

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 680

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 3/2
DATE FOR REVIEW 3/10
DATE DUE 3/16

Adopted w/a hearing _____
Adopted w/o a hearing X
Temporary rule _____

Approved 3/11 Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 3/11

✓ Rule as Adopted

✓ Rule as Proposed copy of S.R. pages

✓ Order Adopting 2.24.81

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
_____ ~~Date of Hearing~~

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice of rulemaking
✓ 12.31.80 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
1.5.81 At least 30/~~20 days~~ prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

N/A Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (~~includes transcript or tape~~, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

N/A Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : ART ENGELBRECHT
Chairman, PCA

DATE: March 12, 1981

ATTN : Barbara Lindsey Sims

FROM : H. Theodore Grindal
Special Assistant
Attorney General

PHONE: 6-1288

SUBJECT: In the Matter of the Proposed Amendment of Rules of the Pollution Control Agency Governing the Management of Hazardous Waste

Enclosed herewith are the rules you submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

February 27, 1981

ADDRESS REPLY TO:
ATTORNEY GENERAL'S OFFICE
POLLUTION CONTROL DIVISION
1935 WEST COUNTY ROAD B-2
ROSEVILLE, MN 55113
TELEPHONE: (612) 296-7342

Mr. Jerry Anderson
Mr. Ted Grindal
Special Assistant Attorneys General
Office of the Attorney General
G-25 State Administration Building
50 Sherburne Avenue
St. Paul, MN 55113

Re: In the Matter of the Proposed Amendment of Rules of the Pollution Control Agency Governing the Management of Hazardous Waste

Dear Mr. Anderson and Mr. Grindal:

In accordance with Minn. Stat. § 15.0412, subd. 4h, the above-captioned rule amendments are hereby submitted for your review. Pursuant to the proposed rules of the Attorney General's Office on the review of "non-controversial" rules, I have enclosed, with this letter, the following:

1. Rule amendments as adopted. (Original and three copies. One of the copies reflects the changes made in the rules as originally proposed and the rules as finally adopted.)

2. Order adopting rules. (Original and three copies)

3. Certificate of Board's Resolution Adopting Rules.

4. Certificate of Board's Authorizing Resolution.

5. Order for Notice of Intent to Adopt Rules Without a Public Hearing.

6. Notice of Intent to Adopt Rules Without a Public Hearing.

7. Affidavit of Mailing Notice of Intent to Adopt Rules Without a Public Hearing and attached mailing list.

8. Mailing List Certificate.

9. Rules as Proposed as published in the State Register, 5 S.R. 1079 (January 5, 1981).

10. Statement of Need and Reasonableness.

11. Copies of all written comments received in response to the Notice of Rulemaking.

12. Findings of Fact and Conclusions.

13. Certificate of Compliance with Rulemaking Procedures.

14. Affidavit evidencing that no person requested notification of transmittal of rules to the Office of the Attorney General.

Unless otherwise indicated, I have attached only one copy of the above-referenced documents.

If you have any questions regarding these rules please contact me at 296-7770.

Very truly yours,

Barbara Lindsey Sims

Barbara Lindsey Sims
Special Assistant
Attorney General

BLS:jh

RECEIVED
MAR 2 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Rules of the Pollution Control Agency Governing the Management of Hazardous Waste

ORDER ADOPTING RULES

Notice of the Board's intent to adopt the above-entitled rule amendments without a public hearing was published in the State Register on January 5, 1981, and was sent by United States mail to all persons on the list maintained by the Agency pursuant to Minnesota Statutes Section 15.0412, subdivision ~~4,~~ on December 31, 1980. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving no written requests for a public hearing during the comment period, reviewing and considering the comments received, and determining the need for and reasonableness of the above captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Amendments to the Rules Governing the Management of Hazardous Waste, 6 MCAR §§ 4.9001 B., C., and D., 4.9002 E.2., 4.9003 F. and H., 4.9004 C. and I., 4.9005 F. and G., 4.9006 G., and 4.9008 C. and E., are adopted this 24th day of February, 1981, pursuant to authority visited in the Agency by Minnesota Statutes Section 116.07, subdivision 4.

Dated this 24th day of February, 1981.

Minnesota Pollution Control Agency

Art Engelbrecht
Chairman

STATE OF MINNESOTA

MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Pollution Control Agency Governing the Management of Hazardous Waste.

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 16th day of December, 1980 that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Minnesota Pollution Control Agency for that purpose and be published in the State Register.

STATE OF MINNESOTA

Terry Hoffman
Executive Director
Minnesota Pollution
Control Agency

MINNESOTA POLLUTION CONTROL AGENCY

ADOPTED AMENDMENTS TO HAZARDOUS WASTE RULES

6 MCAR §4.9001 General applicability, definitions, abbreviations, incorporations, severability, and variances.

. . .

B. Definitions. As used in these hazardous waste rules the following words shall have meaning defined herein:

. . .

23. Manifest: The shipping papers used in transporting hazardous waste.

6 MCAR § 4.9001 B. 23. through 44. Renumber as 6 MCAR § 4.9001 B. 24. through 45.

. . .

C. Abbreviations. The abbreviations used in these hazardous waste rules have the following meanings.

. . .

3. EPA: U.S. Environmental Protection Agency.

6 MCAR § 4.9001 C. 3. through 5. Renumber as 6 MCAR § 4.9001 C. 4. through 6.

D. Incorporations. The following are contained in the indicated appendices at the end of this rule and are hereby incorporated and made a part of these rules and shall apply as indicated within these rules:

. . .

12. EP Toxicity Test (Appendix L).

13. 49 C.F.R. §§ 172.202 and 172.203 (1979) (Appendix M).

6 MCAR § 4.9002 Classification, evaluation and certification of waste.

. . .

E. Comparison of properties.

. . .

2. List 1 and List 2 components. Whenever the person evaluating a waste knows or suspects that any of the components in List 1 or List 2 is in the waste, the person shall conduct a quantitative analysis to determine the concentration of each component in List 1 that is known or suspected to be in the waste and the EP Toxicity Test for each component in List 2 that is known or suspected to be in the waste with the following exceptions:

a. A waste known to contain a component of List 1 in excess of the concentration listed in List 1 need not be analyzed for that component.

b. A waste which is a hazardous waste because it contains a component of List 1 in excess of the concentration listed in List 1 need not be tested for that component in a List 2 test.

6 MCAR § 4.9003 Generation of hazardous waste.

. . .

F. Identification number. Prior to transportation or disposal of any hazardous waste a generator shall obtain a generator identification number from EPA.

G. Preparation of hazardous waste shipping papers. Each generator shall prepare hazardous waste shipping papers for each hazardous waste in accordance with 6 MCAR § 4.9008.

H. Preparation of hazardous waste labels.

1. Each generator shall attach a Hazardous Waste label to each container and portable tank containing hazardous waste in accordance with the applicable U.S. Department of Transportation regulations on hazardous materials under 49 C.F.R. Part 172 (1979). In addition, the following words and information shall be displayed:

a. HAZARDOUS WASTE - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U. S. Environmental Protection Agency.

b. Generator Name and Address_____.

c. Manifest Document Number_____.

d. EPA Identification Number_____.

e. Accumulation start date_____.

2. The container or portable tank shall be labeled and marked in a manner that is suitable for interstate commerce.

3. Any generator or other person who maintains a storage tank containing hazardous waste shall display the words "Hazardous Waste" on the storage tank in a legible and conspicuous manner. The words "Hazardous Waste" shall be plainly visible and legible to any person who may operate any outlet valve.

6 MCAR §§ 4.9003 H. Reletter as 6 MCAR § 4.9003 I.

6 MCAR § 4.9003 I. Reletter as 6 MCAR § 4.9003 J.

6 MCAR § 4.9004 Location, operation and closure of a hazardous waste facility.

. . .

C. Hazardous waste facility operation.

1. General. No person shall operate a hazardous waste facility except in conformance with the following requirements:

. . .

6 MCAR § 4.9004 C.1.k. is repealed.

2. Acceptance of hazardous waste.

a. The facility operator shall notify the agency by telephone immediately upon delivery and prior to acceptance of a shipment of hazardous waste if any of the following discrepancies exist:

(1) Incomplete shipping papers.

(2) A container or portable tank containing hazardous waste is not properly labeled.

(3) The shipping papers and the labels are inconsistent.

(4) The shipping papers and the hazardous waste shipment are inconsistent with regard to quantity, type or number of containers.

Within ten (10) working days, a follow-up report which fully describes any discrepancy, its resolution and the management of the hazardous waste shall be mailed to the agency.

b. In the event a shipment of hazardous waste without any shipping papers is delivered to a hazardous waste facility,

the facility operator shall immediately notify the agency by telephone of:

(1) the transporter's name and vehicle license plate;

(2) the transporter's address and EPA identification number, if available;

(3) the generator's name, address and EPA identification number, if available;

(4) a description of the unmanifested waste;

(5) a brief explanation of why the waste was unmanifested, if known.

Within ten (10) working days, a follow-up report which fully describes any discrepancy, its resolution and the management of the hazardous waste shall be mailed to the agency.

c. No facility operator shall accept a shipment of hazardous waste that the facility operator is not allowed to manage under the Hazardous Waste Facility Permit unless written approval is obtained from the director. The Director shall approve the acceptance of the waste if the director determines that:

(1) The hazardous waste is a waste that can be properly managed at the facility, and

(2) The generator has filed a disclosure with the agency.

The director shall act on the request as expeditiously as possible.

I. Small hazardous waste containerized storage facilities. The facility operator of a hazardous waste containerized storage facility with a capacity of less than 5,000 gallons (18,927 liters) of hazardous waste in containers and tanks shall not be required to comply with the requirements of subparagraph 1 of paragraph B, or subparagraphs 1.d., 1.f., 2.c., 6.a., 6.b., 6.c., and 6.d. of paragraph C, and subparagraphs 1, 3 and 4 of paragraph D, provided no other hazardous waste facility is located at the same site.

6 MCAR § 4.9005 Transportation of hazardous waste.

. . .

F. Delivery of hazardous waste.

No person shall deliver hazardous waste to a hazardous waste facility or give hazardous waste to a transporter for shipment to a hazardous waste facility located in the State of Minnesota, if the facility operator has not obtained a Hazardous Waste Facility Permit from the agency. Nothing in this provision is intended to require the transporter to undertake any evaluation of a waste to determine whether it is hazardous.

G. Registration of hazardous waste transporters. Any person who transports hazardous waste that originates or terminates in Minnesota shall obtain an identification number from EPA prior to transporting the hazardous waste.

6 MCAR § 4.9006 Hazardous waste facility permit program.

6 MCAR § 4.9006 G.4. is repealed.

6 MCAR § 4.9008 Hazardous waste shipping papers.

. . .

C. Preparation of hazardous waste shipping papers.

1. Each generator shall prepare hazardous waste shipping papers for each shipment of hazardous waste.

2. The generator shall prepare an original and a sufficient number of copies of the hazardous waste shipping papers so that all persons who are going to participate in the management of the hazardous waste will be able to comply with the provisions of this rule.

3. The hazardous waste shipping papers shall include the following information.

a. The names, addresses, telephone numbers, and EPA identification numbers of the generator and hazardous waste facility to which the waste is being transported.

b. The name and EPA identification number of each transporter.

c. An identifying shipment number assigned by the generator in sequential order for each waste shipment.

d.The total quantity of each hazardous waste by units of weight or volume and the type and number of containers as loaded into or onto the transport vehicle.

e. The description of the waste(s) [e.g., proper shipping name, etc.] required by regulations of the U.S. Department of Transportation in 49 C.F.R. §§ 172.101, 172.202 and 172.203 (1979) if applicable; otherwise the description of the waste(s) as listed

on the Minnesota hazardous waste disclosure.

f. Signature and date blocks for the generator, the transporter, and the facility operator.

g. The following certification shall appear on the shipping papers:

"This is to certify that the above named materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the U.S. Department of Transportation and the EPA."

6 MCAR §§ 4.9008 C.3.h. - l. are repealed.

6 MCAR § 4.9008 C.4. is repealed.

. . .

E. Signing and submission of hazardous waste shipping papers.

1. Prior to relinquishing possession of a shipment of hazardous waste each generator, transporter, and facility operator shall obtain the dated signature of the transporter or facility operator who accepts the shipment of hazardous waste on the original and each copy of the hazardous waste shipping papers. The generator shall retain one copy of the hazardous waste shipping papers, give the original and at least three copies to the transporter and shall send one copy to the following address:

Hazardous Waste, MIS
322 Washington Avenue South
Hopkins, Minnesota 55343

The transporter shall retain one copy of the hazardous waste shipping papers after relinquishing possession of the hazardous waste and give the original and two copies to the hazardous waste facility operator. The facility operator shall sign the original and the remaining copies of the hazardous waste shipping papers upon gaining possession of the hazardous waste, retaining one copy, sending one copy to the above address and returning the original to the generator within five (5) working days of gaining possession. Generators, transporters, and facility operators shall retain their copies of the shipping papers in accordance with 6 MCAR § 4.9008 E.4.

2. Each transporter or facility operator who accepts a shipment of hazardous waste shall sign and date the hazardous waste shipping papers.

3. When a shipment of hazardous waste is to be delivered to a hazardous waste facility located outside the State of Minnesota, the generator shall ensure that the copy of the hazardous waste shipping papers signed by the facility operator is sent to the address listed in subparagraph 1 of this paragraph within thirty five (35) days of the acceptance of the hazardous waste by the hazardous waste facility. If the generator is unable to comply with this deadline, a letter of explanation must be sent to the address listed in subparagraph 1 of this paragraph within five (5) working days after the expiration of the thirty five (35) day period.

Appendix L

Appendix I—Representative Sampling Methods

The methods and equipment used for sampling waste materials will vary with the form and consistency of the waste materials to be sampled. Samples collected using the sampling protocols listed below, for sampling waste with properties similar to the indicated materials, will be considered by the Agency to be representative of the waste.

Extremely viscous liquid—ASTM Standard D140-70 Crushed or powdered material—ASTM Standard D346-75 Soil or rock-like material—ASTM Standard D420-69 Soil-like material—ASTM Standard D1452-65

Fly Ash-like material—ASTM Standard D2234-76 (ASTM Standards are available from ASTM, 1916 Race St., Philadelphia, PA 19103)

Containerized liquid wastes—"COLIWASA" described in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods."[1] U.S. Environmental Protection Agency, Office of Solid Waste, Washington, D.C. 20460. (Copies may be obtained from Solid Waste Information, U.S. Environmental Protection Agency, 26 W. St. Clair St., Cincinnati, Ohio 45268)

Liquid waste in pits, ponds, lagoons, and similar reservoirs.—"Pond Sampler" described in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods."[1]

This manual also contains additional information on application of these protocols.

Appendix II—EP Toxicity Test Procedure

A. Extraction Procedure (EP)

1. A representative sample of the waste to be tested (minimum size 100 grams) should be obtained using the methods specified in Appendix I or any other methods capable of yielding a representative sample within the meaning of Part 260. (For detailed guidance on conducting the various aspects of the EP see "Test Methods for the Evaluation of Solid Waste, Physical Chemical Methods," SW-846, U.S. Environmental Protection Agency Office of Solid Waste, Washington, D.C. 20460.[1])

2. The sample should be separated into its component liquid and solid phases using the method described in "Separation Procedure" below. If the solid residue[2] obtained using this method totals less than 0.5% of the original weight of the waste, the residue can be discarded and the operator should treat the liquid phase as the extract and proceed immediately to Step 8.

3. The solid material obtained from the Separation Procedure should be evaluated for its particle size. If the solid material has a surface area per gram of material equal to, or greater than, 3.1 cm^2 or passes through a 9.5 mm (0.375 inch) standard sieve, the operator should proceed to Step 4. If the surface area is smaller or the particle size larger than specified above, the solid material should be prepared for extraction by crushing, cutting or grinding the material so that it passes through a 9.5 mm (0.375 inch) sieve or, if the material is in a single piece, by subjecting the material to the "Structural Integrity Procedure" described below.

4. The solid material obtained in Step 3 should be weighed and placed in an extractor with 16 times its weight of deionized water. Do not allow the material to dry prior to weighing. For purposes of this test, an acceptable extractor is one which will

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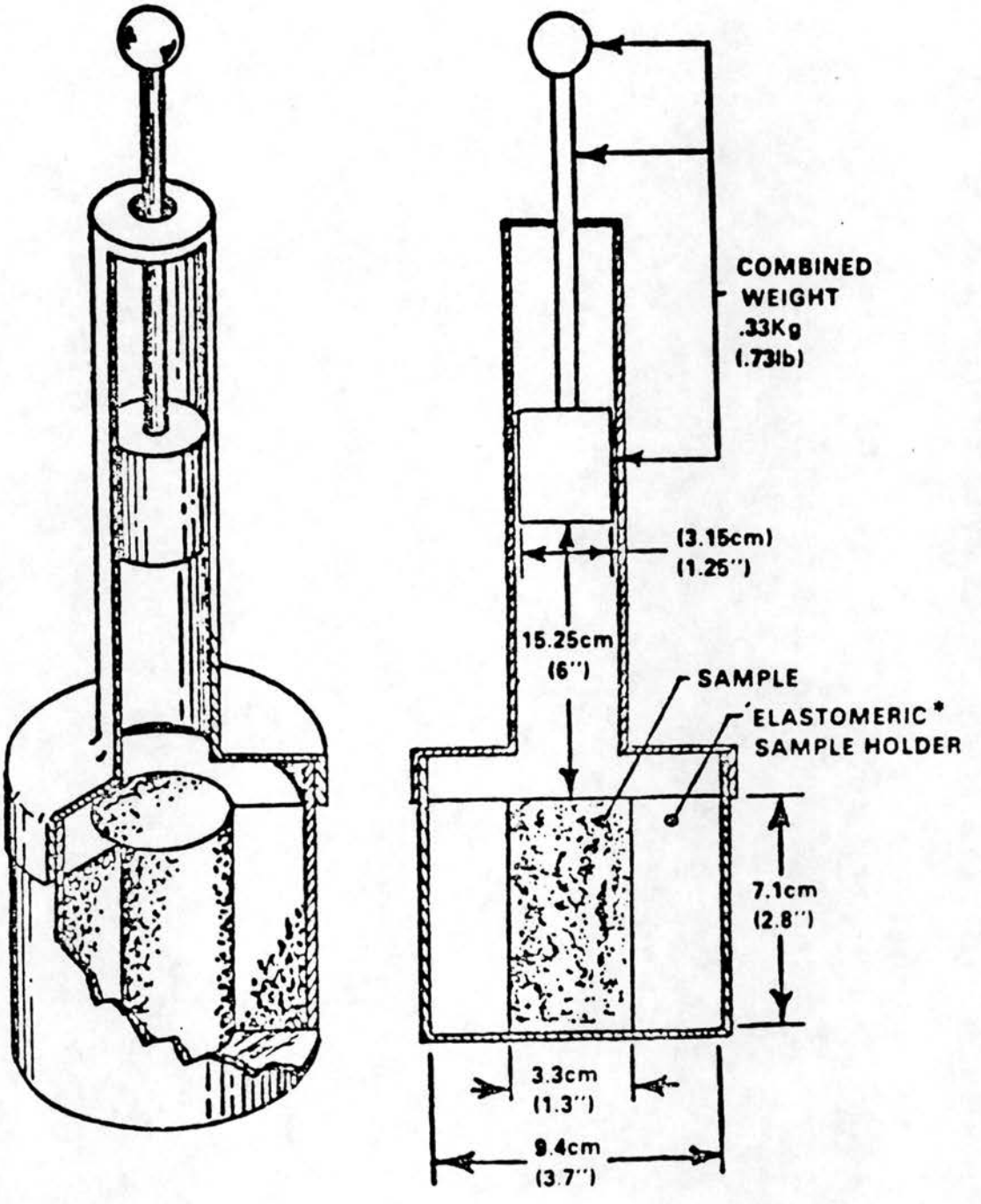
[1] These methods are also described in "Samplers and Sampling Procedures for Hazardous Waste Streams," EPA 600/2-80-018, January 1980.

[1] Copies may be obtained from Solid Waste Information, U.S. Environmental Protection Agcy, 26 W. St. Clair Street, Cincinnati, Ohio 45268.

[2] The percent solids is determined by drying the filter pad at 80°C until it reaches constant weight and then calculating the percent solids using the following equation:

$$\frac{\text{(weight of pad + solid)} - \text{(tare weight of pad)}}{\text{initial weight of sample}} \times 100 = \% \text{ solids}$$



*ELASTOMERIC SAMPLE HOLDER FABRICATED OF MATERIAL FIRM ENOUGH TO SUPPORT THE SAMPLE

Figure 1

COMPACTION TESTER

BILLING CODE 6560-01-C

impart sufficient agitation to the mixture to not only prevent stratification of the sample and extraction fluid but also insure that all sample surfaces are continuously brought into contact with well mixed extraction fluid.

5. After the solid material and deionized water are placed in the extractor, the operator should begin agitation and measure the pH of the solution in the extractor. If the pH is greater than 5.0, the pH of the solution should be decreased to 5.0 ± 0.2 by adding 0.5 N acetic acid. If the pH is equal to or less than 5.0, no acetic acid should be added. The pH of the solution should be monitored, as described below, during the course of the extraction and if the pH rises above 5.2, 0.5N acetic acid should be added to bring the pH down to 5.0 ± 0.2. However, in no event shall the aggregate amount of acid added to the solution exceed 4 ml of acid per gram of solid. The mixture should be agitated for 24 hours and maintained at 20°-40° C (68°-104° F) during this time. It is recommended that the operator monitor and adjust the pH during the course of the extraction with a device such as the Type 45-A pH Controller manufactured by Chemtrix, Inc., Hillsboro, Oregon 97123 or its equivalent, in conjunction with a metering pump and reservoir of 0.5N acetic acid. If such a system is not available, the following manual procedure shall be employed:

(a) A pH meter should be calibrated in accordance with the manufacturer's specifications.

(b) the pH of the solution should be checked and, if necessary, 0.5N acetic acid should be manually added to the extractor until the pH reaches 5.0 ± 0.2. The pH of the solution should be adjusted at 15, 30 and 60 minute intervals, moving to the next longer interval if the pH does not have to be adjusted more than 0.5N pH units.

(c) The adjustment procedure should be continued for at least 6 hours.

(d) If at the end of the 24-hour extraction period, the pH of the solution is not below 5.2 and the maximum amount of acid (4 ml per gram of solids) has not been added, the pH should be adjusted to 5.0 ± 0.2 and the extraction continued for an additional four hours, during which the pH should be adjusted at one hour intervals.

6. At the end of the 24 hour extraction period, deionized water should be added to the extractor in an amount determined by the following equation:

$V = (20)(W) - 16(W) - A$

V = ml deionized water to be added
W = weight in grams of solid charged to extractor
A = ml of 0.5N acetic acid added during extraction

7. The material in the extractor should be separated into its component liquid and solid phases as described under "Separation Procedure."

8. The liquids resulting from Steps 2 and 7 should be combined. This combined liquid (or the waste itself if it has less than ½ percent solids, as noted in Step 2) is the extract and should be analyzed for the presence of any of the contaminants specified in Table I of § 261.24 using the Analytical Procedures designated below.

Separation Procedure

Equipment: A filter holder, designed for filtration media having a nominal pore size of 0.45 micrometers and capable of applying a 5.3 kg/cm^2 (75 psi) hydrostatic pressure to the solution being filtered shall be used. For mixtures containing nonabsorptive solids, where separation can be affected without imposing a 5.3 kg/cm^2 pressure differential, vacuum filters employing a 0.45 micrometers filter media can be used. (For further guidance on filtration equipment or procedures see "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.")

Procedure:[3]

(i) Following manufacturer's directions, the filter unit should be assembled with a filter bed consisting of a 0.45 micrometer

[3] This procedure is intended to result in separation of the "free" liquid portion of the waste from any solid matter having a particle size >0.45 μm. If the sample will not filter, various other separation techniques can be used to aid in the filtration. As described above, pressure filtration is employed to speed up the filtration process. This does not alter the nature of the separation. If liquid does not separate during filtration, the waste can be centrifuged. If separation occurs during centrifugation the liquid portion (centrifugate) is filtered through the 0.45 μm filter prior to becoming mixed with the liquid portion of the waste obtained from the initial filtration. Any material that will not pass through the filter after centrifugation is considered a solid and is extracted.

filter membrane. For difficult or slow to filter mixtures a prefilter bed consisting of the following prefilters in increasing pore size (0.65 micrometer membrane, fine glass fiber prefilter, and coarse glass fiber prefilter) can be used.

(ii) The waste should be poured into the filtration unit.

(iii) The reservoir should be slowly pressurized until liquid begins to flow from the filtrate outlet at which point the pressure in the filter should be immediately lowered to 10-15 psig. Filtration should be continued until liquid flow ceases.

(iv) The pressure should be increased stepwise in 10 psi increments to 75 psig and filtration continued until flow ceases or the pressurizing gas begins to exit from the filter outlet.

(v) The filter unit should be depressurized, the solid material removed and weighed and then transferred to the extraction apparatus, or, in the case of final filtration prior to analysis, discarded. Do not allow the material retained on the filter pad to dry prior to weighing.

(vi) The liquid phase should be stored at 4°C for subsequent use in STEP —.

B. Structural Integrity Procedure

Equipment: A Structural Integrity Tester having a 3.18 cm (1.25 in.) diameter hammer weighing 0.33 kg (0.73 lbs.) and having a free fall of 15.24 cm (6 in.) shall be used. This device is available from Associated Design and Manufacturing Company, Alexandria, VA, 22314, as Part No. 125, or it may be fabricated to meet the specifications shown in Figure 1.

Procedure:

1. The sample holder should be filled with the material to be tested. If the sample of waste is a large monolithic block, a portion should be cut from the block having the dimensions of a 3.3 cm (1.3 in.) diameter × 7.1 cm (2.8 in.) cylinder. For a fixated waste, samples may be cast in the form of a 3.3 cm (1.3 in.) diameter × 7.1 cm (2.8 in.) cylinder for purposes of conducting this test. In such cases, the waste may be allowed to cure for 30 days prior to further testing.

2. The sample holder should be placed into the Structural Integrity Tester, then the hammer should be raised to its maximum height and dropped. This should be repeeate fifteen times.

3. The material should be removed from the sample holder, weighed, and transferred to the extraction apparatus for extraction.

Analytical Procedures for Analyzing Extract Contaminants

The test methods for analyzing the extract are as follows:

(1) For arsenic, barium, cadmium, chromium, lead, mercury, selenium or silver: "Methods for Analysis of Water and Wastes," Environmental Monitoring and Support Laboratory, Office of Environmental Protection Agency, Cincinnati, Ohio 45268 (EPA-800/4-79-020, March 1979),

(2) For Endrin; Lindane; Methoxychlor; Toxaphene; 2,4-D; 2,4,5-TP Silver; in "Methods for Benzidine, Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater," September 1978, U.S. Environmental Protection Agency, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 42568,

as standardized in "Test Methods for the Evaluation of Solid Waste, Physical Chemical Methods."

For all analyses, the method of standard addition shall be used for the quantification of species concentration. This method is described in "Test Methods for the Evaluation of Solid Waste." (It is also described in "Methods for Analysis of Water and Wastes.")

Billing Code 6580-01-M

[45 F.R. 33127, May 19, 1980]

Appendix M

Title 49 C.F.R.

§ 172.202 Description of hazardous material on shipping papers.

(a) Each description of a hazardous material on the shipping paper must include—

(1) The proper shipping name prescribed for the material as required by § 172.101.

(2) The class prescribed for the material as required by § 172.101. When the words of the proper shipping name are identical (excluding the entry "n.o.s.") with the words of the class, the inclusion of the class is not required.

(3) [Reserved]

(4) Except for empty packagings, the total quantity (by weight, volume, or as otherwise appropriate) of the hazardous material covered by the description.

(b) The basic description specified in paragraphs (a)(1) and (a)(2) of this section must be shown in sequence except that the technical name of the material may be entered between the proper shipping name and the class. For example: "Gasoline, Flammable liquid"; or "Flammable solid, n.o.s."; or "Corrosive liquid, n.o.s. (caprylyl chloride), corrosive material."

(c) The total quantity of the material covered by one description must appear before or after, or both before and after, the description required and authorized by this subpart.

(1) Abbreviations may be used to specify the type of packaging and weight or volume. For example: 40 cyl. Nitrogen, Non-flammable Gas-800 pounds; 1 box Cement, liquid n.o.s., Flammable liquid, 25 lbs.

(2) The type of packaging may be entered in any appropriate manner.

[Amdt. 172-29A, 41 FR 40677, Sept. 20, 1976]

§ 172.203 Additional description requirements.

(a) *Exemptions.* Each shipping paper issued in connection with a shipment made under an exemption must bear the notation "DOT-E" followed by the exemption number assigned and so located that the notation is clearly associated with the description to which the exemption applies.

(b) *Limited quantities.* The description for a material defined as "limited quantities" in this subchapter must include the words "Limited Quantities" or "Ltd. Qty." following the basic description.

(c) *Blasting caps.* The description for a shipment of blasting caps must have an entry stating the number of caps in the shipment, either before or after the basic description.

(d) *Radioactive material.* (1) The description for a shipment of radioactive material must include the following additional entries as appropriate:

(i) The name of each radionuclide in the radioactive material that is listed in § 173.390 of this subchapter. Abbreviations, e.g., "^{99}Mo" are authorized.

(ii) A description of the physical and chemical form of the material, if the material is not in special form.

(iii) The activity contained in each package of the shipment in terms of curies, millicuries, or microcuries. Abbreviations are authorized.

(iv) The category of label applied to each package in the shipment. For example: "RADIOACTIVE WHITE-I."

(v) The transport index assigned to each package in the shipment bearing RADIOACTIVE YELLOW-II or RADIOACTIVE YELLOW-III labels.

(vi) For a shipment of fissile radioactive materials—

(A) The words "Fissile Exempt," if the package is exempt pursuant to § 173.396(a) of this subchapter, or

(B) If not exempt, the fissile class of each package in the shipment, pursuant to § 173.389(a) of this subchapter; and

(C) For a Fissile Class III shipment, the additional notation: "Warning—Fissile Class III Shipment. Do not Load More than * * * Packages per Vehicle." (Asterisks to be replaced by appropriate number.) "In loading and Storage Areas, Keep at Least 20 Feet (6 Meters) from Other Packages Bearing Radioactive Labels."

(D) If a Fissile Class III shipment is to be transported by water, the supplementary notation must also include the following statement: "For shipment by water, only one Fissile Class III shipment is permitted in each hold."

(vii) For a package approved by the U.S. Energy Research and Development Administration (ERDA) or U.S. Nuclear Regulatory Commission (USNRC), a notation of the package identification marking as prescribed in the applicable ERDA or USNRC approval. (See § 173.393a of the subchapter.)

(viii) For an export shipment or a shipment in a foreign made package, a notation of the package identification marking as

prescribed in the applicable International Atomic Energy Agency (IAEA) Certificate of Competent Authority which has been issued for the package. (See § 173.393b(a)(3) of the subchapter.)

(ix) For a shipment of radioactive materials being offered and accepted for transportation and transported within the United States under the provisions of § 171.12(e) of this subchapter, the shipping paper shall be annotated with the following entry:

This shipment contains packages of Type A/low specific activity radioactive materials limited in accordance with the 1973 IAEA Regulations, pursuant to the provisions of 49 CFR 171.12(e). (Non-applicable entry to be deleted.)

(e) *Empty packagings.* For other than a tank car, the description on the shipping paper for an empty packaging containing the residue of a hazardous material may contain the word(s) "EMPTY"; or "EMPTY: Last contained * * *" followed by the name of the hazardous material last contained in the packaging. This entry may be before or after the basic description. For empty tank cars, see § 174.25(c) of this subchapter.

(f) *Transportation by air.* When a package containing a hazardous material is offered for transportation by air and this subchapter prohibits its transportation aboard passenger-carrying aircraft, the words "Cargo-only aircraft" must be entered after the basic description.

(g) *Transportation by rail.* (1) The shipping paper for a rail car containing a hazardous material must contain the notation "Placarded" followed by the name of the placard required for the rail car.

(2) The shipping paper for each specification DOT 112A or 114A tank car (without head shields) containing a flammable compressed gas must contain the notation, "DOT 112A" or "DOT 114A," as appropriate, and either "Must be handled in accordance with FRA E.O. No. 5" or "Shove to rest per E.O. No. 5."

(h) *Transportation by highway.* Following the basic description for a hazardous material in a specification MC 330 or MC 331 cargo tank made of quenched and tempered steel, there must be entered for—

(1) *Anhydrous ammonia.* (i) The words "0.2 per cent water" to indicate the suitability for shipping anhydrous ammonia in the cargo tank as authorized by § 177.817 of this subchapter, or

(ii) The words "NOT FOR Q AND T TANKS" when the anhydrous ammonia does not contain 0.2 per cent or more water by weight.

(2) *Liquefied petroleum gas.* The word "Non-corrosive" or "Non-cor" to indicate the suitability for shipment of the "Non-corrosive" liquefied petroleum gas offered for transportation by cargo tank as authorized by § 173.315(a)(1) Note 15 of this subchapter.

(i) *Transportation by water.* (1) Each shipment by water must have the following additional shipping paper entries:

(i) Identification of the type of packages such as barrels, drums, cylinders, and boxes,

(ii) The number of each type of package including those in a freight container or on a pallet, and

(iii) The gross weight of each type of package or the individual gross weight of each package.

(2) The shipping paper for a hazardous material offered for transportation by water to any country outside the United States must have in parenthesis the technical name of the material following the proper shipping name when the material is described by a "n.o.s." entry in § 172.101. For Example: Corrosive liquid, n.o.s. (caprylyl chloride), Corrosive material. However, for a mixture, only the technical name of any hazardous material giving the mixture its hazardous properties must be identified.

(3) The entry "Skin corrosive only" must be included to also authorize "under deck" stowage for corrosive liquid, n.o.s. and corrosive solid, n.o.s. that meet only the corrosion to skin criteria of § 173.240(a)(1).

(49 U.S.C. 1803, 1804, 1808)

[Amdt. 172-29A, 41 FR 40677, Sept. 20, 1976, as amended by Amdt. 172-29B, 41 FR 57067, Dec. 30, 1976; Amdt. 172-41, 43 FR 10918, Mar. 16, 1978; Amdt. 172-45, 43 FR 39791, Sept. 7, 1978]

APPROVED AS TO FORM AND LEGALITY

March 11 19 81

WARREN SPANNAUS, ATTORNEY GENERAL

BY H. Theodore Dunkel

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 11 1981
Joan Anderson Growe
Secretary of State
3:50 PM

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Rules of the Pollution Control Agency Governing the Management of Hazardous Waste

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (hereinafter "Agency") on the 24th day of February, 1981. After offering all interested persons an opportunity to present written and oral data, statements and arguments to the Agency, in accordance with the statutory requirements regarding the adoption of non-controversial rules, after considering the Statement of Need and Reasonableness and the written comments submitted to the Agency, and after considering all the evidence adduced upon the records, files and proceedings herein, the Agency, being fully advised in the premises, hereby accepts and adopts the following Findings of Fact and Conclusions.

FINDINGS OF FACT

1. The Agency adopts the Statement of Need and Reasonableness, except for paragraph H, as the factual basis for the amendments. The Agency hereby incorporates the Statement of Need and Reasonableness into these Findings.

2. The Agency finds that it received six written comments on the proposed amendments. After considering these comments the

Agency finds that changes to the proposed amendments are needed and reasonable. In specific the Agency makes the following findings with respect to the comments received on these rules:

a. 6MCAR § 4.9001 D.13.

The Legislative Commission to Review Administrative Rules (hereinafter "LCRAR") questioned why only 49 C.F.R. §§ 172.202 and 172.203 are included in Appendix 14. Minn. Stat. § 15.0412, subd. 4, provides that an agency may incorporate by reference provisions of federal rules provided the material to be incorporated is 3000 words or more in length or would require five or more pages of publication in the State Register. The Agency finds that 49 C.F.R. is approximately 131 pages in length and that 49 C.F.R. § 172.101 is approximately 91 pages in length. The Agency further finds that due to the length and availability of these federal rules it is reasonable to incorporate them by reference and to include only 49 C.F.R. §§ 172.202 and 172.203 in Appendix M.

b. 6MCAR § 4.9003 H. 1.

Comments were received from the Minnesota Railroads Association (hereinafter "M.R.A."), Minnesota Mining and Manufacturing (hereinafter "3M") and the American Crystal Sugar Company on this rule. The comments received from 3M and the M.R.A. more appropriately relate to the issue of differing universes of hazardous waste between State and Federal requirements rather than to the specific labeling requirements proposed in this rule.

While adoption of federal labeling requirments may create some inconsistencies where wastes considered to be hazardous in Minnesota are not hazardous under federal rules, the Agency finds that the advantages of adopting federal labeling requirements and thus eliminating the burden of dual labeling far outweigh any disadvantages created by this inconsistency.

American Crystal Sugar Company commented that 49 C.F.R. Part 172 was revised during 1980 and suggests that the reference to 1979 be deleted. The Agency finds that to amend the rule as suggested would consitute a substantial change. The Agency believes that it is necessary to go to a uniform label as rapidly as possible. Therefore although the Agency believes that this suggestion has merit, the Agency finds it to be unreasonable at this time.

c. 6MCAR §§ 4.9003 H. and I.

LCRAR commented that because we had added a new paragraph F to section 4.9003 it is necessary to reletter § 4.9003 H to I and § 4.9003 I to J. The Agency finds that this change is needed to correctly number this rule. The Agency finds it is reasonable to so amend the rules.

so amended p. 4

d. 6 MCAR § 4.9004 C.

The Agency received comments from the Minnesota Association of Commerce and Industry (hereinafter the "MACI"), 3M, American Crystal Sugar and the M.R.A. on this paragraph.

Both MACI and 3M felt that the meaning of C.2.a.(4) was unclear as to what would constitute an inconsistency between the shipping papers and the hazardous waste shipment. It should be noted that although the comment by MACI is titled C.2.a.(4) and the "Reason" section discusses the shipment of waste, the proposed wording actually addresses C.2.a.(3). The Agency finds that an inconsistency between the shipping papers and labels can be determined by visual inspection and, therefore, that the language as originally proposed by the Agency is reasonable. However, the Agency finds that the language proposed by 3M and apparently supported by MACI, clarified the intent of this subparagraph and that it is reasonable to so amend the rule. amended p.5

M.R.A., 3M and MACI commented that 5 days is too short a time period in which to submit a discrepancy report and that 10 working days would be more reasonable. The Agency finds that since of 3 or 4 day weekends can make the 5 day limit impossible to comply with and because 10 working days is similar to the 15 days allowed by the United States Environmental Protection Agency (hereinafter "EPA") the change to 10 working days is a reasonable amendment to the rule. changed p.5

M.R.A. commented that it should be clarified that the discrepancy reports are to be submitted by the facility operator. The Agency finds that since paragraph C deals only with requirements for operation of a hazardous waste facility and that

since both subparagraphs a. and b. reference the operator as the party responsible for notifying the Agency, the language as proposed is sufficiently clear and no amendment is required.

Comments were received from MACI and 3M concerning the last sentence of subparagraph 2.c. The MACI comment stated that this sentence appeared to be a part of C.2.c.(2) but actually should apply to the whole subparagraph. MACI proposed that the sentence should be separated and moved out to the left margin to clarify that it does, in fact, apply to the whole subparagraph. The Agency finds that since this sentence was intended to apply to the whole subparagraph C.2.c. the MACI proposal is reasonable and should be adopted. The 3M comment stated that the Director should be required to act on requests within 5 working days. The proposed language is merely relocated and is not new language. This provision of the rule is intended to govern acceptance of hazardous waste which the facility is not permitted to take. Since the decision on whether a particular waste could safely be accepted may take some research or field work by the Agency staff it may not be possible to make a decision within 5 working days. The Agency finds that that the existing wording is reasonable and no amendment should be made.

so amended p. 7

Finally, American Crystal Sugar Co. commented that subparagraph C.2.c. is unreasonable. The reasoning was that since § 4.9003 does not provide a small quantity exclusion for generators then any

generator who puts a waste into a container becomes a small containerized storage facility and thus subject to subparagraph C.2.c. Actually, pursuant to § 4.9004 I., any facility storing less than 5000 gallons does not have to comply with subparagraph C.2.c. Additionally, subparagraph C.2.c. regulates the acceptance of certain hazardous wastes by facilities which are not permitted to handle them. A generator is free to choose any facility which is designed and permitted to handle his particular type of waste. Therefore, the Agency finds that subparagraph C.2.c. is a necessary and reasonable provision and should not be deleted.

e. 6MCAR § 4.9004 I. and 6MCAR § 4.9006 I.2.

The Agency received comments from American Crystal Sugar, the M.R.A. and 3M on the proposed amendments to these provisions. The Agency finds that the amendment to 40 C.F.R. § 261.5 mentioned in the M.R.A. comments applies only to small quantity generators and not to storage facilities and therefore, by itself, is not a reasonable basis for amending the rule. However, the Agency believes that both this comment and other comments received on these amendments may have merit but finds that they need further study. Therefore the Agency finds that it is reasonable to withdraw the proposed amendments to §§ 4.9004 I. and 4.9006 I.2., with the exception of the amendment to correct the cross reference in § 4.9004 I., and to direct the staff to

withdrawn p.7

review the comments received and propose any amendments that may be necessary the next time the hazardous waste rules are revised.

f. 6MCAR § 4.9005 F.2.

The Agency received comments from M.R.A. and MACI on this subparagraph. The thrust of these comments was first, that the transporter will not know the exact contents of the shipment or even how many containers are in a box car or trailer, and second, that the Agency has other means of discovering discrepancies so that this method of reporting is redundant. The Agency finds that these arguments may have merit. Since there are no hazardous waste facilities in Minnesota at this time the Agency finds that it is reasonable to withdraw this proposed amendment pending further study of this issue.

withdrawn p.8

g. 6MCAR § 4.9005 G.

MACI, 3M and the M.R.A. commented that the requirement that transporters be required to register both with the Agency and with EPA was duplicative since transporters are required to obtain an EPA identification number and use it on Minnesota documents. They proposed therefore that the requirement that transporter register with the Agency be deleted. The Agency finds that this proposal is reasonable and that the proposed amendment should be so modified.

h. 6MCAR § 4.9008 C.3.e.

The Agency received comments on the proposed amendment to this subparagraph from 3M and Henkel Corporation.

Henkel proposed that 49 C.F.R. § 172.102 be added to the U. S. Department of Transportation regulations referenced in the rule. In the Statement of Need and Reasonableness we stated that the reason for the proposed amendment is to permit the use in Minnesota of any shipping paper meeting federal requirements. The EPA hazardous waste shipping paper requirements are set forth at 40 C.F.R. § 262.21 and do not reference 49 C.F.R. § 172.102. Therefore the Agency finds this proposal to be unreasonable.

Both Henkel and 3M commented that the proposed amendment provides no guidance as to what waste description should be used on the shipping papers for wastes classified as hazardous in Minnesota but not by EPA. Henkel proposes that the description used on the hazardous waste disclosure filed with the Agency be used on the shipping papers. The Agency finds that the use of this description will avoid the problems which 3M believes will occur if the waste is just described as being hazardous. The Agency finds the proposal to use the description of the waste used on the disclosure on the shipping papers for wastes that are not designated by EPA to be hazardous is reasonable and further finds that the proposed amendment should be modified to include this proposal. included p. 11

k. 6MCAR § 4.9008 E.

The Agency received comments relating to the

number of copies of the shipping papers that are required, the time period for returning signed shipping papers, and the requirement that copies of the shipping papers be sent to the generator upon ultimate disposition of the waste.

American Crystal Sugar Co. commented that a 7-part shipping paper is excessive since EPA only requires six. 3M also addressed this issue by stating that the notification to the generator by the facility after ultimate disposition is unnecessary, costly, and burdensome. The Agency finds that since the EPA is not requiring a seven part form and since the seventh copy is not necessary to the Agency in order to provide an adquate tracking mechanism, it is reasonable to amend the rule to eliminate the seventh copy. amended p. 11, 12

3M commented that the two days allowed for the facility operator to send copies of the shipping paper to the generator and tracking system is unworkable and that at least 10 days should be allowed. The Agency agrees that two days is insufficient but that 10 days is too long since it is necessary to know that the waste has reached or not reached its destination as soon as possible to permit adequate tracking. Therefore the Agency finds that five working days is a sufficient period of time to return the shipping papers. amended p. 12

Henkel and 3M commented that the 10 days allowed for submittal of copies of shipping papers from out of state

facilities is unreasonable. They pointed out that since the EPA allows 30 days there is no way of requiring the facility to return a copy to the generator in a shorter time. The Agency finds that this is a legitimate problem that can best be addressed by amending the time period to 35 days and by providing for those cases where the generator is unable to comply. amended p. 13

3. The Agency finds that it received comments from LCRAR on 6MCAR §§ 4.9002 (E)(3)(d), 4.9009 (D)(3)(a) and 4.9009 (D)(3)(d). These rules are not rules which the Agency proposed to amend at this time. The Agency finds the comments to be irrelevant to this proceeding but directs the staff to consider them the next time the hazardous waste rules are proposed for amendment.

4. The Agency finds that it received no requests for a hearing and that, therefore, no hearing is required to be held prior to the adoption of these amendments.

CONCLUSIONS

1. The Minnesota Pollution Control Agency duly acquired and has jurisdiction over this proceeding.

2. The Agency published and served due, timely and adequate notice of the proposed amendments of the hazardous waste rules without a hearing.

3. The Agency has statutory authority to promulgate and adopt the proposed amendments, as finally amended and adopted by the Agency.

4. All relevant legal and procedural requirements of statutes and rules have been properly complied with.

5. The rules as published at 5 S.R. 1079 et. seq. should be amended as follows:

a. Reletter 6MCAR § 4.9003 H. to I. and I. to J.

b. 6MCAR § 4.9004 C.2.

2. Acceptance of hazardous waste.

a. The facility operator shall notify the agency by telephone immediately upon delivery and prior to acceptance of a shipment of hazardous waste if any of the following discrepancies exist:

(1) Incomplete shipping papers.

(2) A container or portable tank containing hazardous waste is not properly labeled.

(3) The shipping papers and the labels are inconsistent.

(4) The shipping papers and the hazardous waste shipment are inconsistent with regard to quantity, type or number of containers.

Within ~~five (5)~~ ten (10) working days, a follow-up report which fully describes any discrepancy, its resolution and the management of the hazardous waste shall be mailed to the agency.

b. In the event a shipment of hazardous waste without any shipping papers is delivered to a hazardous waste facility,

the facility operator shall immediately notify the agency by telephone of:

(1) the transporter's name and vehicle license plate;

(2) the transporter's address and EPA identification number, if available;

(3) the generator's name, address and EPA identification number, if available;

(4) a description of the unmanifested waste;

(5) a brief explanation of why the waste was unmanifested, if known.

Within ~~five (5)~~ ten (10) working days, a follow-up report which fully describes any discrepancy, its resolution and the management of the hazardous waste shall be mailed to the agency.

c. No facility operator shall accept a shipment of hazardous waste that the facility operator is not allowed to manage under the Hazardous Waste Facility Permit unless written approval is obtained from the director. The Director shall approve the acceptance of the waste if the director determines that:

(1) The hazardous waste is a waste that can be properly managed at the facility, and

(2) The generator has filed a disclosure with the agency. ~~The director shall act on the request as expeditiously as possible~~.

The director shall act on the request as expeditiously as possible.

c. 6MCAR § 4.9004.I.

I. Small hazardous waste containerized storage facilities. The facility operator of a hazardous waste containerized storage facility with a capacity of less than 5,000 gallons (18,927 liters) of hazardous waste in containers and tanks shall not be required to comply with the requirements of subparagraph 1 of paragraph B, or subparagraphs 1.d., 1.f., 2.c., 6.a., 6.b., 6.c., and 6.d. of paragraph C, and subparagraphs 1, 3 and 4 of paragraph D, provided~~: 1. No~~ no other hazardous waste facility is located at the same site~~; or~~

~~2. Any accumulation of hazardous waste equal to or greater than 2200 pounds (1000 kilograms) is not stored for longer than 90 days. The length of accumulation is calculated from the date storage began and not the date on which the accumulated waste first equals or exceeds 2200 pounds (1000 kilograms).~~

d. 6 MCAR § 4.9005 F.

~~1.~~ No person shall deliver hazardous waste to a hazardous waste facility or give hazardous waste to a transporter for

shipment to a hazardous waste facility located in the State of Minnesota, if the facility operator has not obtained a Hazardous Waste Facility Permit from the agency. Nothing in this provision is intended to require the transporter to undertake any evaluation of a waste to determine whether it is hazardous.

~~2. Immediately upon arrival at the hazardous waste facility the transporter shall notify the facility operator of any discrepancy between the hazardous wastes listed on the shipping papers and the hazardous waste shipment being delivered to the hazardous waste facility~~.

e. 6MCAR § 4.9005 G.

G. Registration of hazardous waste transporters. Any person who transports hazardous waste that originates or terminates in Minnesota shall ~~register with the agency and~~ obtain an identification number from EPA prior to transporting the hazardous waste. ~~The transporter shall keep the agency advised of his current address.~~

f. The proposed amendments to 6MCAR § 4.9006 I.2. are withdrawn.

g. 6MCAR § 4.9008 C.3.e.

3. The hazardous waste shipping papers shall include the following information.

. . .

e. The description of the waste(s) [e.g., proper shipping name, etc.] required by regulations of the U.S.

Department of Transportation in 49 C.F.R. §§ 172.101, 172.202 and 172.203 (1979) if applicable; otherwise the description of the waste(s) as listed on the Minnesota hazardous waste disclosure.

h. 6MCAR § 4.9008 E.1.

E. Signing and submission of hazardous waste shipping papers.

1. Prior to relinquishing possession of a shipment of hazardous waste each generator, transporter, and facility operator shall obtain the dated signature of the transporter or facility operator who accepts the shipment of hazardous waste on the original and each copy of the hazardous waste shipping papers. The generator shall retain one copy of the hazardous waste shipping papers, give the original and ~~four~~ at least three copies to the transporter and shall send one copy to the following address:

Hazardous Waste, MIS
322 Washington Avenue South
Hopkins, Minnesota 55343

The transporter shall retain one copy of the hazardous waste shipping papers after relinquishing possession of the hazardous waste and give the original and ~~three~~ two copies to the hazardous waste facility operator. ~~The hazardous waste facility operator shall within two days after gaining possession, return one copy to the generator and one copy to the above address.~~ The facility operator shall sign the original and the remaining ~~copy~~ copies of the hazardous waste

shipping papers upon ~~ultimate disposition~~ gaining possession of the hazardous waste, retaining one copy, sending one copy to the above address and returning the original to the generator within ~~two~~ five (5) working days of ~~ultimate disposition~~ gaining possession. Generators, transporters, and facility operators shall retain their copies of the shipping papers in accordance with 6 MCAR § 4.9008 E.4.

i. 6MCAR § 4.9008 E.3.

3. When a shipment of hazardous waste is to be delivered to a hazardous waste facility located outside the State of Minnesota, the generator shall ensure that the copy of the hazardous waste shipping papers signed by the facility operator is sent to the address listed in subparagraph 1 of this paragraph withing ~~ten~~ thirty five (35) days of the acceptance of the hazardous waste by the hazardous waste facility. If the generator is unable to comply with this deadline, a letter of explanation must be sent to the address listed in subparagraph 1 of this paragraph within five (5) working days after the expiration of the thirty five (35) day period.

6. None of the changes made in the amendments as proposed constitute a substantial change.

Dated this 24th day of February, 1981.

Minnesota Pollution Control Agency

Art Engelbrecht
Chairman

Louis J. Breimhurst
Executive Director

a. pre-implementation grants: twenty percent of the amount appropriated to the agency; and

b. implementation grants: eighty percent of the amount appropriated to the agency.

J. Severability.

If any provision of this rule or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect any other provision or application of any other part of this rule or any other rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule and the various applications thereof are declared to be severable.

Minnesota Pollution Control Agency
Division of Solid Waste

Proposed Amendments to the Rules Governing the Management of Hazardous Waste

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (hereinafter "agency") intends to adopt amendments to the rules governing the management of hazardous waste without a public hearing. The agency has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h (1980). Authority for the adoption of these rules is contained in Minn. Stat. § 116.07, subd. 4.

The agency has prepared a Statement of Need and Reasonableness that describes the agency's reasons for each provision of the proposed amendments and identifies the data and information relied upon by the agency to support the proposed rule. Copies of the Statement of Need and Reasonableness and the proposed amended rules are available and may be obtained by contacting:

Mr. Larry Christensen
Division of Solid Waste
Minnesota Pollution Control Agency
1935 W. County Road B2
Roseville, Minnesota 55113
Telephone: (612) 297-2714

All interested or affected persons have until February 6, 1981, to submit, in writing, comments on the proposed amendments. The proposed amended rules may be modified if the data and views submitted to the agency warrant modifications and the modifications do not result in a substantial change in the proposed language.

If, during the comment period, seven or more persons submit to the agency a written request for a hearing on the proposed amendments, the agency shall proceed to schedule a public hearing before adoption of the amended rules. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subds. 4-4f. (1980).

Persons who wish to submit comments or a request for a public hearing should submit such comments or request to Mr. Larry Christensen at the address given above. The agency requests that if a person desires a public hearing, that when submitting a written request for a hearing, the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

The proposed amended rules would, if adopted, produce greater uniformity between the State hazardous waste rules and the hazardous waste rules adopted by the U.S. Environmental Protection Agency (hereinafter "EPA"). These proposed amendments are necessary for the State to receive interim authorization from EPA to administer the State hazardous waste program in lieu of the Federal program. The proposed amendments can be generally described as follows:

Amendments to 6 MCAR § 4.9001 B., C. and D. provide a definition for the term "manifest" and the abbreviation "EPA" and further provide for the incorporation of two additional appendices to the rules.

An amendment to 6 MCAR § 4.9002.E. specifies that the leach test which must be utilized to determine whether certain wastes are hazardous is the EP Toxicity Test. This is the leach test required by the EPA and its adoption will permit uniform

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

testing requirements. Another amendment to that provision clarifies that once a waste is determined to contain a hazardous component, further testing for that component is not required.

Amendments to 6 MCAR §§ 4.9003F. and 4.9005 G. provides that generators and transporters of hazardous waste must obtain identification numbers from EPA rather than from the agency. EPA rules require generators and transporters to obtain EPA identification numbers.

Amendments to 6 MCAR § 4.9003H. make Minnesota's hazardous waste label requirements identical to federal requirements and will permit generators to use a single label that meets both State and Federal requirements.

Amendments to 6 MCAR §§ 4.9004C.1 and 4.9006G.4. delete the provisions prohibiting hazardous waste facility operators from accepting hazardous waste generated outside the State of Minnesota without the written approval of the agency director.

Amendments to 6 MCAR §§ 4.9004C.2. and 4.9005F. require hazardous waste transporters to notify the receiving facility and the receiving facility to notify the agency of any discrepencies between the shipping papers and the waste delivered or any attempt to deliver waste without shipping papers. This notification corresponds to the discrepancy reports required by EPA.

Amendments to 6 MCAR §§ 4.9004I. and 4.9006I. require facilities which store hazardous wastes for longer than 90 days and accumulate 2000 pounds or more of hazardous waste to obtain a permit. EPA rules currently require such facilities to obtain a permit.

Amendments to 6 MCAR § 4.9008C. bring State hazardous waste shipping paper requirements in line with Federal requirements and will allow use of a nationally standardized form in Minnesota.

Amendments to 6 MCAR § 4.9008E. will require all hazardous waste generators and receiving facility operators to submit copies of the hazardous waste shipping papers to the State. Previously the agency Executive Director could request that copies of the shipping papers be submitted. This will allow the State to trace shipments of hazardous waste and reduce illegal dumping.

After adoption of the final amended rules by the agency board, without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final amended Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Mr. Larry Christensen.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

Terry Hoffman
Executive Director
Minnesota Pollution
Control Agency

Amendments as Proposed

6 MCAR § 4.9001 General applicability, definitions, abbreviations, incorporations, severability, and variances.

B. Definitions. As used in these hazardous waste rules the following words shall have meaning defined herein.

23. Manifest: The shipping papers used in transporting hazardous waste.

6 MCAR § 4.9001 B. 23 through 44. Renumber as 6 MCAR § 4.9001 B. 24. through 45.

C. Abbreviations. The abbreviations used in these hazardous waste ~~regulations~~ rules have the following meanings:

3. EPA: U.S. Environmental Protection Agency.

6 MCAR § 4.9001 C. 3. through 5. Renumber as 6 MCAR § 4.9001 C. 4. through 6.

D. Incorporations. The following are contained in the indicated appendices at the end of this rule and are hereby incorporated and made a part of these rules and shall apply as indicated within these rules:

12. EP Toxicity Test (Appendix L).

13. 49 C.F.R. §§ 172.202 and 172.203 (1979) (Appendix M).

6 MCAR § 4.9002 Classification, evaluation and certification of waste.

E. Comparison of properties.

2. List 1 and List 2 components. Whenever the person evaluating a waste knows or suspects that any of the components in List 1 or List 2 is in the waste, the person shall conduct a quantitative analysis to determine the concentration of each component in List 1 that is known or suspected to be in the waste and ~~a leachate test~~ the EP Toxicity Test for each component in List 2 that is known or suspected to be in the waste with the following exceptions:

a. A waste known to contain a component of List 1 in excess of the concentration listed in List 1 need not be analyzed for that component.

b. A waste which is a hazardous waste because it contains a component of List 1 in excess of the concentration listed in List 1 need not be tested for that component in a List 2 test.

6 MCAR § 4.9003 Generation of hazardous waste.

F. Identification number. Prior to transportation or disposal of any hazardous waste a generator shall obtain a generator identification number from EPA.

G. Preparation of hazardous waste shipping papers. Each generator shall prepare hazardous waste shipping papers for each hazardous waste in accordance with 6 MCAR § 4.9008.

~~G~~H. Preparation of hazardous waste labels.

1. Each generator shall attach a ~~"~~Hazardous Waste~~"~~ label to each container and portable tank containing hazardous waste in accordance with the ~~following requirements.~~ applicable U.S. Department of Transportation regulations on hazardous materials under 49 C.F.R. Part 172 (1979). In addition, the following words and information shall be displayed:

a. HAZARDOUS WASTE—Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

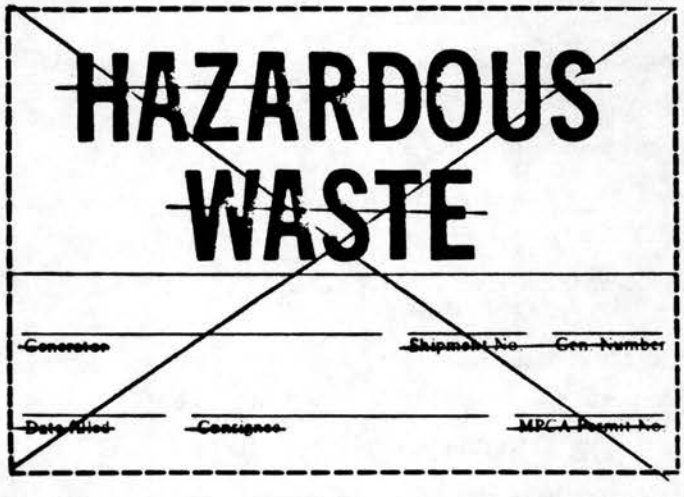
b. Generator Name and Address _____.

c. Manifest Document Number _____.

d. EPA Identification Number _____.

e. Accumulation start date _____.

~~a. The label shall not be smaller than 4" by 6¼". The letters, "HAZARDOUS WASTE", shall not be less than ¾" high. Except for size and color, the label shall have the appearance of the following design.~~



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~~b. The lettering and lines of a "Hazardous Waste" label shall be black and the background color shall be a standard florescent pink.~~

~~c. In addition to the words, "Hazardous Waste", the label placed on portable tanks and containers shall contain the following information:~~

~~(1) The name of the generator.~~

~~(2) The identifying shipment number from the shipping papers required in 6 MCAR § 4.9008.~~

~~(3) The date the container or portable tank was finally filled.~~

~~(4) The name of the hazardous waste facility that is responsible for the ultimate disposition of the hazardous waste and the permit number if that facility is licensed by the agency pursuant to these regulations.~~

~~d. The "Hazardous Waste" label must be capable of withstanding open weather exposure for no less than thirty (30) days without substantial reduction in effectiveness.~~

2. The container or portable tank shall be labeled and marked in a manner that is suitable for interstate commerce.

3. Any generator or other person who maintains a storage tank containing hazardous waste shall ~~attach a~~ display the words "Hazardous Waste" ~~label to~~ on the storage tank in a legible and conspicuous manner. ~~A~~ The words "Hazardous Waste" ~~label~~ shall be plainly visible and legible to any person who may operate any outlet valve.

6 MCAR § 4.9004 Location, operation and closure of a hazardous waste facility.

C. Hazardous waste facility operation.

1. General. No person shall operate a hazardous waste facility except in conformance with the following requirements:

~~k. The facility operator shall not accept waste from outside the State of Minnesota unless specifically authorized to do so by his Hazardous Waste Facility Permit and unless written approval is obtained from the director. The director shall approve the acceptance of the waste if the director determines that.~~

~~(1) The hazardous waste is a waste that can be properly managed at the facility, and~~

~~(2) The generator has filed a disclosure with the agency. The director shall act on the request as expeditiously as possible.~~

2. Acceptance of hazardous waste.

a. ~~No~~ The facility operator shall ~~accept~~ notify the agency by telephone immediately upon delivery and prior to acceptance of a shipment of hazardous waste ~~that does not meet the following requirements:~~ if any of the following discrepancies exist.

(1) ~~The~~ Incomplete shipping papers ~~are complete~~.

(2) ~~Each~~ A container ~~and~~ or portable tank containing hazardous waste is not properly labeled.

(3) The shipping papers and the labels are ~~consistent~~ inconsistent.

(4) The shipping papers and the hazardous waste shipment are inconsistent.

Within five (5) days, a follow-up report which fully describes any discrepancy, its resolution and the management of the hazardous waste shall be mailed to the agency.

b. In the event a shipment of hazardous waste without any shipping papers is delivered to a hazardous waste facility, the facility operator shall immediately notify the agency by telephone of:

(1) the transporter's name and vehicle license plate;

(2) the transporter's address and EPA identification number, if available;

(3) the generator's name, address and EPA identification number, if available;

(4) a description of the unmanifested waste,

(5) a brief explanation of why the waste was unmanifested, if known.

Within five (5) days, a follow-up report which fully describes any discrepancy, its resolution and the management of the hazardous waste shall be mailed to the agency.

~~b~~c. No facility operator shall accept a shipment of hazardous waste that the facility operator is not allowed to manage

under the Hazardous Waste Facility Permit unless written approval is obtained from the director. The director shall approve the acceptance of the waste if the director determines that:

(1) The hazardous waste is a waste that can be properly managed at the facility, and

(2) The generator has filed a disclosure with the agency. The director shall act on the request as expeditiously as possible.

~~e~~d. The facility operator shall schedule the arrival of hazardous waste in a manner that minimizes the potential problem of incompatible wastes coming in contact.

I. Small hazardous waste containerized storage facilities. The facility operator of a hazardous waste containerized storage facility with a capacity of less than 5,000 gallons (18,927 liters) of hazardous waste in containers and tanks shall not be required to comply with the requirements of subparagraph 1 of paragraph B or subparagraphs 1.d., 1.f., 2.~~b~~c., 6.a., 6.b., 6.c., and 6.d. of paragraph C, and subparagraphs 1, 3 and 4 of paragraph D, provided:

1. ~~no~~ No other hazardous waste facility is located at the same site; or

2. Any accumulation of hazardous waste equal to or greater than 2200 pounds (1000 kilograms) is not stored for longer than 90 days. The length of accumulation is calculated from the date storage began and not the date on which the accumulated waste first equals or exceeds 2200 pounds (1000 kilograms).

6 MCAR § 4.9005 Transportation of hazardous waste.

F. Delivery of hazardous waste.

1. No person shall deliver hazardous waste to a hazardous waste facility or give hazardous waste to a transporter for shipment to a hazardous waste facility located in the State of Minnesota, if the facility operator has not obtained a Hazardous Waste Facility Permit from the agency. Nothing in this provision is intended to require the transporter to undertake any evaluation of a waste to determine whether it is hazardous.

2. Immediately upon arrival at the hazardous waste facility the transporter shall notify the facility operator of any discrepancy between the hazardous wastes listed on the shipping papers and the hazardous waste shipment being delivered to the hazardous waste facility.

G. Registration of hazardous waste transporters. Any person who transports hazardous waste that originates or terminates in Minnesota shall register with the agency and obtain an identification number from EPA prior to transporting the hazardous waste. ~~The transporter may request a particular number when he registers and may obtain that number if it is satisfactory to the agency.~~ The transporter shall keep the agency advised of his current address.

6 MCAR § 4.9006 Hazardous waste facility permit program.

G. Hazardous Waste Facility Permit general conditions.

~~4. If the Hazardous Waste Facility Permit authorizes the permittee to accept hazardous waste from outside the State of Minnesota, the permittee shall not accept the hazardous waste without written approval from the director.~~

I. Exceptions.

2. The facility operator of a Hazardous Waste Containerized Storage Facility with a capacity of less than 5,000 gallons (18,927 liters) ~~that is not in the same location as any other types of hazardous waste facility~~ shall not be required to obtain a Hazardous Waste Facility Permit for that facility provided:

1. No other hazardous waste facility is located at the same site, or

2. Any accumulation of hazardous waste equal to or greater than 2200 pounds (1000 kilograms) is not stored for longer than 90 days. The length of accumulation is calculated from the date storage began and not the date on which the accumulated waste first equals or exceeds 2200 pounds (1000 kilograms).

6 MCAR § 4.9008 Hazardous waste shipping papers.

C. Preparation of hazardous waste shipping papers.

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1. Each generator shall prepare hazardous waste shipping papers for each shipment of hazardous waste.

2. The generator shall prepare an original and a sufficient number of copies of the hazardous waste shipping papers so that all persons who are going to participate in the management of the hazardous waste will be able to comply with the provisions of this ~~regulation~~ rule.

3. The hazardous waste shipping papers shall include the following information.

a. The names, ~~and~~ addresses, telephone numbers, and EPA identification numbers of the generator~~, transporters~~ and hazardous waste ~~facilities~~ facility to which the waste is being transported.

b. The name and EPA identification number of each transporter.

c. An identifying shipment number assigned by the generator in sequential order for each waste shipment.

~~e~~d. ~~The amount of hazardous waste being transported.~~ The total quantity of each hazardous waste by units of weight or volume and the type and number of containers as loaded into or onto the transport vehicle.

~~d~~c. ~~The approximate chemical composition of the waste.~~ The description of the waste(s) [e.g., proper shipping name, etc.] required by regulations of the U.S. Department of Transportation in 49 C.F.R. §§ 172.101, 172.202 and 172.203 (1979).

~~e. The hazardous properties of the waste.~~

~~f. The dates during which the hazardous waste was produced.~~

~~g. The names and telephone numbers of persons and agencies to notify or consult with in case of spillage during handling or transportation.~~

~~h. The transporters' agency identification numbers.~~

~~i. The names of other generators whose hazardous wastes are to be commingled with the generator's shipment of hazardous waste.~~

~~j. Procedures for handling spills, fires, and other emergencies.~~

~~k~~f. ~~The signature of~~ Signature and date blocks for the generator~~.~~, the transporter, and the facility operator.

~~l~~g. ~~Any other information the generator deems important.~~ The following certification shall appear on the shipping papers: "This is to certify that the above named materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the U.S. Department of Transportation and the EPA."

4. ~~The hazardous waste shipping papers shall include a place for the signature of each transporter and facility operator who accepts possession of the shipment of hazardous waste and a place for the signature of the facility operator who is responsible for ultimate disposition of the hazardous waste.~~

E. Signing and submission of hazardous waste shipping papers.

1. Prior to relinquishing possession of a shipment of hazardous waste ~~Each~~ each generator, transporter, and facility operator ~~who relinquishes possession of a shipment of hazardous waste~~ shall obtain the dated signature of the transporter or facility operator who accepts the shipment of hazardous waste on the original and each copy of the hazardous waste shipping papers. The generator shall retain one copy of the hazardous waste shipping papers~~.~~. ~~The transporter or facility operator shall obtain two copies of the hazardous waste shipping papers and, within two days after relinquishing possession, return one copy to the generator.~~ give the original and four copies to the transporter and shall send one copy to the following address:

Hazardous Waste, MIS
322 Washington Avenue South
Hopkins, Minnesota 55343

The transporter shall retain one copy of the hazardous waste shipping papers after relinquishing possession of the hazardous waste and give the original and three copies to the hazardous waste facility operator. The hazardous waste facility operator shall within two days after gaining possession, return one copy to the generator and one copy to the above address. The facility operator shall sign the original and the remaining copy of the hazardous waste shipping papers upon ultimate disposition of the hazardous waste, retaining one copy and returning the original to the generator within two days of ultimate disposition. Generators, transporters, and facility operators shall retain their copies of the shipping papers in accordance with 6 MCAR § 4.9008 E.4.

2. Each transporter or facility operator who accepts a shipment of hazardous waste shall sign and date the hazardous waste shipping papers.

3. ~~The facility operator of a hazardous waste processing facility, a hazardous waste land disposal facility or a hazardous waste land treatment facility shall sign the hazardous waste shipping papers a second time upon ultimate disposition~~

~~of the hazardous waste and return the original to the generator within two days of ultimate disposition.~~ When a shipment of hazardous waste is to be delivered to a hazardous waste facility located outside the State of Minnesota, the generator shall ensure that the copy of the hazardous waste shipping papers signed by the facility operator is sent to the address listed in subparagraph 1 of this paragraph within ten days of the acceptance of the hazardous waste by the hazardous waste facility.

Appendix L

Appendix I—Representative Sampling Methods

The methods and equipment used for sampling waste materials will vary with the form and consistency of the waste materials to be sampled. Samples collected using the sampling protocols listed below, for sampling waste with properties similar to the indicated materials, will be considered by the Agency to be representative of the waste.

Extremely viscous liquid—ASTM Standard D140-70 Crushed or powdered material—ASTM Standard D346-75 Soil or rock-like material—ASTM Standard D420-69 Soil-like material—ASTM Standard D1452-65

Fly Ash-like material—ASTM Standard D2234-76 (ASTM Standards are available from ASTM, 1916 Race St., Philadelphia, PA 19103)

Containerized liquid wastes—"COLIWASA" described in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods."[1] U.S. Environmental Protection Agency, Office of Solid Waste, Washington, D.C. 20460. (Copies may be obtained from Solid Waste Information, U.S. Environmental Protection Agency, 26 W. St. Clair St., Cincinnati, Ohio 45268)

Liquid waste in pits, ponds, lagoons, and similar reservoirs.—"Pond Sampler" described in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods."[1]

This manual also contains additional information on application of these protocols.

Appendix II—EP Toxicity Test Procedure

A. Extraction Procedure (EP)

1. A representative sample of the waste to be tested (minimum size 100 grams) should be obtained using the methods specified in Appendix I or any other methods capable of yielding a representative sample within the meaning of Part 260. (For detailed guidance on conducting the various aspects of the EP see "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," SW-846, U.S. Environmental Protection Agency Office of Solid Waste, Washington, D.C. 20460.[1])

2. The sample should be separated into its component liquid and solid phases using the method described in "Separation Procedure" below. If the solid residue[2] obtained using this method totals less than 0.5% of the original weight of the waste, the residue can be discarded and the operator should treat the liquid phase as the extract and proceed immediately to Step 8.

3. The solid material obtained from the Separation Procedure should be evaluated for its particle size. If the solid material has a surface area per gram of material equal to, or greater than, 3.1 cm^2 or passes through a 9.5 mm (0.375 inch) standard sieve, the operator should proceed to Step 4. If the surface area is smaller or the particle size larger than specified above, the solid material should be prepared for extraction by crushing, cutting or grinding the material so that it passes through a 9.5 mm (0.375 inch) sieve or, if the material is in a single piece, by subjecting the material to the "Structural Integrity Procedure" described below.

4. The solid material obtained in Step 3 should be weighed and placed in an extractor with 16 times its weight of deionized water. Do not allow the material to dry prior to weighing. For purposes of this test, an acceptable extractor is one which will

[1] These methods are also described in "Samplers and Sampling Procedures for Hazardous Waste Streams," EPA 600/2-80-018, January 1980.

[1] Copies may be obtained from Solid Waste Information, U.S. Environmental Protection Agey, 26 W. St. Clair Street, Cincinnati, Ohio 45268.

[2] The percent solids is determined by drying the filter pad at 80°C until it reaches constant weight and then calculating the percent solids using the following equation:

$$\frac{\text{(weight of pad + solid) − (tare weight of pad)}}{\text{initial weight of sample}} \times 100 = \%\ \text{solids}$$

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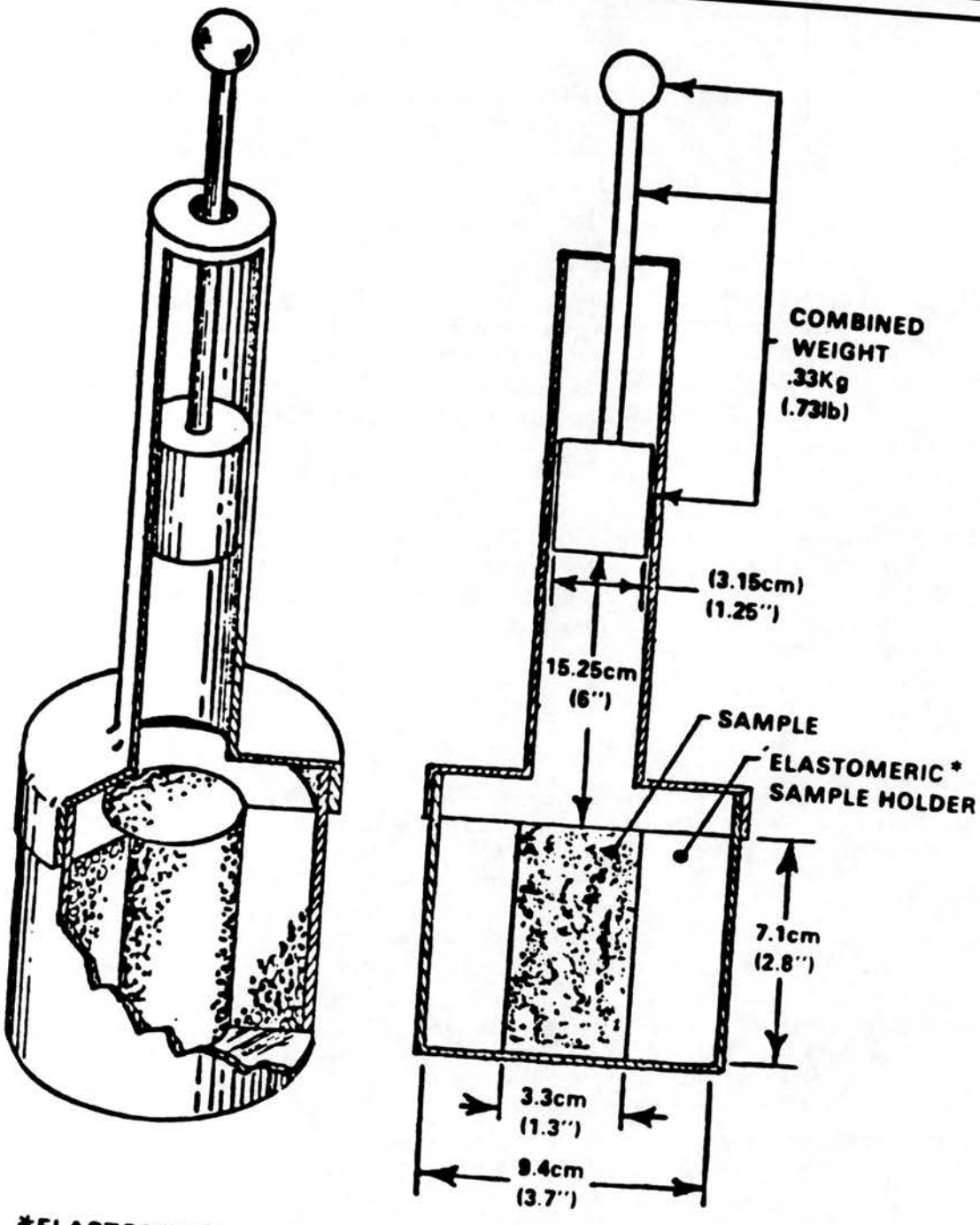

*ELASTOMERIC SAMPLE HOLDER FABRICATED OF MATERIAL FIRM ENOUGH TO SUPPORT THE SAMPLE

Figure 1
COMPACTION TESTER

BILLING CODE 0000-01-C

impart sufficient agitation to the mixture to not only prevent stratification of the sample and extraction fluid but also insure that all sample surfaces are continuously brought into contact with well mixed extraction fluid.

5. After the solid material and deionized water are placed in the extractor, the operator should begin agitation and measure the pH of the solution in the extractor. If the pH is greater than 5.0, the pH of the solution should be decreased to 5.0 ± 0.2 by adding 0.5 N acetic acid. If the pH is equal to or less than 5.0, no acetic acid should be added. The pH of the solution should be monitored, as described below, during the course of the extraction and if the pH rises above 5.2, 0.5N acetic acid should be added to bring the pH down to 5.0 ± 0.2. However, in no event shall the aggregate amount of acid added to the solution exceed 4 ml of acid per gram of solid. The mixture should be agitated for 24 hours and maintained at 20°-40° C (68°-104° F) during this time. It is recommended that the operator monitor and adjust the pH during the course of the extraction with a device such as the Type 45-A pH Controller manufactured by Chemtrix, Inc., Hillsboro, Oregon 97123 or its equivalent, in conjunction with a metering pump and reservoir of 0.5N acetic acid. If such a system is not available, the following manual procedure shall be employed:

(a) A pH meter should be calibrated in accordance with the manufacturer's specifications.

(b) the pH of the solution should be checked and, if necessary, 0.5N acetic acid should be manually added to the extractor until the pH reaches 5.0 ± 0.2. The pH of the solution should be adjusted at 15, 30 and 60 minute intervals, moving to the next longer interval if the pH does not have to be adjusted more than 0.5N pH units.

(c) The adjustment procedure should be continued for at least 6 hours.

(d) If at the end of the 24-hour extraction period, the pH of the solution is not below 5.2 and the maximum amount of acid (4 ml per gram of solids) has not been added, the pH should be adjusted to 5.0 ± 0.2 and the extraction continued for an additional four hours, during which the pH should be adjusted at one hour intervals.

6. At the end of the 24 hour extraction period, deionized water should be added to the extractor in an amount determined by the following equation:

V = (20)(W) − 16(W) − A
V = ml deionized water to be added
W = weight in grams of solid charged to extractor
A = ml of 0.5N acetic acid added during extraction

7. The material in the extractor should be separated into its component liquid and solid phases as described under "Separation Procedure."

8. The liquids resulting from Steps 2 and 7 should be combined. This combined liquid (or the waste itself if it has less than ½ percent solids, as noted in Step 2) is the extract and should be analyzed for the presence of any of the contaminants specified in Table I of § 261.24 using the Analytical Procedures designated below.

Separation Procedure

Equipment: A filter holder, designed for filtration media having a nominal pore size of 0.45 micrometers and capable of applying a 5.3 kg/cm^2 (75 psi) hydrostatic pressure to the solution being filtered shall be used. For mixtures containing nonabsorptive solids, where separation can be affected without imposing a 5.3 kg/cm^2 pressure differential, vacuum filters employing a 0.45 micrometers filter media can be used. (For further guidance on filtration equipment or procedures see "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.")

Procedure:[3]

(i) Following manufacturer's directions, the filter unit should be assembled with a filter bed consisting of a 0.45 micrometer

[3] This procedure is intended to result in separation of the "free" liquid portion of the waste from any solid matter having a particle size >0.45 μm. If the sample will not filter, various other separation techniques can be used to aid in the filtration. As described above, pressure filtration is employed to speed up the filtration process. This does not alter the nature of the separation. If liquid does not separate during filtration, the waste can be centrifuged. If separation occurs during centrifugation the liquid portion (centrifugate) is filtered through the 0.45 μm filter prior to becoming mixed with the liquid portion of the waste obtained from the initial filtration. Any material that will not pass through the filter after centrifugation is considered a solid and is extracted.

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filter membrane. For difficult or slow to filter mixtures a prefilter bed consisting of the following prefilters in increasing pore size (0.65 micrometer membrane, fine glass fiber prefilter, and coarse glass fiber prefilter) can be used.

(ii) The waste should be poured into the filtration unit.

(iii) The reservoir should be slowly pressurized until liquid begins to flow from the filtrate outlet at which point the pressure in the filter should be immediately lowered to 10-15 psig. Filtration should be continued until liquid flow ceases.

(iv) The pressure should be increased stepwise in 10 psi increments to 75 psig and filtration continued until flow ceases or the pressurizing gas begins to exit from the filter outlet.

(v) The filter unit should be depressurized, the solid material removed and weighed and then transferred to the extraction apparatus, or, in the case of final filtration prior to analysis, discarded. Do not allow the material retained on the filter pad to dry prior to weighing.

(vi) The liquid phase should be stored at 4°C for subsequent use in STEP —.

B. Structural Integrity Procedure

Equipment: A Structural Integrity Tester having a 3.18 cm (1.25 in.) diameter hammer weighing 0.33 kg (0.73 lbs.) and having a free fall of 15.24 cm (6 in.) shall be used. This device is available from Associated Design and Manufacturing Company, Alexandria, VA, 22314, as Part No. 125, or it may be fabricated to meet the specifications shown in Figure 1.

Procedure:

1. The sample holder should be filled with the material to be tested. If the sample of waste is a large monolithic block, a portion should be cut from the block having the dimensions of a 3.3 cm (1.3 in.) diameter × 7.1 cm (2.8 in.) cylinder. For a fixated waste, samples may be cast in the form of a 3.3 cm (1.3 in.) diameter × 7.1 cm (2.8 in.) cylinder for purposes of conducting this test. In such cases, the waste may be allowed to cure for 30 days prior to further testing.

2. The sample holder should be placed into the Structural Integrity Tester, then the hammer should be raised to its maximum height and dropped. This should be repeeate fifteen times.

3. The material should be removed from the sample holder, weighed, and transferred to the extraction apparatus for extraction.

Analytical Procedures for Analyzing Extract Contaminants

The test methods for analyzing the extract are as follows:

(1) For arsenic, barium, cadmium, chromium, lead, mercury, selenium or silver: "Methods for Analysis of Water and Wastes," Environmental Monitoring and Support Laboratory, Office of Environmental Protection Agency, Cincinnati, Ohio 45268 (EPA-800/4-79-020, March 1979),

(2) For Endrin; Lindane; Methoxychlor; Toxaphene; 2,4-D; 2,4,5-TP Silver: in "Methods for Benzidine, Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater," September 1978, U.S. Environmental Protection Agency, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 42568,

as standardized in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods."

For all analyses, the method of standard addition shall be used for the quantification of species concentration. This method is described in "Test Methods for the Evaluation of Solid Waste." (It is also described in "Methods for Analysis of Water and Wastes.")

Billing Code 6580-01-M

[45 F.R. 33127, May 19, 1980]

Appendix M

Title 49 C.F.R.

§ 172.202 Description of hazardous material on shipping papers.

(a) Each description of a hazardous material on the shipping paper must include—

(1) The proper shipping name prescribed for the material as required by § 172.101.

(2) The class prescribed for the material as required by § 172.101. When the words of the proper shipping name are identical (excluding the entry "n.o.s.") with the words of the class, the inclusion of the class is not required.

(3) [Reserved]

(4) Except for empty packagings, the total quantity (by weight, volume, or as otherwise appropriate) of the hazardous material covered by the description.

(b) The basic description specified in paragraphs (a)(1) and (a)(2) of this section must be shown in sequence except that the technical name of the material may be entered between the proper shipping name and the class. For example: "Gasoline, Flammable liquid"; or "Flammable solid, n.o.s."; or "Corrosive liquid, n.o.s. (caprylyl chloride), corrosive material."

(c) The total quantity of the material covered by one description must appear before or after, or both before and after, the description required and authorized by this subpart.

(1) Abbreviations may be used to specify the type of packaging and weight or volume. For example: 40 cyl. Nitrogen, Non-flammable Gas-800 pounds; 1 box Cement, liquid n.o.s., Flammable liquid, 25 lbs.

(2) The type of packaging may be entered in any appropriate manner.

[Amdt. 172-29A, 41 FR 40677, Sept. 20, 1976]

§ 172.203 Additional description requirements.

(a) *Exemptions.* Each shipping paper issued in connection with a shipment made under an exemption must bear the notation "DOT-E" followed by the exemption number assigned and so located that the notation is clearly associated with the description to which the exemption applies.

(b) *Limited quantities.* The description for a material defined as "limited quantities" in this subchapter must include the words "Limited Quantities" or "Ltd. Qty." following the basic description.

(c) *Blasting caps.* The description for a shipment of blasting caps must have an entry stating the number of caps in the shipment, either before or after the basic description.

(d) *Radioactive material.* (1) The description for a shipment of radioactive material must include the following additional entries as appropriate:

(i) The name of each radionuclide in the radioactive material that is listed in § 173.390 of this subchapter. Abbreviations, e.g., "^{99}Mo" are authorized.

(ii) A description of the physical and chemical form of the material, if the material is not in special form.

(iii) The activity contained in each package of the shipment in terms of curies, millicuries, or microcuries. Abbreviations are authorized.

(iv) The category of label applied to each package in the shipment. For example: "RADIOACTIVE WHITE-I."

(v) The transport index assigned to each package in the shipment bearing RADIOACTIVE YELLOW-II or RADIOACTIVE YELLOW-III labels.

(vi) For a shipment of fissile radioactive materials—

(A) The words "Fissile Exempt," if the package is exempt pursuant to § 173.396(a) of this subchapter, or

(B) If not exempt, the fissile class of each package in the shipment, pursuant to § 173.389(a) of this subchapter; and

(C) For a Fissile Class III shipment, the additional notation: "Warning—Fissile Class III Shipment. Do not Load More than * * * Packages per Vehicle." (Asterisks to be replaced by appropriate number.) "In loading and Storage Areas, Keep at Least 20 Feet (6 Meters) from Other Packages Bearing Radioactive Labels."

(D) If a Fissile Class III shipment is to be transported by water, the supplementary notation must also include the following statement: "For shipment by water, only one Fissile Class III shipment is permitted in each hold."

(vii) For a package approved by the U.S. Energy Research and Development Administration (ERDA) or U.S. Nuclear Regulatory Commission (USNRC), a notation of the package identification marking as prescribed in the applicable ERDA or USNRC approval. (See § 173.393a of the subchapter.)

(viii) For an export shipment or a shipment in a foreign made package, a notation of the package identification marking as

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prescribed in the applicable International Atomic Energy Agency (IAEA) Certificate of Competent Authority which has been issued for the package. (See § 173.393b(a)(3) of the subchapter.)

(ix) For a shipment of radioactive materials being offered and accepted for transportation and transported within the United States under the provisions of § 171.12(e) of this subchapter, the shipping paper shall be annotated with the following entry:

This shipment contains packages of Type A/low specific activity radioactive materials limited in accordance with the 1973 IAEA Regulations, pursuant to the provisions of 49 CFR 171.12(e). (Non-applicable entry to be deleted.)

(e) *Empty packagings*. For other than a tank car, the description on the shipping paper for an empty packaging containing the residue of a hazardous material may contain the word(s) "EMPTY": or "EMPTY: Last contained * * *" followed by the name of the hazardous material last contained in the packaging. This entry may be before or after the basic description. For empty tank cars, see § 174.25(c) of this subchapter.

(f) *Transportation by air*. When a package containing a hazardous material is offered for transportation by air and this subchapter prohibits its transportation aboard passenger-carrying aircraft, the words "Cargo-only aircraft" must be entered after the basic description.

(g) *Transportation by rail*. (1) The shipping paper for a rail car containing a hazardous material must contain the notation "Placarded" followed by the name of the placard required for the rail car.

(2) The shipping paper for each specification DOT 112A or 114A tank car (without head shields) containing a flammable compressed gas must contain the notation, "DOT 112A" or "DOT 114A," as appropriate, and either "Must be handled in accordance with FRA E.O. No. 5" or "Shove to rest per E.O. No. 5."

(h) *Transportation by highway*. Following the basic description for a hazardous material in a specification MC 330 or MC 331 cargo tank made of quenched and tempered steel, there must be entered for—

(1) *Anhydrous ammonia*. (i) The words "0.2 per cent water" to indicate the suitability for shipping anhydrous ammonia in the cargo tank as authorized by § 177.817 of this subchapter, or

(ii) The words "NOT FOR Q AND T TANKS" when the anhydrous ammonia does not contain 0.2 per cent or more water by weight.

(2) *Liquefied petroleum gas*. The word "Non-corrosive" or "Non-cor" to indicate the suitability for shipment of the "Non-corrosive" liquefied petroleum gas offered for transportation by cargo tank as authorized by § 173.315(a)(1) Note 15 of this subchapter.

(i) *Transportation by water*. (1) Each shipment by water must have the following additional shipping paper entries:

(i) Identification of the type of packages such as barrels, drums, cylinders, and boxes,

(ii) The number of each type of package including those in a freight container or on a pallet, and

(iii) The gross weight of each type of package or the individual gross weight of each package.

(2) The shipping paper for a hazardous material offered for transportation by water to any country outside the United States must have in parenthesis the technical name of the material following the proper shipping name when the material is described by a "n.o.s." entry in § 172.101. For Example: Corrosive liquid, n.o.s. (caprylyl chloride), Corrosive material. However, for a mixture, only the technical name of any hazardous material giving the mixture its hazardous properties must be identified.

(3) The entry "Skin corrosive only" must be included to also authorize "under deck" stowage for corrosive liquid, n.o.s. and corrosive solid, n.o.s. that meet only the corrosion to skin criteria of § 173.240(a)(1).

(49 U.S.C. 1803, 1804, 1808)

[Amdt. 172-29A, 41 FR 40677, Sept. 20, 1976, as amended by Amdt. 172-29B, 41 FR 57067, Dec. 30, 1976; Amdt. 172-41, 43 FR 10918, Mar. 16, 1978; Amdt. 172-45, 43 FR 39791, Sept. 7, 1978]

State of Minnesota

Office of the Attorney General

In the Matter of the Proposed Amendment of Rules of the Pollution Control Agency Governing the Management of Hazardous Waste

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Barbara Lindsey Sims, do hereby declare that I have examined the proposed rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed.

Barbara Lindsey Sims

Barbara Lindsey Sims
Special Assistant
Attorney General

Dated: February 27, 1981

State of Minnesota

Pollution Control Agency

In the Matter of the Proposed Amendment of Rules of the Pollution Control Agency Governing the Management of Hazardous Waste	Affidavit of Mailing Notice of Submission to the Attorney General

Larry P. Christensen, being duly sworn on oath deposes and says:

1. That he is an employee of the Solid Waste Division, Minnesota Pollution Control Agency, State of Minnesota;

2. That he was named on the Notice of Rulemaking as the person to be contacted regarding the above-referenced rules;

3. That no person requested, either orally or in writing, that he or she be notified of the transmittal by the Minnesota Pollution Control Agency of the above-referenced rules to the Office of the Attorney General; and,

4. That, accordingly, no such notice need be made.

Larry P. Christensen

Subscribed and sworn to before me this 27th day of February, 1981.

Patricia Schwarz
Notary Public

PATRICIA SCHWARZ
NOTARY PUBLIC—MINNESOTA
ANOKA COUNTY
My Commission Expires Aug. 6, 1987

LCRAR

Legislative Commission to
Review Administrative Rules

Rep. Wayne A. Simoneau
Chairman

Sen. Timothy J. Penny
Vice-Chairman

Bernadine E. Whitfield
Executive Secretary

Susan P. Robertson
Executive Director

January 27, 1981

RECEIVED
JAN 28 1981
MINN. POLLUTION
CONTROL AGENCY

Larry Christensen
Division of Solid Waste
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, MN 55113

Dear Mr. Christensen:

I have been asked by Ms. Sue Robertson, Executive Director for the Legislative Commission to Review Administrative Rules, to submit to you some comments which we have about the proposed amendments to the hazardous waste rules appearing in 5 S.R. 1079, January 5, 1981.

This letter is written in my capacity as counsel to the LCRAR and is not intended to be an official position related to the Revisor's Office role of offering rule drafting assistance.

Should you have further questions, please do not hesitate to contact Ms. Robertson or myself.

(1.) 6 MCAR 4.9001 (D)(13): We question why only sections 172.202 and 172.203 are included in Appendix M. The two relevant references which appear later in your amendments are to "Part 172" and "Sections 172.101, 172.202 and 172.203." Section 172.202 itself contains several references to requirements of section 172.101. Those who are regulated by these rules would have much better notice of their duties if Appendix M were more comprehensive, at least to the point of including section 172.101 with the other two sections.

(2.) 6 MCAR 4.9002 (E)(3)(b): This rule still has a reference to "a leachate test" even though a similar reference in 4.9002(E)(2) is proposed to be changed to "the EP Toxicity Test." This rule should be clarified so that generators understand the scope of the exemption in 4.9002 (E)(3)(b) and so that the rules are consistent in their terminology.

(3.) 6 MCAR 4.9003: Because you have added a new paragraph "F" and relettered "G" to "H", you should also include in your amendments an instruction to reletter "H" to "I" and "I" to "J."

(4.) 6 MCAR 4.9004 (C)(2)(c): Because you have retained the current letter "b" earlier in the rule, you should not strike the letter "b" before the new "c" appearing at the bottom of 5 S.R. 1082.

(5.) 6 MCAR 4.9004 (I)(1): The semicolon should be underlined as new material.

(6.) 6 MCAR 4.9008 (C)(3)(g): The stricken letter before the new "g" should be an "l" not an "i." The number "4" appearing directly after subclause (g) should be stricken.

(7.) 6 MCAR 4.9009 (D)(3)(a): This rule contains a reference to counties assigning numbers to generators. In light of the contemplated use of EPA numbers, is this rule still accurate? If two numbers will be used, perhaps this rule could be clarified so that metropolitan generators realize they must also apply for an EPA number.

(8.) 6 MCAR 4.9009 (D)(3)(d): There is a reference here to 6 MCAR 9.4005(G). The correct reference would 6 MCAR 4.9005(G).

Several of these comments concern only the form of the rule amendments and are technical in nature. They are offered as prooofreaders' remarks, for the most part. We are primarily concerned with obtaining a response to comments (1.), (2.), and (7.).

Thank you for your consideration of this material.

Yours truly,

Terri Lauterbach

Terri Lauterbach
Counsel to the LCRAR

TL:bv
cc. Lou Breimhurst, Director, PCA
Jay Heffern, Assistant Director, PCA
Dale Wikre, Director of the Solid Waste Division, PCA
Sue Robertson, LCRAR

AMERICAN CRYSTAL SUGAR COMPANY

February 3, 1981

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FEB 6 1981
MINN. POLLUTION
CONTROL AGENCY

Mr. Larry Christensen
Division of Solid Waste
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, MN 55113

RE: PROPOSED AMENDMENTS TO HAZARDOUS WASTE REGULATIONS

In response to your request for comments in the matter of the Proposed Amendment of Rules of the Pollution Control Agency Governing the Management of Hazardous Waste, we offer the following comments:

6 MCAR 4.9003, H.1. refers to 49 C.F.R. Part 172 (1979). 49 C.F.R. Part 172 was revised on May 22, 1980, and again in November of 1980. (1979) should be deleted from the reference.

6 MCAR 4.9004, C. Hazardous Waste Facility Operation:
6 MCAR 4.9003 - "Generation of Hazardous Waste" provides no exclusion for small generators, nor does it define the "accumulation start date." A Generator, therefore becomes a "Small Containerized Storage Facility" if he places hazardous waste in a container for storage or shipment, and subject to 6 MCAR 4.9004 C. Paragraph C appears to be intended to regulate the activities of a commercial storage and disposal site, but indirectly restricts the generator in the selection of a disposal site for his wastes. Part C.2.c. places the burden of locating a disposal site on the generator at the discretion of the Director. A new paragraph should be added to 6 MCAR 4.9004. C.2.c. (3) to read as follows: (3) If the Director denies approval of a facility operator to accept a hazardous waste, the director shall notify the generator, in writing, and shall designate an alternate disposal site that can and will accept the waste. When delays in the designation of alternate disposal sites result in violations of subparagraph I.2. of paragraph C, the storage limitations of subparagraph I.2. of paragraph C. shall be waived.

The provisions of 6 MCAR 4.9004 I.2. and 6 MCAR 4.9005 I.2.(2) are unclear in that "date storage began" and accumulation start date" are not defined. In addition, the provisions of these paragraphs place an unnecessary administrative and financial burden on small generators who will be required to make frequent shipments of small lots of waste to out of state disposal sites. The second sentence should be changed to read as follows: "The length of accumulation is calculated from the date the filled container is placed in storage. The effective date of this paragraph is the date in which a treatment, storage, or disposal facility for the specific waste is placed in operation in the State of Minnesota."

101 NORTH THIRD STREET · MOORHEAD, MINNESOTA 56560 · (218) 236-4400

6 MCAR 4.9008 E. "Signing and submission of hazardous waste shipping papers" requires the preparation and signing of seven copies of the shipping papers. This is one more copy than required by EPA for interstate shipments and more than available in commercially printed manifest forms. The unnecessary administrative burden can be eliminated by permitting the generator, under Par. E.1. and E.3. to mail a copy of the signed paper to the specified address. The number of copies would be reduced to five and would relieve the generator of the requirement to regulate the activities of out of state disposal facilities.

Sincerely,

I. V. Fordyce, Manager
Environmental Control

IVF/mlj

MINNESOTA ASSOCIATION
OF
COMMERCE AND INDUSTRY

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MINN. POLLUTION
CONTROL AGENCY

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(612) ~~221-1875~~ 292-4661

JAMES T. (Ted) SHIELDS
Vice-President
Energy & Environmental Affairs

February 5, 1981

Mr. Larry Christensen
Division of Solid Waste
Minnesota Pollution Control Agency
1935 W. County Road B2
Roseville, Minnesota 55113

Re: Proposed Amendments to
Hazardous Waste Rules
Noticed in the January 5,
1981 State Register (5 S.R. 1079)

Dear Mr. Christensen:

MACI proposes the following amendments to the hazardous waste rules noticed for comment in 5 S.R. 1079.

6 MCAR §4.9004

C.2.a.(4)
The shipping papers and the labels are inconsistent with regard to the quantity, type or number of containers.

Reason: The term "inconsistent" is too inclusive and could be defined as requiring the facility operator to actually test the contents of the shipment to determine if they were in exact accordance with the shipping papers. This would be an unreasonable burden. What is reasonable is that the shipment be inspected to assure that the items identified in 6 MCAR §4.9008 C.3.d. are consistent with the shipping papers.

Further in this paragraph (C.2.a.(4)) and in paragraph C.2.b.(5), a limit of five (5) days is given for the mailing of a report to the agency. Since the agency already has been notified by telephone (paragraph a. and b.), and since in a number of situations it would be impossible to prepare an accurate and complete report in such a short time, the rules should specify a limit of ten (10) working days in these two paragraphs.

C.2.c.(2)
The second sentence (i.e. The director shall act as expeditiously as possible.) should be placed in the rule so that it is clear that it applies to both C.2.c.(1) and C.2.c.(2).

6 MCAR §4.9005

F.2.

Immediately upon arrival at the hazardous waste facility the transporter shall notify the operator of any discrepancy in the quantity, type or number of containers ~~between the hazardous wastes~~ listed on the shipping papers and the hazardous waste shipment being delivered to the hazardous waste facility.

Reason: It is unreasonable to expect the transporter to know of any discrepancy in the shipment, other than the quantity, type or number of containers listed on the shipping papers. Certainly, he could not be expected to know if the contents of the containers are accurately and fully described unless he were to test them.

G.

Registration of hazardous waste transporters. Any person who transports hazardous waste that originates or terminates in Minnesota shall ~~register with the agency and~~ obtain an identification number from EPA prior to transporting -----.

Reason: This is a totally unnecessary step in the process. Furthermore, there is no established procedure for "registering" with the agency.

There are other portions of the rules which cause us some concern; however, suggestions for corrections in those portions will be presented directly by several MACI members.

We urge you to make the recommended changes to assure a workable set of rules.

Sincerely,

James T. Shields

JTS:cms

Henkel

Henkel Corporation
2010 East Hennepin Avenue
Minneapolis, MN 55413
612/378-8800

February 5, 1981
Rad-7-81

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FEB 6 1981
MINN. POLLUTION
CONTROL AGENCY

Larry Christensen
Division of Solid Waste
MPCA
1935 W. County Road B2
Roseville, Minnesota 55113

Dear Larry,

I am submitting the following comments on the proposed non-controversial rule changes to the Minnesota Hazardous Waste Management Regulations published in the January 5 State Register.

6 MCAR § 4.9008 C.3.e.

Included with appropriate DOT paragraphs should be 7 49 CFR 172.102, the alternate Hazardous materials table.

Since Minnesota has classified wastes as hazardous which are not restricted under DOT regulations, at times there will be no DOT Description. §4.9008 C.3.e. should be amended to read:

The Description of waste(s) [e.g., proper shipping of name, etc.] required by regulations of the U.S. Department of Transportation in 49 CFR §§ 172.101, 172.102, 172.202 and 172.203 if applicable; other wise the description listed on your Minnesota Hazardous Waste Declaration.

6 MCAR § 4.9008 E.3.

It is quite probable that a generator will not receive a signed shipping paper from the waste facility within 10 days after the facility received the shipment. In order to be in line with federal regulations and remove the possibility that the generator will be in violation through circumstances totally beyond his control, the paragraph, starting from "subparagraph 1 of this paragraph" should be amended as follows:

"Within 35 days of the acceptance of the hazardous waste by the hazardous waste facility. If the generator is unable to comply with this deadline, a letter of explanation must be sent to the address listed in subparagraph 1 of this paragraph within 5 working days after the expiration of the 35 day time period.

I see one other problem with this paragraph. How is the generator going to know that the facility has submitted the proper documentation to the Hazardous Waste MIS.

Sincerely,

Eric Radke
Safety Coordinator

cc: D. Vaughn
E. Radke
HTCF-A(2)
File

Telex 29-0228
Cable HENKEL EHL

Environmental Engineering
and Pollution Control/3M

PO Box 33331
St. Paul, Minnesota 55133
612/778 4791

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MINN. POLLUTION
CONTROL AGENCY

3M

February 6, 1981

Subject: Proposed Amendments to the
Minnesota Rules Governing the
Management of Hazardous Waste

Mr. Larry Christensen
Division of Solid Waste
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, Minnesota 55113

Dear Mr. Christensen:

This letter is being submitted to the Minnesota Pollution Control Agency (MPCA) as formal comment to the proposed revisions to the Minnesota Hazardous Waste rules. The subject revisions, published January 5, 1981 in the Minnesota State Register, are intended for passage through the non-controversial rule-making process making formal comment necessary due to several significant inconsistencies.

Prior to comment on the proposed revisions, however, it is necessary to comment on the overall complexity of compliance with two differing sets of hazardous waste requirements within Minnesota and the Agency's strategy towards receiving interim authorization from the EPA.

The MPCA in its "Statement of Need and Reasonableness" for the proposed revisions has stated that the intent of the rule revision is to alleviate the complexity of duplicative hazardous waste rules, to become substantially equivalent to the Federal hazardous waste regulations, and to address comments previously submitted by the Legislative Commission to Review Administrative Rules (LCRAR).

The key difference between the State and Federal regulations at present is the hazardous waste criteria. The LCRAR recommended that the criteria be revised towards uniformity with the EPA and yet the State hazardous waste criteria is not even addressed in the January 5, 1981 proposed revisions. In as much as the proposed revisions only partially address the very justification for proposal itself, the revision obviously cannot remedy the current undesirable situation industry is faced with.

Through several meetings held prior to this date with MPCA staff, MACI and various industry representatives, the necessity of uniformity between State and Federal regulations has continually surfaced. A consistent uniform State/Federal program will not lessen the Agency's control over hazardous waste within Minnesota but instead will make the State program much more efficient and effective.

Although the proposed revisions will alleviate some of the duplicative problems, the revisions themselves show the need for consistency with the Federal regulations as addressed in the following comments:

6 MCAR 4.9002 E.2.

Although through this revision Minnesota does define one "leachate test" consistent with the EPA, the differences of the MPCA List 1 and List 2 with the EPA characteristic of EP Toxicity present a serious inconsistency. If the MPCA receives interim authorization from the EPA, how would industry comply with other State requirements when shipping Barium, Selenium and Silver containing wastes interstate? List #1 should be deleted and List #2 should be identical to the Federal EP Toxic list.

6 MCAR 4.9002 H.1.

This proposed amendment requires that a "hazardous waste" label be applied to containers if they contain a hazardous waste as specified by 49 CFR Part 172 Dept. of Transportation hazardous material regulations. Compliance with this requirement would eliminate the necessity of applying hazardous waste labels on wastes classified through Minnesota regulations but not by the EPA and DOT.

Obviously, either the MPCA hazardous waste criteria should be modified to conform to EPA/DOT standards or additional wording should be incorporated to cover the MPCA hazardous wastes differing from EPA/DOT.

6 MCAR 4.9004 c.2.a. (4)

The term inconsistent is not clear and should read:

(4) "The shipping papers and the hazardous waste shipment are inconsistent with regard to quantity, type or number of containers."

6 MCAR 4.9004 c.2.b. (4)

Change wording to "within five (5) working days, a.....".

6 MCAR 4.9004 c.2.b. (5)

Change wording to "within five (5) working days, a.....".

6 MCAR 4.9004 c.2.c. (2)

A time limit for action by the Director on a request should be specified. Action within five (5) working days would be appropriate due to serious implications with the accumulation time at the generating site.

6 MCAR 4.9004 I.2.

The provision for exempting small volume containerized storage facilities from having to acquire facility permits is still in conflict with Federal standards. The provision does not limit volumes for 40 CFR 261.33 (e) listed chemicals and still retains the 5,000 gallon capacity limit. Wording should change to only address 90 day storage limits, generators exempted under Federal standards and the 261.33 (e) listed chemical limits.

The 5,000 gallon capacity limitation should be dropped as it is too inclusive and doesn't allow for use of common tank trucks as temporary storage containers. The 5,000 gallon capacity limitation could, however, be changed to 9,000 gallons capacity to relive this situation.

6 MCAR 4.9005 G.

Registration with the Agency and EPA is duplicative and unnecessary. The "registration with the agency" clause should be deleted.

6 MCAR 4.9006 I.2.

See comments for 6 MCAR 4.9004 I.2.

6 MCAR 4.9008 c.3.e.

As required under Federal standards, hazardous waste must be identified (described) through DOT proper shipping name, DOT hazardous class, UN number and EPA waste code. For those wastes classified as hazardous under Minnesota regulations but not EPA/DOT, however, a proper DOT description will not exist. Minnesota should amend their hazardous waste criteria to conform to EPA standards to avoid this type of discrepancy. If not, any material description could be used for the Minnesota hazardous wastes not classified under EPA/DOT regulations.

Additional wording requiring the use of a description of "Hazardous Waste" for those wastes that are hazardous by MPCA but not by the EPA/DOT would severely limit the acceptance of those wastes in landfills currently used out of state.

6 MCAR 4.9008 E.1.

The limitations for generators and facilities regarding mailing copies to "MIS" are overly stringent and should be changed to more practical limits. The facility operator in-state should have at a minimum ten (10) days to return a copy to the generator and to mail a copy to "MIS".

Since there are no commercial hazardous waste facilities within Minnesota, requirements on facility operators regarding manifest copy distribution is a mute point. If it is intended to require the generator to return a completed copy to MIS after receiving the copy from the out-state facility operator, it should be so stated.

And if this in fact is the intention, a limit of 20-25 days would be more appropriate taking into account mailing time, recordkeeping and accounting time needed to process the manifest.

Notification to the generator by the facility after ultimate disposition is unnecessary, costly and burdensome. Treatment of hazardous waste would in the context of this requirement also lead towards confusion. This requirement should be deleted.

Your consideration of the comments on the proposed revisions and the MPCA strategy for the State hazardous waste program is appreciated. It would also be appreciated if you would

forward a copy of the final revisions to me and if you wish to discuss any of the above comments, please feel free to call me at 778-5058.

Very truly yours,

Daryl C. Huggett
Adv. Environmental Scientist

DCH/dmt

BURLINGTON NORTHERN

LAW DEPARTMENT

176 East Fifth Street
St. Paul, Minnesota 55101
Telephone (612) 298-2121

HAND DELIVERY

February 6, 1981

Mr. Larry Christensen
Division of Solid Waste
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, Minnesota 55113

Re: Proposed Amendments to State Hazardous Waste Rules

Dear Mr. Christensen:

Enclosed are the comments of the Minnesota Railroads Association on the proposed amendments to the State's hazardous waste rules.

Sincerely,

Shirley A. Brantingham
Attorney

SAB:si

Enclosure

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MINN. POLLUTION
CONTROL AGENCY

BEFORE THE

MINNESOTA POLLUTION CONTROL AGENCY

PROPOSED AMENDMENTS TO THE RULES
GOVERNING THE MANAGEMENT
OF HAZARDOUS WASTES

COMMENTS OF MINNESOTA RAILROADS
ASSOCIATION

Shirley A. Brantingham
176 East Fifth Street
St. Paul, Minnesota 55101

For the Minnesota Railroads
Association

Due Date: February 6, 1981

COMMENTS OF MINNESOTA RAILROADS ASSOCIATION

The Minnesota Railroads Association ("Railroads" or "Minnesota Railroads") hereby submit the following comments on the proposed amendments to the rules governing the management of hazardous wastes published in the State Register on Monday, January 5, 1981.

6 MCAR §4.9003 GENERATION OF HAZARDOUS WASTE

The Railroads strongly support the PCA's adoption of the U.S. Department of Transportation regulations on labeling hazardous waste containers and portable tanks. 6 MCAR §4.9003 H.1. The initial rules adopted by the Agency were inconsistent with the U.S. Department of Transportation's rules and regulations in 49 C.F.R. Parts 171 and 172. This inconsistency created an insolvable dilemma because the federal regulations specify that no person can transport a hazardous material unless it is handled and transported in accordance with the DOT regulations (49 C.S.R. §172.2) and that any hazardous material must be labeled in accordance with DOT labeling requirements (49 C.F.R. §172.401).

Adoption of the federal labeling requirements eliminates most of the problems. However, since Minnesota continues to define hazardous waste as encompassing a larger universe of substances than do the U.S. Department of Transportation and Environmental Protection Agency, certain wastes defined as hazardous by Minnesota regulations, but not by the federal regulations, have no prescribed label.

6 MCAR §4.9004 LOCATION, OPERATION AND CLOSURE OF A HAZARDOUS WASTE FACILITY

Paragraph C.2. is being amended to require a facility operator to notify the PCA if certain specified discrepancies exist in the tendered shipment of hazardous waste. (The previous rules forbid the facility operator to accept such a shipment.) Additionally, a follow-up report fully describing the discrepancy and its resolution must be mailed to the Agency.

The Minnesota Railroads urge the Agency to extend the five-day period for mailing the follow-up report to at least ten working days. While Railroads themselves will be rarely, if ever, required to file such a report as facility operators, it is anticipated that they frequently would be requested to aid in investigation of any such discrepancies. Five days is simply too short a time period to complete the investigation which could be needed to resolve the discrepancy. Ten working days would allow nearly as much time for the follow-up report as in the EPA's regulations, which allow 15 days. 40 C.F.R. 265.72.

Additionally, since the Agency is for the first time requiring an accounting of discrepancies, Railroads urge that the Agency adopt the U.S. EPA designation of a significant discrepancy in quantity in the manifest and require that the facility operator notify the Agency only if significant discrepancies as so defined must be reported. See, 40 C.F.R.

265.72. The EPA defines significant discrepancies in quantity as (1) for bulk waste, varations greater than 10 percent in weight, and (2) for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Such a specification would be consistent with the intent of this section and would eliminate problems such as a difference in calibration of scales. This designation would greatly decrease the paperwork burden on facility operators while according adequate protection to the public. It would also allow the Agency to focus on those discrepancies which are significant and not expend Agency resources in monitoring insignificant discrepancies.

For clarity it is recommended that the rules be amended to specify that the follow-up reports required by paragraphs C.2.a. and b. are to be submitted by the facility operator. It appears this is the intent of the rules, but to eliminate any possible questions it should be specified.

6 MCAR §4.9004 I. SMALL HAZARDOUS WASTE CONTAINERIZED STORAGE FACILITIES

It is urged that the Agency modify paragraph 2. to state that the date from which the 90 days is calculated begins on the date which the accumulated waste first equals or exceeds 2,200 pounds (1,000 kilograms). This change would be consistent with the EPA regulations for on-site accumulation for a small quantity generator. 40 C.F.R. §261.5 (published on November 19, 1980, at 45 F. R. 76623).

Minnesota Railroads also suggest that the Agency eliminate the reference to the capacity of less than 5,000 gallons for hazardous waste containerized storage facilities. The new weight limitation provides adequate protection and could replace rather than supplement the previous standard. Elimination of the 5,000 gallon requirement will not impair the Agency's ability to monitor hazardous waste but will reduce the burden of paperwork on the regulated industries and the Agency.

The same comments apply with equal force to 6 MCAR §4.9006 I.2.

6 MCAR §4.9005 TRANSPORTATION OF HAZARDOUS WASTE

Paragraph F.2. is new and requires transporters to notify the facility operator of any discrepancy between the hazardous waste listed in the shipping papers and hazardous waste shipments being delivered to the facility. Railroads strongly object to this requirement which has no counterpart in the federal regulation to the best of our knowledge. Rail carriers (and other transporters) do not necessarily have any knowledge of, or any method of learning of, discrepancies between the wastes listed on the shipping papers and the hazardous waste shipment delivered. First, without a chemical analysis, it would generally be impossible for a transporter to ascertain differences in types of hazardous wastes between the shipping papers and the shipment delivered. Second, it generally would

be impossible for a transporter to know of discrepancies between quantity of hazardous wastes listed on the shipping papers and hazardous waste shipments delivered. If a sealed boxcar is tendered to the rail carrier, for example, the railroad cannot verified the number of containers within or the labeling of these containers. The proposed rule also ignores the problems in complying with such requirements when multiple carriers and crew changes are involved. Railroads currently do not have any mechanism for passing this information from carrier to carrier (or even from train crew to train crew) in interchanging traffic.

There are other methods available to receive this same information. If there is an accident involving the hazardous waste shipment, carriers must give notice to the appropriate agencies. If there is a discrepancy between the shipment and the shipping papers as delivered to the facility operator, the facility operator must notify the Agency. This provision is redundant, is not required by the federal regulations, and would be overly burdensome on transporters. Minnesota Railroads urge that the Agency entirely strike the provisions in §4.9005 F.2.

The proposed rules contain a new requirement in paragraph F.1. that no person shall deliver hazardous waste to a hazardous waste facility if the facility operator does not have a hazardous waste facility permit from the PCA. This language appears to impose a new requirement that transporters must

ascertain if the facility operator is permitted by the PCA. This would require railroads to make an independent search to ensure the hazardous waste facility was permitted and could require carriers to act inconsistent with their duties as common carriers. As common carriers, railroads are obligated to transport any commodities tendered to it for transportation pursuant to the terms of the tariff on file with the Interstate Commerce Commission or the state agency having jurisdiction over transportation. Carriers cannot refuse to deliver a shipment which has been properly tendered to them pursuant to the terms of the tariff. In addition, the burden of determining whether a facility has the proper permit should not fall on the transporter. The State of Minnesota properly placed the burden on the generator in the previous rules. The indicated change in the proposed rule is not justified.

Paragraph G of §4.9005 has retained the requirement that transporters register with the PCA but now requires the carrier to obtain an identification number from EPA. Since the transporter will be registered with the EPA and will use the EPA identification number in transporting hazardous wastes, there is no need for the transporter to register with the PCA or to keep the Agency advised of its current address.

6 MCAR §4.9008 HAZARDOUS WASTES SHIPPING PAPERS

While the proposed rules are generally consistent with the EPA and DOT regulations, this section on a whole remains

significantly different from federal requirements. This is an area which Minnesota Railroads urge the Agency to review as a whole, rather than piecemeal. Nonetheless, Railroads have the following comments on the proposed rules.

Railroads commend the PCA on adopting the hazardous material descriptions of the U.S. Department of Transportation on shipping papers. However, as noted above regarding labeling of hazardous waste containers, there is some difficulty in describing wastes which are defined as hazardous by Minnesota rules but not by the federal regulations. Railroads can only suggest to the Agency that it take future action to adopt the federal definitions of hazardous waste.

The proposed rules now require that an original and four copies of shipping papers be delivered to the transporter. The transporter is to retain one copy and give the remaining original and copies to the facility operator. This assumes that only one transporter will be involved in the shipment. It is quite likely that multiple transporters will be used in completing the shipment. The regulations should provide that enough copies are given to the origin transporter that each carrier that is required to retain a copy of the shipping papers will receive them.* Paragraph E.1. should be amended accordingly.

---

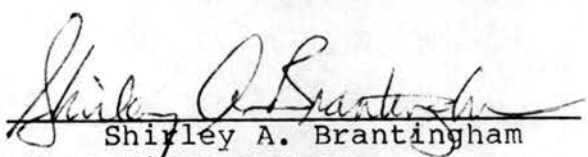
* The Agency should note the amendments to the regulations at 40 C.F.R. 123 and 263 (published at 45 F.R. 86973-4, December 31, 1980), which prescribe new shipping paper requirements for rail carriers.

Railroads also recommend that provision E.3., which now requires that generators have a copy of shipping papers sent to the Agency within ten days of acceptance of the hazardous waste by a facility located outside the State of Minnesota, be further amended to parallel the federal requirements. Section 262.42 of Title 40 of the Code of Federal Regulations requires that a generator who does not receive shipping papers with the facility operator's signature within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the facility operator to determine the status of the hazardous waste. If the generator has not received a copy of the manifest within 45 days, it must file an exception report with the EPA. Since it could be difficult to force an out-of-state facility operator to return the shipping papers so PCA's provision can be complied with, the federal alternative provides a method of tracking the waste which Minnesota generators can control. The generator will not necessarily know when the facility operator accepts the hazardous wastes except by continually contacting the facility operator. Thus, the generator normally will not know specifically when the ten days begins to run and, in any event, cannot ensure that the facility operator will return the shipping papers to the Agency in time to comply with this provision. The generator can, however, maintain a monitoring system for return of shipping papers within a period that commences by its action of tendering a hazardous waste shipment to a transporter. In addition,

the Agency could require the generator to send a copy of the signed shipping papers to the Agency within a reasonable time (say, 10 days) after receipt from the facility operator. This is not a significant change from what is proposed, but makes the generator responsible only for actions which it can control.

Respectfully submitted,

MINNESOTA RAILROADS ASSOCIATION

By 
Shirley A. Brantingham
176 East Fifth Street
St. Paul, Minnesota 55101

Due Date: February 6, 1981.

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Rules of the Pollution Control Agency Governing the Management of Hazardous Waste.

Statement of Need and Reasonableness

INTRODUCTION

On June 18, 1979, Minnesota's Hazardous Waste Rules were promulgated. These rules established a cradle to grave regulatory system which governs the identification, labeling, classification, storage, collection, transportation, and disposal of hazardous wastes.

On May 19, 1980, the federal government published the federal hazardous waste regulations which, although different in approach, set up a management system similar to that in Minnesota's rules 45 F.R. 33066-33588; 40 C.F.R. Parts 260-265. As of November 19, 1980, the date the federal regulations took effect, there are two sets of hazardous waste rules in the state. The result is that industry must often comply with duplicate requirements such as two sets of shipping papers or labels, or, where requirements differ, industry must always meet the more stringent criteria. In order to alleviate this situation, the Agency has proposed certain revisions to the state rules.

This document constitutes the Statement of Need and Reasonableness prepared by the Agency in support of revisions to Minnesota's Hazardous Waste Rules, 6 MCAR § 4.9001 through 4.9010. This statement is divided into two sections: I. Need for Revisions to Minnesota's Hazardous Waste Rules; and, II. Reasonableness of Revisions to Minnesota's Hazardous Waste Rules.

I. NEED FOR PROPOSED REVISIONS TO MINNESOTA HAZARDOUS WASTE RULES

The need for the proposed rule revisions arises from the following factors which will be addressed in detail below:

A. A review of the state rules as compared to the new federal rules by the Legislative Commission to Review Administrative Rules, (LCRAR);

B. The Agency's plan to implement program modifications which will allow the U. S. Environmental Protection Agency (EPA) to grant Interim Authorization to Minnesota to administer the state program in lieu of an EPA program.

A. Certain Rule Revisions are Proposed in Response to a Report from LCRAR. (Attachment 1)

During 1979 and 1980 the LCRAR received several requests to review the Minnesota Pollution Control Agency (MPCA) Hazardous Waste Rules. In comparing the state and federal rules the LCRAR felt the state regulatory system was similar to the federal one in that it followed the same "cradle to grave" concept for regulating hazardous waste. However, there were some differences noted. In an effort to assure that the state program would be as comprehensive, fair and as workable as possible, the LCRAR made several recommendations for amendments to the state hazardous waste rules to make the program substantially equivalent to the federal program. Two of the recommendations are addressed by these rule revisions as follows:

1. Allow prior knowledge of the constituents of a waste to eliminate unnecessary testing. (See Part E.)

2. Change shipping paper or manifest requirements to be equivalent to the federal requirements. (See Part M.)

Thus, the proposed Minnesota Hazardous Waste Rule revisions are necessary and integral parts of the State's efforts to respond to the LCRAR recommendations relative to MPCA's rules and policies for the management of hazardous waste.

B. Certain Rule Revisions are Proposed in Response to U. S. EPA Requirements for Interim Authorization to Administer the State Program in Lieu of the Federal Program

In accordance with 40 C.F.R. Part 123, Subpart F. of EPA's May 19, 1980 Hazardous Waste and Consolidated Permit Regulations the MPCA submitted to the U. S. EPA a draft application for interim authorization on August 1, 1980. By obtaining this authorization, the Agency would administer the state program in lieu of the federal program and Minnesota industry would have one set of hazardous waste rules to comply with instead of two. In response to the draft application, the U. S. EPA submitted extensive comments (Attachment 2) to the MPCA on September 9, 1980, that pointed out several areas of concern that, if not addressed, would prevent the MPCA from gaining interim authorization. The general tone of the U. S. EPA comments is reflected in the conclusion of the executive summary (Attachment 2) of issues.

> The State must satisfactorily address all these concerns before U. S. EPA can approve Interim Authorization of Minnesota's program. Many of these concerns are definite gaps in regulatory authority and unless there are as yet untapped regulations, we do not see how these gaps will be filled.... The identified regulatory gaps and the additional detailed information requested indicate that a second draft application should be submitted.

In response to these comments the MPCA has developed a strategy which includes the rule revisions discussed in this statement. The MPCA Hazardous Waste Rule revisions initiate the effort to obtain interim authorization from the U. S. EPA. This authorization would eliminate the burden and confusion of two very similar programs.

C. Conclusion.

LCRAR and EPA have made recommendations for the State Hazardous Waste program to be substantially equivalent to the federal program. MPCA has responded to these recommendations by proposing amendments to the Minnesota Hazardous Waste Rules. These amendments are necessary if the State is to qualify for Interim Authorization allowing Minnesota to administer the State program in lieu of the U. S. EPA program.

II. REASONABLENESS OF PROPOSED MINNESOTA HAZARDOUS WASTE RULE REVISIONS.

A. 6 MCAR § 4.9001 B. Definitions.

The word "manifest" is used on the federal hazardous waste label. In order to allow the use of the federal label in Minnesota, as discussed in Part G., and to avoid duplicate labeling the word manifest is defined as being the same as Minnesota's shipping paper.

B. 6 MCAR § 4.9001 C. Abbreviations.

The abbreviation "EPA" is added because the Environmental Protection Agency is referenced in other rule revisions.

C. 6 MCAR § 4.9001 D. Incorporations.

1. The Extraction Procedure (EP) Toxicity test is specified as the only acceptable acid leach test in the proposed amendment to 6 MCAR § 4.9002 E.2. Therefore, the test procedure, as listed in the May 19, 1980 Federal Register, is incorporated into the rules as an appendix.

2. Certain U. S. Department of Transportation (DOT) requirements for hazardous waste shipping papers are incorporated as appendices since the waste description and other information required on the manifest or shipping paper by the proposed amendment to 6 MCAR § 4.9008 C. must correspond to these requirements and is required by EPA.

D. 6 MCAR § 4.9002 E.2.

This section contains two modifications. The first change specifies the EP toxicity test as the only acceptable leach test. This approach is reasonable since the EP toxicity test is the leach test currently required by EPA 40 C.F.R. § 261.24. This change will satisfy an EPA requirement for Minnesota to obtain interim authorization and will eliminate the possibility that different leach tests would be required by state and federal rules. The second change is a clarification in regard to testing of components in Lists 1 and 2. The rule is amended so that redundant testing is not required when a generator can demonstrate that he knows what the hazardous constituents of the waste are and that the waste will be handled in compliance with the hazardous waste rules. This is a reasonable change since this was the intent of the rule in the first place and the change in wording does not change the requirements of this paragraph.

E. 6 MCAR § 4.9003 F.

This change requires all generators to acquire and use an EPA identification number. Since this is currently a requirement of the federal program, 40 C.F.R. § 262.12, this change does not increase the burden on industry and moves Minnesota closer to a system of hazardous waste management considered equivalent by EPA.

F. 6 MCAR § 4.9003 H.

The changes in the labeling section will eliminate the Minnesota only label requirements and will require the same information as is currently required by U. S. EPA 40 C.F.R. § 262.31 and 262.82. The proposed change will not substantially change the information provided on the labels and will allow Minnesota industry to use a single hazardous waste label rather than the two currently required because of differences in state and federal requirements. Additionally, any firm using a storage tank for hazardous waste may simply display the words "Hazardous Waste" on the tank rather than specifically requiring a hazardous waste label.

G. 6 MCAR § 4.9004 C.

The first change in this section (C.1.k.) is to eliminate portions of the rule which could be used to discriminate against the importation of out-of-state wastes. Portions of this paragraph which relate to wastes the facility operator is not specifically authorized to accept by his permit and which are deleted are reinserted in 4.9004 C.2.e. This proposed amendment is a response to comments by EPA during the interim authorization process. The second change (C.2.) requires that the Agency be notified and discrepancy reports be filed when any of several conditions, such as missing shipping papers or an inconsistency between the waste shipment and the shipping papers, exists when a shipment arrives at the hazardous waste facility. The requirement of filing discrepancy reports is reasonable since these reports assist in the prevention and discovery of improper disposal of hazardous wastes. Additionally, these reports are currently required by EPA 40 C.F.R. § 264.72, 264.76, 265.72, and 265.76 and satisfy a requirement for Minnesota to obtain interim authorization.

H. 6 MCAR § 4.9004 I. and 6 MCAR § 4.9006 I.

These paragraphs previously exempted all containerized storage facilities with a storage capacity of less than 5,000 gallons from many of the operational requirements of § 4.9004 I. as well as the requirement to obtain a hazardous waste facility permit. The change removes the exemption from those firms who accumulate more than 2,200 pounds (1,000 kilograms) and store hazardous waste for more than 90 days. Under the federal system, any firm which produces more than 2,200 pounds, is considered a generator, 40 C.F.R. § 261.5. If this generator stores hazardous wastes for a period of more than 90 days, the firm is also a storage facility, 40 C.F.R. § 262.34. This change is reasonable since it allows Minnesota to consider certain firms as storage facilities which are already storage facilities under federal

regulations, thus making the programs more equivalent, and also because it satisfies an EPA requirement for Minnesota to obtain interim authorization.

I. 6 MCAR § 4.9005 F.

The first change, F.1., in this paragraph is a necessary clarification in wording. As previously worded it could have been interpreted that it was legal to take hazardous waste to an unpermitted facility as long as the generator delivered it. The new wording makes it clear that hazardous waste is not to be delivered to an unpermitted facility nor given to a transporter for delivery to an unpermitted facility. This clarification was suggested by EPA. The second change, F.2., requires the transporter to notify the facility operator on arrival of any discrepancy between the shipment and the shipping papers. Under the federal system the transporter is required to contact the generator if the entire shipment cannot be delivered, 40 C.F.R. § 263.21. The Agency decision to have the transporter notify the facility operator is a reasonable approach because:

1. Since the load must be delivered to the facility, the transporter will already be in contact with the operator, and

2. The facility operator, as well as the generator, submits a copy of the shipping paper to the Agency. In this way the Agency staff will become aware of the discrepancy and take any actions necessary.

This is a reasonable approach since the transporter should be aware of any changes in the shipment since he accepted it from the generator and should be required to notify the facility operator so the facility operator is aware of what he is accepting. This change is in response to requirements by U. S. EPA for interim authorization.

J. 6 MCAR § 4.9005 G.

This change requires the transporter to obtain an EPA identification number rather than the Agency registration number currently required. This change eliminates the need for Minnesota transporters to obtain two separate numbers and, since transporters are already required by federal regulations to obtain an EPA number, 40 C.F.R. § 263.11, there is no extra burden involved. This change is in response to requirements by U. S. EPA for interim authorization.

K. 6 MCAR § 4.9008 C.

This change eliminates a specific Minnesota shipping paper and substitutes the federal requirement allowing any shipping paper which meets federal requirements to be used. Currently, Minnesota industry must use a specific Minnesota shipping paper or manifest when Minnesota wastes are shipped to other states. Since the information required on both documents is essentially the same, in order to eliminate this unnecessary duplication, the Agency prefers to adopt the federal requirements for a manifest or shipping paper. In addition, the LCRAR requested that the Agency adopt the federal manifest to reduce the paperwork required of Minnesota industry.

L. 6 MCAR § 4.9008 E.

The first change in this section establishes that the shipping papers must be signed and dated prior to relinquishing possession. The EPA requested that it be made clear when the papers were to be signed. The second change clarifies the distribution of copies of the shipping papers, but does not change that distribution. The third change shows the address to which the generator and facility operator are to mail copies of the shipping paper. This change is a result of Minnesota going to the federal manifest (shipping paper) requirements. Since the mailing address for the computer tracking system will no longer be on the shipping papers, it is now included on the rule. The fourth change provides that generators who ship to facilities outside the State of Minnesota must ensure that a copy of the shipping paper signed by the facility operator is mailed to the address designated in the rules. This change was made in response to an EPA requirement, 40 C.F.R. § 264.71, for interim authorization. It should be noted that the Minnesota shipping paper tracking system requires the generator and facility to each submit a copy of the shipping paper to the system. When the shipment goes out of Minnesota, the only way for the Agency to know that it arrived at an acceptable destination is to receive a copy of the shipping paper signed by the facility. Since this facility is outside the state and not subject to Minnesota rules, the only method of retrieving the signed shipping paper is through the generator. Through this process the Agency can assure that all hazardous wastes generated in Minnesota are received at the proper destination.

M. Because of the addition or elimination of language in the proposed amendments, several rules have been renumbered. The word "rules" has been substituted for the word "regulations" wherever it appeared in reference to Minnesota rules in the rules proposed for amendment. This change is necessary to make the rules consistent.

In conclusion, most of the rule changes just discussed were made at the request of the EPA and the LCRAR, or both, and are a reasonable approach to mitigating the differences between the federal regulations and those of the state. These changes will also enable Minnesota to achieve interim authorization to administer the state program in lieu of the federal program. This authorization will eliminate the remaining problems associated with the operation of two hazardous waste programs in the state.

Dated: 1/5/81

Terry Hoffman
Executive Director
Minnesota Pollution Control Agency

State of Minnesota

Pollution Control Agency

In the Matter of the Proposed Amendment of Rules of the Pollution Control Agency Governing the Management of Hazardous Waste

Certificate of Board's Resolution Adopting Rules

I, Art Engelbrecht, do hereby certify that I am a member and the Chairman of the Minnesota Pollution Control Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Control Agency duly and properly called and held on the 24th day of February, 1981, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

BE IT RESOLVED, that the Minnesota Pollution Control Agency adopts the attached Findings of Fact and Conclusions.

BE IT FURTHER RESOLVED, that the rules identified as Amendments to the Rules Governing the Management of Hazardous Waste, 6MCAR §§ 4.9001 B., C., and D., 4.9002 E.2., 4.9003 F. and H., 4.9004 C. and I., 4.9005 F. and G., 4.9006 G. and 4.9008 C. and E., be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes Section 116.07, subdivision 4, and that Art Engelbrecht, the Chairman of the Minnesota Pollution Control Agency, be and hereby is authorized to sign an order adopting these rules.

BE IT FURTHER RESOLVED, that the Executive Director is authorized to forward the rules to the Attorney General for approval, to have the rules published in the State Register and to perform the necessary acts to provide that these rules shall have the force and effect of law.

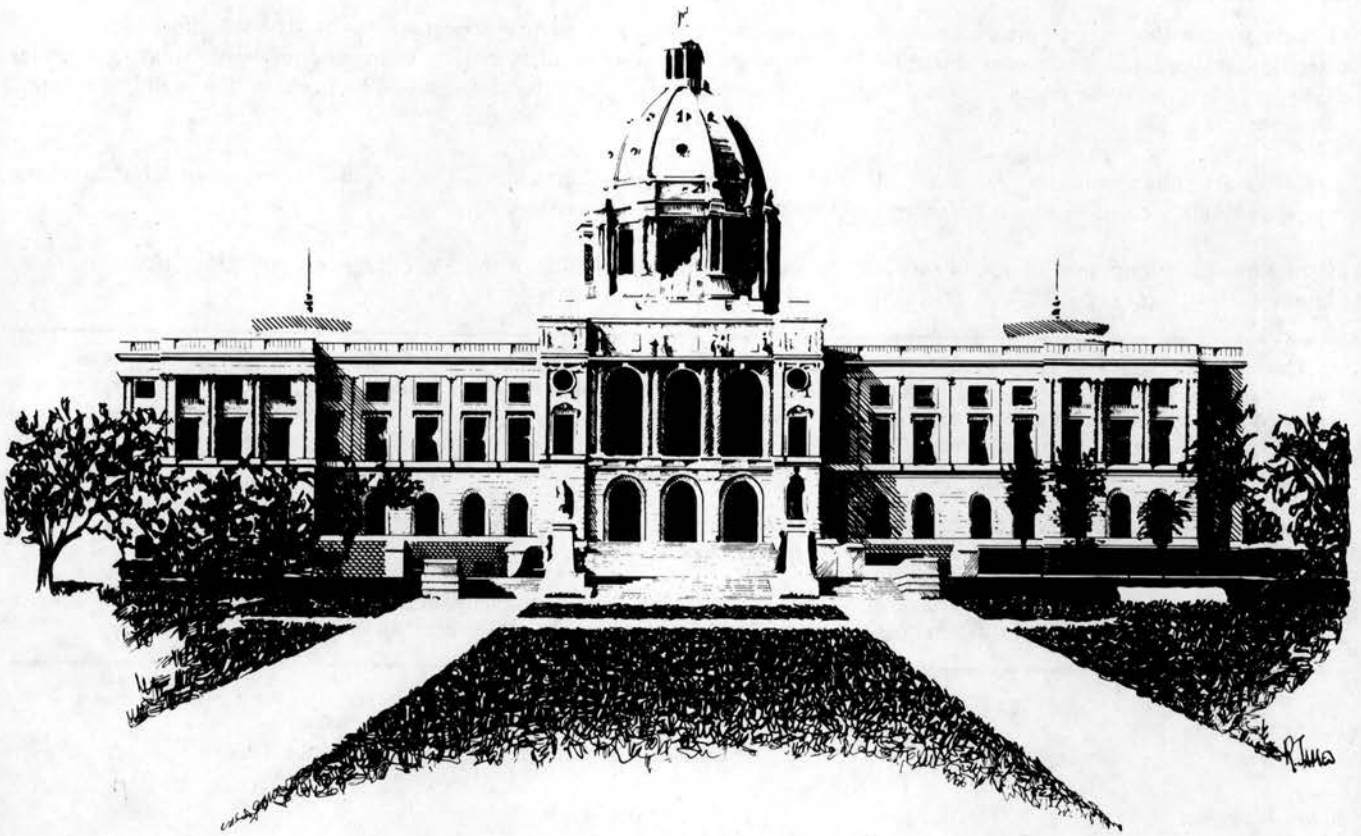
IN WITNESS WHEREOF, I have hereunto subscribed my name this 24th day of February, 1981.

Art Engelbrecht
Chairman

Board Member

STATE REGISTER

STATE OF MINNESOTA



VOLUME 5, NUMBER 27

January 5, 1981

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STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 5		
28	Monday Dec 29	Monday Jan 5	Monday Jan 12
29	Monday Jan 5	Monday Jan 12	Monday Jan 19
30	Monday Jan 12	Monday Jan 19	Monday Jan 26
31	Monday Jan 19	Monday Jan 26	Monday Feb 2

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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Department of Administration

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State Register and
Public Documents Division

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How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION.** Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative lisitngs of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Issues 1-13, inclusive
Issues 14-25, inclusive
Issue 26, cumulative for 1-26
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PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Public Hearings on Agency Rules
January 12-19, 1981

Date	Agency and Rule Matter	Time & Place
Jan. 14	Public Welfare Department Surveillance and Utilization Review Program Hearing Examiner: Jon L. Lunde	9:00 a.m., Minnesota Veterans Home, Building 15, Chapel Auditorium Building, East 51st St. and Minnehaha, Minneapolis, MN

Minnesota Pollution Control Agency
Division of Air Quality

Proposed Revision to Minn. Rule APC 1, 6 MCAR § 4.0001, Relating to Ambient Air Quality Standards

Notice of Hearing

Notice is hereby given that a hearing in the above-entitled matter will be held at the following times and locations:

1. Wednesday, February 11, 1981, 9:30 a.m., and the rest of that week (and the week of February 16, 1981, if necessary) in:
   Minnesota Pollution Control Agency Board Room
   1935 West County Road B-2
   Roseville, Minnesota
2. Monday, February 23, 1981, 7 p.m., and Tuesday, February 24, 1981, 9:30 a.m., in:
   St. Louis County Courthouse
   Fourth Floor
   Duluth, Minnesota
3. Thursday, February 26, 1981, 1 p.m. and 7 p.m., in:
   Friedel Building
   Room 125 A & B
   1200 South Broadway
   Rochester, Minnesota

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Hearing will be continued on subsequent days, if necessary, at a time and place to be determined during the hearing.

The hearing will be conducted by Mr. Howard Kaibel, Jr., Hearing Examiner, Office of Administrative Hearings, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone: (612) 296-8107.

The proposed amendments relate to the ambient air quality standards in APC 1. The Minnesota Association of Commerce and Industry has petitioned the Agency to amend APC 1. The Minnesota Public Interest Research Group, also, has requested the Agency to consider changes in APC 1 to address the acid rain problem. The issues and concerns raised by these groups will be discussed in this hearing process.

The proposed amendments, if adopted, would change APC 1 in the following respects:

1. The definitions of primary and secondary ambient air quality standards would be clarified;

2. The areas where the air quality standards apply would be changed and clarified;

3. New language would be added to address the Agency's enforcement policy with respect to air quality violations;

4. Monitoring requirements would be updated;

5. A date by which secondary standards would have to be attained would be established; and

6. The primary and secondary ambient air quality standards for sulfur dioxide and ozone could be revised. The Agency has proposed a range of numbers for these standards, with the existing state standard on the low end and the existing federal standard on the high end. A range has been proposed to encourage the public to provide available information that will aid the Agency in making a legislative determination of an appropriate standard. Ultimately, the Agency will adopt a specific number for the primary standard, and a specific number for the secondary standard. These specific numbers are likely to fall within the range of numbers proposed, but the Agency urges interested persons to submit information in support of the numbers, including numbers not within the range, they would like the Agency to adopt. Also, there is a possibility that different secondary standards may be adopted for certain areas of the state, and interested persons are encouraged to submit their views on this issue, too.

A free copy of the proposed amendments is available by contacting Jayne Stilwell, Division of Air Quality, Minnesota Pollution Control Agency, Roseville, Minnesota, telephone: (612) 296-7280.

In the interests of economy and efficiency and helpfulness, the Agency hereby requests that any person who has any comments to make or any objection to any part of the proposed amendments submit such comments or objection to the Agency (Attention: Jayne Stilwell) and to the hearing examiner as soon as possible and preferably prior to February 11, 1981. Such comments or objection should:

(1) state concisely and with particularity each portion of the proposed amendments that are supported or to which objection is taken;

(2) state the basis for such support or objection; and

(3) state proposed modifications, the reasons such modifications are sought, and the scientific or other basis for the proposed modifications.

Failure to submit such comments or objections will not prohibit any person from submitting written or oral statements in the record at the hearing. Any comments or objections received by the agency will be made a part of the hearing record. To the extent possible the agency will respond to these comments and objections at the hearing.

The agency's authority to promulgate amendments to APC 1 is found in Minn. Stat. § 116.07 subds. 2 and 4 (1978).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The Statement of Need and Reasonableness will summarize the agency's reasons for the proposed amendments, identify manuals and reports and other documents relied upon by the Agency, and list those persons, including experts, who will present written or oral comments and information at the hearing on behalf of the Agency. In addition to the Office of Administrative Hearings, copies of the Statement of Need and Reasonableness are available from Jayne Stilwell at the address above. Also, interested persons may contact the agency and request copies of the written testimony, which will be made available to the public upon completion.

This proceeding is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052 and by the rules of the Office of Administrative Hearings, 9 MCAR §§ 2.101-2.113, and by other applicable requirements of state law. The hearing will be conducted so all interested persons will have an opportunity to participate.

At the hearing the agency will, through written or oral testimony, or both, and the introduction of exhibits, explain the proposed amendments and the agency's reasons for proposing the amendments. Copies of the written testimony and the Statement of Need and Reasonableness will be available at the hearing.

Upon completion of the agency's presentation, interested persons will be given an opportunity to address questions to the agency representatives and to be heard on the proposed amendments by submitting written and oral statements. It is the agency's intent and desire that after the agency has completed its presentation, comments and statements be received from interested persons before proceeding to questioning and an opportunity to question the agency be afforded all persons upon completion of the exchange of information and comments.

Any person who has any questions about the procedure to be followed may contact the hearing examiner. The agency is also available to discuss scheduling problems and other concerns that particular interested persons may want to bring to the agency's attention. Any objections to the order of this proceeding will be determined by the hearing examiner at the hearing.

Interested persons who wish to make statements may do so by responding to the information presented by the agency and by offering new information. In addition, interested persons may request the agency to provide further explanation about certain proposed amendments for which the person is unclear about the agency's reasons. All interested persons submitting oral statements are subject to questioning by representatives of the agency. The agency will, if possible, present its questions in writing and will provide each person an opportunity to present the requested information in writing if necessary.

During the hearing the agency will respond to the objections and comments and information presented at the hearing by interested persons. Interested persons may also respond with written or oral statements to any new information presented by the agency.

During the questioning period the agency will provide the best answer it can to relevant questions, and to that end the agency will rely on the witness or witnesses who are most familiar with the issue or fact in question. The agency may rely on a panel of witnesses if such is necessary to provide the necessary information. The agency requests that interested persons make every effort to present their questions in writing, so the Agency can adequately and completely respond.

Upon completion of the hearing, the record will remain open for five (5) working days, or for a longer period not to exceed twenty (20) calendar days if ordered by the hearing examiner. Any person may submit written statements to the hearing examiner during this period.

Please be advised that the proposed amendments are subject to change as a result of the rule hearing process. Any changes made could make the rules more stringent or less stringent. The agency urges those who are interested to any extent in the proposed amendments, including those who support the amendments as proposed, to participate in the rule hearing process. The Agency also urges municipalities who operate emission facilities, such as power plants, to participate in this proceeding because the ambient air quality standards that are adopted will have an impact on these municipalities. Those interested in the ambient air quality standards for sulfur dioxide and for ozone are especially encouraged to participate because a range has been proposed for these standards and the Agency will adopt specific numbers after consideration of all the evidence presented during the hearing. The numbers adopted as secondary standards may not be the same for all areas of the State and persons are encouraged to make their views known regarding this concept of regional standards.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979) Supp. as any individual:

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike~~ ~~outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike~~ ~~outs~~ indicate deletions from proposed rule language.

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

December 19, 1980

Terry Hoffman
Executive Director

Amendments as Proposed

6 MCAR § 4.0001 APC 1 Ambient Air Quality Standards

~~(a)~~ A. The "primary" ambient air quality standards are levels of air pollutants above which, on the basis of present knowledge, public health hazards or impairment may be produced. ~~Health hazards include not only production, aggravation or possible production of disease, but also interference with function. Health impairment includes sensory irritation and impairment of well-being by such phenomena as odor.~~ The "secondary" ambient air quality standards are levels ~~which are desirable~~ established to protect the public welfare from any known or anticipated adverse effects, such as injury to agricultural crops and livestock, damage to or deterioration of property, annoyance and nuisance of persons, ~~sensory impairment and obstruction,~~ or hazards to air and ground transportation.

~~(b)~~ B.1. No person shall emit any pollutant in such an amount or in such a manner as to ~~exceed~~ cause or contribute to a violation of any ambient air quality standard ~~herein beyond such person's property line,~~ established in Part E of this rule, as measured on or above any property to which the general public has access.

2. The requirement specified in subparagraph B.1. shall apply without respect to whether emission ~~regulations~~ rules stated in other air pollution control ~~regulations~~ rules of the Agency are also being violated. However, in enforcing the ambient air quality standards specified in this rule, the Agency shall not seek payment of a civil or criminal penalty from a person to or with whom a permit or stipulation agreement has been issued or entered into by the Agency if and only if:

a. that permit or stipulation agreement establishes emission limitations or standards of performance for the pollutant or precursor thereof for which there is an ambient air quality standard which has been violated; and,

b. the person to or with whom the permit or stipulation agreement has been issued or entered into by the Agency was in compliance with the corresponding emission limitations and standards of performance at the time of the violation of the ambient air quality standard.

3. Notwithstanding subparagraph B.2., any violations of the ambient air quality standards shall constitute grounds for the modification or revocation of a permit, for action by the Agency to amend a stipulation agreement, or for other enforcement action by the Agency to further require reduction or control of that person's emissions.

C.1. For all ambient air quality standards except hydrogen sulfide, measurements made to determine compliance with the standards shall be performed as set forth in:

a. 40 C.F.R. Part 50—National Primary and Secondary Ambient Air Quality Standards, or,

b. 40 C.F.R. Part 53—Ambient Air Monitoring Reference and Equivalent Methods, and,

c. 40 C.F.R. Part 58—Ambient Air Quality Surveillance.

C.2. For hydrogen sulfide, measurements made to determine compliance with the standards shall be performed in accordance with any measurement method approved by the Director. The Director shall approve a measurement method if the Director finds:

a. that the method demonstrates acceptable sensitivity, precision, accuracy, response time and interference levels as related to the standard; and

b. that the person seeking to take the measurement has developed and submitted to the Agency an acceptable quality assurance plan.

D. The State secondary ambient air quality standards for sulfur dioxide and ozone, that are more restrictive than the state primary ambient air quality standards, shall be attained as expeditiously as practicable but in no case later than December 31, 1986.

~~(c)~~ E. State Ambient Air Quality Standards~~(a)(b)(c)~~

[The Agency has proposed a range of numbers for the ozone and sulfur dioxide standards. Ultimately, the Agency will adopt a specific number for each primary standard and a specific number for each secondary standard.]

Pollutant/Air Contaminant	~~Concentration~~ Primary Standard	Secondary Standard	Remarks
~~(1).~~ Hydrogen Sulfide~~(d)~~ ~~(primary standards)~~	0.05 ppm by volume (70.0 micrograms per cubic meter)		½ hr. average not to be exceeded over 2 times per yr.
	0.03 ppm by volume (42.0 micrograms per per cubic meter)		½ hr. average not to be exceeded over 2 times in any 5 consecutive days
~~(2).~~ Ozone ~~Photochemical(e) Oxidants (primary and secondary standards)~~	0.07-0.12 ppm by volume (130-235 micrograms per cubic meter)	0.07-0.12 ppm by volume (130-235 micrograms per cubic meter)	~~maximum 1 hr. concentration not to be exceeded more than once per yr.~~ the standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above the standard is equal to or less than one, as determined by 40 C.F.R. Part 50, Appendix H—Interpretation of the National Ambient Air Quality Standards for Ozone
~~(3).~~ Carbon~~(e)~~ Monoxide ~~(primary and secondary standards)~~	9 ppm by volume (10 milligrams per cubic meter)	9 ppm by volume (10 milligrams per cubic meter)	maximum 8 hr. concentration not to be exceeded more than once per yr.
	30 ppm by volume (35 milligrams per cubic meter)	30 ppm by volume (35 milligrams per cubic meter)	maximum 1 hr. concentration not to be exceeded more than once per yr.
~~(4).~~ Hydrocarbons~~(e)~~ ~~(primary and secondary standards)~~	0.24 ppm by volume (160 micrograms per cubic meter)	0.24 ppm by volume (160 micrograms per cubic meter)	maximum 3 hr. concentration (6 to 9 a.m.) not to be exceeded more than once per yr., corrected for methane
~~(5).~~ Sulfur Dioxides~~(b)~~ ~~(primary and secondary standards)~~	0.02-0.03 ppm by volume (60-80 micrograms per cubic meter)	0.02-0.03 ppm by volume (60-80 micrograms per cubic meter)	maximum annual arithmetic mean
	0.1-0.14 ppm volume by (260-365 micrograms per cubic meter)	0.10-0.14 ppm by volume (260-365 micrograms per cubic meter)	maximum 24 hr. concentration not to be exceeded more than once per yr.

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	~~0.25 ppm by volume (655 micrograms per cubic meter)~~	0.25-0.5 ppm by volume (655-1,300 micrograms per cubic meter)	maximum 3 hr. concentration not to be exceeded more than once per yr.
~~(6)~~. Particulate[m] Matter ~~(primary standard)~~	75 micrograms per cubic meter	60 micrograms per cubic meter	maximum annual geometric mean
~~Particulate Matter (secondary standard)~~	260 micrograms per cubic meter	150 micrograms per cubic meter	maximum 24 hr. concentration not to be exceeded more than once per yr.
~~(7)~~. Nitrogen Dioxides[m] ~~(primary and secondary standards)~~	0.05 ppm by volume (100 micrograms per cubic meter)	005 ppm by volume (100 micrograms per cubic meter)	maximum annual arithmetic mean

~~Footnotes:~~

~~(a) All standards apply throughout the State of Minnesota.~~

~~(b) All measurements of ambient air quality are corrected to a reference temperature of 25° C. and a reference pressure of 760 mm of mercury.~~

~~(c) All measurements and tests shall be conducted by the methodology referenced herein, or other methodology as the Director shall hereafter approve.~~

~~(d) By methylene blue, or other method approved by the Director.~~

~~(e) Neutral buffered one percent potassium iodide colorimetric detection technique corrected for SO_2 and NO_2 interference, gas phase chemiluminesence, or other method approved by the Director.~~

~~(f) Nondispersive infrared spectrometry (N.D.I.R.), or other method approved by the Director.~~

~~(g) Flame ionization, or other method approved by the Director.~~

~~(h) By pararosaniline, coulometric, or other method approved by the Director.~~

~~(i) High volume method, or other method approved by the Director.~~

~~(j) Jacobs Hochheiser, or other method approved by the Director.~~

Minnesota Pollution Control Agency
Division of Solid Waste

Proposed Adoption of a Rule for the Administration of the Minnesota Solid Waste Management Demonstration Program for Waste Reduction and Source Separation

Notice of Intent to Adopt a Rule Without a Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (hereinafter "agency") intends to adopt the above-entitled rule without a public hearing. The agency has determined that the proposed adoption of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h (1980).

The proposed rule provides for the administration of the Minnesota Solid Waste Management Demonstration Program for Waste Reduction and Source Separation. This program is created and the agency is authorized to adopt this rule under the Waste Management Act (1980 Minn. Laws, ch. 564, art. 6).

The agency has prepared a Statement of Need and Reasonableness that describes the agency's reasons for each provision of the proposed rule and identifies the data and information relied upon by the agency to support the proposed rule. Copies of the Statement of Need and Reasonableness and the proposed rule are available and may be obtained by contacting:

Mr. Don Kyser
Resource Planning Section
Division of Solid Waste
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113
(Telephone: (612) 297-2727)

All interested or affected persons have until February 4, 1981, to submit comments on the proposed rule. The proposed rule may be modified if the data and views submitted to the agency warrant modifications and the modifications do not result in a substantial change in the proposed language of the rule.

If, during the comment period, seven or more persons submit to the agency a written request for a hearing on the proposed rule, the agency shall proceed to schedule a public hearing before adoption of the proposed rule. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subds. 4-4f. (1980).

Persons who wish to submit comments or to request a public hearing should submit such comments or requests no later than February 4, 1981, to Mr. Don Kyser at the address given above. The agency requests that if a person desires a public hearing, that when submitting a written request for a hearing, the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

In the event a hearing is required, a new notice of hearing will be mailed out and published in the State Register. If no hearing is requested, the agency will consider the adoption of the proposed rule at the February, 1981, agency meeting or as soon thereafter as possible. Persons who wish to receive a copy of the final rule as proposed for adoption by the agency should submit a written statement of such desire to Mr. Kyser.

After adoption of the final rule by the agency, without a public hearing, the proposed rule, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rule as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Mr. Don Kyser.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

December 19, 1980

Terry Hoffman
Executive Director
Minnesota Pollution Control Agency

Rule as Proposed

6 MCAR § 4.6086 Administration of the Minnesota solid waste management demonstration program.

A. Purpose. This rule implements the solid waste management demonstration assistance program, created and described in Article VI of the Waste Management Act of 1980, Minn. Stat. § 115A.49 through 115A.54 (1980), by establishing the substantive criteria and procedural conditions according to which the agency shall award grants to demonstrate the conceptual and technical feasibility of waste reduction and source separation projects.

B. Overview of procedures for applying for and receiving a grant.

1. Application for a grant. To be eligible for a grant under these rules, an applicant shall make an application for a grant.

   a. The procedures the applicant shall follow in applying for a grant are set out in Part E.

   b. The information and documentation the applicant shall provide in the grant application are set out in Part F.

2. Award of a grant. The agency shall award the applicant a grant, in accordance with the procedures and limitations set out in Part G. of this rule, if the agency determines:

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a. that the applicant specified in the grant application is grant eligible (see D.1.);

b. that the costs specified in the grant application are grant eligible (see D.2.); and,

c. that the project specified in the grant application is grant eligible (see D.3.).

C. Definitions.

1. "Acceptable project" means

a. for pre-implementation projects, a project which results in an acceptable written report on the conceptual and technical feasibility of implementing a particular source separation or waste reduction program, as defined in C.16. and C.18, respectively. To be considered an acceptable written report under this rule, the report shall:

(1) describe a particular waste reduction or source separation program proposed to be implemented in a specified area;

(2) establish the solid waste management objectives to be accomplished through the implementation of the proposed program;

(3) evaluate the feasibility and anticipated success of accomplishing those objectives through the implementation of the proposed program;

(4) estimate the operating revenues, if any, to be obtained from the proposed program, considering the availability and security of sources of solid waste and of markets for recovered resources, together with any proposed federal, state or local financial assistance; and,

(5) describe the potential statewide significance or the transferability of knowledge or experience gained from the project to other communities in the state.

b. for implementation projects, a project which:

(1) is undertaken to demonstrate the conceptual and technical feasibility of implementing a particular source separation or waste reduction program, as defined in C.16. and C.18, respectively, and

(2) results in a report which includes an analysis of:

(a) the conceptual and technical feasibility of implementing the project and

(b) an analysis of the potential statewide significance of the project or the transferability of the knowledge or experience gained from the project to other communities in the state.

The Agency shall determine that a project is reasonably designed to demonstrate the conceptual and technical feasibility of implementing a particular waste reduction or source separation program if the grant application required to be submitted under Part E. is complete.

2. "Agency" means the Minnesota Pollution Control Agency, as constituted pursuant to Minn. Stat. § 116.02, subd. 1 (1980).

3. "Application submittal date" means the date by which an application is required to be submitted to the agency in order for the applicant to be eligible to receive a grant under this rule.

4. "City" has the meaning given to it in Minn. Stat. § 115A.03, subd. 4.

5. "Collection" has the meaning given to it in Minn. Stat. § 115A.03, subd. 5.

6. "County" means a subdivision of the state organized pursuant to Minn. Stat. ch. 373.

7. "Curbside collection" means the source separation method whereby generators of household refuse segregate and set out recyclable materials for collection and transportation to a resource recovery facility or to a transfer station.

8. "Director" means the Executive Director and Chief Executive Officer of the agency or a person expressly designated by the director to discharge a duty or responsibility of the director.

9. "Drop off center" means a location where persons can bring or drop off recycled materials derived primarily from households for consolidation and transportation to a resource recovery facility.

10. "Grant eligible" or "grant eligibility" means meets the criteria to receive funding assistance under this rule.

11. "Implementation project" means a project undertaken to demonstrate the feasibility and practicability of a particular source separation or waste reduction method(s).

12. "Person" has the meaning given to it in Minn. Stat. § 115A.03, subd. 23.

13. "Pre-implementation project" means a project undertaken to accomplish preliminary planning and evelopment of,

to study the feasibility and practicability of, or to do the conceptual design of a particular source separation or waste reduction method(s).

14. "Resource recovery facility" has the meaning given to it in Minn. Stat. § 115A.03, subd. 28.

15. "Solid waste management district" has the meaning given to it in Minn. Stat. § 115A.03, subd. 32.

16. "Source separation or source separation program" means the process of segregation and accumulation of recyclable materials at the source of generation of those materials and also means the process of collection and transportation of those materials for resource recovery.

17. "Transfer station" has the meaning given to it in Minn. Stat. § 115A.03, subd. 33.

18. "Waste reduction or waste reduction program" means measures taken by persons to change product or packaging design or consumption habits and thereby reduce the quantity of waste generated.

D. Grant eligibility criteria.

1. Eligible applicants. Any city, county, or solid waste management district within the State of Minnesota is grant eligible. Eligible applicants may apply for grants on behalf of any person that is not an eligible applicant, but the named grantee shall be the city, county, or solid waste management district.

2. Eligible costs.

a. For pre-implementation projects:

(1) the following costs are grant eligible:

(a) Consultant fees and salaries of staff persons employed to develop an acceptable project;

(b) Costs associated with the drafting and execution of necessary contracts between the grantee and other units of government or qualified consultants employed to carry out project tasks, including, but not limited to, reasonable attorneys' fees;

(c) Costs associated with holding meetings to inform the public of the development of the project and to provide an opportunity for the public to participate in and comment on the development of the project;

(d) Costs associated with printing and distributing project materials and the project report;

(e) Costs of any in-state travel, the primary purpose of which is to attend meetings or gather information needed for the development of the project report, including, but not limited to, reimbursement for mileage consistent with state allowances;

(f) Costs of any necessary supplies required for the development and publication of the report. The costs of leasing equipment needed for the development and publication of the report are eligible for funding. The costs of any commodities, materials, capital expenditures and equipment which could be used after the project is completed shall not be considered supplies and are, therefore, not grant eligible under this rule; and,

(g) Overhead costs.

(2) the agency shall award grants to cover 90 percent of the eligible costs specified in the grant application and the grantee shall either fund or obtain from another source funding for the remaining costs of completing the project, provided, however, that to the extent the grantee has obtained a non-agency grant(s) to fund any portion of the project, the agency shall fund only 90% of the remaining (i.e., non-agency funded) eligible costs; and,

(3) the maximum amount of a pre-implementation grant for each category listed in G.2.b.(1) and (2) shall be $3,500. If a grantee submits an application for a grant relating to more than one category, the maximum amount of the grant to be awarded by the agency shall be $3,500 for each category funded.

b. For implementation projects:

(1) the following costs are grant eligible:

(a) Consultant fees and salaries of staff persons employed to develop an acceptable project;

(b) Costs associated with the drafting and execution of necessary contracts between the grantee and other

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units of government or qualified consultants employed to carry out project tasks, including, but not limited to, reasonable attorneys' fees;

(c) Costs associated with holding meetings to inform the public of the development of the project and to provide an opportunity for the public to participate in and comment on the development of the project;

(d) Costs associated with printing and distributing project materials;

(e) Costs of any in-state travel, the primary purpose of which is to attend meetings or gather information needed for the development of the project report, including, but not limited to, reimbursement for mileage consistent with state allowances;

(f) Costs of any necessary supplies required for the development of the project and the publication of the report. The costs of leasing equipment needed for the development of the project and the publication of the report are eligible for funding. The costs of any commodities, materials, capital expenditures and equipment which could be used after the project is completed shall not be considered supplies and are, therefore, not grant eligible under this rule; and,

(g) Overhead costs.

(2) the agency shall award grants to cover 90 percent of the eligible costs specified in the grant application and the grantee shall either fund or obtain from another source funding for the remaining costs of completing the project, provided, however, that to the extent the grantee has obtained a non-agency grant(s) to fund any portion of the project, the agency shall fund only 90% of the remaining (i.e., non-agency funded) eligible costs; and,

(3) the maximum amount of an implementation grant for each category listed in G.2.b.(1) and (2) shall be $15,000. If a grantee submits an application for a grant relating to more than one category, the maximum amount of the grant to be awarded by the Agency shall be $15,000 for each category funded.

c. Once a grant has been awarded, adjustments between funds awarded to cover the costs specified in D.2.a.(1) and D.2.b.(1) shall be made if the agency and the grantee agree that such adjustments shall result in the development of the project in a more efficient manner.

d. If, while working to complete the project, a grantee finds that more funds are needed, the grantee shall proceed as follows:

(1) if the grantee finds that the amount of additional funding that is needed is more than 20% of the original grant, the grantee shall submit a new application which shall be treated in accordance with the procedures set out in G.1. through G.4.

(2) if the grantee finds that the amount of additional funding that is needed is less than 20% of the original grant, and that the original grant was for an amount less than the maximum grants allowed under D.2.(a)(3) and D.2.(b)(3), the grantee shall submit an amended grant application which shall be treated in accordance with the procedures set out in G.5.

e. Grants shall be awarded to cover the eligible costs of only those tasks which are undertaken and completed during the grant period established in the grant agreement. Grants shall not be awarded to cover any cost associated with tasks performed prior to the award of a grant or after the expiration of the grant agreement.

f. The availability of funds is a precondition to the award of any grant or grant amendment by the agency.

g. The fact that an item or person is "grant eligible" under this rule does not automatically assure that a grant shall be awarded. A grant shall only be awarded if the grant eligiblity criteria are met and if sufficient funds are available to cover the grant.

3. Eligible projects.

a. The agency shall consider grant eligible all projects that are reasonably designed to result in an acceptable project, as defined in C.1.

b. The agency shall determine that a project is reasonably designed to result in an acceptable project if the agency finds that the grant application required to be submitted under Part E. is complete. The agency shall determine that a grant application is complete if the application contains all the information and meets all the requirements set out in Part F.

c. The agency shall prioritize and limit the award of grants to eligible projects in accordance with the procedures and limitations set out in Part G.

E. Grant application procedures

1. For grants to be awarded during the fiscal year ending June 30, 1981:

a. As soon as possible and no later than April 15, 1981, a grant applicant shall submit a grant application to the agency.

b. The grant application to be submitted to the agency shall include all the information and documentation set out in Part F. of this rule.

c. Upon receiving a grant application, the director shall promptly review the application and shall make a determination as to

(1) the eligibility of the applicant specified in the application;

(2) the eligibility of the costs specified in the application, and,

(3) the eligibility of the project specified in the application.

d. Within two weeks after receiving the application, the director shall notify each applicant as to the director's determinations.

(1) If the director determines that the applicant, the costs and the project specified in the application are grant eligible, the application shall be considered final as of the date it was received and the applicant shall be so notified. The application shall then be treated in accordance with the agency review provisions established in Part G. of this rule.

(2) If the director determines that the applicant is not grant eligible, the application shall not be further considered and the applicant shall be so notified.

(3) If the director determines that any of the costs described in the application are not grant eligible or that the application is otherwise incomplete:

(a) The director shall note the inadequacies in the application and shall so notify the applicant;

(b) The applicant shall have two weeks after the date of the director's notification to cure the inadequacies noted by the director or shall have two weeks after the application submittal date, whichever gives the applicant more time to cure the inadequacies noted.

(i) An application which is considered inadequate under this section shall not be considered final until the agency receives the information or documentation which cures the inadequacies described by the director.

(ii) An application which is considered inadequate under this section shall be considered final on the date all necessary supplemental information is received by the agency.

(iii) Once the application is considered final, it shall be treated in accordance with the agency review provisions established in Part G. of this rule.

2. For grants to be awarded during all fiscal years other than that described in E.1.:

a. There shall be two application submittal dates: June 30 and December 31 of each year.

b. As soon as possible and no later than the application submittal dates, a grant applicant shall submit a grant application to the agency.

c. The grant application to be submitted to the agency shall include all the information and documentation set out in Part F. of this rule.

d. Upon receiving a grant application, the director shall promptly review the application and shall make a determination as to:

(1) the eligibility of the applicant specified in the application,

(2) the eligibility of the costs specified in the application; and,

(3) the eligibility of the project specified in the application.

e. Within two weeks after receiving the application, the director shall notify each applicant as to the director's determinations:

(1) If the director determines that the applicant, the costs and the project specified in the application are grant eligible, the application shall be considered final as of the date it was received and the applicant shall be so notified. The application shall then be treated in accordance with the agency review provisions established in Part G. of this rule.

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(2) If the director determines that the applicant is not grant eligible, the application shall not be further considered and the applicant shall be so notified.

(3) If the Director determines that any of the costs described in the application are not grant eligible or that the application is otherwise incomplete:

(a) The director shall note the inadequacies in the application and shall so notify the applicant;

(b) The applicant shall have two weeks after the date of the director's notification to cure the inadequacies noted by the director or shall have two weeks after the application submittal date, whichever gives the applicant more time to cure the inadequacies noted.

(i) An application which is considered inadequate under this section shall not be considered final until the Agency receives the information or documentation which cures the inadequacies described by the director.

(ii) An application which is considered inadequate under this section shall be considered final on the date all necessary supplemental information is received by the agency.

(iii) Once the application is considered final, it shall be treated in accordance with the agency review provisions established in Part G. of this rule.

3. If, while working to complete a project which has been funded under this rule, a grantee finds that more funds are needed to complete the project and that the amount of additional funding needed is more than 20% of the original grant, the grantee shall submit a new grant application which shall be treated in accordance with the procedures set out in G. (1) through G. (4). The total amount awarded for any one project (including all additional funding) shall in no event exceed the maximums established in D.2. (a) (3) and D.2. (b) (3).

4. If, while working to complete a project which has been funded under this rule, a grantee finds that more funds are needed to complete the project, that the amount of additional funding is less than 20% of the original grant, and that the original grant was for an amount less than the maximum grants allowed under D.2. (a) (3) and D.2. (b) (3):

a. The grantee shall submit an amended grant application to the agency.

b. The amended grant application shall include all the information and documentation set out in Part F.3. of this rule.

c. Upon receiving the amended grant application, the director shall promptly review the amended grant application and shall make a determination as to:

(1) the eligibility of the costs specified in the amended grant application, and

(2) the difference between the maximum amount of funding the project is eligible to receive and the amount of funding the project has received to date.

d. Within two weeks after receiving the amended grant application, the director shall notify the applicant as to the eligibility of the costs specified in the amended grant application.

(1) If the director determines that the costs are not eligible, the amended grant application shall not be further considered and the applicant shall be so notified.

(2) If the director determines that the costs are eligible, the application shall be considered final as of the date it was received and the applicant shall be so notified. The application shall then be treated in accordance with the agency review provisions established in G.5.

(3) If the director determines that the amended grant application is incomplete:

(a) The director shall note the inadequacies in the application and shall so notify the applicant;

(b) The applicant shall have two weeks from the date of the director's notification to cure the inadequacies noted by the director;

(i) An application which is considered inadequate under this section shall not be considered final until the agency receives the information or documentation which cures the inadequacies described by the director.

(ii) An application which is considered inadequate under this section shall be considered final on the date all necessary supplemental information is received by the agency.

(iii) Once the application is considered final, it shall be treated in accordance with the agency review provisions established in G.

F. Grant application content.

1. Applications for grants for pre-implementation projects shall include the following information:

a. The name(s) of the each applicant making the grant application;

b. The name(s) of each person on whose behalf the grant application is submitted;

c. The name(s) of each political subdivision(s) affected by the project, located in the area studied in the project, or located in the area in which the project is intended to be implemented.

d. Resolutions from each political subdivision named in the application which demonstrate that the political subdivision is committed to implement the project; is committed to provide necessary local financing; and, is committed to accept and exercise the government powers necessary to the project.

e. The name(s) and address(es) of the project manager(s);

f. Total project cost;

g. Amount of grant funding requested;

h. Amount and sources of all other funding contributions; including the amount of funds to be contributed by the applicant;

i. Boundaries of and population of any areas which would be served by the program if the project were implemented;

j. A work plan which provides the following information and details how the grantee will make the evaluations necessary to complete an acceptable project within the meaning of C.1.a:

(1) A brief description of the waste reduction and/or source separation program the grantee proposes to evaluate;

(2) A breakdown of the specific work tasks to be completed under the terms of the grant; including, but not limited to,

(a) an evaluation of the conceptual and technical feasibility of implementing the project;

(b) an evaluation of the solid waste management objectives to be accomplished through the implementation of the project;

(c) an estimate of the operating revenues, if any, to be obtained from the proposed program, considering the availability and security of sources of solid waste and of markets for recovered resources, together with any proposed federal, state or local financial assistance; and,

(d) the drafting of a final report describing the work done and conclusions made by the grantee.

(3) A breakdown of the number of work hours needed to complete each of the work tasks specified in j. (2);

(4) A breakdown of all the costs associated with completing each of the tasks specified in j. (2), including an explanation of how each cost was calculated;

(5) A breakdown of the staff, consultants, and units of government associated with completing each of the tasks specified in (j) (3);

(6) A breakdown of the amount of time needed to complete each of the tasks specified in j. (2);

(7) A discussion of the reports, documents and other written materials to be developed;

(8) A discussion of the applicability of the project results to other areas of the state; and,

(9) A discussion of the existing solid waste management system, the impact the project may have on that system, and a statement of the landfill(s) currently serving the area which would be served by the project if it were implemented.

2. Applications for grants for implementation projects shall include the following information:

a. The name(s) of the each applicant making the grant application;

b. The name(s) of each person on whose behalf the grant application is submitted;

c. The name(s) of each political subdivision(s) affected by the project, located in the area studied in the project, or located in the area in which the project is intended to be implemented.

d. Resolutions from each political subdivision named in the application which demonstrate that the political subdivi-

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sion is committed to implement the project; is committed to provide necessary local financing; and, is committed to accept and exercise the government powers necessary to the project.

e. The name(s) and address(es) of the project manager(s);

f. Total project cost;

g. Amount of grant funding requested;

h. Amount and sources of all other funding contributions; including the amount of funds to be contributed by the applicant;

i. Boundaries of and population of any areas which would be served by the program if the project were implemented;

j. Statements, together with supporting information, that demonstrate:

(1) that the project is conceptually and technically feasible;

(2) that operating revenues from the project, considering the availability and security of sources of solid waste and of markets for recovered resources, together with any proposed federal, state, or local financing assistance, will be sufficient to pay all costs over the projected life of the project; and,

(3) that the applicant has evaluated the feasible and prudent alternatives to disposal and has compared and evaluated the costs of the alternatives, incuding capital and operating costs, and the effects of the alternatives on the cost to generators.

k. A work plan which provides the following information and details how the grantee will take the action necessary to complete an acceptable project within the meaning of C.1.b.

(1) A brief description of the waste reduction and/or source separation program the grantee proposes to undertake;

(2) A breakdown of the specific work tasks to be completed under the terms of the grant;

(3) A breakdown of the number of work hours needed to complete each of the work tasks specified in k.(2);

(4) A breakdown of all the costs associated with completing each of the tasks specified in k.(2), including an explanation of how each cost was calculated;

(5) A breakdown of the staff, consultants, and units of government associated with completing each of the tasks specified in k.(2);

(6) A breakdown of the amount of time needed to complete each of the tasks specified in k.(2);

(7) A discussion of the reports, documents and other written materials to be developed;

(8) A discussion of the applicability of the project results to other areas of the state; and,

(9) A discussion of the existing solid waste management system, the impact the project may have on that system, and a statement of the landfill(s) currently serving the area which would be served by the project if it were implemented.

3. Amended grant applications shall include the following information:

a. The name(s) of each applicant making the amended grant application;

b. The additional funds requested by the applicant;

c. Justification for the request for additional funds;

d. A statement of the amount of funds already obtained from the agency to complete the project;

e. A statement of the total amount of funds expended and anticipated to be expended to complete the project;

f. A statement of the amount and sources of all funds not provided by the agency; and,

g. A discussion of the work proceeding to date under the grant and a statement as to whether the work is being completed on schedule and, if not, a discussion as to why it is not proceeding on schedule.

G. Agency review of grant applications and amendments and award of grants and grant amendments.

1. Grants shall be awarded to eligible grantees, to the extent funding is available, in accordance with the procedures and limitations set out in this Part.

2. Within 45 days after each application submittal date, the agency shall categorize each eligible project:

a. by determining whether the project is a waste reduction or a source separation project, and

b. by identifying the category within which each eligible project falls. The categories of eligible projects are the following:

(1) Waste reduction.

Pre-implementation projects that study or design the following methods of waste reduction	Implementation projects that demonstrate the following methods of waste reduction
(a) Change in procurement policies	(a) Change in procurement policies
(b) Public awareness programs	(b) Public awareness programs
(c) Marketing programs	(c) Marketing programs
(d) Office waste reduction	(d) Office waste reduction
(e) Reduction of solid materials generated by an industry or commercial establishment	(e) Reduction of solid materials generated by an industry or commercial establishment
(f) Curriculum development	(f) Curriculum use

(2) Source separation.

Pre-implementation projects that study or design the following methods of source separation	Implementation projects that demonstrate the following methods of source separation
(a) Public awareness programs	(a) Public awareness programs
(b) Marketing program	(b) Marketing program
(c) Office waste recycling	(c) Office waste recycling
(d) Source separation of solid materials generated by an industry or commercial establishment	(d) Source separation of solid materials generated by an industry or commercial establishment
(e) Separation of yard waste	(e) Separation of yard waste
(f) Curriculum development	(f) Curriculum use
(g) Drop off center	(g) Drop off center
(h) Mandatory curbside collection	(h) Mandatory curbside collection
(i) Voluntary curbside collection	(i) Voluntary curbside collection
(j) Separation at a transfer station	(j) Separation at a transfer station

3. Also within 45 days after each application submittal date, the agency shall rank the projects within each category by assigning that project one point for each of the following statements that correctly describes that project:

a. The project relates specifically to an area where natural geologic and soil conditions are unsuitable for land disposal of solid waste.

b. The project relates specifically to an area where the available capacity of existing solid waste disposal facilities is determined by the agency to be less than five years.

c. The project relates specifically to an area outside the metropolitan area and would serve more than one local government unit.

d. The project is being carried out pursuant to the findings or recommendations of a solid waste management plan which meets the requirements of Minn. Stat. § 115A.46 and 6 MCAR § 4.6085.

4. The agency shall award grants as follows:

a. The agency shall award a grant to the project with the highest point ranking within each category. If there are insufficient monies to fund the highest ranking project within each category, the agency shall first award a grant to the project with the highest ranking; shall second award a grant to the project with the second highest ranking; shall third award a grant to the project with the third highest ranking and so on until all grant monies are obligated. For projects with equal rankings, the

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agency shall first award a grant to the grantee whose final application was submitted earliest; shall second award a grant to the grantee whose final application was submitted second earliest; shall third award a grant to the grantee whose final application was submitted third earliest and so on until grant monies are obligated. If grant applications with equal rankings were submitted on the same date, the agency shall determine the priority of the projects by lottery.

b. After the agency has awarded a grant to the projects that rank the highest within each category, the agency shall award a grant to the projects that rank the second highest within each category. In awarding grants for these projects, the agency shall follow the procedure described in G.4.a.

c. After the agency has awarded a grant to the projects that rank the second highest within each category, the agency shall award a grant to the project that ranks the third highest within each category. The agency shall continue in this fashion until all grant monies have been obligated.

5. The agency shall award grants on a first come, first serve basis to applicants for a supplemental grant that meet the description set out at E.4. These awards shall be made within one month after a completed eligible application for a grant amendment has been received by the agency. Grant amendments shall not be subject to the ranking procedures set out in G.4.

H. Grant agreement.

1. The grant agreement shall incorporate by reference the final grant application submitted to the agency in accordance with F.

2. The grant agreement shall establish the term of the grant. All grants awarded under this rule shall have a maximum term of two years.

3. Grants not completed in accordance with the terms and conditions of the grant agreement, including time schedules, shall be forfeited unless the agency determines that the variances from the grant requirements are due to factors outside the control of the grantee.

4. The grant agreement shall include a payment schedule. This payment schedule shall provide for reimbursement of stated travel costs in a manner described in the grant agreement and shall require that ten percent of each payment made under the grant agreement (except reimbursable travel costs) be retained by the agency until the director determines that the report submitted under the grant is an acceptable project. If the director determines that the report is deficient, the director shall notify the grantee of the deficiency. The agency shall pay the withheld ten percent of the grant as soon as the director determines that the report is an acceptable project.

5. The grant agreement shall provide that the grantee shall be authorized to enter into contracts to complete the work specified in the grant. The grant agreement shall further provide that if any person other than the grantee is to receive any grant monies for completing work under the grant, the grantee must enter into a written agreement with that person for the work to be done by that person. The grant agreement shall further require that all written agreements for work to be done under this grant shall name the agency as a third-party beneficiary to those agreements.

6. The grant agreement shall provide that, upon the agreement of the grantee and the director, the grant agreement shall be amended.

7. The grant agreement shall provide that the director shall extend the expiration date of the grant upon request and justification of the change by the grantee. The grantee shall justify a request for extension by demonstrating that the factors which resulted in the delay of the project were beyond the control of the grantee.

I. Apportionment.

1. The agency shall apportion funds allocated to it by legislature for the grant programs set out in Articles V and VI of the Waste Management Act, Minn. Stat. § 115A.42 through 115A.54 (1980) as follows:

a. Article V grants (grants awarded under other rules): forty percent of the amount appropriated to the agency; and

b. Article VI grants (grants awarded under this rule): sixty percent of the amount appropriated to the agency.

c. If the agency receives more eligible requests for grant assistance under Article VI than the agency has funds available and the agency receives less eligible requests for grant assistance under Article V than it has funds available, the agency shall adjust the apportionment described in this part. Similarly, if the agency receives less eligible requests for grant assistance under Article VI than the agency has funds available to it and more eligible request for grant assistance under Article V than it has funds available, the agency shall adjust the apportionment described in this part. No such adjustment shall be made until the last date that grant applications are permitted to be submitted to the agency under this rule and the rule developed to implement Article V of the Waste Management Act.

2. For pre-implementation and implementation grants, the agency shall apportion funds allocated to it by legislature as follows:

a. pre-implementation grants: twenty percent of the amount appropriated to the agency; and

b. implementation grants: eighty percent of the amount appropriated to the agency.

J. Severability.

If any provision of this rule or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect any other provision or application of any other part of this rule or any other rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule and the various applications thereof are declared to be severable.

Minnesota Pollution Control Agency
Division of Solid Waste

Proposed Amendments to the Rules Governing the Management of Hazardous Waste

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (hereinafter "agency") intends to adopt amendments to the rules governing the management of hazardous waste without a public hearing. The agency has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h (1980). Authority for the adoption of these rules is contained in Minn. Stat. § 116.07, subd. 4.

The agency has prepared a Statement of Need and Reasonableness that describes the agency's reasons for each provision of the proposed amendments and identifies the data and information relied upon by the agency to support the proposed rule. Copies of the Statement of Need and Reasonableness and the proposed amended rules are available and may be obtained by contacting:

Mr. Larry Christensen
Division of Solid Waste
Minnesota Pollution Control Agency
1935 W. County Road B2
Roseville, Minnesota 55113
Telephone: (612) 297-2714

All interested or affected persons have until February 6, 1981, to submit, in writing, comments on the proposed amendments. The proposed amended rules may be modified if the data and views submitted to the agency warrant modifications and the modifications do not result in a substantial change in the proposed language.

If, during the comment period, seven or more persons submit to the agency a written request for a hearing on the proposed amendments, the agency shall proceed to schedule a public hearing before adoption of the amended rules. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subds. 4-4f. (1980).

Persons who wish to submit comments or a request for a public hearing should submit such comments or request to Mr. Larry Christensen at the address given above. The agency requests that if a person desires a public hearing, that when submitting a written request for a hearing, the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

The proposed amended rules would, if adopted, produce greater uniformity between the State hazardous waste rules and the hazardous waste rules adopted by the U.S. Environmental Protection Agency (hereinafter "EPA"). These proposed amendments are necessary for the State to receive interim authorization from EPA to administer the State hazardous waste program in lieu of the Federal program. The proposed amendments can be generally described as follows:

Amendments to 6 MCAR § 4.9001 B., C. and D. provide a definition for the term "manifest" and the abbreviation "EPA" and further provide for the incorporation of two additional appendices to the rules.

An amendment to 6 MCAR § 4.9002.E. specifies that the leach test which must be utilized to determine whether certain wastes are hazardous is the EP Toxicity Test. This is the leach test required by the EPA and its adoption will permit uniform

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testing requirements. Another amendment to that provision clarifies that once a waste is determined to contain a hazardous component, further testing for that component is not required.

Amendments to 6 MCAR §§ 4.9003F. and 4.9005 G. provides that generators and transporters of hazardous waste must obtain identification numbers from EPA rather than from the agency. EPA rules require generators and transporters to obtain EPA identification numbers.

Amendments to 6 MCAR § 4.9003H. make Minnesota's hazardous waste label requirements identical to federal requirements and will permit generators to use a single label that meets both State and Federal requirements.

Amendments to 6 MCAR §§ 4.9004C.1 and 4.9006G.4. delete the provisions prohibiting hazardous waste facility operators from accepting hazardous waste generated outside the State of Minnesota without the written approval of the agency director.

Amendments to 6 MCAR §§ 4.9004C.2. and 4.9005F. require hazardous waste transporters to notify the receiving facility and the receiving facility to notify the agency of any discrepencies between the shipping papers and the waste delivered or any attempt to deliver waste without shipping papers. This notification corresponds to the discrepancy reports required by EPA.

Amendments to 6 MCAR §§ 4.9004I. and 4.9006I. require facilities which store hazardous wastes for longer than 90 days and accumulate 2000 pounds or more of hazardous waste to obtain a permit. EPA rules currently require such facilities to obtain a permit.

Amendments to 6 MCAR § 4.9008C. bring State hazardous waste shipping paper requirements in line with Federal requirements and will allow use of a nationally standardized form in Minnesota.

Amendments to 6 MCAR § 4.9008E. will require all hazardous waste generators and receiving facility operators to submit copies of the hazardous waste shipping papers to the State. Previously the agency Executive Director could request that copies of the shipping papers be submitted. This will allow the State to trace shipments of hazardous waste and reduce illegal dumping.

After adoption of the final amended rules by the agency board, without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final amended Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Mr. Larry Christensen.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

Terry Hoffman
Executive Director
Minnesota Pollution
Control Agency

Amendments as Proposed

6 MCAR § 4.9001 General applicability, definitions, abbreviations, incorporations, severability, and variances.

B. Definitions. As used in these hazardous waste rules the following words shall have meaning defined herein.

23. Manifest: The shipping papers used in transporting hazardous waste.

6 MCAR § 4.9001 B. 23 through 44. Renumber as 6 MCAR § 4.9001 B. 24. through 45.

C. Abbreviations. The abbreviations used in these hazardous waste ~~regulations~~ rules have the following meanings:

3. EPA: U.S. Environmental Protection Agency.

6 MCAR § 4.9001 C. 3. through 5. Renumber as 6 MCAR § 4.9001 C. 4. through 6.

D. Incorporations. The following are contained in the indicated appendices at the end of this rule and are hereby incorporated and made a part of these rules and shall apply as indicated within these rules:

12. EP Toxicity Test (Appendix L).

13. 49 C.F.R. §§ 172.202 and 172.203 (1979) (Appendix M).

6 MCAR § 4.9002 Classification, evaluation and certification of waste.

E. Comparison of properties.

2. List 1 and List 2 components. Whenever the person evaluating a waste knows or suspects that any of the components in List 1 or List 2 is in the waste, the person shall conduct a quantitative analysis to determine the concentration of each component in List 1 that is known or suspected to be in the waste and ~~a leachate test~~ the EP Toxicity Test for each component in List 2 that is known or suspected to be in the waste with the following exceptions:

a. A waste known to contain a component of List 1 in excess of the concentration listed in List 1 need not be analyzed for that component.

b. A waste which is a hazardous waste because it contains a component of List 1 in excess of the concentration listed in List 1 need not be tested for that component in a List 2 test.

6 MCAR § 4.9003 Generation of hazardous waste.

F. Identification number. Prior to transportation or disposal of any hazardous waste a generator shall obtain a generator identification number from EPA.

G. Preparation of hazardous waste shipping papers. Each generator shall prepare hazardous waste shipping papers for each hazardous waste in accordance with 6 MCAR § 4.9008.

~~G~~H. Preparation of hazardous waste labels.

1. Each generator shall attach a ~~"~~Hazardous Waste~~"~~ label to each container and portable tank containing hazardous waste in accordance with the ~~following requirements.~~ applicable U.S. Department of Transportation regulations on hazardous materials under 49 C.F.R. Part 172 (1979). In addition, the following words and information shall be displayed:

a. HAZARDOUS WASTE—Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

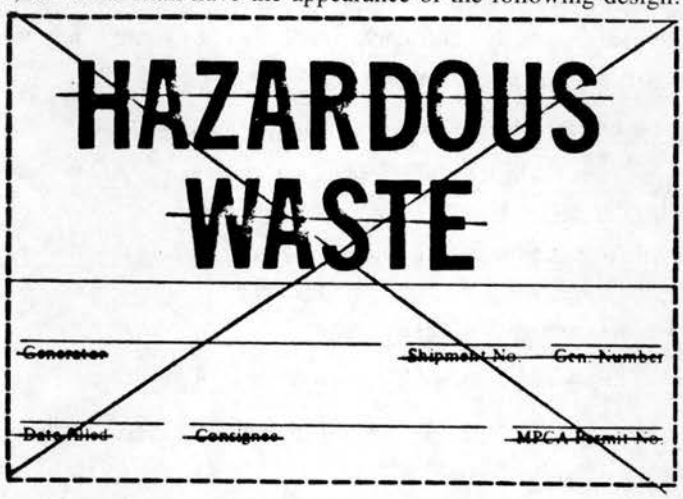
b. Generator Name and Address _____.

c. Manifest Document Number _____.

d. EPA Identification Number _____.

e. Accumulation start date _____.

~~a. The label shall not be smaller than 4" by 6¼". The letters, "HAZARDOUS WASTE", shall not be less than ¾" high. Except for size and color, the label shall have the appearance of the following design.~~



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~~b. The lettering and lines of a "Hazardous Waste" label shall be black and the background color shall be a standard florescent pink.~~

~~c. In addition to the words, "Hazardous Waste", the label placed on portable tanks and containers shall contain the following information:~~

~~(1) The name of the generator.~~

~~(2) The identifying shipment number from the shipping papers required in 6 MCAR § 4.9008.~~

~~(3) The date the container or portable tank was finally filled.~~

~~(4) The name of the hazardous waste facility that is responsible for the ultimate disposition of the hazardous waste and the permit number if that facility is licensed by the agency pursuant to these regulations.~~

~~d. The "Hazardous Waste" label must be capable of withstanding open weather exposure for no less than thirty (30) days without substantial reduction in effectiveness.~~

2. The container or portable tank shall be labeled and marked in a manner that is suitable for interstate commerce.

3. Any generator or other person who maintains a storage tank containing hazardous waste shall ~~attach a~~ display the words "Hazardous Waste" ~~label to~~ on the storage tank in a legible and conspicuous manner. ~~A~~ The words "Hazardous Waste" ~~label~~ shall be plainly visible and legible to any person who may operate any outlet valve.

6 MCAR § 4.9004 Location, operation and closure of a hazardous waste facility.

C. Hazardous waste facility operation.

1. General. No person shall operate a hazardous waste facility except in conformance with the following requirements:

~~k. The facility operator shall not accept waste from outside the State of Minnesota unless specifically authorized to do so by his Hazardous Waste Facility Permit and unless written approval is obtained from the director. The director shall approve the acceptance of the waste if the director determines that.~~

~~(1) The hazardous waste is a waste that can be properly managed at the facility, and~~

~~(2) The generator has filed a disclosure with the agency. The director shall act on the request as expeditiously as possible.~~

2. Acceptance of hazardous waste.

a. ~~No~~ The facility operator shall ~~accept~~ notify the agency by telephone immediately upon delivery and prior to acceptance of a shipment of hazardous waste ~~that does not meet the following requirements:~~ if any of the following discrepancies exist.

(1) ~~The~~ Incomplete shipping papers ~~are complete~~.

(2) ~~Each~~ A container ~~and~~ or portable tank containing hazardous waste is not properly labeled.

(3) The shipping papers and the labels are ~~consistent~~ inconsistent.

(4) The shipping papers and the hazardous waste shipment are inconsistent.

Within five (5) days, a follow-up report which fully describes any discrepancy, its resolution and the management of the hazardous waste shall be mailed to the agency.

b. In the event a shipment of hazardous waste without any shipping papers is delivered to a hazardous waste facility, the facility operator shall immediately notify the agency by telephone of:

(1) the transporter's name and vehicle license plate;

(2) the transporter's address and EPA identification number, if available;

(3) the generator's name, address and EPA identification number, if available;

(4) a description of the unmanifested waste,

(5) a brief explanation of why the waste was unmanifested, if known.

Within five (5) days, a follow-up report which fully describes any discrepancy, its resolution and the management of the hazardous waste shall be mailed to the agency.

~~b~~c. No facility operator shall accept a shipment of hazardous waste that the facility operator is not allowed to manage

under the Hazardous Waste Facility Permit unless written approval is obtained from the director. The director shall approve the acceptance of the waste if the director determines that:

(1) The hazardous waste is a waste that can be properly managed at the facility, and

(2) The generator has filed a disclosure with the agency. The director shall act on the request as expeditiously as possible.

~~e~~d. The facility operator shall schedule the arrival of hazardous waste in a manner that minimizes the potential problem of incompatible wastes coming in contact.

I. Small hazardous waste containerized storage facilities. The facility operator of a hazardous waste containerized storage facility with a capacity of less than 5,000 gallons (18,927 liters) of hazardous waste in containers and tanks shall not be required to comply with the requirements of subparagraph 1 of paragraph B or subparagraphs 1.d., 1.f., 2.~~b~~c., 6.a., 6.b., 6.c., and 6.d. of paragraph C, and subparagraphs 1, 3 and 4 of paragraph D, provided:

1. ~~no~~ No other hazardous waste facility is located at the same site; or

2. Any accumulation of hazardous waste equal to or greater than 2200 pounds (1000 kilograms) is not stored for longer than 90 days. The length of accumulation is calculated from the date storage began and not the date on which the accumulated waste first equals or exceeds 2200 pounds (1000 kilograms).

6 MCAR § 4.9005 Transportation of hazardous waste.

F. Delivery of hazardous waste.

1. No person shall deliver hazardous waste to a hazardous waste facility or give hazardous waste to a transporter for shipment to a hazardous waste facility located in the State of Minnesota, if the facility operator has not obtained a Hazardous Waste Facility Permit from the agency. Nothing in this provision is intended to require the transporter to undertake any evaluation of a waste to determine whether it is hazardous.

2. Immediately upon arrival at the hazardous waste facility the transporter shall notify the facility operator of any discrepancy between the hazardous wastes listed on the shipping papers and the hazardous waste shipment being delivered to the hazardous waste facility.

G. Registration of hazardous waste transporters. Any person who transports hazardous waste that originates or terminates in Minnesota shall register with the agency and obtain an identification number from EPA prior to transporting the hazardous waste. ~~The transporter may request a particular number when he registers and may obtain that number if it is satisfactory to the agency.~~ The transporter shall keep the agency advised of his current address.

6 MCAR § 4.9006 Hazardous waste facility permit program.

G. Hazardous Waste Facility Permit general conditions.

~~4. If the Hazardous Waste Facility Permit authorizes the permittee to accept hazardous waste from outside the State of Minnesota, the permittee shall not accept the hazardous waste without written approval from the director.~~

I. Exceptions.

2. The facility operator of a Hazardous Waste Containerized Storage Facility with a capacity of less than 5,000 gallons (18,927 liters) ~~that is not in the same location as any other types of hazardous waste facility~~ shall not be required to obtain a Hazardous Waste Facility Permit for that facility provided:

1. No other hazardous waste facility is located at the same site, or

2. Any accumulation of hazardous waste equal to or greater than 2200 pounds (1000 kilograms) is not stored for longer than 90 days. The length of accumulation is calculated from the date storage began and not the date on which the accumulated waste first equals or exceeds 2200 pounds (1000 kilograms).

6 MCAR § 4.9008 Hazardous waste shipping papers.

C. Preparation of hazardous waste shipping papers.

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1. Each generator shall prepare hazardous waste shipping papers for each shipment of hazardous waste.

2. The generator shall prepare an original and a sufficient number of copies of the hazardous waste shipping papers so that all persons who are going to participate in the management of the hazardous waste will be able to comply with the provisions of this ~~regulation~~ rule.

3. The hazardous waste shipping papers shall include the following information.

a. The names, ~~and~~ addresses, telephone numbers, and EPA identification numbers of the generator~~, transporters~~ and hazardous waste ~~facilities~~ facility to which the waste is being transported.

b. The name and EPA identification number of each transporter.

c. An identifying shipment number assigned by the generator in sequential order for each waste shipment.

~~e~~d. ~~The amount of hazardous waste being transported.~~ The total quantity of each hazardous waste by units of weight or volume and the type and number of containers as loaded into or onto the transport vehicle.

~~d~~e. ~~The approximate chemical composition of the waste.~~ The description of the waste(s) [e.g., proper shipping name, etc.] required by regulations of the U.S. Department of Transportation in 49 C.F.R. §§ 172.101, 172.202 and 172.203 (1979).

~~e. The hazardous properties of the waste.~~

~~f. The dates during which the hazardous waste was produced.~~

~~g. The names and telephone numbers of persons and agencies to notify or consult with in case of spillage during handling or transportation.~~

~~h. The transporters' agency identification numbers.~~

~~i. The names of other generators whose hazardous wastes are to be commingled with the generator's shipment of hazardous waste.~~

~~j. Procedures for handling spills, fires, and other emergencies.~~

~~k~~f. ~~The signature of~~ Signature and date blocks for the generator~~.~~, the transporter, and the facility operator.

~~i~~g. ~~Any other information the generator deems important.~~ The following certification shall appear on the shipping papers: "This is to certify that the above named materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the U.S. Department of Transportation and the EPA."

4. ~~The hazardous waste shipping papers shall include a place for the signature of each transporter and facility operator who accepts possession of the shipment of hazardous waste and a place for the signature of the facility operator who is responsible for ultimate disposition of the hazardous waste.~~

E. Signing and submission of hazardous waste shipping papers.

1. Prior to relinquishing possession of a shipment of hazardous waste ~~Each~~ each generator, transporter, and facility operator ~~who relinquishes possession of a shipment of hazardous waste~~ shall obtain the dated signature of the transporter or facility operator who accepts the shipment of hazardous waste on the original and each copy of the hazardous waste shipping papers. The generator shall retain one copy of the hazardous waste shipping papers~~.~~, ~~The transporter or facility operator shall obtain two copies of the hazardous waste shipping papers and, within two days after relinquishing possession, return one copy to the generator.~~ give the original and four copies to the transporter and shall send one copy to the following address:

Hazardous Waste, MIS
322 Washington Avenue South
Hopkins, Minnesota 55343

The transporter shall retain one copy of the hazardous waste shipping papers after relinquishing possession of the hazardous waste and give the original and three copies to the hazardous waste facility operator. The hazardous waste facility operator shall within two days after gaining possession, return one copy to the generator and one copy to the above address. The facility operator shall sign the original and the remaining copy of the hazardous waste shipping papers upon ultimate disposition of the hazardous waste, retaining one copy and returning the original to the generator within two days of ultimate disposition. Generators, transporters, and facility operators shall retain their copies of the shipping papers in accordance with 6 MCAR § 4.9008 E.4.

2. Each transporter or facility operator who accepts a shipment of hazardous waste shall sign and date the hazardous waste shipping papers.

3. ~~The facility operator of a hazardous waste processing facility, a hazardous waste land disposal facility or a hazardous waste land treatment facility shall sign the hazardous waste shipping papers a second time upon ultimate disposition~~

~~of the hazardous waste and return the original to the generator within two days of ultimate disposition.~~ When a shipment of hazardous waste is to be delivered to a hazardous waste facility located outside the State of Minnesota, the generator shall ensure that the copy of the hazardous waste shipping papers signed by the facility operator is sent to the address listed in subparagraph 1 of this paragraph within ten days of the acceptance of the hazardous waste by the hazardous waste facility.

Appendix L

Appendix I—Representative Sampling Methods

The methods and equipment used for sampling waste materials will vary with the form and consistency of the waste materials to be sampled. Samples collected using the sampling protocols listed below, for sampling waste with properties similar to the indicated materials, will be considered by the Agency to be representative of the waste.

Extremely viscous liquid—ASTM Standard D140-70 Crushed or powdered material—ASTM Standard D346-75 Soil or rock-like material—ASTM Standard D420-69 Soil-like material—ASTM Standard D1452-65

Fly Ash-like material—ASTM Standard D2234-76 (ASTM Standards are available from ASTM, 1916 Race St., Philadelphia, PA 19103)

Containerized liquid wastes—"COLIWASA" described in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods."[1] U.S. Environmental Protection Agency, Office of Solid Waste, Washington, D.C. 20460. (Copies may be obtained from Solid Waste Information, U.S. Environmental Protection Agency, 26 W. St. Clair St., Cincinnati, Ohio 45268)

Liquid waste in pits, ponds, lagoons, and similar reservoirs.—"Pond Sampler" described in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods."[1]

This manual also contains additional information on application of these protocols.

Appendix II—EP Toxicity Test Procedure

A. Extraction Procedure (EP)

1. A representative sample of the waste to be tested (minimum size 100 grams) should be obtained using the methods specified in Appendix I or any other methods capable of yielding a representative sample within the meaning of Part 260. (For detailed guidance on conducting the various aspects of the EP see "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," SW-846, U.S. Environmental Protection Agency Office of Solid Waste, Washington, D.C. 20460.[1])

2. The sample should be separated into its component liquid and solid phases using the method described in "Separation Procedure" below. If the solid residue[2] obtained using this method totals less than 0.5% of the original weight of the waste, the residue can be discarded and the operator should treat the liquid phase as the extract and proceed immediately to Step 8.

3. The solid material obtained from the Separation Procedure should be evaluated for its particle size. If the solid material has a surface area per gram of material equal to, or greater than, 3.1 cm^2 or passes through a 9.5 mm (0.375 inch) standard sieve, the operator should proceed to Step 4. If the surface area is smaller or the particle size larger than specified above, the solid material should be prepared for extraction by crushing, cutting or grinding the material so that it passes through a 9.5 mm (0.375 inch) sieve or, if the material is in a single piece, by subjecting the material to the "Structural Integrity Procedure" described below.

4. The solid material obtained in Step 3 should be weighed and placed in an extractor with 16 times its weight of deionized water. Do not allow the material to dry prior to weighing. For purposes of this test, an acceptable extractor is one which will

[1] These methods are also described in "Samplers and Sampling Procedures for Hazardous Waste Streams," EPA 600/2-80-018, January 1980.

[1] Copies may be obtained from Solid Waste Information, U.S. Environmental Protection Agey, 26 W. St. Clair Street, Cincinnati, Ohio 45268.

[2] The percent solids is determined by drying the filter pad at 80°C until it reaches constant weight and then calculating the percent solids using the following equation:

$$\frac{\text{(weight of pad + solid) − (tare weight of pad)}}{\text{initial weight of sample}} \times 100 = \%\ \text{solids}$$

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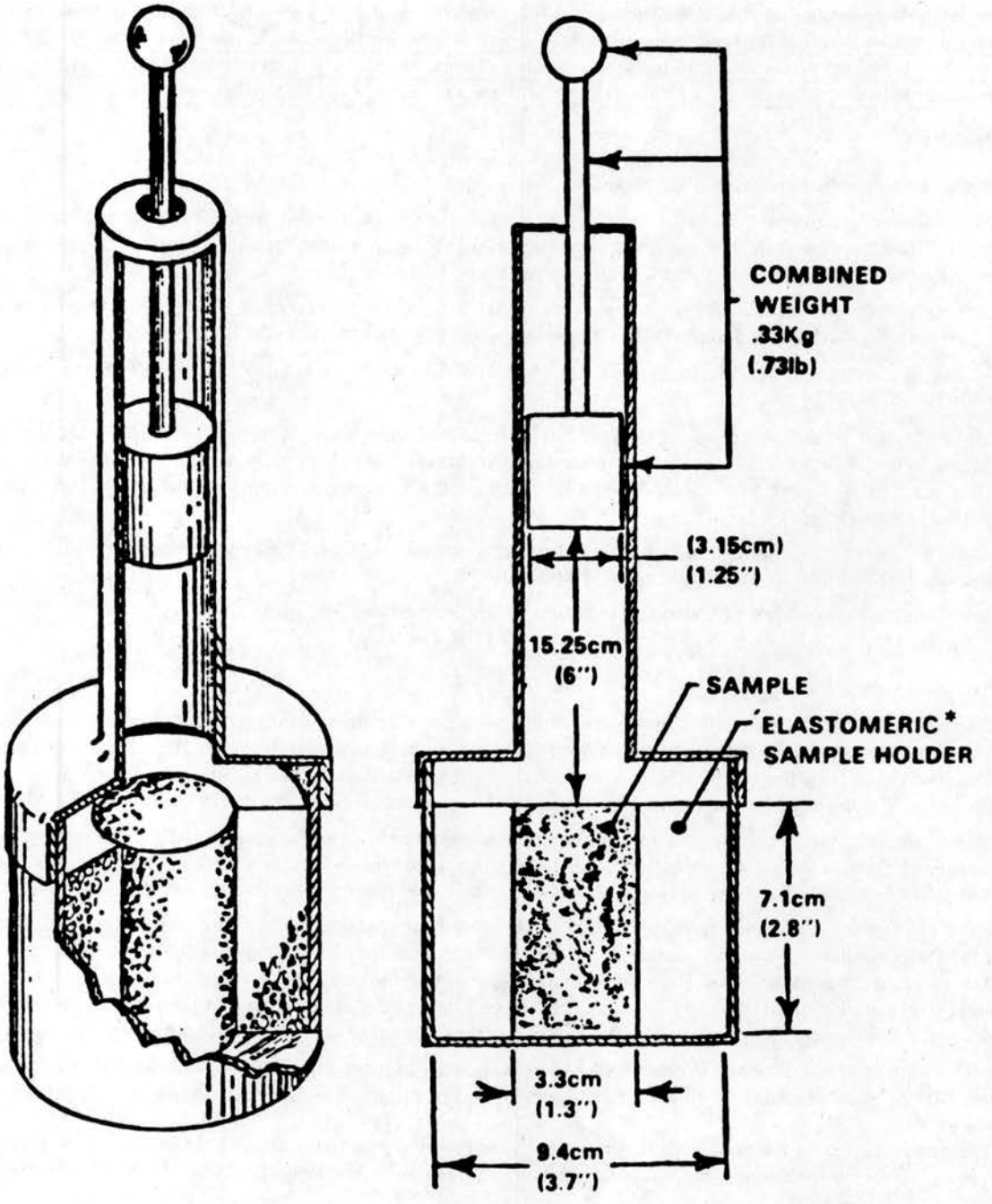

*ELASTOMERIC SAMPLE HOLDER FABRICATED OF MATERIAL FIRM ENOUGH TO SUPPORT THE SAMPLE

Figure 1

COMPACTION TESTER

BILLING CODE 6820-01-C

impart sufficient agitation to the mixture to not only prevent stratification of the sample and extraction fluid but also insure that all sample surfaces are continuously brought into contact with well mixed extraction fluid.

5. After the solid material and deionized water are placed in the extractor, the operator should begin agitation and measure the pH of the solution in the extractor. If the pH is greater than 5.0, the pH of the solution should be decreased to 5.0 ± 0.2 by adding 0.5 N acetic acid. If the pH is equal to or less than 5.0, no acetic acid should be added. The pH of the solution should be monitored, as described below, during the course of the extraction and if the pH rises above 5.2, 0.5N acetic acid should be added to bring the pH down to 5.0 ± 0.2. However, in no event shall the aggregate amount of acid added to the solution exceed 4 ml of acid per gram of solid. The mixture should be agitated for 24 hours and maintained at 20°-40° C (68°-104° F) during this time. It is recommended that the operator monitor and adjust the pH during the course of the extraction with a device such as the Type 45-A pH Controller manufactured by Chemtrix, Inc., Hillsboro, Oregon 97123 or its equivalent, in conjunction with a metering pump and reservoir of 0.5N acetic acid. If such a system is not available, the following manual procedure shall be employed:

(a) A pH meter should be calibrated in accordance with the manufacturer's specifications.

(b) the pH of the solution should be checked and, if necessary, 0.5N acetic acid should be manually added to the extractor until the pH reaches 5.0 ± 0.2. The pH of the solution should be adjusted at 15, 30 and 60 minute intervals, moving to the next longer interval if the pH does not have to be adjusted more than 0.5N pH units.

(c) The adjustment procedure should be continued for at least 6 hours.

(d) If at the end of the 24-hour extraction period, the pH of the solution is not below 5.2 and the maximum amount of acid (4 ml per gram of solids) has not been added, the pH should be adjusted to 5.0 ± 0.2 and the extraction continued for an additional four hours, during which the pH should be adjusted at one hour intervals.

6. At the end of the 24 hour extraction period, deionized water should be added to the extractor in an amount determined by the following equation:

$V = (20)(W) - 16(W) - A$
V = ml deionized water to be added
W = weight in grams of solid charged to extractor
A = ml of 0.5N acetic acid added during extraction

7. The material in the extractor should be separated into its component liquid and solid phases as described under "Separation Procedure."

8. The liquids resulting from Steps 2 and 7 should be combined. This combined liquid (or the waste itself if it has less than ½ percent solids, as noted in Step 2) is the extract and should be analyzed for the presence of any of the contaminants specified in Table I of § 261.24 using the Analytical Procedures designated below.

Separation Procedure

Equipment: A filter holder, designed for filtration media having a nominal pore size of 0.45 micrometers and capable of applying a 5.3 kg/cm^2 (75 psi) hydrostatic pressure to the solution being filtered shall be used. For mixtures containing nonabsorptive solids, where separation can be affected without imposing a 5.3 kg/cm^2 pressure differential, vacuum filters employing a 0.45 micrometers filter media can be used. (For further guidance on filtration equipment or procedures see "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.")

Procedure:[3]

(i) Following manufacturer's directions, the filter unit should be assembled with a filter bed consisting of a 0.45 micrometer

[3] This procedure is intended to result in separation of the "free" liquid portion of the waste from any solid matter having a particle size >0.45 μm. If the sample will not filter, various other separation techniques can be used to aid in the filtration. As described above, pressure filtration is employed to speed up the filtration process. This does not alter the nature of the separation. If liquid does not separate during filtration, the waste can be centrifuged. If separation occurs during centrifugation the liquid portion (centrifugate) is filtered through the 0.45 μm filter prior to becoming mixed with the liquid portion of the waste obtained from the initial filtration. Any material that will not pass through the filter after centrifugation is considered a solid and is extracted.

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filter membrane. For difficult or slow to filter mixtures a prefilter bed consisting of the following prefilters in increasing pore size (0.65 micrometer membrane, fine glass fiber prefilter, and coarse glass fiber prefilter) can be used.

(ii) The waste should be poured into the filtration unit.

(iii) The reservoir should be slowly pressurized until liquid begins to flow from the filtrate outlet at which point the pressure in the filter should be immediately lowered to 10-15 psig. Filtration should be continued until liquid flow ceases.

(iv) The pressure should be increased stepwise in 10 psi increments to 75 psig and filtration continued until flow ceases or the pressurizing gas begins to exit from the filter outlet.

(v) The filter unit should be depressurized, the solid material removed and weighed and then transferred to the extraction apparatus, or, in the case of final filtration prior to analysis, discarded. Do not allow the material retained on the filter pad to dry prior to weighing.

(vi) The liquid phase should be stored at 4°C for subsequent use in STEP —.

B. Structural Integrity Procedure

Equipment: A Structural Integrity Tester having a 3.18 cm (1.25 in.) diameter hammer weighing 0.33 kg (0.73 lbs.) and having a free fall of 15.24 cm (6 in.) shall be used. This device is available from Associated Design and Manufacturing Company, Alexandria, VA, 22314, as Part No. 125, or it may be fabricated to meet the specifications shown in Figure 1.

Procedure:

1. The sample holder should be filled with the material to be tested. If the sample of waste is a large monolithic block, a portion should be cut from the block having the dimensions of a 3.3 cm (1.3 in.) diameter × 7.1 cm (2.8 in.) cylinder. For a fixated waste, samples may be cast in the form of a 3.3 cm (1.3 in.) diameter × 7.1 cm (2.8 in.) cylinder for purposes of conducting this test. In such cases, the waste may be allowed to cure for 30 days prior to further testing.

2. The sample holder should be placed into the Structural Integrity Tester, then the hammer should be raised to its maximum height and dropped. This should be repeeate fifteen times.

3. The material should be removed from the sample holder, weighed, and transferred to the extraction apparatus for extraction.

Analytical Procedures for Analyzing Extract Contaminants

The test methods for analyzing the extract are as follows:

(1) For arsenic, barium, cadmium, chromium, lead, mercury, selenium or silver: "Methods for Analysis of Water and Wastes," Environmental Monitoring and Support Laboratory, Office of Environmental Protection Agency, Cincinnati, Ohio 45268 (EPA-800/4-79-020, March 1979),

(2) For Endrin; Lindane; Methoxychlor; Toxaphene; 2,4-D; 2,4,5-TP Silver: in "Methods for Benzidine, Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater," September 1978, U.S. Environmental Protection Agency, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 42568,

as standardized in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods."

For all analyses, the method of standard addition shall be used for the quantification of species concentration. This method is described in "Test Methods for the Evaluation of Solid Waste." (It is also described in "Methods for Analysis of Water and Wastes.")

Billing Code 6580-01-M

[45 F.R. 33127, May 19, 1980]

Appendix M

Title 49 C.F.R.

§ 172.202 Description of hazardous material on shipping papers.

(a) Each description of a hazardous material on the shipping paper must include—

(1) The proper shipping name prescribed for the material as required by § 172.101.

(2) The class prescribed for the material as required by § 172.101. When the words of the proper shipping name are identical (excluding the entry "n.o.s.") with the words of the class, the inclusion of the class is not required.

(3) [Reserved]

(4) Except for empty packagings, the total quantity (by weight, volume, or as otherwise appropriate) of the hazardous material covered by the description.

(b) The basic description specified in paragraphs (a)(1) and (a)(2) of this section must be shown in sequence except that the technical name of the material may be entered between the proper shipping name and the class. For example: "Gasoline, Flammable liquid"; or "Flammable solid, n.o.s."; or "Corrosive liquid, n.o.s. (caprylyl chloride), corrosive material."

(c) The total quantity of the material covered by one description must appear before or after, or both before and after, the description required and authorized by this subpart.

(1) Abbreviations may be used to specify the type of packaging and weight or volume. For example: 40 cyl. Nitrogen, Non-flammable Gas-800 pounds; 1 box Cement, liquid n.o.s., Flammable liquid, 25 lbs.

(2) The type of packaging may be entered in any appropriate manner.

[Amdt. 172-29A, 41 FR 40677, Sept. 20, 1976]

§ 172.203 Additional description requirements.

(a) *Exemptions.* Each shipping paper issued in connection with a shipment made under an exemption must bear the notation "DOT-E" followed by the exemption number assigned and so located that the notation is clearly associated with the description to which the exemption applies.

(b) *Limited quantities.* The description for a material defined as "limited quantities" in this subchapter must include the words "Limited Quantities" or "Ltd. Qty." following the basic description.

(c) *Blasting caps.* The description for a shipment of blasting caps must have an entry stating the number of caps in the shipment, either before or after the basic description.

(d) *Radioactive material.* (1) The description for a shipment of radioactive material must include the following additional entries as appropriate:

(i) The name of each radionuclide in the radioactive material that is listed in § 173.390 of this subchapter. Abbreviations, e.g., "^{99}Mo" are authorized.

(ii) A description of the physical and chemical form of the material, if the material is not in special form.

(iii) The activity contained in each package of the shipment in terms of curies, millicuries, or microcuries. Abbreviations are authorized.

(iv) The category of label applied to each package in the shipment. For example: "RADIOACTIVE WHITE-I."

(v) The transport index assigned to each package in the shipment bearing RADIOACTIVE YELLOW-II or RADIOACTIVE YELLOW-III labels.

(vi) For a shipment of fissile radioactive materials—

(A) The words "Fissile Exempt," if the package is exempt pursuant to § 173.396(a) of this subchapter, or

(B) If not exempt, the fissile class of each package in the shipment, pursuant to § 173.389(a) of this subchapter; and

(C) For a Fissile Class III shipment, the additional notation: "Warning—Fissile Class III Shipment. Do not Load More than * * * Packages per Vehicle." (Asterisks to be replaced by appropriate number.) "In loading and Storage Areas, Keep at Least 20 Feet (6 Meters) from Other Packages Bearing Radioactive Labels."

(D) If a Fissile Class III shipment is to be transported by water, the supplementary notation must also include the following statement: "For shipment by water, only one Fissile Class III shipment is permitted in each hold."

(vii) For a package approved by the U.S. Energy Research and Development Administration (ERDA) or U.S. Nuclear Regulatory Commission (USNRC), a notation of the package identification marking as prescribed in the applicable ERDA or USNRC approval. (See § 173.393a of the subchapter.)

(viii) For an export shipment or a shipment in a foreign made package, a notation of the package identification marking as

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prescribed in the applicable International Atomic Energy Agency (IAEA) Certificate of Competent Authority which has been issued for the package. (See § 173.393b(a)(3) of the subchapter.)

(ix) For a shipment of radioactive materials being offered and accepted for transportation and transported within the United States under the provisions of § 171.12(e) of this subchapter, the shipping paper shall be annotated with the following entry:

This shipment contains packages of Type A/low specific activity radioactive materials limited in accordance with the 1973 IAEA Regulations, pursuant to the provisions of 49 CFR 171.12(e). (Non-applicable entry to be deleted.)

(e) *Empty packagings*. For other than a tank car, the description on the shipping paper for an empty packaging containing the residue of a hazardous material may contain the word(s) "EMPTY": or "EMPTY: Last contained * * *" followed by the name of the hazardous material last contained in the packaging. This entry may be before or after the basic description. For empty tank cars, see § 174.25(c) of this subchapter.

(f) *Transportation by air*. When a package containing a hazardous material is offered for transportation by air and this subchapter prohibits its transportation aboard passenger-carrying aircraft, the words "Cargo-only aircraft" must be entered after the basic description.

(g) *Transportation by rail*. (1) The shipping paper for a rail car containing a hazardous material must contain the notation "Placarded" followed by the name of the placard required for the rail car.

(2) The shipping paper for each specification DOT 112A or 114A tank car (without head shields) containing a flammable compressed gas must contain the notation, "DOT 112A" or "DOT 114A," as appropriate, and either "Must be handled in accordance with FRA E.O. No. 5" or "Shove to rest per E.O. No. 5."

(h) *Transportation by highway*. Following the basic description for a hazardous material in a specification MC 330 or MC 331 cargo tank made of quenched and tempered steel, there must be entered for—

(1) *Anhydrous ammonia*. (i) The words "0.2 per cent water" to indicate the suitability for shipping anhydrous ammonia in the cargo tank as authorized by § 177.817 of this subchapter, or

(ii) The words "NOT FOR Q AND T TANKS" when the anhydrous ammonia does not contain 0.2 per cent or more water by weight.

(2) *Liquefied petroleum gas*. The word "Non-corrosive" or "Non-cor" to indicate the suitability for shipment of the "Non-corrosive" liquefied petroleum gas offered for transportation by cargo tank as authorized by § 173.315(a)(1) Note 15 of this subchapter.

(i) *Transportation by water*. (1) Each shipment by water must have the following additional shipping paper entries:

(i) Identification of the type of packages such as barrels, drums, cylinders, and boxes,

(ii) The number of each type of package including those in a freight container or on a pallet, and

(iii) The gross weight of each type of package or the individual gross weight of each package.

(2) The shipping paper for a hazardous material offered for transportation by water to any country outside the United States must have in parenthesis the technical name of the material following the proper shipping name when the material is described by a "n.o.s." entry in § 172.101. For Example: Corrosive liquid, n.o.s. (caprylyl chloride), Corrosive material. However, for a mixture, only the technical name of any hazardous material giving the mixture its hazardous properties must be identified.

(3) The entry "Skin corrosive only" must be included to also authorize "under deck" stowage for corrosive liquid, n.o.s. and corrosive solid, n.o.s. that meet only the corrosion to skin criteria of § 173.240(a)(1).

(49 U.S.C. 1803, 1804, 1808)

[Amdt. 172-29A, 41 FR 40677, Sept. 20, 1976, as amended by Amdt. 172-29B, 41 FR 57067, Dec. 30, 1976; Amdt. 172-41, 43 FR 10918, Mar. 16, 1978; Amdt. 172-45, 43 FR 39791, Sept. 7, 1978]

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Minnesota Energy Agency
Division of Data and Analysis

Adopted Temporary Rules Governing Procedures to Reduce Demand and Increase Supply of Fuel Oil During a Fuel Oil Supply Shortage. (6 MCAR §§ 2.3101-2.3108)

The proposed temporary rules published at *State Register*, Volume 5, Number 17, pp. 662-669, October 27, 1980 (5 S.R. 662) were adopted December 10, 1980, approved by the Office of the Attorney General on December 11, 1980 and filed with the Office of the Secretary of State on December 11, 1980 with the following amendments:

Temporary Rules as Adopted Showing Changes from Proposed

6 MCAR § 2.3101 Authority and Purpose of Rules: These rules are authorized by Minnesota Statutes § 116H.09, especially subdivision 4. The purpose of these rules is to specify procedures to be used during a Fuel Oil Supply Emergency and to specify measures that may be employed to reduce demand for and increase supply of fuel oil and the method of implementing the measures.

6 MCAR § 2.3102 Applicability of Rules: The rules shall apply:

A. during a declared fuel oil supply emergency (see 6 MCAR 2.3105);

B. during a declared fuel oil supply alert (see 6 MCAR 2.3104); and

C. to the Minnesota Energy Agency when the Agency is preparing to recommend that a fuel oil supply alert or fuel oil supply emergency be declared.

6 MCAR § 2.3103 Definitions:

A. "Agency" means the Minnesota Energy Agency;

B. "Agriculture" means all the activities classified under the industry code numbers specified in paragraph 1 below as set forth in the Standard Industrial Classification Manual, 1972 edition, except those industry code numbers listed in paragraph 2 which are excluded:

1. Activities included. (a) All industry code numbers included in Division A, Agriculture, Forestry and Fishing, except as specified in paragraph 2 of this section. (b) All industry code numbers included in Major Group 20, Food and Kindred Products, of Division D, Manufacturing, including grain and seed drying, except as specified in paragraph 2 below; and (c) All the following other industry code numbers:

1474 Potash, Soda and Borate Mineral (Potash mining only);

1475 Phosphate Rock;

2141 Tobacco Stemming and Redrying;

2411 Logging Camps and Logging Contractors;

2421 Sawmills and Planing Mills;

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2819 Industrial Inorganic Chemicals, Not Elsewhere Classified (dicalcium phosphate only);

2873 Nitrogenous Fertilizers;

2874 Phosphatic Fertilizers;

2875 Fertilizers, Mixing Only;

2879 Pesticides and Agricultural Chemicals Not Elsewhere Classified;

4212 Local Trucking Without Storage (Farm to market hauling and log trucking only);

4971 Irrigation Systems (for farm use); and

5462 Retail Bakeries, Baking and Selling.

2. Activities excluded. (a) All the following industry code numbers, otherwise listed under Division A, Agriculture, Forestry and Fishing, are excluded from the definition:

0271 Fur-Bearing Animals and Rabbits (except rabbit farms which are included in the definition);

0279 Animal Specialties, Not Elsewhere Classified, (except apiaries, honey production and bee, catfish, fish, frog and trout farms which are included in the definition);

0742 Veterinary Services for Animal Specialties;

0752 Animal Specialty Services;

0781 Landscape Counseling and Planning;

0782 Lawn and Garden Services; and

0849 Gathering of Forest Products, Not Elsewhere Classified.

C. "Btu" means British thermal unit, a common unit of energy measurement which is used in these rules for comparative purposes;

D. "Commercial Building" means a building all of whose occupants are engaged in commerce, unless residential occupants have separate heating controls;

E. "Communications" means telecommunications including the repair, operation and maintenance of voice, data, telegraph, video and similar communication services for the public by a communications common carrier or by a firm providing the same service in direct competition with a communication common carrier, newspaper production and distribution, excluding sales and routine administrative activities;

F. "Consumer" means a person that consumes natural gas, electricity, middle distillate, residual, or propane;

G. "County and/or Municipal Fuel Coordinator" means any person who has been appointed by his/her county board or city council to perform certain actions with regard to the Federal Fuel Allocation Program;

H. "Demand" means that quantity of products or services for which there are willing and able purchasers;

I. "Division" means the Division of Emergency Services~~,~~ of the Department of Public Safety;

J. "Electric Utility" means any entity engaged in the generation, transmission, or distribution of electric energy for sale;

K. "Emergency Services" means law enforcement, fire fighting, snow removal, emergency medical services, search and rescue activities, telecommunications~~,~~ services and utilities services;

L. "Energy Production" means the refining, processing, production and distribution of coal, natural gas, petroleum or petroleum products, shale oil, nuclear fuels and electrical energy. It also includes the construction of facilities and equipment used in energy production, such as pipelines, power plants, transmission lines and similar capital goods. Excluded from this definition is electrical generation whose power source is petroleum based;

M. "Environmental Standards" means those laws and regulations, both federal and state, intended to protect the environment,

N. "Essential Government Services" means court and judicial activities, jails and prisons, meetings of duly elected political officials, the Division of Emergency Services and the Emergency Operating Center, Local Energy Conservation Boards, Department of Natural Resources enforcement activities, minimum services to provide AFDC, SSI, and Social Security checks and other welfare payments including food stamps;

~~N.~~O. "Essential Transportation" means emergency vehicles, public transportation including bus, rail, taxi, and van pool services, energy distribution such as heating oil delivery, transportation of perishable food items, ~~and~~ postal delivery and mail hauling, and transportation of medicine and medical materials;

~~O.~~P. "Forecast" means a projection of future demand or supply for some specified time period;

~~P.~~Q. "Fuel Oil" means any liquid or liquefiable petroleum product with a flashpoint above 100°F which is used to generate heat or power;

~~Q.~~R. "Health and Residential Care Facilities" means hospitals, nursing homes, penal institutions, and all types of residential treatment centers including but not limited to drug/alcoholism treatment centers, residential mental health centers, and residential care centers for the retarded or handicapped;

~~R.~~S. "Home Owner" means a person who has a vested legal or beneficial interest, jointly or severally, in a dwelling which is occupied by that person;

~~S.~~T. "Middle distillate" means any derivative of petroleum, including kerosene, home heating oil, range oil, stove oil, and diesel fuel, which have a fifty percent boiling point in the ASTM D86 standard distillation test falling between 370° and 700°F. Products specifically excluded from this definition are kerosene-base and naphtha-base jet fuel, heavy fuel oils as defined in VV-F-815C of ASTM D-396, grades #4, 5, and 6, intermediate fuel oils (which are blends containing #6 oil), and all specialty items such as solvents, lubricants, waxes, and process oil;

~~T.~~U. "Person" means any individual, firm, estate, trust, sole proprietorship, partnership, association, company, corporation, governmental unit or subdivision thereof, or a charitable, educational or other institution;

~~U.~~V. "Plant protection" means minimum plant maintenance necessary to secure buildings and prevent damage from inclement weather;

~~V.~~W. "Residence" means the place where a natural person or persons actually live including hotels and motels, and including buildings being used as emergency housing facilities;

~~W.~~X. "Residual fuel oil" means the fuel oil commonly known as: 1. No. 4, No. 5 and No. 6 fuel oils; 2. Bunker C; 3. Navy Special Fuel Oil; and 4. all other fuel oils which have a fifty percent boiling point over 700°F in the ASTM D-86 standard distillation test;

Y. "Sanitation services" means the collection and disposal for the public of solid wastes and hazardous wastes, whether by public or private entities, and the maintenance, operation and repair of liquid purification and waste facilities. Sanitation services includes the provision of water supply services by public utilities, whether privately or publicly owned and operated;

Z. "Shortage" means a situation in which demand exceeds supply and normal market forces will not act to equalize supply and demand within a reasonable period of time;

AA. "State Set-aside" means the amount of an allocated product from the total supply of a supplier made available to the state for use to meet emergencies and hardship needs, pursuant to 10 Code of Federal Regulations § 211.17;

BB. "Supplier" means any firm or any part of a subsidiary which presently supplies, sells, transfers, or otherwise furnishes (as by consignment) any petroleum product to wholesale purchasers or end users, including but not limited to refiners, natural gas processing plants or fractioning plants, importers, resellers, jobbers and retailers; and

CC. "Tenant" means any person who occupies but does not own a dwelling under any agreement, lease, or contract, whether oral or written, and for whatever period of time, which requires the payment of moneys as rent for the use of the dwelling unit, and all other regular occupants of such dwelling unit.

6 MCAR § 2.3104 Fuel Oil Supply Alert. A fuel oil supply alert will be declared to inform the citizens of a potential fuel oil shortage, encourage conservation, and initiate a state of readiness for such a shortage.

A. A Fuel Oil Supply Alert may be declared in the event that Agency forecasts indicate a reasonable likelihood that fuel oil supply will not be adequate to meet fuel oil demand, within a period of 6 months from the date of declaration.

B. The Director of the Agency shall have sole responsibility for declaring a Fuel Oil Supply Alert.

6 MCAR § 2.3105 Fuel Oil Supply Emergency. A fuel oil supply emergency is a state of declared emergency resulting from a shortage of fuel oil.

A. Declaration of an energy emergency. Responsibilities of each organization are as follows:

1. Minnesota Energy Agency. When Agency forecasts of short-term demand for fuel oil exceed forecasts of short-term

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supply of fuel oil within a three month period of time, the Director of the Agency may recommend that an energy supply emergency be declared.

2. The Executive Council or Legislature. The Executive Council, consisting of the Governor, the Lieutenant Governor, the Attorney General, the Auditor, the Treasurer, and the Secretary of State, or the Legislature has responsibility for declaring an energy supply emergency.

a. An energy supply emergency automatically expires in 30 days, unless renewed by the Legislature. Declaration of an energy supply emergency must be renewed every 30 days~~.~~ by the legislature.

b. The declaration shall be promptly disseminated and brought to the attention of the general public by the Executive Council or Legislature, whichever body declares the emergency. The Energy Supply Emergency Resolution shall be promptly filled with the Division, the Agency, and the Secretary of State.

B. Priority ranking of users.

1. In an energy supply emergency resulting from a fuel oil shortage, end-user suppliers shall deliver fuel oil according to the system of priorities set out below. Higher priority users shall have necessary requirements satisfied before lower priority uses.

a. First priority users are fuel oil users with no available alternative fuel whose continued operation is essential for the health and safety of the citizens of the State. These include:

1. Health and residential care facilities,
2. Residences,
3. Essential Transportation;
4. Plant Protection;
5. Emergency Services;
6. Communications;
7. Energy Production;
8. Agriculture; ~~and~~
9. Sanitation Services; and
10. Essential Government Services.

b. Second Priority Users are those users whose continued operation is necessary for the health and safety of the citizens of the State but who have an available alternative source of fuel, such as residual oil or coal, the use of which would violate environmental standards. Cargo and freight hauling, except those services listed in rule 6 MCAR § 2.3105 B.1.a., shall also be considered a second priority use of fuel oil.

c. Third priority users are those users whose continued operation is not essential for the immediate health and safety of the citizens of the State. These include:

1. Schools and religious institutions;
2. Government except those services listed in rule 6 MCAR § 2.3105 B.1.a.;
3. Commerce except those services listed in rule 6 MCAR § 2.3105 B.1.a.;
4. Industry except those services listed in rule 6 MCAR § 2.3105 B.1.a.
5. ~~Cargo and Freight Hauling.~~

Within this category preference will be given to users who have no available alternative source of fuel and users who have demonstrated that they have engaged in energy saving measures.

d. Users who have an available alternative source of fuel the use of which would not violate environmental standards will not receive fuel oil during a fuel oil supply emergency. Natural gas is not considered 'available' to interrupted users.

e. Uses within priority categories are not ranked according to preference.

2. Major refineries, prime suppliers and supplier representatives will be notified of the state of emergency by agency staff and supplied with a written description of the priority system for distribution, within two (2) days of a declared emergency.

3. The Emergency Operating Center shall provide services necessary to answer questions and resolve conflicts regarding the priority ranking of individual firms or entities.

4. Appeals of priority status shall be made by following the Fuel Allocation Rules of Procedure, 6 MCAR 2.0101-2.0107.

C. Measures.

1. Upon declaration of a fuel oil energy supply emergency, the Governor shall select from the following measures to reduce the shortage.

a. Voluntary Measures:

~~b.~~ (1) Home owners and renters ~~may~~ shall be requested to voluntarily turn their thermostats back to between 62°F and 66°F during the day and ~~52°F~~ 60°F and 58°F during the night and during unoccupied hours, and ~~may~~ shall be requested to set back water heater thermostats to between 105°F and 115°F (or the lowest setting). Residences occupied by persons for whom such a measure endangers health shall be warned not to comply with this measure. Such persons include the elderly and sick and children under the age of one (1).

~~c.~~ (2) Citzens ~~may~~ shall be requested to refrain from driving diesel-powered automobiles.

~~d.~~ (3) Voluntary industrial, commercial, government, and residential conservation targets ~~may~~ shall be established to reduce energy usage, including electricity and natural gas, especially during periods of peak usage.

~~g.~~ (4) Commercial and industrial establishments ~~may~~ shall be requested to voluntarily reduce their hours of operations where this action saves energy.

~~l.~~ (5) Commercial and industrial users ~~may~~ shall be requested to voluntarily release fuel oil from inventory supplies. The Agency will use Fuel Allocation Rules of Procedure (See 6 MCAR 2.0101-2.0107) to allocate voluntarily released inventory.

~~(1)~~ (a) Under this system suppliers shall be directed to deliver fuel oil supplies according to the system of priorities described in 2.3105 B.

~~(2)~~ (b) First priority users shall receive set-aside and voluntary inventory releases necessary to maintain health and safety for as long as such supplies last.

~~m.~~ (6) Business, industrial and government institutions ~~may~~ shall be requested to close nonessential buildings.

(7) Public information efforts shall be conducted to instruct Minnesotans in fuel oil, natural gas and electricity saving measures. These measures may include instruction in home heating techniques and truck and bus fuel economy measures. Regular information up-dates regarding the status and severity of the shortage shall also be issued.

b. Mandatory Measures:

~~a.~~ (1) Commercial buildings ~~may~~ shall be ordered to comply with the Emergency Building Temperature Restrictions (EBTR), ~~pursuant to the Energy Policy and Conservation Act of 1975, 201 (A) and (B), (42 USC 6201).~~ 10 Code of Federal Regulations Part 490 (1979). ~~(~~Buildings which are exempt under EBTR will be exempted from this rule.~~)~~

~~e. Mandatory industrial, commercial, and government targets may be established to reduce energy usage, including electricity and natural gas, especially during peak usage periods.~~

~~h.~~ (2) Smoking within buildings ~~may~~ shall be prohibited and reduction of the amount of outside air entering building ventilation systems may be ordered.

~~i.~~ (3) All electric utilities with oil-fired generating facilities who are members of the Mid-Continent Area Power Pool ~~may~~ shall be ordered to use oil of a quality not suitable for home heating or to shut down these plants and purchase power from the Mid-Continent Area Power Pool when power from ~~nuclear or coal fired~~ non-petroleum-fired generating facilities is available from the Pool.

~~f.~~ (4) Fuel oil suppliers ~~may~~ shall be ordered to stop deliveries to large users (1000 gallon or larger storage tanks) until those users have less than one week's fuel oil supply on hand.

~~j. Weight limits on trucks may be raised to a uniform level of 80,000 lbs. for all roads.~~

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~~k.~~ (5) Business, industrial and government institutions which now burn middle distillate, natural gas, or propane and which have the capacity to burn residual oil ~~may~~ shall be ordered to convert to the residual oil during the crisis period, unless such action is specifically prohibited by other law or rule of the Pollution Control Agency or other agency.

(6) The 55 mph speed limit shall be strictly enforced.

2. When the Agency determines that actions listed in 6 MCAR § 2.3105 C.1. have not been or will not be sufficient to approximately equalize supply and demand the following options may be selected by the Governor:

a. Owners/operators of commercial, industrial, and government buildings ~~may~~ shall be ordered to reduce heating thermostats to 62°F during the day where such action does not violate Minnesota Rules MOSHC 41f and 50°F at night or during unoccupied periods.

b. Temporary rules ~~may~~ shall be ordered adopted or rules may be ordered suspended to relax environmental standards, where such action would yield significant fuel savings.

c. Delivery of fuel oil supplies to specific industries, including commerce and government, ~~may~~ shall be ordered to be curtailed according to the following criteria. A curtailment order shall be in writing and shall be delivered by registered mail to firms in the industry and area supplies.

(1) Order of curtailment will be based on an industry's energy-labor ratio, defined as the sum of natural gas and fuel oil consumption in Btu's per year per employee. The industry with the highest energy-labor ratio will be the first to be curtailed, and so on. Such action will be rescinded in reverse order according to the industry's energy-labor ratio.

(2) Users who have first priority status under 6 MCAR § 2.3105 B. will be the last to be curtailed. Users who have second priority status will be curtailed after third priority users.

(3) A firm may be exempted from curtailment of delivery of fuel oil supplies if it can demonstrate it has reached the 1980 energy conservation targets established by the Department of Energy in 1977, under the Energy Policy and Conservation Act of 1975 if applicable, and that its energy-labor ratio is below the industry average. If no energy conservation targets exist, the firm must prove that its energy-labor ratio is significantly below the industry average. Exemption may be granted by appeal pursuant to 6 MCAR § 2.3108.

(4) A firm's energy labor ratio shall be determined by dividing the consumption of natural gas and fuel oil per employee by the ratio of its local degree days to the statewide average degree days of 8400. The 30 year average of degree days shall be used.

~~(4)~~ (5) The order of curtailment and ~~estimated~~ energy-labor ratio will be estimated by the Agency and published annually in the *State Register* during the month of October.

d. Homeowners and renters may be requested to close homes and move in with friends or relatives or move into emergency shelters. The Emergency Operating Center shall assist in this effort by designating shelters, aiding in securing homes, and providing emergency transportation.

3. Actions available for implementation under 6 MCAR § 2.3105 C. 1. will remain available under 6 MCAR § 2.3105 C. 2.

D. Operating Organization During an Emergency

1. Energy Emergency Operating Center. During a declared energy emergency, the Division and the Agency will set up an Energy Emergency Operating Center.

a. The Director of the Emergency Operating Center ~~will~~ shall be the Director of the Division. She/He shall direct the implementation of the emergency plan.

b. The Emergency Operating Center shall be located at a site designated by the Director of the Center and staffed by personnel from the Division, the Agency and other State agencies as deemed necessary by the Director of the Center. While on detail at the Center, these personnel shall be primarily responsible to the Director of the Center.

2. Energy agency.

a. The Agency shall assist the Division by analyzing the fuel oil situation, evaluating alternative courses of action included in the emergency plan, and advising as to the proper time and sequence of the implementation of emergency measures.

b. The Agency shall determine and recommend to the Governor the least restrictive measures specified under 6 MCAR § 2.3105 C.1.-2. capable of eliminating the shortage of fuel oil.

3. Emergency services.

a. The Division shall have the responsibility for ~~the~~ implementing the energy emergency plan and coordinating the emergency operations of the governmental organizations involved in the Energy Emergency program.

b. The Division shall use a network of regional and local coordinators who are responsible for coordinating the emergency operations with the different geographic areas of the State.

c. By ~~January~~ July 1, 1982, the Division shall develop procedures to monitor compliance with the mandatory measures listed in 6 MCAR § 2.3105 C. 1.-2.

~~4. Pollution Control Agency. By JanuaryJuly 1, 1982, the Pollution Control Agency, with the cooperation of the Agency, shall develop standby plans and procedures for the administration and possible modification of pollution control standards during an energy emergency.~~

~~5.~~4. Other Organizations with Important Responsibilities. The Division shall have the authority to call on any State Agency or cooperating organization, such as the Red Cross, if its services are deemed to be necessary.

6 MCAR § 2.3106 Penalties:

A. Penalties for the violation of any provision of the plan are set out in Minnesota Statutes 116H.15 (1978).

B. Any person who violates the plan or knowingly submits false information in any report required by the plan shall be guilty of a misdemeanor. Maximum penalty is $500 or 90 days or both. Each day of violation shall constitute a separate offense.

C. The plan may be enforced by injunction, action to compel performance or other appropriate action in the district court of the county where the violation takes place. The existence of an adequate remedy at law shall not be a defense to such an action.

D. A court which finds that a person has violated a requirement of the plan or has knowingly submitted false information in any report required by the plan, or has violated a court order issued pursuant to the plan may impose a civil penalty of not more than $10,000 for each such violation. These funds are payable to the general fund in the state treasury.

6 MCAR § 2.3107 Local Energy Conservation Board.

A. A Local Energy Conservation Board will be created to hear requests for exemption from mandatory measures listed in 6 MCAR § 2.3105 C.1.-C.2., except 2.c., in each county, in each city of the first class and in each city of more than one thousand population in St. Louis county.

B. Members:

1. The Chair~~man~~ of the County Board of Commissioners, shall appoint a five-member county Local Energy Conservation Board to include, if available, an elected county official, the county fuel coordinator, a health professional, the county director of emergency services (if different from the county fuel coordinator), and a member of the public. If the county fuel coordinator and county director of emergency services are the same person, the fifth member shall be selected from the public. The county attorney shall act as an advisor to the Local Energy Conservation Board.

2. Where appropriate under 6 MCAR § 2.3107 A., the Chair~~man~~ of the City Council shall appoint a five-member municipal Local Energy Conservation Board to include an elected city official, the city fuel coordinator, a health professional, the city director of Emergency Services (if different from the city fuel coordinator), and a member of the public. If the city fuel coordinator and the city director of Emergency Services are the same person, the fifth member shall be selected from the public. The city attorney shall act as an advisor to the Local Energy Conservation Board.

C. The appointed members shall not be named until after the declaration of an emergency. In making the appointments, the Chair~~man~~ of the County Board of Commissioners and Chair~~man~~ of the City Council shall make every reasonable effort to avoid any conflicts of interest.

D. Three members shall constitute a quorum.

6 MCAR § 2.3108 Appeals

A. Appeals shall be delivered by mail or in person to the following locations:

1. Appeals of mandatory measures described in 6 MCAR § 2.3105 C., except 2.c., shall be decided by the Local Energy Conservation Board and directed to the County Courthouse, or the Mayor's office, whichever is appropriate. Persons residing in a municipality where a Local Energy Conservation Board exists shall direct appeals to the municipal Local Energy Conservation Board.

2. Appeals of orders to curtail delivery of supplies described in 6 MCAR § 2.3105 C.2.c. shall be decided by ~~a Hearing~~

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~~Examiner appointed by the Chief Hearing Examiner and shall~~ the Fuel Allocation Appeals Board described in Minnesota Rule EA 105 (6 MCAR § 2.0105) and shall be directed to the ~~Office of Administrative Hearings, Room 300, 1745 University Avenue,~~ Minnesota Energy Agency, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101.

3. Appeals of priority status shall be decided by the Fuel Allocation Appeals Board described in 6 MCAR § 2.0101-2.0107 and shall be directed to the Minnesota Energy Agency, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101. Procedures for appeals are fully set out in 6 MCAR §§ 2.0101-2.0107 and the procedural requirements set out in this rule are not applicable.

B. Content of appeals.

1. Each appeal from an action taken pursuant to a declared energy supply emergency shall be in writing and shall be signed by the appellant. Each appeal shall state:

a. the action from which the appeal is made, including the individual or unit of government taking the action, and the date and nature of the appeal;

b. the reason for the appeal, including the reasons the appellant believes the action to be unjust or unwise;

c. the names and addresses of any persons known to the appellant who might be adversely or beneficially affected by the outcome of the appeal; and

d. the nature of the relief sought, whether reversal, modification or some other relief.

2. Each appeal of an order to curtail delivery of fuel oil supplies based on conservation effort, shall also include:

a. a detailed description of ~~energy~~ petroleum savings resulting from conservation efforts since 1977, ~~and~~

b. calculation of the firm's energy-labor ratio; and

c. degree days for the area where the firm is located.

C. Timing and Procedures.

1. Within two (2) calendar days after receipt of an appeal, the ~~Hearing Examiner or Local Energy Conservation~~ appropriate Board, ~~whichever is applicable,~~ or a designate shall set a hearing date. The date of hearing shall not be more than five (5) calendar days after the receipt of an appeal. The Chair~~man or Hearing Examiner~~ or his/her designate, shall notify ~~all affected persons,~~ the parties to an appeal, either verbally or in writing, of the appeal and the time and place for the hearing, not less than two (2) calendar days before the hearing.

2. The parties to an appeal shall be the appellant and the Emergency Operating Center. Any party may be represented by counsel, but need not be.

3. The order to curtail delivery of fuel oil supplies shall remain in effect during an appeal of such an order.

4. Informal disposition may be made of an appeal or any issue therein by stipulation, agreed settlement, or consent order at any point in the proceedings. The ~~Hearing Examiner~~ Fuel Allocation Appeals Board or Local Energy Conservation Board may dispose of an appeal adversely to a party which defaults. Disposition by default shall occur only after the party against whom default is proposed, having received timely notice, fails to appear. The ~~Hearing Examiner or Local Energy Conservation~~ Board may order a prehearing conference to be held at any time prior to hearing, if ~~it~~ a determinesation is made that such conference may simplify the issues or provide an opportunity for settlement. If a prehearing conference is ordered, notice of the time and place of the conference shall be served on all parties to the appeal not less than two (2) working days before the date of the conference.

5. Appeals from an action taken pursuant to an energy supply emergency shall not be heard if received more than ten (10) working days after the termination or expiration of an energy supply emergency.

D. Hearings.

1. Anyone submitting an appeal shall have the right to a hearing before the ~~Hearing Examiner or Local Energy Conservation~~ appropriate Board, at which hearing the parties may present and cross-examine witnesses and present evidence, rebuttal testimony and argument with respect to the issue or issues raised in the appeal.

2. The ~~Hearing Examiner or Local Energy Conservation~~ board shall prepare an official record of each hearing. Any party requesting a verbatim transcript of the hearing must bear the expense of preparing the transcript.

3. The Chair~~man of the Local Energy Conservation Board or the Hearing Examiner~~ shall use the procedures set by the Office of Administrative Hearings at the hearing. The ~~Hearing Examiner or Local Energy Conservation Board~~ Chair may prohibit devices which interfere with the hearing and may evict persons who disrupt the hearing.

E. Decision:

1. No factual information or evidence which is not part of the record shall be considered by the board ~~or the Hearing Examiner~~ in making a decision on an appeal.

2. Within two (2) calendar days after the hearing record is closed, the ~~Hearing Examiner or Local Energy Conservation~~ board shall issue a decision in writing, including the findings and conclusions on which the decision is based, a copy of which shall be given to all parties to the appeal.

3. The ~~Hearing Examiner~~ Fuel Allocation Appeals Board shall issue a final decision. The Local Energy Conservation Board shall issue a recommended decision to the Division Director. The Division Director may accept or overrule the Local Energy Conservation Board's decision, or ~~he/she~~ may remand the appeal for further hearing on specified parts. ~~His/her~~ The decision shall be in writing and served on all parties.

4. The appellant may seek judicial review of a final decision of the Division Director or the ~~Hearing Examiner~~ Fuel Allocation Appeals Board, in accordance with the Minnesota Administrative Procedure Act.

SUPREME COURT

Decisions Filed Friday, December 19, 1980

Compiled by John McCarthy, Clerk

51200/Sp. Donald Juhlin, Appellant, vs. Life Insurance Company of North America. Dakota County.

In the restricted context of an accident insurance contract, the qualified use of the word "severance," with regard to limbs, as in the phrase "loss by actual severance," is unambiguous and means that the loss of limb must involve a cutting of the flesh of the limb. The plaintiff's loss of the use of his legs as the result of a spinal injury and subsequent paralysis is, therefore, not covered by an insurance policy that limits coverage to losses by "actual severance."

Affirmed. Otis, J.

50384/275 Guaranty State Bank of St. Paul, vs. Dwight R. J. Lindquist, Trustee in Bankruptcy of Total Maintenance Co., County of Hennepin, etc., United States of America, Appellant, Gloria Strand, individually and d.b.a. G & T Maintenance. Hennepin County.

The taxpayer possessed an interest in its accounts receivable sufficient for a federal tax lien to attach.

Plaintiff's security interest in the taxpayer's accounts receivable is not entitled to priority over the federal tax lien. I.R.C. § 6323.

Reversed and remanded. Peterson, J.

50736/332 Robert E. Short, Appellant, vs. Sun Newspapers, Inc., et al, Carroll E. Crawford, Vincent J. Manno, et al, Elmer L. Andersen, et al. Hennepin County.

Appeals for sealed bids, couched in positive and definite terms leaving nothing to negotiate, the sale to go to the highest bidder and the seller reserving no right to reject bids, may constitute an enforceable offer rather than only an invitation to make an offer.

In sealed bidding for a private contract, the use of a concealed sharp bid in the form "X dollars more than the highest bid submitted" is a fraud on other unsuspecting parties to the bidding procedure.

A private contract resulting from a concealed sharp bid is not void but rather voidable at the timely election of the defrauded parties. Here questions of fact exist as to whether, if a voidable contract resulted from the sharp bid, it could be and was avoided.

Reversed and remanded for proceedings consistent with this opinion. Simonett, J. Took no part, Otis, J.

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SUPREME COURT

51438/Sp. Frank Edward Spears, petitioner, Appellant, vs. State of Minnesota. Beltrami County.

Evidence of petitioner's guilt of aggravated assault was sufficient.

Trial court did not abuse its discretion in denying a continuance and in substituting an alternate juror when one of the 12 jurors became ill.

Trial court did not prejudicially err in any of its evidentiary rulings.

Petitioner, by failing to object, move for mistrial, or seek curative instructions, is deemed to have forfeited his right to have the issue of prosecutorial misconduct in closing argument considered on appeal.

Equity of sentence imposed in 1978 for crime committed in 1977 is not reviewable by this court.

Petitioner did not meet his burden of proving that there was newly discovered evidence entitling him to a new trial.

Affirmed. Simonett, J.

51320/374 In the Matter of the Application for the Discipline of Logan O. Scow, an Attorney at Law of the State of Minnesota. Supreme Court.

Resignation from practice of law permitted. Per Curiam. Took no part, Simonett, J.

50699/Sp. State of Minnesota vs. Roland Johnson, Appellant. Hennepin County.

Evidence of defendant's guilt of criminal sexual conduct in the first degree was legally sufficient.

Trial court did not abuse its discretion in admitting relevant other-crime evidence.

Affirmed. Per Curiam. Took no part, Amdahl, J.

Decision Filed Monday, December 15, 1980

51831/Sp. State of Minnesota, Plaintiff, vs. Kristin D. Anderson. Crow Wing County.

District court in a criminal prosecution should certify a question of law for pretrial determination by this court only if the question "in the opinion of the judge is so important or doubtful as to require a decision of the Supreme Court," Minn. R. Crim. P. 29.02, subd. 4.

Held, district court properly denied motion to suppress confession.

Remanded. Sheran, C. J.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Education Vocational-Technical Education Division

Notice of Intent to Solicit Outside Opinion Regarding Rules and Changes in Rules for Secondary Vocational Education, Adult Vocational-Technical Education, General Rules and Post-Secondary Vocational-Technical Education.

The Department of Education, Division of Vocational-Technical Education is drafting rules and changes in the General Rules for Vocational-Technical Education (Chapter Four-A, 5 MCAR §§ 1.0077, 1.0084 D.2.), in the Secondary Vocational Education Rules (Chapter Five-A, 5 MCAR §§ 1.00811 D.6., D.1.b.(2)(c), G.1., G.1.c., G.3.b., G.3.c., G.3.d., 1.00821 C., D., E.2.), in the Post-Secondary Vocational-Technical Education Rules (Chapter Six, 5 MCAR § 1.0102 F.) and in the Adult Vocational-Technical Education Rules (Chapter Six-A, 5 MCAR § 1.0115, § 1.0084 B.).

The Department invites interested persons or groups to provide information, comment and advice on these subjects in writing or orally to:

Dr. Mary Thornton Phillips
Assistant Commissioner
Division of Vocational-Technical Education
564 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Written statements will be made part of the public hearing record.

All materials to be considered in the original draft should be submitted by January 26, 1981.

Minnesota State Agricultural Society
Minnesota State Fair

Annual Meeting Notice

The 122nd annual meeting of the Minnesota State Agricultural Society, governing body of the State Fair, will be held Jan. 18, 19 and 20 at the Leamington Hotel in Minneapolis. The annual meeting will be followed by meetings of the society's board of managers Jan. 20.

A complete program of all scheduled meetings is available during regular business hours at the Administration Building on the fairgrounds, Falcon Heights, or at the hotel during the meeting.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Energy Agency
Conservation Division

Notice of Request for Proposals for Contractual Services for Technical Background Papers on Residential Energy Conservation Measures

Notice is hereby given to request proposals for engineering consultant and/or technical writing contract services for the purpose of writing from one to five technical background papers on Residential Energy Conservation Measures. The papers shall be used by Agency personnel to develop consumer publications on the following topics: basement insulation, window coverings, home heating systems, air to air heat exchangers, and how to install combustion air supply in residences.

The consultant contractor shall review existing literature on one or more of the subjects. Review materials shall include doctoral theses, product literature, and technical reports and documents such as those available through the National Technical Information Service. The consultant shall then write a technical background paper which concisely summarizes the review literature.

Contact persons:

Richard D. Hermans or Jean Dick
Minnesota Energy Agency
Conservation Division
980 American Center Building
150 East Kellogg Blvd.
St. Paul, MN, 55101
Phone (612) 296-1565 or (612) 296-9082

Estimated cost: Not to exceed $15,000 for all five subjects or not to exceed $3,000 for any one subject.

Submission deadline January 26, 1981.

A more detailed request for proposal is available from Richard Hermans at the above address.

Interested respondents may submit proposals to the above contact persons.

Contractors with the Minnesota Energy Agency must apply for a Certificate of Compliance from the Minnesota Department of Human Rights, 240 Bremer Building, St. Paul, MN 55101.

STATE OF MINNESOTA
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FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

Perspectives—Publication about the Senate. Contact Senate Information Office.

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

This Week—weekly interim bulletin of the House. Contact House Information Office.

STATE OF MINNESOTA

MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Pollution Control Agency Governing the Management of Hazardous Waste.

CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. STat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the Minnesota Pollution Control Agency for the purpose of receiving notice of the proposed adoption of rules by this Agency is accurate and complete as of 9:00 A.M., this 31 day of December, 1980.

Mary K King

STATE OF MINNESOTA

MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Pollution Control Agency Governing the Management of Hazardous Waste.

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

DARRYL J. WEAKLEY, being first duly sworn, deposes and says:

That on the 31st day of December, 1980, at the City of Roseville, County of Ramsey, State of Minnesota, he served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, on all those persons and associations who have requested that their names be placed on file with the Minnesota Pollution Control Agency for the purpose of receiving notice of the proposed adoption of rules by this Agency and on all other persons and associations listed in the attached mailing list.

Darryl J. Weakley

Subscribed and sworn to before me this 31st day of Dec., 1980.

Maryanne Gibbons

MARYANNE GIBBONS
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Sept 26, 1985

MPCA HEARING NOTIFICATION
MAILING LIST
PAGE 1

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STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Rules of the Pollution Control Agency Governing the Management of Hazardous Waste

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (hereinafter "agency") intends to adopt amendments to the rules governing the management of hazardous waste without a public hearing. The agency has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §15.0412, subd. 4h (1980). Authority for the adoption of these rules is contained in Minn. Stat. §116.07, subd. 4.

The agency has prepared a Statement of Need and Reasonableness that describes the agency's reasons for each provision of the proposed amendments and identifies the data and information relied upon by the agency to support the proposed rule. Copies of the Statement of Need and Reasonableness and the proposed amended rules are available and may be obtained by contacting:

Mr. Larry Christensen
Division of Solid Waste
Minnesota Pollution Control Agency
1935 W. County Road B2
Roseville, Minnesota 55113
Telephone: (612) 297-2714

All interested or affected persons have until February 6, 1981, to submit, in writing, comments on the proposed amendments. The proposed amended rules may be modified if the data and views submitted to the agency warrant modifications and the modifications do not result in a substantial change in the proposed language.

If, during the comment period, seven or more persons submit to the agency a written request for a hearing on the proposed amendments, the agency shall proceed to schedule a public hearing before adoption of the amended rules. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. §15.0412, subds. 4-4f. (1980).

Persons who wish to submit comments or a request for a public hearing should submit such comments or request to Mr. Larry Christensen at the address given above. The agency requests that if a person desires a public hearing, that when submitting a written request for a hearing, the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications. 6

The proposed amended rules would, if adopted, produce greater uniformity between the State hazardous waste rules and the hazardous waste rules adopted by the U.S. Environmental Protection Agency (hereinafter "EPA"). These proposed amendments are necessary for the State to receive interim authorization from EPA to administer the State hazardous waste program in lieu of the Federal program. The proposed amendments can be generally described as follows:

Amendments to 6MCAR §4.9001 B., C. and D. provide a definition for the term "manifest" and the abbreviation "EPA" and further provide for the incorporation of two additional appendices to the rules.

An amendment to 6MCAR §4.9002.E. specifies that the leach test which must be utilized to determine whether certain wastes are hazardous is the EP Toxicity Test. This is the leach test required by the EPA and its aoption will permit uniform testing requirements. Another amendment to that provision clarifies that once a waste is determined to contain a hazardous component, further testing for that component is not required. 10

Amendments to 6MCAR §§4.9003F. and 4.9005G. provides that generators and transporters of hazardous waste must obtain identification numbers from EPA rather than from the agency. EPA rules require generators and transporters to obtain EPA identification numbers.

Amendments to 6MCAR §4.9003H. make Minnesota's hazardous waste label requirements identical to federal requirements and will permit generators to use a single label that meets both State and Federal requirements.

Amendments to 6MCAR §§4.9004C.1 and 4.9006G.4. delete the provisions prohibiting hazardous waste facility operators from accepting hazardous waste generated outside the State of Minnesota without the written approval of the agency director.

Amendments to 6MCAR §§4.9004C.2. and 4.9005F. require hazardous waste transporters to notify the receiving facility and the receiving facility to notify the agency of any discrepencies between the shipping papers and the waste delivered or any attempt to deliver waste without shipping papers. This notification corresponds to the discrepancy reports required by EPA.

Amendments to 6MCAR §§4.9004I. and 4.9006I. require facilities which store hazardous wastes for longer than 90 days and accumulate 2000 pounds or more of hazardous waste to obtain a permit. EPA rules currently require such facilities to obtain a permit.

Amendments to 6MCAR §4.9008C. bring State hazardous waste shipping paper requirements in line with Federal requirements and will allow use of a nationally standardized form in Minnesota.

Amendments to 6MCAR §4.9008E. will require all hazardous waste generators and receiving facility operators to submit copies of the hazardous waste shipping papers to the State. Previously the agency Executive Director could request that copies of the shipping papers be submitted. This will allow the State to trace shipments of hazardous waste and reduce illegal dumping.

After adoption of the final amended rules by the agency board, without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final amended Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Mr. Larry Christensen.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

Date: December 23, 1980

STATE OF MINNESOTA

EXECUTIVE DIRECTOR
MINNESOTA POLLUTION
CONTROL AGENCY

CERTIFICATE OF BOARD'S

AUTHORIZING RESOLUTION

I, Art Engelbrecht, do hereby certify that I am a member and Chairman of the Minnesota Pollution Control Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Control Agency duly and properly called and held on the 16th day of December, 1980, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

BE IT RESOLVED, that the Minnesota Pollution Control Agency approves the rule revisions for the purpose of rulemaking and authorizes the initiation of rulemaking proceedings on the proposed amendments to the hazardous waste rules;

BE IT FURTHER RESOLVED, that the Minnesota Pollution Control Agency finds that the proposed amendments to the hazardous waste rules are non-controversial in nature;

BE IT FURTHER RESOLVED, that the Minnesota Pollution Control Agency authorizes and directs the Executive Director to sign an Order of the Agency directing that Notice be given of the Agency's intent to adopt without a public hearing rules governing the management of hazardous waste, to sign the Notice thereof, and to perform any and all acts incidental thereto. In the event a public hearing becomes necessary, the Executive Director hereby is granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Agency's representative at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 16th day of December, 1980.

Art Engelbrecht
Chairman

Board Member