

Attachment #2

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of Proposed Amendments Governing
the Transportation of Hazardous Waste Feedstocks
and By-products and the Regulation of Pipeline
Interface Material, Minn. Rules Pts. 7045.0020,
7045.0120, 7045.0125, and 7045.0230.

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of this proceeding is the amendment of certain rules of the Minnesota Pollution Control Agency (hereinafter "Agency") governing the management of hazardous waste. Specifically, the amendments the Agency is proposing address the transportation of hazardous waste feedstocks and by-products and the regulation of pipeline interface material. The proposed amendments remove the requirement that hazardous waste feedstocks and by-products be transported via a hazardous waste transporter when sent for recycling and exempt pipeline interface material from regulation as a hazardous waste when recycled.

This Statement of Need and Reasonableness is divided into six 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 reducing the impact of the proposed amendments on small businesses as required by Minn. Stat. § 14.115 (1992). Part V documents the economic factors the Agency considered in drafting the proposed amendments as required by Minn. Stat. § 116.07, subd. 6 (1992). Part VI sets forth the Agency's conclusion regarding the proposed amendments.

Minn. Stat. § 14.11, which requires the Agency to estimate the costs to local public bodies to implement proposed amendments, is not applicable to the proposed amendments. The proposed amendments reduce the level of regulation on hazardous waste generators, and do not impose additional costs. They would reduce the costs of compliance with the hazardous waste rules for local public bodies managing hazardous waste feedstocks and by-products.

The authority to adopt these amendments is provided under Minn. Stat. § 116.07, subd. 4 (1992).

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

Minn. Stat. Ch. 14 (1992) 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 that requires administrative attention and reasonableness means that the solution proposed by an agency is appropriate. Need is a broad test that 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 is based on two factors: (A) the need to remove unnecessary regulatory and economic burdens from hazardous waste generators who are having specific types of hazardous waste recycled, and (B) the need to encourage recycling.

A. Need to Remove Unnecessary Regulatory and Economic Burdens

The proposed amendments remove the requirement for use of a hazardous waste transporter for hazardous waste feedstocks and by-products in order to address the need to relieve the economic burden of this requirement. Use of a hazardous

waste transporter can cost several times the amount of using a common carrier. Even feedstocks and by-products that pose no transportation hazard are subject to this requirement simply because of their designation as hazardous waste feedstocks and by-products, and thus impose high transportation costs. Requiring all feedstocks and by-products to be transported by a licensed hazardous waste transporter is unnecessary because of applicable hazardous materials transportation requirements (Code of Federal Regulations title 49, part 172). The hazardous materials requirements apply to feedstocks and by-products that pose a transportation hazard, and provide appropriate safeguards for such transportation. The elimination of the requirement to use a hazardous waste transporter will remove the unnecessary and economically burdensome regulation of feedstocks and by-products that pose no transportation hazard.

The proposed amendments will have the same effect on the transportation requirements for pipeline interface material as on feedstocks and by-products. In addition, the proposed amendments exempt pipeline interface material from the remaining hazardous waste rules. This exemption recognizes that, because of the inherent economic value of pipeline interface material, generators of this material manage it in an environmentally sound manner, regardless of the regulations imposed on them. The exemption is necessary in order to eliminate overregulation and an unwarranted regulatory and economic burden on generators.

B. Need to Encourage Recycling

Minnesota's waste management hierarchy (see Minn. Stat. § 115A.02, 1992) places recycling above disposal as a preferred waste management strategy. The proposed amendments are intended and are necessary to encourage recycling of hazardous waste feedstocks and by-products, and pipeline interface material. To

accomplish this, the proposed amendments alleviate some of the economic and regulatory burden of the hazardous waste rules for these wastes when recycled.

III. REASONABLENESS OF THE PROPOSED AMENDMENTS

The Agency is required by Minn. Stat. ch. 14 (1992) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules or amendments. The Agency proposes to remove the requirement that hazardous waste feedstocks and by-products be transported by hazardous waste transporters and exempt pipeline interface material from the hazardous waste rules. The proposed amendments that accomplish these changes would be found in Minn. Rules pts. 7045.0020, 7045.0120, 7045.0125, and 7045.0230. The reasonableness of the proposed amendments to the state hazardous waste rules is discussed below.

A. Minn. Rules pt. 7045.0020 Definitions.

The existing Minn. Rules pt. 7045.0020 provides definitions for technical terms contained in the hazardous waste rules. The proposed amendments amend the definition of the term "designated facility" and define the term "pipeline interface material."

Subpart 15 of this part defines the term "designated facility." The existing definition indicates that a designated facility can be designated on a shipping paper or management plan required by Minn. Rules pt. 7045.0125. The proposed amendments to Minn. Rules pt. 7045.0125 (see section C of this discussion below) remove the requirement that a shipping paper be used for transport of feedstocks and by-products. In light of this change, the proposed amendments to this subpart amend the definition of "designated facility" to remove the shipping paper designation language from the existing definition. It is reasonable to amend this definition to correspond with the proposed amendments to Minn. Rules pt. 7045.0125.

The proposed amendments also create a definition for the term "pipeline interface material" in subpart 70a of this part. Pipeline interface material is generated during the normal course of transport of fuel products in a pipeline. One fuel pushes another fuel through the pipeline during transport. At the point where the two fuels contact each other, the fuels intermix, creating a mixture of the two fuel products. This mixture is pipeline interface material. The proposed amendments to Minn. Rules pt. 7045.0125 (see section C of this discussion below) exempt pipeline interface material from the hazardous waste rules when recycled. It is reasonable to create this definition in order to specify the exact type of waste covered by this exemption.

B. Minn. Rules pt. 7045.0120 Exemptions and Special Requirements.

Subpart 2 of this part exempts specific wastes from the general requirements of ch. 7045 when managed as specified in this subpart. The proposed amendments add a new item D to subp. 2, to add hazardous waste feedstocks and by-products to the wastes already exempted in this subpart. By including feedstocks and by-products in this subpart, the proposed amendments exempt feedstocks and by-products from Minn. Rules pt. 8870.0200, the Minnesota Department of Transportation rules that require the use of a licensed hazardous waste transporter for the transportation of hazardous waste. All wastes described in Minn. Rules pt. 7045.0120 are exempt from this requirement.

The current state rules governing the transportation of hazardous waste feedstocks and by-products require that these wastes be transported via a licensed hazardous waste transporter. However, federal regulations do not include this requirement. Use of a hazardous waste transporter can cost several times the cost of using a common carrier. Members of the business sector have commented to the Agency that this requirement is an economic burden on industry. Since this rule is specific to Minnesota, it puts Minnesota businesses at a

competitive disadvantage in relation to businesses in other states that do not have to meet this requirement.

Moreover, members of the business sector have expressed their opinion that the added costs of using hazardous waste transporters for feedstocks and by-products do not provide any additional benefit to the environment. The fact that Minnesota Department of Transportation hazardous materials transportation requirements apply to feedstocks and by-products that are hazardous materials, even if they are not sent via a licensed hazardous waste transporter, support this contention. The hazardous materials transportation requirements provide protection for human health and the environment from the potential dangers of the transportation of dangerous substances, whether they are "wastes" or "materials." Certain hazardous waste feedstocks and by-products may be dangerous and thus are regulated, but others are not dangerous and do not warrant further regulation.

As further support for the removal of this requirement, members of the business sector have also indicated that they have an incentive to ensure that feedstocks and by-products are properly transported and recycled because they have commercial value as recyclable materials. The proposed amendments will require the generators of feedstocks and by-products to maintain records showing that their wastes were received at a recycling facility, so that movement of such materials to a proper destination can be confirmed.

In summary, the use of a hazardous waste transporter can cost several times the amount it costs to use a common carrier. Yet, many feedstocks and by-products pose little transportation hazard, and are excessively regulated through this requirement. The transportation of those feedstocks and by-products that are hazardous materials is subject to the Minnesota Department of Transportation's hazardous materials transportation requirements, which are

intended to provide the appropriate level of protection from these wastes. It is reasonable to remove the requirement for use of a hazardous waste transporter in order to minimize costs and allow the existing hazardous materials requirements to provide the necessary environmental protection.

C. Minn. Rules pt. 7045.0125 Management of Waste By Use, Reuse, Recycling, Reclamation.

Subpart 4 of this part lists wastes that, when recycled, are not subject to the hazardous waste rules. The proposed amendments add pipeline interface material to this list. Pipeline interface material is a mixture of different fuel products generated incidentally during the transportation of petroleum fuel products (see section A of this discussion above).

Current state hazardous waste rules regulate pipeline interface material as hazardous waste; federal regulations do not consider pipeline interface material that is intended for recycling to be hazardous waste. This material is commonly recycled by petroleum refiners, but under the state's current rules is subject to the hazardous waste rules until it has been recycled. The regulation of pipeline interface material as a hazardous waste creates an economic and administrative burden on generators of this material. Since this rule is specific to the Minnesota Hazardous Waste Rules, it puts Minnesota generators at a competitive disadvantage in relation to generators in other states who do not have to manage pipeline interface material as hazardous waste prior to recycling.

Pipeline interface material is similar to the petroleum products commonly handled by the generators of this material, who are experienced in handling this material and are capable of dealing with the related hazards these materials may pose. This material must be transported in compliance with all applicable hazardous materials transportation requirements, whether or not it is classified

as hazardous waste. Regulating pipeline interface material prior to recycling does not provide a necessary level of environmental protection from this waste, but only creates an economic and administrative burden for the generators of this waste.

It is reasonable to exempt pipeline interface material from the hazardous waste rules, provided it is recycled, in order to relieve the economic and administrative burden of the rules, to encourage recycling, and in recognition of the other regulatory safeguards and non-regulatory incentives that promote proper transportation and management of this material.

Subpart 5, item B of this part contains the requirements that generators of hazardous waste feedstocks and by-products must follow. Subitem 4 of this item presently requires a generator to submit to the Agency's Commissioner a copy of shipping papers which accompanied feedstocks and by-products transported to a designated facility. This allows tracking of shipments of feedstocks and by-products. Since any hazardous waste shipment that must be accompanied by shipping papers under Minn. Rules pt. 7045.0125 must be transported via a licensed hazardous waste transporter according to Minn. Stat. § 221.035 (1992), the proposed amendments remove this shipping paper requirement from pt. 7045.0125, consequently removing the requirement that feedstocks and by-products be shipped by a hazardous waste transporter. Generators will, however, be required by the proposed amendments to keep records at their businesses confirming that shipments of feedstocks and by-products were received at the designated facilities to which they were sent, helping to ensure that they are properly recycled. The reasonableness for removing the hazardous waste transporter requirement for feedstocks and by-products is discussed in section B above.

D. Minn. Rules pt. 7045.0230 Content of License Application.

Subpart 1 of this part contains the information required to be included in a hazardous waste generator license application, and item E of subp. 1 specifies the information to be included in the required management plan. The current subitem 6 of item E requires the generator to provide the names of the hazardous waste facilities involved in the management of the generator's waste. The proposed amendments change the terminology of subitem 6 from "hazardous waste facility" and "facility" to "designated facility," thus clarifying this subitem by using a term defined in Minn. Rules pt. 7045.0020. Also, Minn. Rules pt. 7045.0125, subpart 5, item B, subitem 4 refers to "the designated facility" indicated in the generator's hazardous waste management plan. Using the term "designated facility" in this part will help clarify this reference.

IV. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

To comply with Minn. Stat. § 14.115 (1992), the Agency has considered the statutory methods for reducing the impact of the proposed amendments on small businesses. The statute requires that each of the following methods be considered with respect to each rule:

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 proposed amendments will not negatively affect small businesses. The proposed amendments reduce the current level of regulation and will have a positive effect on all businesses to which they apply.

V. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. § 116.07, subd. 6 (1992) to give due consideration to economic factors. The statute provides:

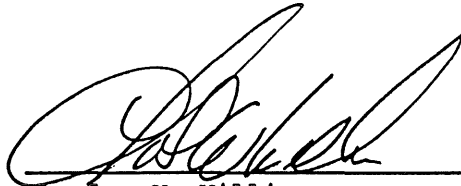
In exercising all its powers, the Pollution Control Agency shall give due consideration to the establishment, maintenance, operation, and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any 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 reduce the stringency of regulation placed on hazardous waste generators. Accordingly, the proposed amendments will have a positive economic effect on generators of hazardous waste feedstocks and by-products, and pipeline interface material. These generators will no longer have to pay certain hazardous waste management costs, such as the cost of using hazardous waste transporters to transport these wastes, and in the case of pipeline interface material, applicable hazardous waste fees.

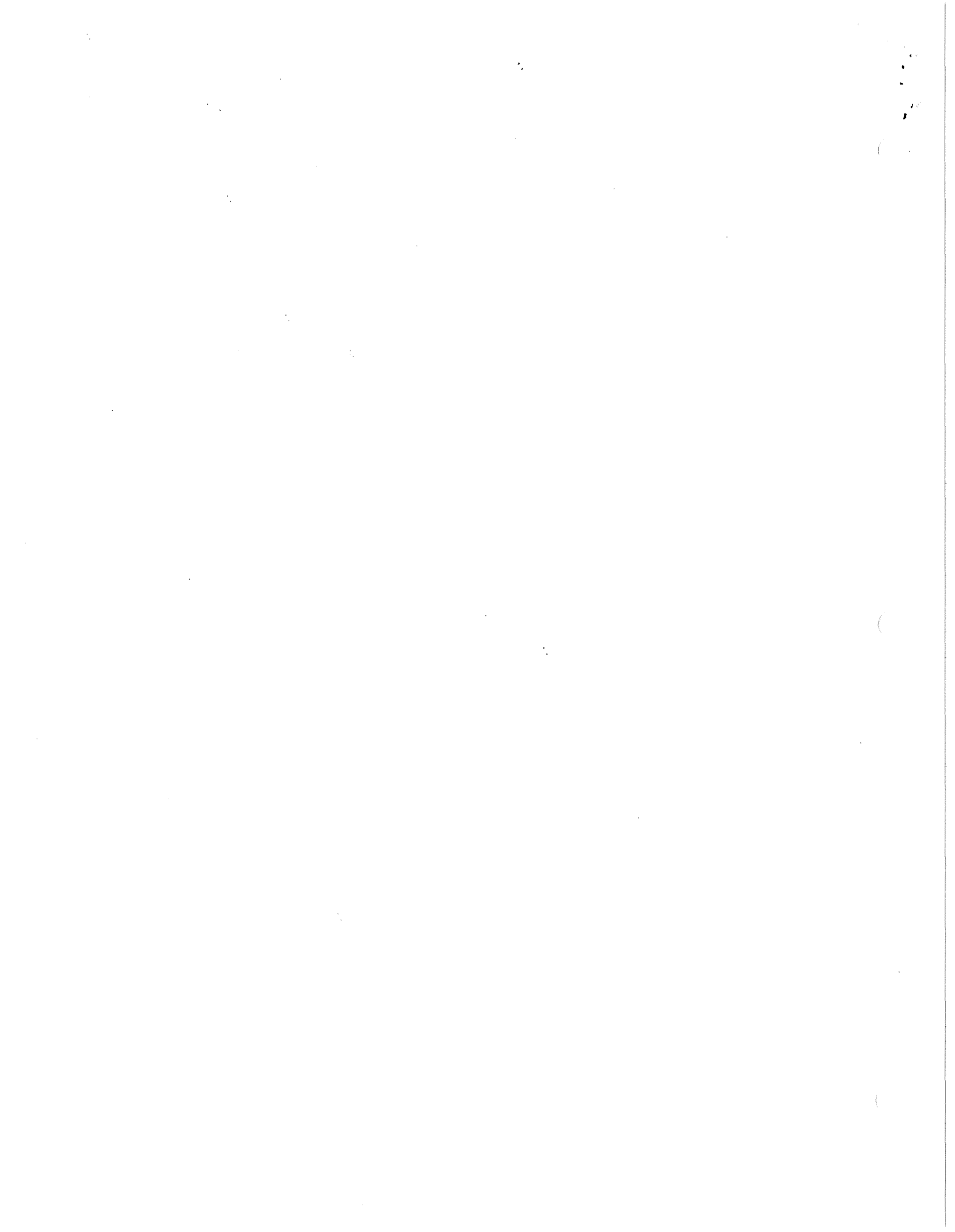
VI. CONCLUSIONS

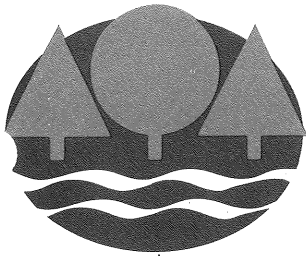
The Agency has, in this document and its exhibits, made its presentation of facts establishing the need for and reasonableness of the proposed amendments to Minnesota's Hazardous Waste Rules. This document constitutes the Agency's Statement of Need and Reasonableness for the proposed amendments to the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

Dated: 10/13/93



Charles W. Williams
Commissioner





Minnesota Pollution Control Agency

November 12, 1993

Ms. Maryann Hruby, Director
Legislative Commission to Review
Administrative Rules
55 State Office Building
St. Paul, Minnesota 55155

Dear Ms. Hruby:

As required by the Administrative Procedures Act, I am forwarding to you a copy of the Statement of Need and Reasonableness (SONAR) and proposed rule amendments for a rule amendment package that reduces the level of regulation on specific types of hazardous wastes being recycled. These proposed rule amendments and a notice of intent to adopt rules without a public hearing were published in the State Register on November 15, 1993. The comment period for these rules ends on December 15, 1993 at 4:30 p.m.

If you have any questions, please contact me at 297-8319.

Sincerely,

A handwritten signature in cursive script that reads "Glenn D. Skuta".

Glenn D. Skuta
Rules Unit
Program Development Section
Hazardous Waste Division

GDS:jao

Enclosures

MPCA Toll Free 1-800-657-3864, Telephone Device for the Deaf (TDD) 612/297-5353, Greater Minnesota TDD 1-800-627-3529

520 Lafayette Rd.; St. Paul, MN 55155-4194; (612) 296-6300; Regional Offices: Duluth • Brainerd • Detroit Lakes • Marshall • Rochester

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