



Minnesota Pollution Control Agency

Office of the Commissioner

August 16, 2006

Legislative Reference Library
645 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: In The Matter of the Proposed Rules of the Minnesota Pollution Control Agency
Governing the National Uniform Hazardous Waste Manifest Form, Minnesota Rules
Chapters 7046

Dear Librarian:

The Minnesota Pollution Control Agency (MPCA) intends to adopt rules governing the use of a national uniform hazardous waste manifest form. We plan to publish a Notice of Intent to Adopt Rules in the August 21, 2006, edition of the *State Register*.

The MPCA has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the MPCA is sending the Library a copy of the Statement of Need and Reasonableness at the time we are mailing our Notice of Intent to Adopt Rules.

If you have any questions, please contact me at 651-297-8371.

Sincerely,

A handwritten signature in cursive script that reads "Carol Nankivel".

Carol Nankivel
Rule Coordinator
Municipal Division

CN:lmg

Enclosure: Statement of Need and Reasonableness

Minnesota Pollution Control Agency

Municipal Division

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment of Rules Governing Hazardous Waste Manifests, Minn. R. 7045.0020, 7045.0090, 7045.0125, 7045.0127, 7045.0137, 7045.0212, 7045.0261, 7045.0262, 7045.0265, 7045.0270, 7045.0292, 7045.0302, 7045.0322, 7045.0325, 7045.0375, 7045.0385, 7045.0452, 7045.0474, 7045.0476, 7045.0482, 7045.0556, 7045.0580, 7045.0582, 7045.0588, and 7045.0675

I. Introduction and Background

The subject of this proceeding is the amendment of the rules of the Minnesota Pollution Control Agency (MPCA) governing hazardous waste manifests. The most significant portions of the proposed amendments are being made to reflect changes that have been made to the federal hazardous waste regulations which are the basis for the state hazardous waste rules. Other amendments make state-only adjustments to the hazardous waste rules mainly to improve understanding or to maintain certain elements of the existing state manifest system.

The federal amendments that are the basis for many of these amendments were published by the U.S. Environmental Protection Agency (EPA) and adopted under specific federal authorities. When a federal regulation is promulgated under authority of the Resource Conservation and Recovery Act (RCRA), it does not go into effect in an authorized state until the state rules are amended to incorporate the change. Federal regulations that are more stringent than the state rules and that are adopted under the authority of the Hazardous and Solid Waste Amendments (HSWA) become effective in authorized states regardless of the state's rulemaking activities. Minnesota is an authorized state and therefore more stringent HSWA requirements become effective regardless of whether the state rules are amended.

The federal requirements addressing the manifest changes were published in the March 4, 2005, Federal Register (Vol. 70, No. 42, pg. 10776). Minor corrections were published in the June 16, 2005, Federal Register (Vol. 70, No. 115, page 35034). However, these new amendments to the federal manifest system were promulgated under an unusual combination of authorities. Most of the manifest requirements were promulgated through combined authority of RCRA and the hazardous materials authorities that the Department of Transportation administers. This effect of this combination of authorities is that, although they are RCRA requirements, the national manifest system will go into effect in all states on the federal effective date (September 5, 2006), regardless of whether the provisions are less stringent or whether the state has adopted rules to make the necessary changes. This is because the hazardous materials laws of the Department of

Transportation require national consistency in the use of hazardous materials shipping papers such as the manifest. A discussion of the federal authority for the manifest rules is provided at page 10809 of the March 4, 2005, Federal Register.

There is one portion of the federal manifest revisions that was not promulgated under the combined RCRA/Department of Transportation authorities. The amendments published in the March 4, 2005, Federal Register include a waste minimization certification statement to Minn. R. 7045.0262 that is not based on RCRA authority. It is based on authority granted to EPA through HSWA.

In this rulemaking the MPCA is also adding federal requirements for transfrontier shipments among countries that participate in the Organization for Economic Cooperation and Development (OECD). These requirements were adopted under authority of HSWA and have been in effect nationwide since July 11, 1996. The transfrontier shipment regulations are not part of the manifest rules published in the March 4, 2005, Federal Register (Vol. 70, No. 42, pg. 10776); they were published in the April 12, 1996, Federal Register (Vol. 61, No. 72, page 16290). The state rules were not previously amended to incorporate the transfrontier shipment requirements because this element of the federal hazardous waste program is not delegable to the states and therefore states were not required to adopt these portions of the federal regulations. However, because the transfrontier shipment requirements deal with the manifested transportation of hazardous waste, the MPCA believes it is appropriate to adopt them in conjunction with the manifest rule revisions. The transfrontier shipment requirements being addressed in this rulemaking are found in Minn. R. 7045.0125, 7045.0212, 7045.0302, 7045.0322, 7045.0375, 7045.0452, 7045.0474, 7045.0556, 7045.0580, and 7045.0675.

Certain of the amendments being made in this rulemaking are not prompted by changes to the federal regulations but are being made because they address state-only concerns or because they will either correct a previous error or make existing state rule language more closely conform to its federal equivalent. The following rule parts contain changes that are not based on either the federal manifest revisions or the transfrontier shipment amendments, but are being made at this time for the reasons discussed in the relevant sections of part IV of this Statement of Need and Reasonableness (Statement). Minn. R. 7045.0020, 7045.0075, 7045.0137, 7045.0261, 7045.0265, 7045.0302, 7045.0474, and 7045.0580.

MPCA staff believes that the amendments being proposed are not controversial.

MPCA staff drafted the proposed amendments after publishing a Request for Comments in the August 1, 2005, State Register. An additional Request for Comments, specifically identifying the transfrontier shipment amendments, was published in the January 23, 2006, State Register. This Statement can be made available in other formats, including Braille, large print, and audio tape. To make a request, contact Carol Nankivel at the Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, MN, 55155-4194; phone (651) 297-8371; fax (651) 297-8676; or e-mail: carol.nankivel@pca.state.mn.us. TTY users may call the MPCA at (651) 292-5332 or 1 (800) 657-3864. TDD: 651/282-5332.

This Statement contains the MPCA's affirmative presentation of facts on the need for and reasonableness of the proposed rule amendments. Section II sets forth the MPCA's statutory authority to adopt the proposed rule amendments; section III discusses the general need for the amendments; section IV describes the reasonableness of the proposed rule amendments; section V addresses statutory considerations established in Minnesota statutes, including a discussion of economic factors and the additional notice efforts conducted by the MPCA; section VI is a listing of authors, witnesses, and exhibits; and section VII is the conclusion.

II. Statutory Authority

The MPCA's statutory authority to adopt these rules is found in Minn. Stat. §116.07, subd. 2. This statute states:

The Pollution Control Agency shall adopt standards for the identification of hazardous waste and for the management, identification, labeling, classification, storage, collection, transportation, processing, and disposal of hazardous waste, recognizing that due to variable factors, a single standard of hazardous waste control may not be applicable to all areas of the state. In adopting standards, the Pollution Control Agency shall recognize that elements of control which may be reasonable and proper in densely populated areas of the state may be unreasonable and improper in sparsely populated or remote areas of the state. The agency shall consider existing physical conditions, topography, soils, and geology, climate, transportation and land use. Standards of hazardous waste control shall be premised on technical knowledge, and commonly accepted practices. Hazardous waste generator licenses may be issued for a term not to exceed five years. No local government unit shall set standards of hazardous waste control which are in conflict or inconsistent with those set by the Pollution Control Agency.

The rulemaking process is governed by Minn. Stat. §§ 14.001 to 14.69. In adopting rules or amendments, the MPCA must make an affirmative presentation of facts establishing the need for and reasonableness of the rules or amendments proposed. In general terms, this means the MPCA 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 is appropriate.

Under the above cited statute, the MPCA has the necessary statutory authority to adopt the proposed rules. All statutory authority was granted before January 1, 1996, therefore Minn. Stat. § 14.125, Time Limit On Authority to Adopt, Amend or Repeal Rules, does not apply nor does the requirement of Minn. R. 1400.2070, subp. 1, item D, to report the effective date of the agency's statutory authority to adopt the rule.

III. Need for Amendments

The main need for most of these amendments is the need to maintain consistency between the state hazardous waste rules and the federal hazardous waste rules. This is necessary for three reasons. The first reason is that for many of the amendments relating to the manifest system, the requirements will become effective regardless of whether the state adopts them. The state does not have discretion in this area of hazardous waste shipping and is very limited in the amount of difference that can exist between the state and federal hazardous waste transportation requirements. The regulated parties involved in transportation must comply with the federal manifest requirements, not the existing state requirements if they are different than the federal regulations. Consistency is necessary in order for the state rules to accurately reflect what is required to transport hazardous waste.

The second need for consistency relates to the state's authorization status. The state hazardous waste rules are based on the federal hazardous waste regulations. The federal hazardous waste program allows states with hazardous waste rules that are at least as stringent as federal regulations to obtain authorization from EPA. This authorization grants states the authority to operate a hazardous waste program in lieu of EPA. Minnesota's hazardous waste program has been authorized by EPA, but authorization must be periodically renewed and updated as the federal regulations change. In order to maintain authorization to implement the hazardous waste program in Minnesota, Minnesota must amend its rules to adopt more stringent federal regulations. Therefore, the second need for these amendments is to adopt those more stringent federal requirements that must be adopted in order to maintain program authorization.

In previous rulemakings, the MPCA has addressed this need to maintain program equivalence by including the phrase "as amended" wherever the MPCA adopts a federal regulation by reference. In this rulemaking the MPCA continues to address this need by using the phrase "as amended" wherever the MPCA intends that the rules adopted by reference will prospectively include future amendments to the federal regulations.

The third need to maintain consistency with the federal regulations is the need to understand and enforce effective regulation of hazardous waste transportation. Some aspects of the state rules are deliberately different than the federal regulations and the MPCA intends that those differences continue to be in effect. However, in some areas, the state rules are different than the federal regulations because of past decisions regarding state rule conventions or because specific state rules were adopted before their federal counterpart or because the rules have not been routinely updated to address minor changes to the federal regulations. The MPCA believes that there is a need to monitor the state rules and continually evaluate whether a state-only difference continues to be relevant. The MPCA believes that it is a benefit to the regulated community to make the state rules correspond as closely as possible to the federal language if there is no loss of environmental protectiveness. When the state and federal language are differently phrased but have the same meaning and effect, the MPCA believes there is a legitimate need to amend the rules to eliminate the perception of inconsistency between the two sets of rules.

There is an additional need to amend these rules that does not relate to the need to maintain consistency with the federal regulations. Some portions of the rules are being amended to address state-only concerns that have no relation to the federal regulations. The rule amendments that are being made to provide additional, state-only regulation of manifest transactions are needed in order to maintain the requirements of the current hazardous waste manifest system. Minnesota's hazardous waste rules have included state-only manifest requirements for many years, and the MPCA believes that to the extent possible, these requirements should be retained in the hazardous waste rules even though they are being revised to embody the federal manifest program. The state-only requirements for generators to submit a copy of the manifest form to the MPCA or to the appropriate county, to allow the use of the lab pack waste code on manifests and to require that state-only waste codes be on a manifest, are all needed in order to maintain a manifest system that provides an acceptable level of oversight and responsiveness.

Some changes are being made in order to address simple errors and deficiencies that have been identified in the course of the rule drafting process. Examples are the change to the rule cited in the definition of "destination facility" and changes to the address of the MPCA, EPA, and the Minnesota Bookstore. These changes are needed in order to provide current and accurate information.

The MPCA believes that for all the reasons cited above, the proposed amendments are needed.

IV. Reasonableness of the Amendments

Minn. R. 7045.0020 Definitions.

Part 7045.0020, subp. 15 defines "designated facility" and is being amended to make the state definition more consistent with the federal definition found in Code of Federal Regulations, title 40, section 260.10. The changes to item A, subitems (1) and (2) are based on minor changes that were made to the federal definition that was published in the March 4, 2005 Federal Register. Subitem (4) is amended by deleting the previous requirements that apply to facilities outside of Minnesota and moving the conditions of former item B to subitem (1). The MPCA believes that the federal definition of "designated facility" more effectively addresses, in new subitems (1) and (2), the type of facility formerly addressed by subitem (4). The former language of subitem (4) that addressed the status of designated facilities in states other than Minnesota is duplicative and can be reasonably deleted.

The change to subitem (1)(c) of the definition of "designated facility" is not based on the changes to the federal manifest regulations but is in response to an error in a 1986 rulemaking. Subitem (1)(c) is being amended to remove a reference to the battery collector standards and add a reference to the precious metal recovery standards. In a 1986 rulemaking to incorporate federal changes to this rule, the MPCA incorrectly cited to Minn. R. 7045.0685 instead of to Minn. R. 7045.0675. In the original federal

definition of designated facility in Code of Federal Regulations, title 40, section 260.10, EPA stated that a designated facility was either a permitted facility or a recycling facility or a facility regulated under subpart F of Code of Federal Regulations, title 40, part 266. Subpart F of Code of Federal Regulations, title 40, part 266 regulates precious metal recovery. When the MPCA adopted the federal reuse/recycling provisions, the definition of designated facility was also amended but it did not include the reference to the precious metal recovery provisions. Instead, the MPCA now believes, the definition erroneously referenced the requirements for the management of spent lead acid batteries. In the state rules the precious metal recovery requirements are found in part 7045.0675 and the spent lead-acid battery requirements are found in part 7045.0685. The MPCA believes that the current reference to part 7045.0685 (spent lead-acid batteries) is a longstanding error and is in this rulemaking changing the definition of designated facility to correctly cite to part 7045.0675 (precious metal recovery.) This change will make the state definition for designated facility more consistent with the definition established in the corresponding federal regulations.

Former Item B of Minn. R. 7045.0020, subpart 15 is amended to remove a reference to a management plan required under Minn. R. 7045.0230. The reference is to the management plan required of generators in their initial license application. The state rules for licensing of hazardous waste generators require that generators provide information in their management plan about the facilities to which they will be sending their waste. When the definition of "designated facility" was first added to the state rules, the MPCA included a reference to the requirement for management plan information in the definition. However, the MPCA believes that this provision referring to the management plan is not relevant to what is meant by a "designated facility" and, in fact, causes confusion by making the definition different than the corresponding federal definition. For this reason, the MPCA believes it is reasonable to remove the reference to "management plan" from this definition. This change is only to remove an obsolete reference and does not affect the definition of what is considered to be a "designated facility" nor does it affect the requirements for the management plan specified in Minn. R. 7045.0230.

The newly added language of item A, subitem (2) is from the March 4, 2005, Federal Register and provides a new category of designated facilities. The new manifest rules are adding significant new conditions for how a facility will handle rejected waste shipments, including the option of returning the waste to the generator. The definition of "designated facility" must be expanded to also include an area at the originating generator's site where returned wastes can be returned after rejection. The process for rejecting a shipment of wastes requires the identification of a new "designated facility" on the manifest and in some cases, that new designated facility will be the originating generator. The MPCA believes this is a reasonable addition to reflect how the new manifest system will operate.

Item B of subpart 15 is amended by minor grammatical additions that make the state rule language consistent with the federal regulations. The changes do not affect the meaning of this item but enhance clarity.

Minn. R. 7045.0020, subp. 53 defines "manifest" and is being amended to refer to the federal manifest form and continuation sheet and to make the definition correspond to the definition previously provided at Code of Federal Regulations, title 40, section 260.10 in addition to the amendments made to that definition in the March 4, 2005, Federal Register. Because Minnesota has used a unique state manifest form, the previous definition in the state rules did not contain a specific reference to the federal manifest forms. In the future, Minnesota will only use the federal manifest forms and therefore the definition is being amended to specifically refer to the federal forms as they are being adopted by reference into Minn. R. 7045.0325.

The new federal definition also refers to the fact that the manifest may be signed by a generator or an "offeror." The MPCA is adopting the federal definition of manifest but does not agree with all of EPA's reasoning as presented in the preamble to the March 4, 2005, Federal Register (pages 10791 -10793). In its discussion of the definition of manifest, EPA states two reasons for using the phrase "or offeror" in the definition of manifest. EPA believes it is necessary to add that phrase to address the situations where a facility may be unable to accept a waste and may need to prepare a new manifest to either return a waste to the generator or send it to an alternate facility. In this case, the owner or operator of a facility that rejects the waste shipment, though not the actual generator of the waste, is allowed to sign the new manifest as an "offeror" of the waste. The MPCA believes that this is a reasonable provision and is therefore keeping the term "or offeror" in the definition. However, EPA also proposes another reason for the use of the term "or offeror" in its preamble. EPA believes that it is reasonable for the generator to contract with another party to handle the pretransport preparation and shipment of the generator's waste. EPA believes that this arrangement can be extended to allow a contractor to sign the manifest and serve as the "offeror" of the waste. The MPCA does not agree that anyone but the generator should be allowed to sign the manifest at the point waste is first shipped. For this reason, the MPCA clearly states in Minn. R. 7045.0265, subpart 1, item A, that the generator must "sign the manifest certification by hand." This responsibility is not delegated to the "offeror" even though this term is included in the definition of "manifest."

Finally, the definition is being broadened by expanding the limited reference to part 7045.0261 (the generator's manifest responsibilities) to instead refer to all of the sections of the rules where manifest requirements are mentioned. This is reasonable because it more accurately identifies the relevant rules and also makes the state definition conform to the federal definition.

Minn. R. 7045.0020, subpart 54 provided a definition of "manifest document number." This definition was formerly in federal regulations. The definition was removed in the amendments in the March 4, 2005, Federal Register because it is now being replaced by the term "manifest tracking number" in subpart 54a. It is reasonable to repeal this now obsolete term and rely on the new term that is relevant to the new, national manifest tracking system.

Minn. R. 7045.0020, subp. 54a adds a new definition for “manifest tracking number.” The definition is the same as the definition found at Code of Federal Regulations, title 40, section 260.10 and is reasonable to maintain consistency with the national manifest system that was discussed in the March 4, 2005, Federal Register.

Minn. R. 7045.0020, subpart 62a adds a new definition for “Organization for Economic Cooperation and Development” (OECD). The definition in the state rule provides a reference to a description of the Organization for Economic Cooperation and Development found at Code of Federal Regulations, title 40, section 262.58 (a)(1). The definition OECD will change over time as countries enter into and leave the organization. Because the transfrontier shipment requirements of the OECD are applicable at the federal level and are not delegable to authorized states, the MPCA believes it is reasonable to defer to the federal regulations for the definition of the OECD.

Minn. R. 7045.0090 Adoption and Incorporation by Reference.

Minn. R. 7045.0090 establishes conditions and exceptions that apply when a federal regulation is adopted by reference. The amendments to this part change the structure of this rule and also make two minor changes to the effect of the rule. The changes to the structure of the rule are being made to add items and headings to more conveniently group the adopted rules and terms identified in subparts 1a to 1e and the exceptions identified in subparts 2 and 3. When this rule was first adopted, the MPCA simply listed a series of exceptions to the adoption by reference provisions. However, as the rule has been used, the MPCA has realized that this listing may be difficult to understand and there is a need to re-arrange some of the items and break the list into more logical components. The MPCA believes that the minor re-arrangements being made to organize the existing exceptions are a reasonable improvement of this rule.

Subparts 2 and 3 identify rules that when adopted by reference do not change to refer to state counterparts. When the MPCA adopts a federal regulation by reference, in most cases, the MPCA intends that the federal regulation to be modified so that some references within the adopted federal language refers to Minnesota-specific parts of the state hazardous waste rules. However, in subparts 2 and 3, the rule specifies exceptions to this sort of modification. In subpart 2, the MPCA identifies those general terms in the federal regulations that either have no state counterpart or are not delegable to the state. In a previous rulemaking, the MPCA identified, in former item B, subitem (1), two parts of the federal regulations relating to waste transportation that the MPCA did not intend to be modified to refer to the MPCA instead of EPA. These two parts were: (1) the generator standards relating to exports and transfrontier shipments, and (2) the transportation standards relating to manifests. The MPCA believes that the original reference to the manifest requirements was an error because at that time the MPCA had not adopted any federal manifest provisions by reference and was still using the Minnesota manifest. It is reasonable to allow the existing references to the export standards and the transfrontier requirements to remain because these parts of the federal regulations are either being adopted by reference in this rulemaking (transfrontier shipments) or contain references to federal regulations that are not intended to be translated into the state equivalent (exports).

A new item D is being added to address the adoption by reference of the new federal uniform Hazardous Waste Manifest in part 7045.0325 of this rulemaking. This reference is different than the one being deleted from subitem (1) because it only refers to the appendix to Code of Federal Regulations, title 40, part 262 and not to the entire subpart that regulates the transporters' use of manifests. The MPCA has not adopted the entire federal generator standards by reference in this rulemaking, only the appendix that establishes the manifest, manifest continuation sheets and the instructions for completing the manifest. It is reasonable to make this addition to the exceptions to adoption by reference because the MPCA does not intend that the requirements of the appendix differ from the federal requirements and in fact, is not authorized to make any changes to the manifest form, continuation sheet, or instructions.

Minn. R. 7045.0125 Management of Waste by Use, Reuse, Recycling and Reclamation.

Minn. R. 7045.0125, subp. 9, item B is being amended to add a reference to Minn. R. 7045.0482, subp. 2. This added part requires recyclers to annually report information on their activities to the MPCA Commissioner. In other parts of this rulemaking, the MPCA is changing how it will receive manifest information for tracking purposes. For example, part 7045.0474 formerly required the owners and operators of facilities that receive hazardous waste to send a copy of the completed manifest to the MPCA Commissioner at the time waste is accepted. Part 7045.0474 is being amended in this rulemaking to eliminate this notification requirement. Instead, the MPCA will rely on the information already being submitted by facilities in their annual report, required under Minn. R. 7045.0482, subp.2. However, the rules currently only require this report from facilities that have hazardous waste permits. Much of the hazardous waste generated in Minnesota is sent to recycling facilities, which, if they do not store waste, are not required to have a hazardous waste permit and therefore, have not been required to submit an annual report of their activities. The MPCA believes that it is reasonable to obtain information from all types of facilities about the wastes that they are receiving. In this rulemaking the MPCA is eliminating the requirement for recycling facilities to send a notification for each shipment of recyclable waste received and adding a requirement to annually report on the recyclable hazardous wastes received.

Minn. R. 7045.0125 is amended by the addition of a new subpart 13 to address wastes that are exported for recycling. The amendment provides a cross reference to the transfrontier shipment requirements that are being adopted by reference in part 7045.0322 of this rulemaking. This provision corresponds to Code of Federal Regulations, title 40, section 261.6 (a)(5). The reasonableness of this provision is discussed on pages 16304 and 16306 in the April 12, 1996, Federal Register.

Minn. R. 7045.0127 Residues in Empty Containers and Empty Inner Liners.

Subpart 2 of this rule establishes the criteria for determining when a container or inner liner can be considered to be empty and, therefore, no longer regulated as hazardous waste. The rule corresponds to Code of Federal Regulations, title 40, section 261.7(b)(1)(iii) and establishes different criteria depending on the type of container that

held the waste. Subitem C. establishes the criteria for an empty container such as a barrel, and subitem D. addresses bulk containers, such as tanks. In the March 4, 2005, Federal Register preamble (page 10790) EPA discusses why the rules changed the volume of what is considered to be empty in both bulk and individual container storage. The former limit was 110 gallons for both types of containers and in this rulemaking, that volume is changed to 119 gallons. The change in the federal regulations is the result of revisions to Department of Transportation (DOT) standards that were made to accommodate international shipping requirements. The MPCA believes that the change to 119 gallons is reasonable in order to provide uniformity with the federal hazardous waste rules and DOT requirements.

Minn. R. 7045.0137 Small Amounts of Unrelated Chemicals.

Minn. R.7045.0137 regulates small amounts of unrelated chemicals such as small vials or containers that are combined in one shipping container, often referred to as a "lab pack." There is no federal counterpart to this provision. A lab pack is a common method of preparing hazardous waste for shipping. In Minnesota, which has a generator licensing program that does not have a counterpart in the federal program, there was a special need to be able to identify this type of waste stream when the generator applied for a Minnesota hazardous waste generator license. Part 7045.0137 specified that waste in a lab pack would be identified by a Minnesota specific waste code (MN02) but that the code was only applicable for license purposes. Under the former manifest system, there was no limit to the number of wastes that would be listed on a manifest at the time it was shipped. When a lab pack composed of many different waste codes was shipped, it would need to be identified on the manifest by a complete list of the specific waste codes that applied to each small amount of waste in the lab pack, not the MN02 code which was only used for licensing purposes.

The new federal manifest revisions will change the number of waste codes that can be entered on a manifest. A generator is limited to using six waste codes to characterize their waste. In the case of most lab packs, six codes will not accurately characterize the waste that is actually in the lab pack. The MPCA believes that the use of the MN02 code can fill the need for better waste identification and should be extended beyond the originally intended licensing purpose. The amendment to this part will allow generators of lab packs to use the code MN02 on the new manifest forms to identify a waste that is a collection of small amounts of chemicals. Although the MN02 waste code will not describe all the wastes in the lab pack, it will serve to notify the inspector that it is a collection of small amounts of wastes and that further investigation may be needed. It is reasonable to make this change to more accurately characterize wastes being shipped.

Minn. R. 7045.0212 Transfrontier Shipments.

Part 7045.0212 is being amended to add a requirement to clarify that exporters to transfrontier countries who are subject to the manifest requirements must also comply with part 7045.0322, the transfrontier shipment requirements. This provision corresponds to Code of Federal Regulations, title 40, section 262.10 (d) and is a reasonable clarification to include in the state rules.

The title of this part is also being changed. The previous title, "Importers of Hazardous Waste," is no longer appropriate, since the transfrontier standards apply to both importers and exporters of hazardous waste. The title "Transfrontier Shipments" is appropriate to the requirements being newly added as well as the existing requirements.

Minn. R. 7045.0261 Manifest Document; General Requirements.

Subpart 1 is being amended to make several changes. A phrase is being added to the first sentence to notify the reader that exceptions exist in subpart 1a. Subpart 1a is not a new subpart and is not part of the corresponding federal regulation, but the MPCA believes it is appropriate to add this clarifying phrase at this time.

The next change in subpart 1 adds a provision that identifies the owner or operator of a treatment, storage, or disposal facility as a possible generator of a rejected load of wastes. The previous manifest requirements did not address the possibility that a facility owner or operator might need to re-direct a waste that could not be accepted and that the facility owner or operator would need to originate a manifest for the shipment. These changes are reasonable in order to make the state rules consistent with the federal manifest regulations in Code of Federal Regulations, title 40, section 262.20. The state rules are slightly different than the federal regulations because they refer to the "owner or operator" of a treatment, storage, and disposal facility instead of just the treatment, storage, and disposal facility. This is a reasonable difference because it reflects state rule drafting convention that requires that rules cannot impose a requirement on an inanimate object. The intent of both the state and federal requirement is the same.

The third change to subpart 1 is to add a reference to the form numbers that identify the new manifest and continuation sheet. These numbers are required by the federal manifest regulations and are reasonable to ensure national consistency in the type of manifest used.

The fourth change to subpart 1 removes a reference to items A to C which are being deleted and are discussed below. The final change to subpart 1 adds a reference to subpart 6, which is a newly added provision regarding state-only wastes, and adds a reference to the federal instructions for completing a manifest. The Minnesota manifest included instructions for completion with the manifest form. Under the federal manifest system, the generator must refer to the instructions for completing the manifest provided in the Appendix to the federal regulations. This Appendix is being adopted by reference in this rulemaking in part 7045.0325. The MPCA believes it is reasonable to make this reference to the correct instructions for the completion of the manifest that will be used nationally.

Items A, B, and C of subpart 1 are being deleted in this rulemaking because they are no longer relevant to the new manifest system. These items addressed situations where wastes would be transported to states that required different manifest forms. The federal manifest requirements published in the March 4, 2005, Federal Register apply to all states and eliminate the use of state-only manifests. It is reasonable to delete these now obsolete provisions.

Subpart 1a provides exemptions to the manifest requirements and is amended to remove a sentence relating to transporters that is redundant and inappropriate in this part of the rules which applies to generators, not transporters. The requirements that apply to transporters are already addressed in part 7045.0371. There was no federal counterpart to this sentence.

Subpart 1a is also being amended to identify situations which do not require the use of a manifest. These are not newly added exemptions, but they were not formerly identified in this part of the rules. This subpart previously identified only two situations where waste could be transported without a manifest: very small quantity generators (VSQG) transporting to a VSQG collection site, and very small or small quantity generators who have obtained approval for an alternative manifest system (Code of Federal Regulations, title 40, section 262.20 [e]). But these two situations were not the only situations which did not require the use of a manifest. Minn. R. 7045.0125, subps. 5 and 6, which address the recycling of feedstocks and by-products, allows such waste to be transported without the use of a manifest. A universal waste handler managing its waste under Minn. R. 7045.1400 is not required to use a manifest. Also, transportation of waste on-site (Code of Federal Regulations, title 40, section 262.20 [f]) and transportation of spent lead-acid batteries to a recycler do not require the use of a manifest. These specific circumstances are being added to the rules in items C to F as reasonable clarifications of situations where the rules do not require use of a manifest. Although the federal regulations provide the same exemptions to manifest use, there is no counterpart to this subpart in the federal regulations to specifically list all the situations where manifests are not required.

Subpart 2 is being amended to make it consistent with the corresponding language of Code of Federal Regulations, title 40, section 262.20 (b) and to eliminate duplicative language. This is not a change that is prompted by the March 4, 2005, revisions to the manifest rules, but is reasonable to make at this time to clarify the rule and enhance consistency with the existing federal regulations. The language that is being deleted duplicates information already provided in the definition of a designated facility in Minn. R. 7045.0020 and is reasonable to remove from this subpart.

Subpart 5 is being deleted in order to eliminate confusion and avoid duplication with the definition of a designated facility. The MPCA has found that this section is confusing to regulators and to the regulated community because it implies that all destination facilities must have some form of a hazardous waste permit or qualify for interim status. Although this is usually the case, a designated facility can also be an unpermitted recycling facility, a solid waste facility in a state that does not recognize the waste as hazardous or it may be the originating generator receiving a rejected shipment of its waste. The MPCA does not believe that this subpart is relevant to the use of the hazardous waste manifest and is reasonably deleting it to avoid future confusion regarding its meaning. There was no federal counterpart to this part.

Subpart 6 is amended to add a state-specific requirement for the use of the Hazardous Waste Manifest. The federal manifest regulations limit a generator to using no more than six waste codes on the manifest. Under the former system, a generator could use as many waste codes as necessary to accurately characterize the waste being shipped. In the case of a lab pack (MN02) or state-only hazardous waste (e.g. Lethality characteristic or PCBs) a generator would have been allowed to list all applicable waste codes on the manifest form or continuation sheet. Under the new requirements, a generator is only allowed to list the six most relevant waste codes with the result that the presence of state-specific waste or a lab pack would not necessarily be listed on the manifest. The amendment to subpart 6 requires that if any waste being shipped can be described by any Minnesota-specific waste codes, those codes must be included on the manifest as one of the six allowed codes. The MPCA believes this is a reasonable, though more stringent state requirement. The MPCA's enforcement activities are frequently based on manifest information and depend on accurate characterization of the wastes being shipped. Although the state rules must conform to the requirements and limitations of the federal manifest requirements, and, therefore, cannot require more than six waste codes on the manifest form, the MPCA believes that the identification of PCBs, lethal wastes and lab packs on the manifest form is of high importance and justifies this additional requirement.

Subpart 7 is amended to make several changes. First, references to the Minnesota manifest are obsolete and are reasonably deleted. Second, this part is amended to include a specific reference to Minn. R. 7045.0325 which adopts the federal manifest by reference and which is further discussed at that point in this document. Finally, this subpart is amended to delete requirements for specific state manifest information requirements. These requirements are obsolete under the new manifest system and are reasonably deleted.

Subpart 8 is amended to update information about obtaining manifests. This is a state-only provision and has no federal counterpart. In the past, Minnesota manifests were only available from the Minnesota Bookstore and it was appropriate to provide specific information about obtaining them from the Minnesota Bookstore. The new manifests will be available from any printer who meets the EPA criteria for printing. The Minnesota Bookstore may continue to provide manifests for sale, but they are no longer the sole source. The Minnesota Bookstore has also changed location and address. Because there is some uncertainty at this time about whether the Minnesota Bookstore will provide manifests, the MPCA believes it is reasonable to amend the rules to eliminate the existing specific information about the Minnesota Bookstore.

Subpart 9 is being repealed. This part formerly addressed the number of copies that were required for a Minnesota manifest. Because these rules establish a national uniform manifest, there is no longer any need for specifications for a Minnesota manifest. The information regarding the address for mailing manifest copies to the MPCA is now provided in part 7045.0265.

Subpart 10 is being amended to remove obsolete references to the Minnesota manifest. This subpart does not have a counterpart in the federal regulations. In the previous rule this subpart specified when a continuation sheet was required was based on information provided in the federal manifest instructions sheet. The MPCA believes that this same information, which is still provided in the federal instructions for the use of the continuation sheet, is still appropriate to be provided in this subpart of the state rules. The existing information in this subpart regarding continuation sheets is being slightly revised to correspond to information provided in the federal instructions. In addition to the changes necessary to refer to the correct instructions, manifest form and continuation sheet, this subpart is also being amended to provide a cross reference to the requirements of part 7045.0265 which identifies where copies of the manifest and any continuation sheets are to be sent. Part 7045.0265 requires a generator to submit a copy of its manifest to the MPCA or appropriate county regulator at the time of shipping. If a generator must use a continuation sheet, the same additional requirements apply for submittal of a copy of the continuation sheet. The changes to this subpart are reasonable to eliminate obsolete references, update information and provide a cross reference to state-specific requirements for manifest use.

Minn. R. 7045.0262 Waste Minimization Certification.

This is a new rule part being added to address the requirements of Code of Federal Regulations, title 40, section 262.27 that were adopted in the March 4, 2005, Federal Register. The requirement that waste generators certify that they have made efforts to minimize the amount of waste generated is not new. The Minnesota manifest formerly required that large and small quantity generators certify to these waste minimization statements. However, the previous certification statements were printed directly on the Minnesota manifest form. This amendment will make the federal certification statements a part of the state rules through adoption by reference. The appropriate certification will still be made at the time the generator signs the manifest form, but the actual text of the certification will not be printed on the new manifest forms as they were previously. The new manifest form only includes a citation to the section of the federal regulations where the certification can be found. The MPCA believes it is reasonable to add a new rule to adopt the federal certification by reference in order to make the state rules consistent with the federal regulations and the information provided on the federal manifest form.

Minn. R. 7045.0265 Use of Manifest.

Subpart 1 of Minn. R. 7045.0265 is amended to reflect the federal changes in the manifest form. The Minnesota manifest formerly consisted of 8 pages. When a generator initiated a shipment of waste, one of the pages was sent to the MPCA. The new federal manifest has only six pages and does not include a page to be sent to the regulatory agency in the generating state. The MPCA has always required that hazardous waste generators include the MPCA in the tracking process, and the MPCA considers that notification from the generator is an essential component of the manifest system. The MPCA does not believe that it is reasonable to eliminate this aspect of the manifest tracking system to accommodate the new federal manifest form and has, therefore, amended the rules to include this already existing state-only difference.

The first change to subpart 1 is an amendment to require generators to make a copy of the page of the manifest form that the generator retains and send that copy to the MPCA at the time waste is shipped. Except for the requirement that the generator photocopy, instead of using a page provided as part of the manifest, this is not a change in the existing system. The MPCA believes that photocopy equipment is reasonably available to all waste generators and that this is not a burdensome requirement.

The second change to subpart 1 is being made to reflect the current process for submittal of the generator's copy. Seven counties in the metropolitan area have been given legislative authority to conduct their own hazardous waste programs. The hazardous waste programs in these counties include a system to enter and monitor the manifest information received from generators of very small quantities of hazardous wastes. The current rules, as well as the Minnesota manifest form, have identified the MPCA as the destination for mailing the notification copy of the form. However, for the past few years the counties and the MPCA have arranged to have the manifests from very small quantity generators (VSQGs) sent to the appropriate county program for tracking. The regulated communities in these counties know where their manifests should be sent and it has worked effectively for several years. The MPCA believes it is appropriate at this time to change the rules to reflect how manifest forms from these VSQGs should be submitted. The MPCA anticipates that there could be future changes to the county process for handling VSQG manifests submittals, so this provision has been drafted to require VSQGs to send their manifest copies to whatever address is identified on the county license. Referring to the information that is sent annually to these generators and not specifying a particular address in the rules will allow counties to either withdraw from participation in this part of the program or to contract to have the manifests processed at a location that may change over time. The MPCA believes that referring to the conditions of the license to provide mailing information is a reasonable mechanism to provide generators with the most current and accurate information about the mailing address and will also enable the counties to adjust and modify the mailing location as this program changes over time.

The same changes are made to subparts 2 and 3. The MPCA believes that it is reasonable to keep the same process for the generator to submit initial waste shipment information regardless of whether the waste is shipped by truck, rail, or water.

Subpart 4 of Minn. R. 7045.0265 is being amended in this rulemaking to change the current state-only requirement that requires that the MPCA be notified when waste is received at a destination facility. This subpart formerly established conditions only for generators who sent waste to out-of state facilities. Under the existing requirements that apply to facility owners and operators (part 7045.0474), the owner or operator of a facility is required to return a copy of the signed manifest to the generator and also to the Commissioner when waste is accepted at the facility. The requirement for the facility to notify the generator when waste is received continues to be part of the federal manifest system and will remain in the state rules. However, the requirement in part 7045.0474 to notify the Commissioner when waste is accepted is a state-only requirement and only

applied to facilities in Minnesota. The MPCA cannot effectively enforce this requirement on the owners or operators of facilities outside of Minnesota. For this reason, subpart 4 of Minn. R. 7045.0265 required that generators who sent waste to out of state facilities "ensure" that a copy of the manifest was sent to the MPCA when waste was accepted at an out of state facility. This existing provision placed a responsibility on generators in Minnesota to ensure that the notification is completed, either by mailing the copy to the Commissioner themselves or by compelling the facility to send a copy to the Commissioner. For the reasons discussed below, the MPCA believes that it is appropriate to extend this responsibility to all generators, not just the generators who ship wastes to out-of-state facilities.

In this rulemaking, the MPCA is making a distinction between manifests sent by VSQGs and larger categories of generators. In Minn. R. 7045.0265, subps. 1 to 3, the MPCA is changing the rules to require VSQGs in the seven county metropolitan area to send a copy of the manifest to the appropriate county authority at the time waste is shipped. Because of this change in the notification process, the MPCA believes there is a need to amend the rules further in order to close the loop on manifest reporting. The reason for requiring that the MPCA or the county be notified of waste shipments is to provide a cradle to grave tracking system. Because VSQGs will send copies of their manifests to their county at the time wastes are shipped, it is, therefore, reasonable that the county also be notified when the waste is delivered and accepted at the facility (either in-state or out-of-state). However, the facility owner or operator cannot reasonably be expected to know whether the waste they received is from a VSQG located in one of the seven counties identified in the rule. The MPCA does not believe that there is a reasonable way for the facility owner or operator to know when it must send the manifest to the Commissioner and when the manifest must be sent to one of the seven participating counties. The process is further complicated when waste is sent to an out of state facility which the MPCA has no authority to regulate. The MPCA believes the most reasonable and simplest way to ensure that the tracking system remains effective is to require all generators to be responsible for ensuring that either the Commissioner or the appropriate county is notified. All facilities are required, both state and federally, to send generators a copy of the final signed manifest from the designated facility within 30 days of waste acceptance. In subpart 4, the MPCA is requiring all generators to ensure that a copy of the manifests they received from the facility is sent to either the Commissioner or the appropriate county. All generators who currently ship to out of state facilities currently are required to ensure that this occurs. This amendment only changes the requirement so that all generators must ensure that the appropriate entity receives a copy of the final manifest. The MPCA believes that this is a reasonable requirement because it ensures that the notification loop is completed and will not impose an excessive burden on the regulated community.

Minn. R. 7045.0270 Pretransport Requirements.

Minn. R. 7045.0270 is amended to incorporate changes found at Code of Federal Regulations, title 40, section 262.32. These changes are based on amendments made in the March 4, 2005, Federal Register. The amendments to subpart 1 make a change to the

amount that is considered to be a "container" as discussed for the amendments to part 7045.0127 and also make minor grammatical changes to the information required for marking a container. These are reasonable changes to make the state rules correspond to the federal regulations.

One element of the March 4, 2005, Federal Register is not being added in this rulemaking. In that publication, EPA added a specific reference in Code of Federal Regulations, title 40, section 262.33 to refer to Department of Transportation requirements that applied if placarding was not required. That provision was later removed in a correction to the amendments published in the June 16, 2005, Federal Register. The MPCA is not making any change to subpart 6 of the rules to correspond to this federal amendment which was later removed.

Minn. R. 7045.0292 Accumulation of Hazardous Waste.

A new subpart 12 is added to this rule to address the accumulation of waste rejected by a designated facility. This subpart addresses a situation when a designated facility sends the rejected shipment of waste back to the generation site. It is reasonable to allow a generator to accept its rejected waste and to provide time for the generator to make arrangements with a different facility to accept the waste. The amount of accumulation time allowed in this subpart depends on the amount of waste that is being accepted on-site and corresponds to the accumulation time limits for waste generation. The requirements that apply to a generator in this situation were published in the March 4, 2005, Federal Register and are the same as Code of Federal Regulations, title 40, section 262.34 (m). The MPCA believes it is reasonable to amend the state rules to address this type of scenario and that the conditions of the federal regulations provide a reasonable level of regulation to ensure that rejected wastes are safely managed.

Minn. R. 7045.0302 International Shipments; Special Conditions.

Minn. R. 7045.0302 is being amended to add a new subpart 1a which addresses international agreements for the transfrontier shipment of hazardous waste. This new subpart corresponds to Code of Federal Regulations, title 40, section 262.58 (a) and is reasonable for the reasons presented in this Statement for the addition of Minn. R. 7045.0322.

Minn. R. 7045.0302, subp. 2 is being amended to change the address to which a primary exporter must send a notification to EPA. The previous address had been changed in the April 12, 1996, Federal Register. This rule corresponds to Code of Federal Regulations, title 40, section 262.53(b) and (c). This is a reasonable change to ensure that the correct information is provided to the regulated community. The other amendments to this subpart only move existing requirements from the end of this subpart to the introductory area. The MPCA believes that the location of these two provisions was confusing and gave the appearance that they only applied to the notification required in item B, subitem 9 when in fact the information was applicable to all the information required in items A and B. It is reasonable to clarify the rule for the regulated community and to provide the most accurate information regarding addresses.

The introductory paragraph of Minn. R. 7045.0302, subp. 4 is being amended to eliminate references to the Minnesota manifest and to make the state rules consistent with the revised federal requirements found at Code of Federal Regulations, title 40, section 262.60 (c) and published in the March 4, 2005, Federal Register.

Subpart 4, items C and D are amended to incorporate requirements of Code of Federal Regulations, title 40 section 262.60 (d) and (e) relating to the manifest. The reasonableness of the federal requirements are discussed in the preamble (page 10783) of the March 4, 2005, Federal Register. The MPCA agrees with the EPA discussion and believes the amendments are reasonable for the reasons presented in the preamble.

Subpart 5 is being amended to delete a reference to the Minnesota manifest and to address requirements discussed in the March 4, 2005, Federal Register that are found at Code of Federal Regulations, title 40, section 262.54. These amendments are minor and simply clarify the requirements for filling out a manifest for exported waste. The MPCA believes they are reasonable to ensure consistency with the federal regulations.

Subpart 6 is being amended to update the address for sending annual export reports to EPA. This rule part corresponds to Code of Federal Regulations, title 40, section 262.56 (b). This address was changed in the April 12, 1996, Federal Register and the MPCA believes that it is reasonable to amend the rules to provide the most accurate information to the regulated community.

Minn. R. 7045.0322 Transfrontier Shipment Standards.

A new rule part, Minn. R. 7045.0322, is being added to incorporate federal regulations by reference to address the shipment of hazardous waste to countries that participate in an international agreement known as the Organization for Economic Cooperation and Development. The reasonableness of these requirements is discussed by EPA in the April 12, 1996, Federal Register and the MPCA agrees with and incorporates that discussion in this Statement.

These federal provisions are not part of the hazardous waste regulations that EPA will delegate to states under the authorization process. The authority for implementing and enforcing the transfrontier shipment requirements remains with EPA even though these rules are adopted by reference into the state rules. However, EPA encourages states to adopt these regulations so that state rules reflect the federal regulations and to increase awareness of the requirements in the regulated community. In this adoption by reference, the MPCA does not intend that references within the federal regulations be translated to refer to a state equivalent. For all transfrontier shipment requirements, the exceptions identified in Minn. R. 7045.0090, subp. 2 apply.

Minn. R. 7045.0325 Appendix to Generator Standards.

Minn. R. 7045.0325 is being added to the hazardous waste rules to provide a place where the federal manifest form and instructions for completing the form can be adopted by reference. The federal manifest form is contained in an appendix to the standards in Code of Federal Regulations, title 40, part 262. The need for the state to adopt the federal manifest form is discussed in Part III of this Statement. The MPCA believes that the addition of a new rule part that incorporates the federal manifest form and instructions is reasonable to provide the legal structure for the use of the manifest and to notify the regulated community of the requirements that apply.

Subpart 2 provides two exceptions to the adoption of the federal manifest by reference. The first, in item A, clarifies the MPCA's intentions regarding the use of the term "offeror." As discussed previously in this Statement, (in the discussion of the changes to Minn. R. part 7045.0020, subpart 53) the MPCA does not allow generators to delegate the responsibility for signing a manifest to another party who prepares the waste for shipment and who, under the federal regulations, can sign the manifest as the "offeror" of the waste. Although the MPCA is not able to make changes to the federal instructions for the completion of the manifest, the exception in item A clarifies that where the federal instructions use the term "offeror," in Minnesota that term is limited to only the generator and the owner or operator of the destination facility.

Item B clarifies the application of the term "discrepancy" in the federal manifest instructions. The MPCA intends that a facility's response to discrepancies extend to all discrepancies identified in Minn. R. 7045.0476 and 7045.0582. These two Minnesota Rules include one category of discrepancy, called a minor discrepancy, which is not included in the federal regulations. The Minnesota Rules (parts 7045.0476 and 7045.0582) require that minor discrepancies also be noted on the manifest. By making this change to the adoption by reference of the manifest instruction form, the MPCA ensures that all discrepancies identified in the Minnesota Rules will be addressed.

Minn. R. 7045.0375 The Manifest System; General Requirements.

Subpart 1 of part 7045.0375 is amended to change the reference to the manifest requirements. The previous rules referred to the whole set of standards applicable to the generators of hazardous wastes, Minn. R. 7045.0205 to 7045.0320. The rule is being amended to narrow the scope of the reference to only the generator's manifest requirements of part 7045.0265. This reference corresponds to the federal counterpart at Code of Federal Regulations, title 40, section 263.20 (a)(1). The MPCA believes this is a reasonable change that more effectively identifies the relevant cross reference.

A new subpart, 1a, is being added to address the transporters responsibility when wastes are exported. The requirements are basically the same as were previously listed under subpart 1. However, they have been moved to a new subpart, and a reference to the federal requirements regarding transfrontier shipments of hazardous waste has been added so that this subpart more closely corresponds to Code of Federal Regulations, title

40, section 263.20 (a). These changes are not part of the manifest revisions published in the March 4, 2005, Federal Register. This part was amended in that Federal Register to re-organize the paragraph, but the actual requirements of items A to C had been part of the federal regulations for several years.

The MPCA had not previously addressed the requirements of Code of Federal Regulations, title 40, subpart H dealing with transfrontier shipments. The MPCA is adding a new part (Minn. R. 7045.0322) to this rulemaking to adopt the transfrontier shipment requirements by reference and those changes are discussed in that section of this Statement. Although the changes being made to subpart 1a are not new federal requirements, the MPCA believes it is reasonable to make these changes at this time to refer to the additional requirements of part 7045.0322 and to make the state rules consistent with the corresponding federal regulations.

Minn. R. 7045.0385 Compliance with the Manifest.

Minn. R. 7045.0385, subp. 2 is being amended to address the circumstances where a load or a partial load of waste is rejected by the destination facility. The changes being made to this part are based entirely on the requirements published in the March 4, 2005, Federal Register that correspond to Code of Federal Regulations, title 40, section 263.21. The federal regulations are being incorporated verbatim and the MPCA believes they are reasonable for the reasons presented on page 10803 of the Federal Register preamble.

Minn. R. 7045.0452 General Facility Standards.

A new item is being added to subpart 3 to address transfrontier shipments to a recovery facility. This item corresponds to Code of Federal Regulations, title 40, section 264.12(a)(2) and was added to the federal regulations in the April 12, 1996, Federal Register. The MPCA believes it is reasonable to amend the state rules to maintain consistency with the federal regulations.

Minn. R. 7045.0474 Manifest System.

Minn. R. 7045.0474 is amended to add conditions and clarifications to the manifest requirements that apply to the owners or operators of destination facilities. Subpart 2, item A, subitem 1 is amended to make minor clarifications and to make the structure of the state rules correspond with the federal regulations found at Code of Federal Regulations, title 40, section 264.71. These revisions do not add any significant change to the rules.

The most significant change to subpart 2 is to the change to the time period allowed for a facility to notify the generator of waste delivery. This is an existing part of the state rules that has been more stringent than the corresponding federal regulations. The state rules required a facility owner or operator to send a copy of the signed manifest to the generator and to the MPCA Commissioner within ten days of receipt of the waste. The corresponding federal regulations allowed a facility owner or operator thirty days to send a copy to the generator. (As discussed below, the federal regulations do not require the facility to send a copy to the Commissioner. This was a state-only requirement.) The

MPCA believes that it is reasonable to amend the rules at this time to provide the same time period for a response as is allowed in the federal regulations because so much of Minnesota's hazardous waste is shipped to out-of-state facilities which may be unaware of this more stringent state requirement, because the more stringent, state-only time limit is burdensome to the regulated community, and because having a ten day requirement does not provide any administrative or environmental advantage over the thirty days provided in the federal regulations. The MPCA believes it is reasonable at this time to amend the rules to allow facilities thirty days to send manifest copies to the generator and the Commissioner.

The MPCA is removing an existing element of subpart 2 that does not have a federal counterpart. The federal regulations require that a facility send a copy of the signed manifest to the generator when waste is accepted, but do not require a facility owner or operator to notify a state agency at the same time. However, subpart 2, item D formerly required a facility owner or operator to send a copy of the signed manifest to both the generator and the Commissioner. In this rulemaking, for the reasons discussed for the amendments to Minn. R. 7045.0265, subpart 4, the MPCA is removing the existing requirement for the facility owner and operator to send a copy of the manifest to the Commissioner. In the future, the generator will be required to notify the Commissioner or the appropriate county, not the facility owner or operator. The MPCA believes this is the most reasonable way to maintain the cradle to grave tracking system for waste shipments.

A new item B is being added to correspond to Code of Federal Regulations, title 40, section 264.71(a)(3), which was added in the March 4, 2005, Federal Register.

The same change, from ten days to thirty days, is made to subpart 3, item D regarding shipments of hazardous waste by rail and water. The existing state rule language has also been re-arranged to make this rule part correspond to the federal counterpart in Code of Federal Regulations, title 40, section 264.71 (b)(4). The MPCA believes these changes are reasonable for the reasons discussed above.

Subpart 4 is being added to address the manifest requirements for transfrontier shipments of hazardous waste. This requirement corresponds to Code of Federal Regulations, title 40, section 264.71 (d) and was published in the April 12, 1996, Federal Register. The MPCA believes it is reasonable to make this amendment to provide consistency with the federal transfrontier shipment regulations being adopted by reference in this rulemaking in part 7045.0322.

Subpart 5 is amended to correspond to Code of Federal Regulations, title 40, section 264.71 (e) and provides direction to facility owner and operators regarding state-only hazardous wastes. This subpart is based on changes published in the March 4, 2005, Federal Register. The MPCA believes it is reasonable to maintain consistency with the federal regulations.

Minn. R. 7045.0476 Manifest Discrepancies.

The changes to Minn. R. 7045.0476 are based on changes to the federal regulations published in the March 4, 2005, Federal Register and correspond to Code of Federal Regulations, title 40, section 264.72. Incorporating the federal changes required some re-arrangement of the existing rule language. However, the MPCA does not believe that the intent of the existing rule language has changed. The requirements being added address procedures for different types of discrepancy situations. The process for handling manifest discrepancies is discussed in the preamble to the March 4, 2005, Federal Register at pages 10803 -10809. The MPCA agrees with the discussion presented by EPA and finds that the additional requirements are reasonable.

Subpart 2 is being amended to change the former distinction between “significant” and “minor” discrepancies to now refer to “major” and “minor” discrepancies. What was formerly called a significant discrepancy is now a subcategory of major discrepancy called a “significant difference.” In the existing rule, a significant discrepancy was a discrepancy in the amount or type of waste being transported. The conditions for what is considered to be this type of discrepancy remain the same in this rulemaking; only the identifying term is being changed. The federal regulations have also added two additional types of discrepancies to the category of major discrepancies. The amendments add: (1) rejected shipments, and (2) containers that are not empty, as types of major discrepancies. The MPCA believes that both these additional situations are reasonably regulated as major discrepancies.

Subpart 3 is being amended in two ways. First, it is being amended to change the number of days allowed to respond to a manifest discrepancy. The state rules had formerly allowed 10 days for a facility owner or operator to respond. However, the corresponding federal regulations have, for several years, allowed 15 days to resolve discrepancies. The MPCA does not believe that there is any environmental basis to require a more rapid response and believes it is reasonable to amend the rules to provide the same response period as is allowed under the federal regulations.

The second change to this part adds procedures for the facility operator to follow in the case of certain major discrepancies. These procedures are the same as specified in Code of Federal Regulations, title 40, section 264.72 (d).

Subparts 4 to 6 are added in this rulemaking to address situations where a rejected waste shipment is sent to an alternate facility. These conditions are the same as are found in Code of Federal Regulations, title 40, section 264.72 (e) to (g) and are reasonable for the reasons presented on pages 10803 to 10809 of the March 4, 2005, Federal Register.

Minn. R. 7045.0482 Required Reports.

The amendments to subpart 3 of Minn. R. 7045.0482 are based on changes to the federal regulations published in the March 4, 2005, Federal Register and correspond to Code of Federal Regulations, title 40, section 264.76. The changes do not significantly change

the existing conditions for an unmanifested waste report. The former requirements required that a facility owner or operator attempt to reconcile discrepancies and if that was not possible, to send a report to the MPCA Commissioner within ten days. The amendments delete the requirement to attempt to reconcile the differences because the requirements that already exist in part 7045.0476 establish specific procedures for reconciling discrepancies. The new language being added to this subpart only addresses reporting requirements. The amendments only clarify what kinds of discrepancies must be reported and provide fifteen days, instead of the previous ten day reporting period, for the facility operator to notify the MPCA Commissioner. The MPCA believes it is reasonable to amend this rule to eliminate redundant information and to more closely conform to the federal requirements for reporting.

The MPCA has made one minor change to the federal language in 40 Code of Federal Regulations, title 40, section 264.76 (a). In the federal language the facility operator is required to submit a "letter" to the Regional Administrator. The MPCA believes that the "letter" referred to in the federal regulations is the same thing as the unmanifested waste report and is modifying the language to only refer to the unmanifested waste report.

Minn. R. 7045.0556 General Facility Standards.

Subpart 3, is amended to add a new item D that establishes requirements for transfrontier shipment to a recovery facility. This item corresponds to Code of Federal Regulations, title 40, section 265.12(a)(2) and was added to the federal regulations in the April 12, 1996, Federal Register. This specific change and the reasonableness of the change, which affects the owners and operators of interim status facilities is discussed in this Statement as it relates to the change to Minn. R. 7045.0452 that affects the owners or operators of permitted facilities. The MPCA believes it is reasonable for the reasons presented in that discussion.

Minn. R. 7045.0580 Manifest System.

The requirements of this part are amended to reflect the requirements of the corresponding federal regulations in Code of Federal Regulations, title 40, section 265.71. The specific changes and the reasonableness of those changes, which affect the owners and operators of interim status facilities, are discussed in this Statement as they relate to the changes to Minn. R. 7045.0474 that affect the owners or operators of permitted facilities. The MPCA believes they are reasonable for the reasons presented in that discussion.

Minn. R. 7045.0582 Manifest Discrepancies.

The requirements of this part are amended to reflect the requirements of the corresponding federal regulations in Code of Federal Regulations, title 40, section 265.72. The specific changes and the reasonableness of those changes, which affect the owners and operators of interim status facilities, are discussed in that Statement as they relate to the changes to Minn. R. 7045.0476 that affect the owners or operators of

permitted facilities. The MPCA believes they are reasonable for the reasons presented in that discussion.

Minn. R. 7045.0588 Required Reports.

The requirements of this part are amended to reflect the requirements of the corresponding federal regulations in Code of Federal Regulations title 40, section 265.76. The specific changes and the reasonableness of those changes, which affect the owners and operators of interim status facilities, are discussed in this Statement as they relate to the changes to Minn. R. 7045.0482, subp. 3 that affect the owners or operators of permitted facilities. The MPCA believes they are reasonable for the reasons presented in that discussion.

Minn. R. 7045.0675 Recyclable Hazardous Waste Used for Precious Metal Recovery.

Subpart 5 is amended to add conditions for the transfrontier shipment of hazardous wastes being exported or imported for precious metal recovery. This provision corresponds to Code of Federal Regulations, title 40, section 266.70 (b)(3) and is reasonable to maintain constancy with the federal regulations.

V. Statutory Considerations

Minnesota statutes contain several requirements relating to rulemaking.

Minn. Stat. § 14.111 Impact on Agriculture.

Minn. Stat. § 14.111 requires an agency to provide a copy of the proposed rule to the Commissioner of Agriculture no later than 30 days prior to publication of the proposed rule in the State Register if the proposed rule affects farming operations. The MPCA does not believe that the proposed rule will have any effect on farming operations and is not providing special notification to the Commissioner of Agriculture.

Minn. Stat. § 14.116 Legislative Notification.

Minn. Stat. § 14.116 requires an agency to send a copy of the Notice of Intent to Adopt Rules and a copy of this Statement to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules. In addition, if the mailing of the notice is within two years of the effective date of the law granting the agency the authority to adopt the proposed rules, the agency shall make reasonable efforts to send a copy of the notice and this Statement to all sitting legislators who were chief house and senate authors of the bill granting the rulemaking authority. If the bill was amended to include this rulemaking authority, the agency shall make reasonable efforts to send the notice and this Statement to the chief house and senate authors of the amendment granting rulemaking authority, rather than to the chief authors of the bill.

The MPCA intends to send a copy of the notice, proposed rules, and this Statement to the leadership of the Senate Environmental and Natural Resources Committee, Senate Environment, Agriculture, and Economic Budget Division, and to the leadership of the House Environmental and Natural Resources Policy Committee and the House Environmental and Natural Resources Finance Committee.

The remaining requirements of Minn. Stat. § 14.116 are inapplicable because the MPCA's statutory authority to adopt and implement the proposed rule is found in Minn. Stat. § 116.07, subd. 2 and is not a new grant of rulemaking authority as described in Minn. Stat. § 14.116.

Minn. Stat. § 14.127 Economic Effect on Business and Local Government Units.

Minn. Stat. § 14.127 provides that an agency must determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed a threshold of \$25,000 for (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees. "Business" means a business entity organized for profit or as a nonprofit, and includes an individual, partnership, corporation, joint venture, association or cooperative. The MPCA does not believe that there will be any significant cost of compliance with the proposed amendments for any business or local governmental unit.

The changes being made to the rules are mainly the result of federal regulations that will go into effect regardless of Minnesota's rules. The MPCA has no authority to keep EPA from requiring the use of the national uniform manifest on the federal effective date. This rulemaking will not affect the fact that the regulated community will be required to obtain the new manifest and make any necessary changes to their shipping process in order to use the federal manifest. The MPCA does not anticipate that the cost of transition to the new manifest system will be significant for any business in Minnesota.

Some of the amendments are not based on changes to the federal manifest system and are within the scope of MPCA discretion. The requirement that a generator mail a copy of the final manifest to the MPCA is a change to the previous requirements and will require additional effort from the regulated community. However, the MPCA does not believe that there is any generator in Minnesota that will incur significant cost as a result of this requirement. The generators who currently ship to out of state facilities are already doing this notification to the MPCA, and the generators who are newly required to send the notification will only incur minor postage and copying expenses.

Minn. Stat. § 14.131 Factors to be addressed in this Statement.

Minn. Stat. § 14.131 sets out seven factors the MPCA must address in this Statement based on information that may be obtained by reasonable effort. This statute also requires that this Statement include a discussion of how the rules address the legislative policy for performance based standards and an explanation of how the MPCA provided additional notification of the rulemaking to potentially affected parties.

The factors that must be addressed are:

“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.”

The persons who will be affected by the proposed rule will be the generators of hazardous waste who transport their waste off-site, the transporters of hazardous waste, the owners and operators of hazardous waste facilities and the staff of the MPCA and Minnesota Department of Transportation who will implement the new manifest requirements. The MPCA receives copies of approximately 17,000 manifests a year from approximately 2,800 different generators.

No class of person will be adversely affected by the costs of the proposed rule. There will be a minor expense to businesses that must obtain new manifests and discard obsolete manifests on the federal effective date. However, this expense is not the result of the amendments to the state rules. The requirement to change manifest forms is a federal requirement and is not the result of this rulemaking.

“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.”

The rules do not impose any costs to the MPCA or any other agency and will not affect state revenues. The Minnesota Bookstore was formerly the sole source for the regulated community to obtain Minnesota manifests. Although the Minnesota Bookstore intends to continue to sell the new national manifests, they will no longer be the sole source for them. However, this loss of revenue is not caused by the amendments to these rules. Minnesota's manifest will become obsolete on the effective date of the federal regulations and cannot be used regardless of whether the state rules are amended to reflect the federal changes.

“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.”

There are no alternatives to adoption of the manifest portion of this rulemaking because the changes are based on mandatory changes to the national manifest system. The changes to the manifest system will take place on the federal effective date regardless of the state rulemaking process. The MPCA believes that the state rulemaking will provide a benefit to the regulated community by providing consistency between the state and federal regulations in the area of hazardous waste transport.

“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.”

The only alternative to amending the rules would be to keep the state rules as they currently exist and allow the federal regulations to take effect and supersede the state rules. The MPCA believes this would be unreasonably confusing to the regulated community and would serve no useful purpose. Additionally, Minnesota is committed to maintaining its authorization to implement the hazardous waste program. The manifest system is a major part of the hazardous waste program, and the MPCA could not maintain program authorization without adopting the national system into the state rules.

The amendments that adopt transfrontier shipments are not required to maintain program authorization, and the MPCA considered not adopting them. But the MPCA considers that the goal of consistency with the federal regulations justifies the effort to adopt them. The transfrontier shipment rules do not impose any additional burdens on the regulated community or government entities.

“(5) the probable cost of complying with the rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.”

Transportation and disposal account for the greatest expense of all hazardous waste management. Other costs result from the requirements of licensing, hazardous waste fees, timely shipment of accumulated wastes and the resources needed to ensure proper on-site storage (personnel training, securing access, and container inspection). The manifest rules do not change the fact that hazardous wastes must either be disposed or recycled and in most cases must be transported to another location. The rules will not have any effect on the cost of waste disposal, either by increasing or decreasing the cost. However, because the rules eliminate state-only manifests, they will provide a certain amount of simplification in the area of manifest preparation and handling which may result in some minor reduction in the cost of hazardous waste transportation.

“(6) the probable cost or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of governmental units, business, or individuals.”

If the MPCA does not adopt the proposed rules, the federal manifest revisions will still become effective in Minnesota on the federal effective date. There will be no difference to the regulated community if the proposed rules are not adopted; they must still comply with the federal manifest requirements. However, not adopting the state rules will impair the state's authorization status. In the preamble to the March 4, 2005, Federal Register at page 10810, EPA discusses authorization and the effect of the revisions to the national manifest system. On page 10811 EPA states that “ program consistency considerations under RCRA section 3006 and 40 CFR 271.4(c) demand that all authorized States must require the use of the revised manifest form and requirements as set out in today's final rule” EPA further states, on that same page that “in order to be consistent with the federal program, and receive approval from EPA, states must have a manifest system that includes a manifest format that follows the federal format required in 40 CFR §§

262.20(a) and 262.21.” The MPCA believes that the consequences of not adopting the federal manifest revisions would significantly and adversely affect the state’s hazardous waste authorization.

“(7) an assessment of the difference between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.”

The proposed rules address three types of amendment. Amendments to the manifest requirements, amendments to add transfrontier shipment requirements and state-initiated amendments to correct and modify the existing rule language.

There are only minor differences between the amendments being proposed for the manifest program and the federal regulations. These amendments only adopt the federal manifest requirements that were revised in the March 4, 2005, Federal Register and the June 16, 2005, Federal Register. Some differences in the rules being adopted are necessary to accommodate differences between the existing rules and the federal manifest requirements. The proposed rules require a generator to identify state-only waste codes on the manifest, but there is no federal counterpart to this requirement. Also, the proposed rules provide a petition option for alternative reporting that is not provided in the federal rules. The requirement to report manifest activity to the MPCA is an existing, state-only requirement so there is no federal equivalent. The reasonableness of each of these provisions is discussed in Parts III and IV of this Statement.

There are no differences between the state rules and the federal transfrontier shipment requirements.

Some state-initiated requirements have been proposed in this rulemaking. They do not have a federal counterpart so no assessment can be made.

Minn. Stat. § 14.131 State Regulatory Policy.

Minn. Stat. § 14.131 requires an agency to include in its Statement a discussion of how the agency, in developing the rules, considered and implemented the legislative policy supporting performance-based regulatory systems set forth in Minn. Stat. § 14.002.

Minn. Stat. § 14.002, states that:

The legislature recognizes the important and sensitive role for administrative rules in implementing policies and programs created by the legislature. However, the legislature finds that some regulatory rules and programs have become overly prescriptive and inflexible, thereby increasing costs to the state, local governments, and the regulated community and decreasing the effectiveness of the regulatory program. Therefore, whenever feasible, state agencies must develop rules and regulatory programs that emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulatory party and the agency in meeting those goals.

The MPCA's options for considering performance-based standards in this rulemaking are limited by the fact that the MPCA is not drafting new standards, but is only adopting existing federal regulations. The federal manifest system requires that the state rules be consistent with the federal regulations; this consistency will be lost if the MPCA modifies the rules to provide additional flexibility or different options for meeting the regulatory goals. The MPCA's primary need for these amendments is to provide consistency with the federal manifest system. The MPCA does not believe that this need can be effectively met if the rules are significantly modified to adopt performance-based standards different than the federal regulations.

Minn. Stat. § 14.131 Additional Notification.

Minn. Stat. § 14.131 requires that an agency either include in its Statement a description of its efforts to provide additional notification to persons or classes or persons who may be affected by the proposed rule, or explain why these efforts were not made.

The amendments being adopted in this rulemaking will not significantly change the requirements that apply to hazardous waste generators, transporters or facility operators. The regulated community is familiar with the use of the manifest system to transport hazardous waste, and the MPCA does not expect that they will have difficulty adjusting their practices for the new requirements.

At the time that the MPCA published a Request for Comments in the August 1, 2005, State Register (30 SR 107) and posted the same notice on the MPCA's website, the MPCA intended to compile a mailing list of interested parties. No one responded to these notices or asked to be specifically notified regarding this rulemaking. If anyone requests, they will be mailed a copy of the proposed rules and the MPCA's Notice of Intent to Adopt Rules at the time they are published in the State Register.

The MPCA will also make the Notice of Intent to Adopt rules available to the following people and organizations:

- a. All parties who have registered with the MPCA for the purpose of receiving notice of rulemaking proceedings as required by Minn. Stat. § 14.14, subd. 1(a).
- b. All interested parties who have contacted the MPCA with an interest in this rulemaking proceeding.
- c. A copy of the notice, proposed rules and this Statement will be posted on the MPCA's Public Notice Website at (www.pca.state.mn.us). The website will include the Notice as published in the State Register, which includes information relevant to the comment period and identification of a contact person.
- d. Staff at the EPA Region 5 office in Chicago.

- e. The management of the hazardous waste programs operated by the seven counties in the Twin Cities metropolitan area.
- f. Legislators as required and identified by Minnesota Statutes.

The MPCA believes its regular means of notice as required by Minn. Stat. § 14.22, will have adequately placed other persons regulated by these rules on notice of this rulemaking.

Minn. Stat. § 116.07 Consideration of Economic Impacts.

Minn. Stat. § 116.07, subd. 6, states:

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 which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

In determining whether to adopt proposed rules or amendments, the MPCA must consider the impact that economic factors have on the feasibility and practicability of the proposed rules or amendments. In proposing these rules, the MPCA has given due consideration to economic impacts of implementing the proposed rule amendments. In the case of this rulemaking, the MPCA finds that the economic effects of the rules are to the advantage of the generators, transporters and facility operators. These entities will be required to spend less time in preparing manifests and in tracking state-only differences in transportation requirements. In the past, hazardous waste manifests were only available through the Minnesota Bookstore. The new rules will allow other printers to sell the revised manifest forms so that the Minnesota Bookstore will not have sole control of the sale of manifests. The effect of broadening the availability of manifests will be an economic benefit to the parties who must buy them. The MPCA does not believe that any business will find that the rules have adversely affected their business.

Minn. Stat. § 16A.1285 Commissioner of Finance Review of Charges.

Minn. Stat. § 16A.1285 requires that an agency include in its Statement a discussion of any fiscal and policy concerns raised during the review process for rules setting, adjusting, or establishing regulatory, licensure, or other charges for goods and services. The requirements of Minn. Stat. § 16A.1285 are inapplicable because the proposed rule amendments do not set or adjust fees or charges.

Minn. Stat. § 174.05 Notification of the Commissioner of Transportation.

Minn. Stat. § 174.05 requires the MPCA to inform the Commissioner of Transportation of all rulemakings initiated under Minn. Stat. § 116.07 that concern transportation and

requires the Commissioner of Transportation to prepare a written review of the proposed rules. Even though the proposed amendments will not affect the Minnesota Department of Transportation because they would become effective nationwide regardless of MPCA action, the MPCA is still intending to notify the Commissioner of this rulemaking.

VI. LIST OF AUTHORS, WITNESSES, AND EXHIBITS

The following documents are provided as attachments to this Statement.

Federal Register April 12, 1996, Volume 61, Number 72, pages 16290 to 16316. Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision; Final Rule.

Federal Register March 4, 2005, Volume 70, Number 42, pages 10776 to 10825. Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System; Final Rule.

Federal Register June 16, 2005, Volume 70, Number 115, pages 35034 to 35041. Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System; Correction

VII. CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

6/16/06
Dated

Kristen Applegate
for Sheryl A. Corrigan
Commissioner
Minnesota Pollution Control Agency