which listings were promulgated under HSWA, must meet federal compliance dates for the drip pad standards. The federal compliance dates for facilities managing F032 wastes are February 6, 1992, for the upgrade of existing pads, and May 6, 1992, for the installation of new pads (see Exhibit 4).

The Agency is required to adopt new federal regulations in order to maintain EPA authorization to administer its hazardous waste program when the new regulations are more stringent than current state rules. In contrast, the Agency is not required to adopt federal regulations that are less stringent than current state rules. The proposed amendments, which exempt CFCs that are reclaimed from hazardous waste regulation, incorporate federal regulations that are less stringent than existing rules. Although not required to adopt these federal regulations, the Agency believes that doing so will improve the hazardous waste rules by allowing for flexibility in the rules that will encourage and facilitate environmentally beneficial management of CFCs.

The authority to adopt the proposed amendments is provided under Minn. Stat. § 116.07, subd. 4 (1990).

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

II. NEED FOR THE PROPOSED AMENDMENTS TO THE HAZARDOUS WASTE RULES

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. Need is a broad test which does not easily lend itself to evaluation of each proposed revision. In the case of this proceeding, the need for amendments to the Agency's rules governing the management of hazardous waste has three bases: (A) the need for consistency with federal hazardous waste regulations; (B) the need to provide for flexibility within the hazardous waste rules in order to facilitate environmentally beneficial management of certain hazardous wastes; and (C) the need for environmental protection.

A. Need for Consistency with Federal Regulations.

In 1976, Congress adopted RCRA (42 U.S.C. § 6901 et seq.) to regulate the management of hazardous waste. In adopting RCRA, Congress provided for eventual state control of the hazardous waste program and set up a mechanism for the EPA to grant authority to states to operate the program. In states that receive authorization, the state environmental agency administers the state program in lieu of the federal program. To receive and maintain authorization, the state program must be "equivalent" to the federal program and consistent with federal or state programs applicable to other states. EPA has defined "equivalent" to mean that state requirements are at least as stringent as federal requirements. In terms of consistency, EPA's goal is to achieve an integrated national program which requires that final state programs do not conflict with each other or with the federal program. The proposed amendments in this rulemaking are as stringent as the federal regulations which they contain.

Minnesota received final authorization from EPA for its hazardous waste program pursuant to RCRA effective February 11, 1985 (see 50 FR 3756, published on January 28, 1985). A state with final authorization administers its hazardous waste program in lieu of the EPA program for those regulations which were promulgated pursuant to RCRA. In order to maintain its authorization, the state must enact equivalent requirements within specific time frames when new, more stringent federal requirements are promulgated by EPA. The federal regulations incorporated by the proposed amendments regarding the management of wastes at wood treating operations were promulgated under RCRA and HSWA and are more stringent than current state rules. Therefore, the proposed amendments are needed in order for state rules to be consistent with federal regulations and in order for the Agency to maintain its authorization to administer the hazardous waste program.

B. Need to Provide for Flexibility Within the Hazardous Waste Rules in Order to Facilitate Environmentally Beneficial Management of Certain Hazardous Wastes.

The proposed amendments provide flexibility in the hazardous waste rules in order to help facilitate recycling of CFCs. The proposed amendments exempt CFCs from the hazardous waste rules, provided that the CFCs are reclaimed. Regulating CFCs under the hazardous waste rules would be economically costly to generators and would possibly encourage generators to vent CFCs to the atmosphere in lieu of proper management. Venting of CFCs has been determined to be a cause of ozone depletion. The proposed amendments, through exemption, provide an incentive for CFC recycling. Generators disposing of CFCs would have to pay the high costs of hazardous waste management, while generators recycling CFCs would avoid these costs. EPA is expected to ban the venting of CFCs in the near future under the authority of the Clean Air Act.

Since the proposed federal regulations regarding CFC recycling are less stringent than current state rules, the Agency is not required to adopt them. The Agency has decided to incorporate these less stringent federal requirements into state rules in order to facilitate recycling and prevent venting of CFCs. This exemption will help promote protection of human health and the environment, while making the hazardous waste rules more flexible. It is necessary to adopt the proposed amendments for these reasons.

C. Need for Environmental Protection.

The types of wood preserving wastes and operations regulated by the proposed amendments pose a great threat to the environment. Approximately 54 wood treating facilities are on the Superfund National Priorities List and there are also wood treating operations on the state Superfund program's Permanent List of Priorities in Minnesota. Cases of environmental damage resulting from

these wastes and operations are sometimes severe and long-term (see Exhibit 6). The proposed amendments seek to correct and prevent these problems by adding several types of wood preserving wastes to the wastes that are addressed in the existing rules. The proposed amendments also mandate specific management standards for these wastes, including the use of drip pads at wood treating facilities in order to collect wastes and prevent them from coming into contact with environmental media such as soil and ground water. The proposed amendments are needed in order to provide the standards necessary to help protect human health and the environment from the potential hazards posed by wood preserving wastes and operations.

III. 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 rules or amendments. The Agency proposes to incorporate federal requirements promulgated by EPA into the state hazardous waste rules. A complete discussion of the reasonableness of these federal amendments is presented in Exhibits 1 to 5 listed in Part VII of this document, which are hereby incorporated by reference. The proposed amendments to state rules due to these federal regulations are found in Minn. Rules pts. 7001.0623, 7045.0020, 7045.0120, 7045.0135, 7045.0139, 7045.0141, 7045.0145, 7045.0292, 7045.0528, 7045.0546, 7045.0628, and 7045.0644. The reasonableness of the proposed amendments to the state hazardous waste rules is discussed below.

A. Minn. Rules pt. 7001.0623, Part B Information Requirements for Drip Pads.

The amendments create a new type of hazardous waste management unit - the drip pad. The drip pad requirements have been designed to specifically address the normal operating conditions of wood treating operations which include the

holding of newly treated wood in a drippage area until all drippage has ceased. Drip pads are to be used in drippage areas in the collection and accumulation of the newly listed wood preservative wastes discussed in item D below. If owners of operations using drip pads do not meet the requirements of Minn. Rules pt. 7045.0292, subp. 1, item B, subitem (3) regarding the accumulation of hazardous waste (see discussion in item H below), or if they treat hazardous wastes on their drip pads, they must obtain a facility permit to operate their drip pad. This part contains the information which must be included in Part B of the applicant's permit application. The information which this part requires to be submitted includes the types of wastes to be managed on drip pads and the design, construction, operation, and maintenance of drip pads.

It is reasonable to require a permit for operations which will be storing hazardous wastes for an extended period of time or treating hazardous wastes on drip pads, because in doing so, they are increasing the potential for a release of hazardous waste to the environment. It is also reasonable that a permit containing the information specified in this part be required to more closely monitor the activities of facilities operating in this manner in order to assure protection of human health and the environment.

B. Minn. Rules pt. 7045.0020 Definitions.

Minn. Rules pt. 7045.0020 provides definitions for a number of terms in the hazardous waste rules. The proposed amendments add the term "drip pad" to this part. It is reasonable to include this definition in this part in light of the proposed amendments which establish the drip pad as a new hazardous waste management unit in order to clarify the meaning of this new term.

C. Minn. Rules pt. 7045.0120 Exempt Wastes.

The existing Minn. Rules pt. 7045.0120 lists classes of wastes which are excluded from hazardous waste regulation. The proposed amendments add two new

classes of waste to this part. Both exclusions are for recycled wastes. One class of excluded waste is wood preserving process wastes which are reclaimed and reused to treat wood. The other exclusion is that of used CFCs reclaimed for further use. In both cases, recycling of the wastes involved is preferred to disposal because recycling decreases the need for the production of more hazardous chemicals and is an environmentally protective method of managing these wastes. Recycling of these wastes is also less expensive than managing them as hazardous waste. By exempting these wastes when recycled, the proposed amendments encourage the lower cost and more environmentally beneficial alternative of recycling. The proposed amendments to this part are reasonable for these reasons.

D. Minn. Rules pt. 7045.0135 Lists of Hazardous Wastes.

The existing Minn. Rules pt. 7045.0135 contains the lists of substances which are classified as hazardous wastes. Wastes listed as hazardous are subject to full regulation under the hazardous waste rules. The proposed amendments add three classes of wood preserving wastes to these lists, including chlorophenolic (Hazardous Waste Code F032), creosote (Hazardous Waste Code F034), and inorganic (Hazardous Waste Code F035; containing arsenic and chromium) formulations. These classes include wastewaters, process residuals, preservative drippage, and spent formulations containing these types of wood preserving chemicals. The F032 listing carries over to wastes from operations which have ceased use of chlorophenolic preservatives, but which have not met the equipment cleaning standards of Minn. Rules pt. 7045.0145 (see discussion in item G below). The listing applies to this situation because EPA has determined that cross-contamination from past uses of chlorophenolics has occurred. It is reasonable to list these three classes of wastes as hazardous

because of the high degree of toxicity they display. Listing these wastes will protect human health and the environment by bringing them into the hazardous waste management system.

E. Minn. Rules pt. 7045.0139 Basis for Listing Hazardous Wastes.

The existing Minn. Rules pt. 7045.0139 lists the hazardous constituents which are the basis for listing wastes as hazardous in Minn. Rules pt. 7045.0135. The proposed amendments to this part list the constituents which are the basis for listing the new wastes which the proposed amendments add to Minn. Rules pt. 7045.0135. The proposed amendments to this part are reasonable because they support the proposed amendments to Minn. Rules pt. 7045.0135.

F. Minn. Rules pt. 7045.0141 Hazardous Constituents.

The existing Minn. Rules pt. 7045.0141 lists hazardous constituents of concern to human health and the environment. Wastes containing constituents listed in this part may be listed at the Agency's discretion, as laid out in Minn. Rules pt. 7045.0129. Chemicals of a toxic, carcinogenic, or otherwise hazardous nature are listed in this part. The proposed amendments add to this part three additional constituents which are found in wood preserving wastes. The proposed amendments add these chemicals to the list of constituents of concern because they have been determined by EPA to be probable human carcinogens and potentially highly toxic. For this reason, it is reasonable to add these constituents to the list to allow for them to be considered in the evaluation of wastes to determine whether or not wastes should be listed.

G. Minn. Rules pt. 7045.0145 Deletion of Certain Hazardous Waste Codes Following Equipment Cleaning and Replacement at Wood Preserving Plants.

The listing of F032 wastes in Minn. Rules pt. 7045.0135 (see discussion in item D above) includes wastes generated at operations which have discontinued use of chlorophenolic formulations, but which have not removed chlorophenolic

residues from process equipment. The listing is retained even though the use of chlorophenolics has ceased because residues from past treatments are known to cause cross-contamination of non-chlorophenolic wastes. The proposed amendments create this new rule part which contains standards for equipment cleaning at operations which in the past used chlorophenolic formulations. Wastes generated at facilities which meet the requirements of this part will no longer come under the F032 listing. The proposed amendments contained in this part are reasonable because they allow for flexibility in the rules while still protecting the environment. The standards of this part, combined with the listing for F032 wastes, place additional requirements on facilities in this situation for the sake of environmental protection, but also allow for a relaxation of regulation once equipment cleaning is completed and the possibility of cross-contamination is removed. The proposed amendments of this part are reasonable because they act as a safeguard while the possibility of cross-contamination exists, but are relaxed once this possibility is removed.

H. Minn. Rules pt. 7045.0292 Accumulation of Hazardous Waste.

The existing Minn. Rules pt. 7045.0292, subp. 1 contains the standards generators must follow for the accumulation of hazardous waste without having a permit to do so. The existing rules of this subpart address the accumulation of hazardous waste in containers and in tanks. In light of the proposed amendments contained in Minn. Rules pt. 7045.0644 regarding the use of drip pads as accumulation units (see item J below), it is reasonable to provide standards similar to those for containers and tanks for drip pads. The proposed amendments allow for accumulation of hazardous waste without a permit on drip pads provided that the drip pad standards of Minn. Rules pt. 7045.0644 are met and all wastes are removed from the pad once every 90 days. It is reasonable to allow for accumulation of hazardous wastes on drip pads without a permit for the

short period of time allowed by this part because short-term accumulation presents little risk to human health and the environment. As long as the drip pad standards of Minn. Rules pt. 7045.0644 are met and the waste removal time established by this subpart are respected, a full permit for the accumulation of hazardous waste is unnecessary.

I. Minn. Rules pts. 7045.0528 and 7045.0628 Tank Systems.

The proposed amendments create a new hazardous waste management unit - the drip pad. Drip pads are used to collect wood preserving process wastes. Drip pads are used to convey wood preservative drippage from newly treated wood into a collection device, such as a tank system. The existing Minn. Rules pts. 7045.0528 and 7045.0628 contain requirements for the use of tank systems. The proposed amendments to these parts state that tank systems used in conjunction with drip pads are subject to the requirements of these parts. It is reasonable that tank systems used in conjunction with drip pads be subject to the existing tank system requirements because they are of the same nature and used for a similar purpose as other tank systems.

J. Minn. Rules pts. 7045.0546 and 7045.0644 Drip Pads.

The proposed amendments contained in these parts create a new type of hazardous waste management unit - the drip pad. These parts contain the drip pad requirements. The drip pad requirements have been designed to specifically address the normal operating conditions of wood treating operations, which include the holding of newly treated wood in a drippage area until all drippage has ceased. These parts require operators of wood treating facilities that use formulations listed in Minn. Rules pt. 7045.0135 to use drip pads to collect drippage of excess formulations from newly treated wood. These parts also contain the requirements for drip pad design, construction, operation, and maintenance. It is reasonable to require the use of drip pads to collect

hazardous wood preservative drippage because these wastes pose a significant risk to human health and the environment. Drip pads will prevent these hazardous wastes from contacting environmental media. It is also reasonable to include specific design and operation standards for drip pads in order to assure that they will be adequately able to protect human health and the environment.

IV. 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 proposed rules 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.

The Agency is required to adopt the proposed amendments regarding the management of waste at wood treating operations in order to maintain its authorization to administer the hazardous waste program, as explained in Part I and II of this document. Since the proposed amendments may not be less stringent than the federal regulations which they contain, the Agency may not make the proposed amendments less stringent in order to accommodate all small businesses. The Agency does, however, have the freedom to regulate Very Small Quantity Generators of hazardous waste (VSQGs--those generating less than 100 kilograms/month), which may also be small businesses in some cases, less

stringently than larger generators, since the federal government does not regulate this class of generator. However, the Agency as a matter of policy regulates VSQGs in a similar way that it does larger generators because of the potential hazards of the wastes which VSQGs generate. Hazardous wastes are dangerous regardless of the size of the business generating them, and so all sizes of businesses must meet similar requirements with respect to the hazardous waste rules. The existing rules contain provisions which seek to lessen the regulatory burden on VSQGs to the extent possible without compromising environmental protection. These existing rules affect the implementation and effect of the proposed rules, lessening their burden on VSQGs. Although the proposed amendments will increase the cost of hazardous waste management for some small businesses, these costs are balanced by the protection of human health and the environment provided by the proposed amendments and the cost savings the proposed amendments will provide through the prevention of future cleanups of environmental contamination.

The proposed amendments regarding the exemption of recycled CFCs from the hazardous waste rules are designed to allow for flexibility in the rules and lessen the burden of the rules on all businesses. Thus, this part of the proposed rules will have a positive effect on all businesses to which they apply, including small businesses.

V. 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.

The proposed amendments regarding the management of hazardous wastes at wood preserving operations will result in additional costs for businesses which are affected by them. However, the Agency is required to adopt the proposed amendments in order to maintain its EPA authorization to administer the hazardous waste program, as explained in Parts I and II of this document. The Agency is required by EPA to make the proposed amendments at least as stringent as the federal amendments they adopt. Thus, the Agency may not lessen the requirements of the proposed rules in consideration of economic factors. The Agency does, as stated above in item IV, have the freedom to regulate VSQGs less stringently than larger generators, since the federal government does not regulate this class of generator. However, the Agency as a matter of policy regulates VSQGs in a similar way that it does larger generators because of the potential hazards of the wastes which VSQGs generate. Hazardous wastes are dangerous regardless of the size of the business generating them, and so all sizes of businesses must meet similar requirements with respect to the hazardous waste rules. The existing rules contain provisions which seek to lessen the regulatory burden on VSQGs to the extent possible without compromising environmental protection.

These existing rules affect the implementation and effect of the proposed rules, lessening their burden on VSQGs. Although the proposed amendments will increase the cost of hazardous waste management, these costs are balanced by the protection of human health and the environment provided by the proposed amendments and the cost savings the proposed amendments will provide through the

prevention of future cleanups of environmental contamination. The proposed amendments regarding the exemption from hazardous waste regulation for recycled CFCs reduce the economic burden of the hazardous waste rules on all businesses to which they apply. The proposed amendments are designed to allow for flexibility in the rules and are less stringent than current rules. They will have a beneficial economic effect on all businesses to which they apply by lessening the amount of costly hazardous waste regulation placed on those businesses. These proposed amendments will not cause any adverse economic impacts on any business.

VI. 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 rules. This document constitutes the Agency's Statement of Need and Reasonableness for the proposed amendments to the hazardous waste rules.

VII. LIST OF EXHIBITS

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

Agency Ex. No.	Title
1	<u>Federal Register</u> , Vol. 53, No. 251, pages 53282-53330, December 30, 1988.
2	<u>Federal Register</u> , Vol. 55, No. 235, pages 50450-50490, December 6, 1990.
3	<u>Federal Register</u> , Vol. 56, No. 30, pages 5910-5915, February 13, 1991.
4	<u>Federal Register</u> , Vol. 56, No. 114, pages 27332-27336, June 13, 1991.
5	<u>Federal Register</u> , Vol. 56, No. 126, pages 30192-30198, July 1, 1991.
6	Minnesota Government Report, Vol. 14, No. 27, page 5, April 4, 1991.

November 13, 1991
Date

for Ann Hummel
Charles W. Williams
Commissioner