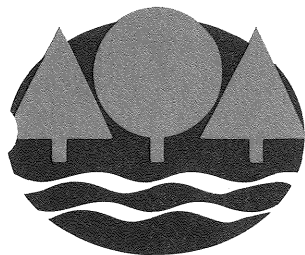


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AUG 18 1995



Minnesota Pollution Control Agency

August 17, 1995

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

RE: Sonar and Rule Review

Dear Ms. Hruby:

As required by the Administrative Procedures Act, I am forwarding you a copy of the Statement of Need and Reasonableness (SONAR) along with a copy of the corresponding rule. The SONAR supports rule amendment changes that concern testing methodology, reference materials and hazardous constituents. The rule is scheduled to be published in the State Register on August 28, 1995.

If you have any questions, my number is 612/297-8335.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeannie C. Blatz".

Jeannie C. Blatz
Generator Technical Assistance/Rules Unit
Program Development Section
Hazardous Waste Division

JCB/jmp

Enclosure

**STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY**

**In the Matter of the Proposed Rule
Amendments Governing Reference
Materials, Testing Methodology and
Hazardous Waste Constituents
Minnesota Rules Parts 7045.0065,
7045.0075, 7045.0131, 7045.0135,
7045.0141, 7045.0528, 7045.0538,
7045.0628, 7045.0638, 7045.1350**

**STATEMENT OF NEED
AND
REASONABLENESS**

I. INTRODUCTION

The Minnesota Pollution Control Agency (hereinafter "MPCA") proposes to incorporate federal hazardous waste program amendments that revise and update the hazardous waste testing reference manual, expand the chemical constituent list and correct previously made minor rule errors.

To maintain the U.S. Environmental Protection Agency's (EPA) authorization to administer the state hazardous waste program, the MPCA must adopt the new federal regulations. The federal amendments in this rulemaking were promulgated by the EPA under the Resource Recovery Conservation Act (RCRA) and the Hazardous and Solid Waste Amendments of 1984 (HSWA). The amendments promulgated under RCRA are also referred to as "pre-HSWA." RCRA amendments are not effective in Minnesota until they are incorporated into state rules. Amendments promulgated under the authority of HSWA are effective in Minnesota under federal authority on the effective date of the federal rule. In this rulemaking, all but one of the provisions are pre-HSWA and consequently do not go into effect until Minnesota adopts them. The changes proposed in Minnesota Rules part (Minn. R. pt. 7045.0131) affect the Toxicity Characteristic and Toxicity Characteristic Leaching Procedure (TCLP) both of which were added to HSWA authority. Consequently, the changes to Minn. R. pt. 7045.0131 are already effective.

The rule amendments presented here are, for the most part, technical in nature and do not substantively change the current application of rules. Specifically, one rule provision cluster

proposes to update and augment the already approved EPA testing and evaluation manual: "Test Methods for Evaluating Solid Waste, Physical /Chemical Methods," (herein the manual is referred to as SW-846). Additionally, the new provisions directly reference and cross reference SW-846 in rule parts that discuss test methods or refer to the testing manual. This change adds clarity to the rules and eliminates discrepancies and redundancies.

Another provision proposes to correct a listing which contains the chemical name "beryllium" by adding "powder" to the chemical name. This name change does not substantively change the rules.

The amendment to add chemicals to the hazardous constituent list has broader implications than the previously described technical amendment proposals. Only chemicals determined to present demonstrated health risks are added to this list. Consequently, the proposed amendment is made to protect both human health and the environment.

This Statement of Need and Reasonableness (SONAR) can be made available in other formats, including Braille, large print and audio tape. TDD: (612) 297-5353 or 1-800-627-3529.

This SONAR is divided into the following eleven parts:

- I. Introduction
- II. Statement of MPCA's Statutory Authority
- III. Statement of Need
- IV. Statement of Reasonableness
- V. Small Business Considerations in Rulemaking
- VI. Consideration of Economic Factors
- VII. Impact On Agricultural Lands and Farming Operations
- VIII. Costs to Local Public Bodies
- IX. Review by Commissioner of Transportation
- X. Conclusion
- XI. List of Exhibits

II. STATEMENT OF MPCA'S STATUTORY AUTHORITY

The MPCA's statutory authority to adopt these rules is found in Minn. Stat. § 116.07, subd. 4 (1994). Minn. Stat. §§ 14.22 to 14.48 (1994) govern the non-controversial rulemaking process.

The statutes require the MPCA 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.

PART III. STATEMENT OF NEED

Need is a broad test that does not lend itself to evaluation of each proposed revision. In this proceeding, the need to amend the MPCA's rules governing the management of hazardous waste is prompted by the need to remain consistent with federal hazardous waste regulations and to offer environmental protection.

In adopting RCRA, Congress provided a means for state control of the hazardous waste program and set up a mechanism for the EPA to grant authority to states to operate the programs with primacy. In states that receive state authorization, the state environmental agency administers its program with primacy over the federal program. To receive and maintain authorization, the state program must be "equivalent" to the federal program. EPA has defined "equivalent" to mean that state requirements are at least as restrictive and broad in scope as their federal counterpart. In terms of consistency, EPA's goal is to achieve an integrated national program that ensures that final state programs do not conflict with each other or with the federal program.

To maintain authorization, Minnesota must respond to the new federally promulgated regulations by enacting equivalent state rules within time frames set by EPA. Since the federal

amendments are more stringent than the existing hazardous waste rules, the proposed amendments are needed to eliminate this inconsistency and to maintain state authorization.

SW-846 is a testing manual reference document that embodies EPA approved testing and measuring protocols. The test methods compiled in the SW-846 volumes permit the evaluator to assess the chemical composition of material and analyze for a variety of contaminants. As technological advancements are made, it is necessary that this reference manual be updated and revised so current and accurate information is dispensed to the public relying on this resource. Updating the reference manual not only promotes uniformity between the state and federal programs but is a cost benefit to the individual or company relying on this resource. The updates ensure that the customer and laboratory have a correct understanding as to what test methods need to be utilized for a particular waste assessment. The availability of current and correct information is necessary to eliminate outmoded analytical testing.

IV. STATEMENT OF REASONABLENESS

The MPCA is required by Minn. Stat. ch. 14 (1994) to make an affirmative presentation of the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the MPCA's proposed action.

Since EPA made a presentation of facts in promulgating these regulations and these regulations are for the most part "technical" in nature, the MPCA refers the reader to the preamble published in the Federal Register for each regulation, amendment or correction for the presentation of need, reasonableness and economic impact. The appropriate Federal Registers are listed Part XI. The affected Minnesota Rule parts, also listed below, refer the reader to the applicable Federal Register(s) via the letter assigned. These Federal Registers are available for review at the MPCA and can be obtained through local libraries. The MPCA provides its own discussion summary to support reasonableness only where the MPCA program differs substantively from the federal program.

In general, minor modifications to federal language that make it appropriate in the context of Minnesota Rules are reasonable to make the state rule language clear and understandable. It

is reasonable to renumber Minnesota Rule subparts, items, subitems, units, and subunits to accommodate resequencing and insertion of new language to maintain readability and clarity. Moreover, it is reasonable that Minnesota would adopt the federal rule changes because they are technical corrections to existing Minnesota Rules and they are required by EPA for Minnesota to maintain its authorized program status.

FEDERAL REGISTERS CONTAINING AMENDMENTS FOR THIS RULEMAKING:

<u>Volume</u>	<u>Pages</u>	<u>Date</u>	<u>Title</u>	<u>Checklist</u>
(A) 58	46040-46056	08/31/93	Testing and Monitoring Activities	126
(B) 59	458-469	01/04/94	Wastes from the Use of Chlorophenolic Formulations in Wood Surface Protection	128
(C) 59	28484	06/02/94	Wood Surface Protection; Correction	132
(D) 59	31551-31552	06/20/94	Correction of Beryllium Powder (PO15) Listing	134

What follows is a list of Minnesota Rule parts affected by this rulemaking and the corresponding Federal Register(s) from the list above. The MPCA incorporates the discussion of reasonableness as presented in the appropriate Federal Registers as its own statement of reasonableness for the adoption of these amendments. A state initiated discussion is provided only where Minnesota differs substantially from the EPA regulation.

A. Topic: Testing and Monitoring Activities

Minn. R. pt. 7045.0065 Availability of References: Item G updates the "Test methods for Evaluating Solid Waste, Physical/Chemical Methods", an EPA testing manual publication

(herein referred to as "SW-846") by replacing the "Second revision" reference with a "Third revision" reference. Test method 4010, which tests for the presence of pentachlorophenate or pentachlorophenol is added to SW-846 and incorporated by reference as "Update IIA." It is reasonable to add new testing methodology to SW-848 as this is a testing manual that must evolve as new and better testing methodology is developed.

Minn. R. pt. 7045.0075 Petitions: subp. 2, item E, subitem (1), unit (a) now identifies the Minnesota Rule part that features the constituents discussed in this section and deletes the federal regulation citation. Direct reference to SW-846 testing manual and Minn. R. 7045.0065 (which incorporates SW-846 as a reference) is also added.

Minn. R. pt. 7045.0131 Characteristics of Hazardous Waste: subp. 4, items (A) and (B), and Subp.7, item (A) now point directly to the updated version of SW-846 and to Minn. R. pt. 7045.0065. Federal cross reference to the applicable test methods are deleted. Subp. 4, item (A) now specifically identifies Method 9040 when determining pH.

Minn. R. pt. 7045.0528 Tank Systems: subp.1 item (A) corrects the reference to SW-846 and identifies Minn. R. 7045.0065 as the rule part that incorporates SW-846 as a reference.

Minn. R. pt. 7045. 0538 Landfills: subp. 10 item (C) corrects the reference to SW-846 and identifies Minn. R. 7045.0065 as the rule part that incorporates SW-846 as a reference.

Minn. R. pt. 7045.0628 Tank Systems: subp. 1 item (A) corrects the reference to SW-846 and identifies Minn. R. 7045.0065 as the rule part that incorporates SW-846 as a reference.

Minn. R. pt. 7045.0638 Landfills: subp. 7 item (B) corrects the reference to SW-846 reference and identifies Minn. R. 7045.0065 as the rule part that incorporates SW-846 as a reference.

The above listed rule amendments are reasonable to provide current and consistent rule citations.

Minn. R. pt. 7045.1350 Treatment Standards: subp. 1 now reasonably identifies the specific test methods necessary to determine whether treated waste may be land disposed. SW-846 and Minn. R. 7045.0065 (which incorporates SW-846 by reference) are also added.

B. Topic: Wastes From Use of Chlorophenolic Formulations in Wood Surface Protection

Minn. R. pt. 7045.0141 Hazardous Constituents: This amendment adds four constituents to the list: Potassium pentachlorophenate; sodium pentachlorophenate; 2,3,4,6 - tetrachlorophenol (potassium salt); and 2,3,4,6 tetrachlorophenol (sodium salt). It is reasonable to add constituents that have toxic, carcinogenic or mutagenic effects on humans and other life forms. Adding these constituents also causes the remainder of the list to be renumbered.

C. Topic: Wood Surface Protection Correction

Minn. Rule pt. 7045.0065 References: Corrects the address where copies of the testing procedure updates are available and corrects publication information. The addition of Method 4010 to the SW-846 testing manual is represented as Update IIA in this rule part. Method 4010 measures the presence of sodium and potassium salts derived from chlorophenolic formulations and other sources. It is reasonable to provide current information regarding testing procedures in the state rules.

D. Topic: Correction of Beryllium Powder (PO15) Listing

Minn. R. pt. 7045.0135 List of Hazardous Wastes: The word "powder" is added to clarify the type of beryllium listed. This is reasonable because "beryllium powder" is the correct industrial name for this material.

Minn. R. pt. 7045.0141 Hazardous Constituents: For clarification purposes the word "powder" is added to item (Q). Instead of "beryllium" the constituent is now more accurately, and thus reasonably, labeled "beryllium powder."

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat., § 14.115, subd. 2, requires an agency, when proposing rules which may affect small businesses to consider the impact on small businesses.

The amendments proposed in this rulemaking are mostly technical corrections and do not affect the applicability or implementation of the existing rules. The updates, corrections and additional cross-referencing changes proposed for the rule parts will add clarity to the rules.

The small business person gains when rule references and cross references are direct and less cumbersome to use. Updating the SW-846 edition assures the small business person that the reference is one that can be relied on to provide EPA approved methods and technologically advanced information. As a purchaser of analytical testing services, the small business owner will be able to order the tests most applicable to his or her environmental needs.

The addition of the chlorophenolic chemical constituents to the hazardous waste constituent list may affect any business owner who generates waste containing these chemicals. However, since effective alternative formulations are available to replace the chlorophenolic products this listing will likely have limited impact on small business. Regardless, neither the proposed state rules nor the federal rules make special provisions for reduced regulation for wastes generated by the small business. The size of the business has no relation to the risk the chlorophenolic compounds pose if present in ground water. The MPCA finds that given the toxic, carcinogenic and mutagenic effects of these chemicals, it is only reasonable that the chemicals be listed. Furthermore, the MPCA cannot be less stringent than its federal counterpart and maintain its program authorization.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its power, the MPCA is required by Minn. Stat. § 116.07, subd. 6 (1994) to give due consideration to economic factors. The statute provides:

In exercising all its powers, the Pollution Control Agency shall give 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 which may result therefrom, and shall take or provide for such action as may be reasonable.

The technical amendments proposed here do not affect rule implementation. Consequently, it is unlikely that adopting these provisions will have any significant economic impact. However, the provisions adding the chlorophenolic chemicals to the hazardous

constituent list will impose additional costs on those businesses producing waste with these constituents. Considering both the environmental risk posed by these chemicals if mismanaged and the costs associated with cleanup, the additional costs are appropriate to ensure protection of human health and the environment. Additionally, the MPCA must remain as stringent as the EPA and therefore must adopt these chemical additions in order to maintain the EPA's authorization to administer the hazardous waste program, as explained in Part I and II of this document.

VII. IMPACT ON AGRICULTURAL LAND AND FARMING OPERATIONS

Minn. Stat. § 14.11, subd. 2, requires that if the agency proposing adoption of a rule determines that the rule may have a direct and substantial adverse impact on agricultural land in the state, the agency shall comply with specified additional requirements. The MPCA believes that this rulemaking will have no significant effect on agricultural lands or farming operations. The amendments proposed are primarily technical or list chlorophenolic chemicals formerly used by wood preserving industries.

VIII. COSTS TO LOCAL PUBLIC BODIES

Minn. Stat., § 14.11, sub. 1, requires an agency to include a statement of the rule's estimated costs to the local public bodies in the notice of intent to adopt rules if the rule would have a total cost of over \$100,000 to all local bodies in the state in either of the two years immediately following the adoption of the rule. This provision does not apply here because local units of government will not be negatively affected.

IX. REVIEW BY THE COMMISSIONER OF TRANSPORTATION

The proposed amendments do not substantially alter or affect any current transportation practices, therefore a report to the Minnesota Department of Transportation is not required according to Minn. Stat., § 174.05.

X. CONCLUSION

Based on the foregoing, the proposed amendments to Minn. R. pts. 7045.0065, 7045.0075, 7045.0131, 7045.0135, 7045.0141, 7045.0528, 7045.0538, 7045.0628, 7045.0638, 7045.1350 are both needed and reasonable.

XI. LIST OF EXHIBITS

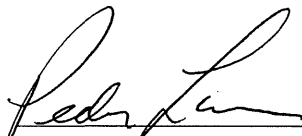
The MPCA is relying on the following documents to support these amendments:

Agency

Ex. No.

Title

1. Federal Register, Vol. 58, No. 167, pages 46040-46056, August 31, 1993.
2. Federal Register, Vol. 59, No. 2, pages 458-469, January 4, 1994.
3. Federal Register, Vol. 59, No. 105, page 28484, June 2, 1994.
4. Federal Register, Vol. 59, No. 117, pages 31551-31552, June 20, 1994.



Charles W. Williams

Commissioner