

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

SF-00006-03

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT

ATTORNEY GENERAL

DATE: 4/09/87

TO: LAURIE JACOBSON
P.C.A.

PHONE: 6-6555

FROM:

MIKE MILES
Assistant Attorney General

SUBJECT: In the Matter of the Adopted Rules Relating to Hazardous Waste Fees

The above-referenced rule has been approved as to its legality by the Attorney General on April 8, 1987.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

JMM:nah

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Adminsitrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

RULE REVIEW CHECKLIST

File No. 1358

Docket No. 05.0009.F167

DATE RECEIVED 3/25/87
REVIEW DATE 4/3/87
DUE DATE 4/9/87 4-8-87

APPROVED 4/8/87
DISAPPROVED
WITHDRAWN

ADOPTED W/O HEARING ✓ N/O
EMERGENCY RULE

REVISOR APPROVED
REVISOR DISAPPROVED
FILED W/SEC. STATE
RETURNED TO AGENCY

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1 Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion
8/4/86 Date published in State Register
yes Comments

Petition for Adoption of a Rule

✓ Board's Authorizing Resolution

✓ Proposed rule
yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule
116.12 Statutory Authority
yes Small business statement
no Expenditure of public money statement
yes Signature

✓ Statement of Need and Reasonableness

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
Jan 2, 1987 Date (30)/25 days before adoption

✓ Publication in State Register
Jan 5, 1987 Date (30)/25 days before adoption

✓ Resolution Adopting

✓ Findings of Fact, Conclusions & Order Adopting
3/25/87 Date

✓ Written requests, submissions or comments

✓ Declaration of attorney
Jocelyn Olson Name of SAAG representing agency

✓ Notice of Submission to Attorney General

✓ Affidavit of Mailing Notice to Attorney General

Approval of fee Schedule

Pollution Control Agency

Adopted Permanent Rules Relating to Hazardous Waste Fees

Rules as Adopted

7046.0031 NONMETROPOLITAN AREA GENERATOR FEES.

Subpart 1. **Basis of fees.** The agency shall charge nonmetropolitan area generator fees that are based on the annual reports submitted by generators, disclosures, and other appropriate information available to the agency.

Subp. 2. **Small generator exemption.** Nonmetropolitan area generators that generate a total of less than the equivalent of ten gallons or 100 pounds of hazardous waste per year are exempt from the annual fees of this part.

For the purposes of this part, a conversion factor of one gallon of hazardous waste equals ten pounds of hazardous waste will be used.

Subp. 3. **Retroactive fee collection.** Retroactive fees must be paid by the generator for each year in which hazardous waste was generated but not disclosed, for each waste stream for a maximum retroactive period of two calendar years prior to the most current calendar year subject to fees. The retroactive fee is calculated by multiplying the current annual fee and surcharge or the portion of the current annual fee and surcharge subject to retroactive fees, times the number of years, up to a maximum of two years, the generator had generated the waste. Retroactive fees for waste produced for less than two years shall be calculated according to the closest number of years of production.

Subp. 4. **Annual fees.** An annual fee is the sum of the review and maintenance fee, waste stream fees, and waste generation volume fees. Nonmetropolitan area generators shall submit annual fees as follows:

A. A review and maintenance fee must be paid by all nonmetropolitan area generators. The review and maintenance fee

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is $30 per calendar year for each identification number issued to the generator pursuant to part 7045.0221.

B. A waste stream fee must be paid by all nonmetropolitan area generators for each waste stream generated over ten gallons or 100 pounds. The waste stream fee is $20 for each unsewered waste stream per calendar year and $20 for each sewered waste stream per calendar year.

C. A waste generation volume fee must be paid by all nonmetropolitan generators based on the amount of unsewered hazardous waste generated and method of waste management or disposal used in the calendar year. The base volume fee is assessed on a per gallon basis for liquid waste streams or a per pound basis for nonliquid waste streams. The base volume fee is $0.06 per gallon and $0.006 per pound for the first 2,000 gallons or pounds produced. The base volume fee for 2,001 to 6,000 gallons or pounds is $0.045 per gallon and $0.0045 per pound. The base volume fee for more than 6,000 gallons or pounds is $0.03 per gallon and $0.003 per pound. There shall be no volume fee charged for that part of any waste stream in excess of 100,000 gallons or 1,000,000 pounds. The base volume fee shall be multiplied by the following factors for waste streams managed by the following methods:

Management Method	Factor
Recycle, feedstock, or by-product on-site	0
Recycle, feedstock, or by-product off-site	0.67
Burned for fuel	0.67
Neutralization	0.67
Incineration	0.67
Disposal and other methods	1.00

Any sludges or residues of recycling, burning for fuel, neutralization, or incineration are subject to the base volume fee.

Subp. 5. **Follow-up action fee.** A nonmetropolitan area generator is subject to payment of a follow-up action fee if the generator fails to respond within 30 days of receipt of a registered letter from the director concerning the generator's

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noncompliance with part 7045.0240 requiring submission of a disclosure, part 7045.0216 requiring submission of an evaluation report, or part 7045.0296 requiring submission of an annual report. The agency shall charge a follow-up action fee only if the director's follow-up action involves sending the generator one or more additional registered letters or causing an authorized representative of the agency to make an inspection for the purpose of obtaining the required information. The fee for each follow-up registered letter, not to include the initial registered letter, is $25. The fee for each follow-up inspection is $200.

Subp. 6. **Payment schedule.** A nonmetropolitan area generator shall submit fees within 60 days after receipt of the notice from the director that the fees are due. Fees submitted after the due date are considered late.

A nonmetropolitan area generator shall submit a check for the required amount to the director, made payable to the Minnesota Pollution Control Agency.

Subp. 7. **Failure to submit fees.** If a nonmetropolitan area generator fails to submit the required fees by the due date, the generator shall pay the fees plus a late fee for each 30-day period or fraction of that period that the fee remains unpaid. The late fee is calculated as a percentage of the annual fee as follows: ten percent of the annual fee for each of the first two 30-day periods, and 15 percent of the annual fee for each 30-day period, or fraction of a 30-day period, thereafter.

If a nonmetropolitan area generator fails to submit the requested fees by the due date, the generator becomes liable for reasonable additional expenses the agency incurs in collection of the fee, in addition to the annual fee and any applicable late fees.

7046.0040 GENERATOR SURCHARGE.

Subpart 1. **In general.** All generators in Minnesota are subject to an annual surcharge equal to 45 percent of the annual

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by Revisor _____

fee. Payment must be made as provided in subparts 2 and 3.

Subp. 2. **Nonmetropolitan area generators.** Nonmetropolitan area generators shall pay the surcharge to the director at the time of payment of the annual fee. A nonmetropolitan area generator who fails to pay the annual surcharge is considered delinquent and subject to the late fee penalty provided in part 7046.0031, subpart 7.

Subp. 3. [Unchanged.]

7046.0050 GENERATOR FEE EXEMPTIONS.

Subp. 2. [See Repealer.]

Subp. 3. [Unchanged.]

Subp. 4. **Certain nonmetro area generators.** Small quantity nonmetropolitan area generators whose sole hazardous wastes are degreasing or drycleaning ~~solvents~~ solvent related wastes reclaimed off-site under a maintenance agreement, lead acid batteries, gasoline tank bottoms, and scrap metal are not subject to annual fees for those calendar years for which they submit accurate disclosures under part 7045.0240, or annual reports by March 1, under part 7045.0296, but rather are subject to a flat annual fee of $25. For the purposes of this part, a maintenance agreement is a written agreement acceptable to the director between a generator and a transporter and a reclaimer under which waste is removed from the generator's site on a regularly scheduled basis for reclamation by distillation.

7046.0070 APPEAL PROCEDURE.

A generator who believes that the fee requested by the director is in error may appeal the fee levy. Within ten days of receipt of the fee statement from the director, the generator shall provide written notice of the error in fee calculation, the fee the generator has calculated, and the method used by the generator in calculating the fee. If the director finds, upon reviewing the data, that the new data presented by the generator is correct, no penalty fee will be assessed. However, if the director finds that the original calculated fee was correct, the generator shall be assessed any applicable penalty as provided

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in part 7046.0031, subpart 7 from the date of the director's decision regarding the fee adjustment appeal.

REPEALER. Minnesota Rules, parts 7046.0030 and 7046.0050, subpart 2 are repealed.

Approved
by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 9 1987
Joan Anderson Growe
Secretary of State
2:11 PM

APPROVED AS TO FORM AND LEGALITY
4/8 19 87
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
ASSISTANT ATTORNEY GENERAL

projects: 10% for firms owned and controlled by socially and economically disadvantaged individuals, and 2% for women-owned and -controlled firms.

The goals and a description of how they were set are available for inspection during normal business hours at the Council offices for 30 days following the date of this notice. Comments, which are for informational purposes only, may be sent to the Council, 300 Metro Square Bldg., St. Paul, MN 55101; or the U.S. Department of Transportation, 400 7th St. SW., Washington, D.C. 20590, within 45 days from the date of this notice.

Metropolitan Council

Public Hearing on 1987 Work Program and Budget

The Metropolitan Council will hold a public hearing on its proposed 1987 work program and budget on Thursday, September 11, 1986, 5 p.m., at the Metropolitan Council Chambers, 300 Metro Square Bldg., 7th and Robert Sts., St. Paul. All interested persons are encouraged to attend the hearing and offer comments. People may register to speak in advance by calling Jane Larson at 291-6500. A draft of the document for public hearing will be adopted by the Council on August 14, 1986. Copies of the proposed work program and budget will be available for public inspection beginning Monday, August 18 at designated libraries throughout the region. For information on the location of these libraries or a free copy of the budget document, call 291-6464.

Department of Natural Resources, Minerals Division

Notice of Intent to Hold State Copper, Nickel, and Associated Minerals Lease Sale; State Lands to be Offered for Copper, Nickel, and Associated Minerals Exploration

The Minnesota Department of Natural Resources announces that plans are being developed to hold the state's tenth sale of copper, nickel, and associated minerals exploration and mining leases. The sale is tentatively scheduled for November or December of 1986. The lease sale plans are being announced at this time in order to give mining companies, public interest groups and all other interested parties additional time to reveiw the areas under consideration.

The purpose of Minnesota's copper, nickel, and associated minerals rules is to promote and regulate the prospecting for, mining and removal of copper, nickel and associated minerals on state-owned and state-administered lands. These rules, and the leases issued under these rules, authorize exploration and development of these minerals and impose certain requirements on the lessee. The requirements include: the payment of minimum rentals that increase with the passage of time, the payment of royalty for all ore mined and removed, the submission of data and other reports, and the addressing of environmental considerations. In addition, the state lessee must comply with all applicable regulatory laws.

The areas under consideration for lease sale covers portions of Beltrami, Carlton, Itasca, Koochiching, Lake, Lake of the Woods, Marshall, Norman, Pine, Roseau and St. Louis Counties. Some of the lands being considered have been offered in previous copper, nickel, and associated minerals lease sales, but in light of present interest shown and geologic data and exploration techniques developed during the past few years, it is felt that within these lands there is significant potential for the discovery of mineral resources. Certain new lands of interest are also being considered for the lease sale.

The exact time of the lease sale will be announced by legal notice at least thirty days prior to the sale. Mining unit books, listing the state lands to be offered at the lease sale, will be available for inspection or purchase at that time.

A map showing the general areas under consideration may be obtained from the Division of Minerals, Box 45, 500 Lafayette Road, St. Paul, MN 55155-4045, telephone (612) 296-4807.

Dated: 25 July 1986

Joseph N. Alexander
Commissioner of Natural Resources

Pollution Control Agency, Solid and Hazardous Waste Division

Notice of Intent to Solicit Outside Opinion Regarding Amendments to Minn. Rules Ch. 7046 Governing the Fee System for Hazardous Waste Generators and Hazardous Waste Facilities

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) is seeking information or opinions from sources outside the MPCA in reviewing Minn. Rules Parts 7046.0010-7046.0070, Hazardous Waste Facility and Generator Fee Rule.

Minn. Stat. § 116.12 (Supp. 1985) directs the MPCA to establish hazardous waste generator and facility fees to cover the amount appropriated from the special revenue fund to the MPCA for permitting, monitoring, inspection and enforcement expenses of the hazardous waste activities of the MPCA. In establishing these fees, the MPCA is directed to follow the procedures set forth in Minn. Stat. § 16A.128 (as amended 1986 Minn. Laws chapter 436, section 2).

Minn. Stat. § 16A.128 requires annual review of the fees. It also requires adjustment of the fees so that the total fees received nearly equal the sum of the appropriation for the accounts plus the agency's general support costs, statewide indirect costs, and attorney general costs attributable to the fee function.

The MPCA believes it necessary to review the fee rules (Minn. Rules Parts 7046.0010-7046.0070) to comply with the requirements of Minn. Stat. § 16A.128 and is soliciting suggestions on potential amendments to those rules.

The MPCA staff is particularly interested in receiving comments on how the fee schedule should be applied to small and very small quantity hazardous waste generators. Further, the MPCA seeks comments on how the fee schedule can be amended to provide incentives to promote recycling and to be more readily understood and administered.

The MPCA requests information and comment concerning the subject of the fee rules. Written statements and comments concerning these matters wills be accepted for consideration until August 29, 1986. Written statements should be addressed to:

Laurie Jacobson
Solid and Hazardous Waste Division
1935 West County Road B2
Roseville, Minnesota 55113

Oral statements will be accepted during regular business hours at 612/296-7039. Any written material received by the MPCA on or before August 29, 1986, shall become part of the rule making record in the event that the amendments are promulgated.

Teachers Retirement Association

Meeting Notice

The Board of Trustees, Minnesota Teachers Retirement Association will hold a meeting on Thursday, August 21, 1986 at 10:00 a.m. in Room 302 Capitol Square Bldg. to select an Executive Director and to consider matters which may properly come before the Board.

Department of Transportation

Debarment Order for Allied Blacktop, Inc.

Pursuant to Laws 1984, Chapter 654, Article 2, Section 8, Minnesota Rule 1230.3400, and a Stipulation for Informal Disposition dated July 8, 1986 you are debarred and disqualified from entering into or receiving a Minnesota Department of Transportation contract and from serving as a subcontractor or material supplier under a Mn/DOT contract. Neither you nor any business or entity owned by, or associated with you may enter into a contract with Mn/DOT or serve as a subcontractor or supplier of materials or services under a Mn/DOT contract.

Minnesota Rules 1230.3100, Subpart 9. states:

Subp. 9. Mn/DOT contract. "Mn/DOT contract" means a written instrument:

A. containing the elements of offer, acceptance, and consideration to which the Minnesota Department of Transportation is a party, or acts as an agent for a party under Minnesota Statutes, section 161.36, subdivision 2 and 3, 360.016, subdivisions 2 and 3, or 350.039, subdivisions 2 and 3;

B. for which competitive bids are required or taken; and

C. which is subject to the approval of the commissioner.

This order takes effect on August 15, 1986, and continues until and including January 14, 1987.

Dated: 28 July 1986

Robert J. McDonald
Deputy Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments to Rules Governing Hazardous Waste Generator Fees, Minn. Rules pts. 7046.0030, 7046.0031, 7046.0040, 7046.0050, and 7046.0070

NOTICE OF INTENT TO ADOPT RULE AMENDMENTS WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends to adopt, without a public hearing, amendments to rules governing hazardous waste generator fees, Minn. Rules pts. 7046.0030, 7046.0031, 7046.0040, 7046.0050, and 7046.0070. The rules will be adopted in accordance with the provisions of Minn. Stat. § 16A.128 (Supp. 1985) and in accordance with Minn. Stat. §§ 14.22 - 14.28 (1984).

The proposed rules, if adopted, will simplify the existing fee structure, will better reflect the costs of regulating various activities, will promote recycling, discourage land disposal, and make the fees more equitable. The proposed amendments establish annual fees which consist of a review and maintenance fee (a flat fee which must be paid by non-metropolitan area generators), a waste stream fee (a flat fee for each hazardous waste stream generated by each non-metropolitan area generator), and a volume fee (a fee based on the total volume of waste generated and the method used for management of a waste). The proposed amendments also establish fees for follow-up actions if a generator's refusal to submit required information causes the Agency to send additional registered letters or to conduct an inspection for the purpose of obtaining required information. The proposed amendments reduce slightly the surcharge applied to all hazardous waste generators. The proposed amendments establish a new flat fee for certain non-metropolitan area generators whose sole hazardous wastes are begreasing or drycleaning solvents recycled off-site, batteries, gasoline tank bottoms, and scrap metal. Finally, the proposed amendments adjust the fee schedule in a manner that reduces the overall revenues collected by the Agency through hazardous waste fees.

The proposed rules are authorized by Minn. Stat. § 116.12 (Supp. 1985). A copy of the proposed amendments is enclosed. In addition, one free copy of the rules is available from the Agency upon request. Please contact the person whose name and address appears below.

The Agency has prepared a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon by the Agency to support the proposed amendments. Copies of the Statement of Need and Reasonableness and of the proposed amendments are available and may be obtained by contacting:

Laurie Jacobson
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155
Telephone: (612) 296-7227

Interested persons have until 4:30 p.m. on February 4, 1987, to submit comments on the proposed rule amendments. Comments should be submitted to Laurie Jacobson at the address stated above. The proposed amendments may be modified if the data and views received by the Agency before the end of the comment period warrant modification and the modification does not result in a substantial change in the proposed amendments.

Unless the Agency receives, within the comment period, written requests for a hearing on the proposed amendments from twenty percent of the persons who will be required to pay a fee, a public hearing will not be held. In the event that a public hearing is required, the Agency will proceed according to the provisions of Minn. Stat. §§ 14.131 - 14.20 (1984). If a person desires to request a public hearing, the Agency requests that 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.

Upon adoption of the rules by the Agency Board, the rules as proposed, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted will be sent 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 amendments as adopted, should submit a written statement of such request to Laurie Jacobson at the address previously stated.

You are hereby advised, pursuant to Minn. Stat. § 14.115 (1984), "Small business considerations in rulemaking," that the proposed amendments will affect small businesses because most of the businesses whose fees will be changed or that will be subject to a new fee will be small businesses. However, the amendments will benefit most of these small businesses. Additional information on the impact of the proposed amendments on small businesses is set forth in the Agency's Statement of Need and Reasonableness.

for Barbara Lindsey Sims
THOMAS J. KALITOWSKI
Executive Director

Dated: January 2, 1987

CERTIFICATE OF AGENCY'S AUTHORIZING RESOLUTION

I, Thomas J. Kalitowski, do hereby certify that I am the Executive Director 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 25th day of November, 1986, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified.

BE IT RESOLVED, that the Executive Director of the Minnesota Pollution Control Agency (Agency) is hereby granted the authority and directed to sign an order of the MPCA directing to give notice of the MPCA's intent to adopt without a public hearing the attached amendments to the MPCA's hazardous waste fee rule, (Minn. Rule pts. 7046.0010-7046-0070), to all persons who have registered their names with the MPCA for that purpose and publish the notice and the rule amendments in the State Register, and to perform any and all acts incidental thereto, including making any form changes in the rules that the Revisor of Statutes requires the MPCA to make in order to obtain the revisor's certification as required by Minn. Stat. §14.07, subd. 2 (Supp. 1985).

BE IT FURTHER RESOLVED, that in the event a public hearing becomes necessary, the Executive Director is hereby granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as to perform any and all acts incidental thereto, including but not limited to signing an Order and Notice for Hearing, as well as acting as the MPCA's representative at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 25th day of November, 1986.

Thomas Kalitowski

THOMAS J. KALITOWSKI
Executive Director

Pollution Control Agency

Proposed Permanent Rules Relating to Hazardous Waste Fees

Rules as Proposed (all new material)

7046.0031 NONMETROPOLITAN AREA GENERATOR FEES.

Subpart 1. **Basis of fees.** The agency shall charge nonmetropolitan area generator fees that are based on the annual reports submitted by generators, disclosures, and other appropriate information available to the agency.

Subp. 2. **Small generator exemption.** Nonmetropolitan area generators that generate a total of less than the equivalent of ten gallons or 100 pounds of hazardous waste per year are exempt from the annual fees of this part.

For the purposes of this part, a conversion factor of one gallon of hazardous waste equals ten pounds of hazardous waste will be used.

Subp. 3. **Retroactive fee collection.** Retroactive fees must be paid by the generator for each year in which hazardous waste was generated but not disclosed, for each waste stream for a maximum retroactive period of two calendar years prior to the most current calendar year subject to fees. The retroactive fee is calculated by multiplying the current annual fee and surcharge or the portion of the current annual fee and surcharge subject to retroactive fees, times the number of years, up to a maximum of two years, the generator had generated the waste. Retroactive fees for waste produced for less than two years shall be calculated according to the closest number of years of production.

Subp. 4. **Annual fees.** An annual fee is the sum of the review and maintenance fee, waste stream fees, and waste generation volume fees. Nonmetropolitan area generators shall submit annual fees as follows:

A. A review and maintenance fee must be paid by all nonmetropolitan area generators. The review and maintenance fee

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is $30 per calendar year for each identification number issued to the generator pursuant to part 7045.0221.

B. A waste stream fee must be paid by all nonmetropolitan area generators for each waste stream generated over ten gallons or 100 pounds. The waste stream fee is $20 for each unsewered waste stream per calendar year and $20 for each sewered waste stream per calendar year.

C. A waste generation volume fee must be paid by all nonmetropolitan generators based on the amount of unsewered hazardous waste generated and method of waste management or disposal used in the calendar year. The base volume fee is assessed on a per gallon basis for liquid waste streams or a per pound basis for nonliquid waste streams. The base volume is $0.06 per gallon and $0.006 per pound for the first 2,000 gallons or pounds produced. The base volume fee for 2,001 to 6,000 gallons or pounds is $0.045 per gallon and $0.0045 per pound. The base volume fee for more than 6,000 gallons or pounds is $0.03 per gallon and $0.003 per pound. The base volume fee shall be multiplied by the following factors for waste streams managed by the following methods:

Management Method	Factor
Recycle, feedstock, or by-product on-site	0
Recycle, feedstock, or by-product off-site	0.67
Burned for fuel	0.67
Neutralization	0.67
Incineration	0.67
Disposal and other methods	1.00

Any sludges or residues of recycling, burning for fuel, neutralization, or incineration are subject to the base volume fee.

Subp. 5. **Follow-up action fee.** A nonmetropolitan area generator is subject to payment of a follow-up action fee if the generator fails to respond within 30 days of receipt of a registered letter from the director concerning the generator's noncompliance with part 7045.0240 requiring submission of a disclosure, part 7045.0216 requiring submission of an evaluation

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

report, or part 7045.0296 requiring submission of an annual report. The agency shall charge a follow-up action fee only if the director's follow-up action involves sending the generator one or more additional registered letters or causing an authorized representative of the agency to make an inspection for the purpose of obtaining the required information. The fee for each follow-up registered letter, not to include the initial registered letter, is $25. The fee for each follow-up inspection is $200.

Subp. 6. **Payment schedule.** A nonmetropolitan area generator shall submit fees within 60 days after receipt of the notice from the director that the fees are due. Fees submitted after the due date are considered late.

A nonmetropolitan area generator shall submit a check for the required amount to the director, made payable to the Minnesota Pollution Control Agency.

Subp. 7. **Failure to submit fees.** If a nonmetropolitan area generator fails to submit the required fees by the due date, the generator shall pay the fees plus a late fee for each 30-day period or fraction of that period that the fee remains unpaid. The late fee is calculated as a percentage of the annual fee as follows: ten percent of the annual fee for each of the first two 30-day periods, and 15 percent of the annual fee for each 30-day period, or fraction of a 30-day period, thereafter.

If a nonmetropolitan area generator fails to submit the requested fees by the due date, the generator becomes liable for reasonable additional expenses the agency incurs in collection of the fee, in addition to the annual fee and any applicable late fees.

Rules as Proposed

7046.0040 GENERATOR SURCHARGE.

Subpart 1. **In general.** All generators in Minnesota are subject to an annual surcharge equal to ~~50~~ 45 percent of the

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

annual fee. Payment must be made as provided in subparts 2 and 3.

Subp. 2. **Nonmetropolitan area generators.** Nonmetropolitan area generators shall pay the surcharge to the director at the time of payment of the annual fee. A nonmetropolitan area generator who fails to pay the annual surcharge is considered delinquent and subject to the late fee penalty provided in part ~~7046.0030~~ 7046.0031, subpart 7.

Subp. 3. [Unchanged.]

7046.0050 GENERATOR FEE EXEMPTIONS.

Subp. 2. [See Repealer.]

Subp. 3. [Unchanged.]

Subp. 4. **Certain nonmetro area generators.** Small quantity nonmetropolitan area generators whose sole hazardous wastes are degreasing or drycleaning solvents reclaimed off-site under a maintenance agreement, lead acid batteries, gasoline tank bottoms, and scrap metal are not subject to annual fees for those calendar years for which they submit accurate disclosures under part 7045.0240, or annual reports by March 1, under part 7045.0296, but rather are subject to a flat annual fee of $25. For the purposes of this part, a maintenance agreement is a written agreement acceptable to the director between a generator and a transporter and a reclaimer under which waste is removed from the generator's site on a regularly scheduled basis for reclamation by distillation.

7046.0070 APPEAL PROCEDURE.

A generator who believes that the fee requested by the director is in error may appeal the fee levy. Within ten days of receipt of the fee statement from the director, the generator shall provide written notice of the error in fee calculation, the fee the generator has calculated, and the method used by the generator in calculating the fee. If the director finds, upon reviewing the data, that the new data presented by the generator is correct, no penalty fee will be assessed. However, if the director finds that the original calculated fee was correct, the

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

generator shall be assessed any applicable penalty as provided in part ~~7046.0030~~ 7046.0031, subpart 7 from the date of the director's decision regarding the fee adjustment appeal.

REPEALER. Minnesota Rules, parts 7046.0030 and 7046.0050, subpart 2 are repealed.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Hazardous Waste Fees

AGENCY: Pollution Control Agency

MINNESOTA RULES: Chapter 7046

The attached rules are approved for publication in the State Register

David S. Niss
Assistant Revisor

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments to Rules Governing Hazardous Waste Generator Fees, Minn. Rules pts. 7046.0030, 7046.0031, 7046.0040, 7046.0050, and 7046.0070

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The subject of this proceeding is the amendment of the rules of the Minnesota Pollution Control Agency (Agency) governing the payment of fees by generators of hazardous waste and the owners and operators of hazardous waste treatment, storage, and disposal facilities, Minn. Rules pts. 7046.0010 - 7046.0070. These rules, which became effective on February 6, 1984, were amended effective April 22, 1985.

The statutory authority for the rules is set forth in Minn. Stat. §116.12 (Supp. 1985). The statute, together with the Agency's appropriations bill, requires the Agency to establish fees to collect funds to cover a portion of the cost of the hazardous waste regulatory program. The Agency is also required by Minn. Stat. §16A.128, subd. 1 (Supp. 1985) to review the fees each fiscal year. As a result of its most recent review of the fees, the Agency is proposing amendments to the rules.

The proposed rule amendments, if adopted, will simplify the existing fee structure, will better reflect the costs of regulating various activities, will promote recycling, discourage land disposal, and make the fees more equitable. The proposed amendments establish annual fees which consist of a review and maintenance fee (a flat fee which must be paid by non-

metropolitan area generators), a waste stream fee (a flat fee for each hazardous waste stream generated by each nonmetropolitan area generator), and a volume fee (a fee based on the total volume of waste generated and the method used for management of a waste). The proposed rules also establish fees for follow-up actions if a generator's refusal to submit required information causes the Agency to send additional registered letters or to make an inspection for the purpose of obtaining the required information. The proposed amendments reduce slightly the surcharge applied to all hazardous waste generators. The proposed amendments establish a new flat fee for certain generators whose sole hazardous wastes are degreasing or drycleaning solvents recycled off-site, batteries, gasoline tank bottoms, and scrap metal. Finally, the proposed rule amendments adjust the fee schedule in a manner that reduces the overall revenues collected by the Agency through hazardous waste fees.

The Agency is amending the rules according to the procedure for noncontroversial rulemaking provided in Minn. Stat. §§14.21 to 12.28, except that no public hearing need be held unless 20 percent of the persons who will be required to pay the fees under the amended fee schedule request a public hearing. The legislature has specifically imposed this limitation by providing in Minn. Stat. §116.12, subd. 1 (Supp. 1985) that the fees are to be established "in the manner provided in section 16A.128." Minn. Stat. §16A.128, subd. 2a (Supp. 1985) provides:

> Other fees not fixed by law must be fixed by rule. The procedure for noncontroversial rules in sections 14.21 to 14.28 may be used except that no public hearing need by held unless 20 percent of the persons who will be required to pay the fee submit to the agency during the 30-day period allowed for comment a written request for a public hearing on the proposed rule. The notice of intention to adopt the rules must state whether a hearing will be held if not required. This procedure may be used only when the total fees estimated for the biennium do not exceed the sum of direct appropriations, indirect costs, transfers in, and salary supplements for that purpose. A public hearing is required to fix fees spent under open appropriations of dedicated receipts.

A Notice of Intent to Solicit Outside Opinion was published on August 4, 1986. The proposed rule amendments were considered by the Agency's Rules Committee at a meeting held on October 27, 1986. This meeting was open to the public and was attended by approximately 25 interested persons.

A part of the administrative requirement for the rulemaking process is review and approval of the fee schedule in the rules by the Minnesota Commissioner of Finance. The approval is attached as Exhibit A.

This Statement of Need and Reasonableness is divided into several parts. Part II contains the Agency's statement of its statutory authority to adopt the rule amenemdments. Part III contains the Agency's explanation of the need for the proposed amendments. Part IV contains an explanation of the reasonableness of the proposed amendments. Part V documents how the Agency has considered methods of reducing the impact of the proposed amendments on small businesses. Part VI contains a list

of the exhibits relied on by the Agency to support the proposed Amendments. The exhibits are available for review at the Agency's offices at 520 Lafayette Road, St. Paul, Minnesota 55155.

II. STATEMENT OF THE AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority for the rule amendments is set forth in Minn. Stat. §116.12 (Supp. 1985), which provides:

> Subdivision 1. Fee schedules. The agency shall establish the fees provided in subdivisions 2 and 3 in the manner provided in section 16A.128 to cover the amount appropriated from the special revenue fund to the agency for permitting, monitoring, inspection and enforcement expenses of the hazardous waste activities of the agency.
>
> The legislature may appropriate additional amounts from the general fund that need not be covered by fees, in order to assure adequate funding for the regulatory and enforcement functions of the agency related to hazardous waste. All fees collected by the agency under this section shall be deposited in the special revenue fund.
>
> Subd. 2. Hazardous waste generator fee. Each generator of hazardous waste shall pay a fee on the hazardous waste which he generates. The agency shall compute the amount of the fee due based on the hazardous waste disclosures submitted by the generators and other information available to the agency. The agency shall annually prepare a statement of the amount of the fee due from each generator. The fee shall be paid annually commencing with the first day of the calendar quarter after the day of the statement.
>
> The agency may exempt generators of small quantities of hazardous wastes otherwise subject to the fee if it finds that the cost of administering a fee on those generators is excessive relative to the proceeds of the fee. The fee shall consist of a minimum fee for each generator not exempted by the agency and an additional fee based on the quantity of wastes generated by the generator.

> If any metropolitan counties recover the costs of administering county hazardous waste regulations by charging fees, the fees charged by the agency outside of those counties shall not exceed the fees charged by those counties. The agency shall not charge a fee in any metropolitan county which charges such a fee. The agency shall impose a fee calculated as a surcharge on the fees charged by the metropolitan counties and by the agency to reflect the agency's expenses in carrying out its statewide hazardous waste regulatory responsibilities. The surcharge imposed on the fees charged by the metropolitan counties shall be collected by the metropolitan counties in the manner in which the counties collect their generator fees. Metropolitan counties shall remit the proceeds of the surcharge to the agency by the last day of the month following the month in which they were collected.
>
> Subd. 3. Facility fees. The agency shall charge an original permit fee, a reissuance fee and an annual operator's fee for any hazardous waste facility regulated by the agency. The agency may include reasonable and necessary costs of any environmental review required under chapter 116D in the original permit fee for any hazardous waste facility.

The rationale behind the legislature's enactment of the statute was that persons generating and handling hazardous waste should pay a portion of the administrative costs of regulating hazardous waste activities.

The hazardous waste fees are intended to cover the amount of $613,280 for the State Fiscal Year 1986 and $630,000 for the State Fiscal Year 1987.

The Agency's obligation to review and, if necessary, to adjust the amount of the fees is set forth in Minn. Stat. §16A.128, subd. 1 (Supp. 1985), which provides:

> Approval. Fees for accounts for which appropriations are made may not be established or adjusted without the approval of the commissioner. If the fee or fee

> adjustment is required by law to be fixed by rule, the commissioner's approval must be in the statement of need and reasonableness. These fees must be reviewed each fiscal year. Unless the commissioner determines that the fee must be lower, fees must be set or fee adjustments must be made so the total fees nearly equal the sum of the appropriation for the accounts plus the agency's general support costs, statewide indirect costs, and attorney general costs attributable to the fee function.

Based on the foregoing statutes, the Agency has statutory authority to adopt the proposed rule amendments.

III STATEMENT OF NEED

Minn. Stat. ch. 14 (1984) requires the Agency to make an affirmative presentation of facts establishing the need for and reasonableness of the amendments as proposed. In general terms this means that the Agency must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention and reasonableness means that the solution proposed by the Agency is appropriate.

The need for the proposed amendments to the hazardous waste fee rules has three bases: A) the need to comply with the legislative mandate to annually review the fee revenue and adjust the fees as needed; A) the need to simplify the current fee system for both the Agency and the regulated community; and C) the need to provide a more equitable distribution of the fees. These three bases are discussed below.

A. Need for Annual Review of Fee Targets

The Agency's obligation to review and, if necessary, to adjust the amount of the fees is set forth in Minn. Stat. §16A.128, subd. 1, quoted above on page 6.

The revenue target for Fiscal Year (FY) 1986 was $613,280. Actual revenues collected for FY 1986 as a result of the fees was $668,000. The revenue target for FY 1987 is $630,000. Based on the current fee schedule and assuming growth in the number of hazardous waste generators in Minnesota the Agency projects hazardous waste fee revenues for FY 1987 to be between $700,000 and $800,000. Therefore it is necessary to revise the fee schedules so that the Agency will not collect more than the target amount.

B. Fee System Simplification

Under the current rules, the calculation of fees involves about a dozen major factors with a very large number of variations. The calculation of a fee has to take each factor into account for each of the three years' fees which were calculated for FY 1986 billings. Because of this extreme complexity it is very difficult to maintain consistency and accuracy in applying the present fee schedule. Much effort has gone into correcting past years' mistakes. Many generators call or write to complain about the complexity of the fee system and to request a detailed explanation of their fee calculation, thereby reducing the amount of staff time available for other

regulatory activities. It is the Agency's estimate that more than two year's worth of staff effort is involved in calculation and collection of fees each year. Therefore it is necessary to revise the fee rules to simplify the fee calculation.

C. Fee Incentives and Fairness

The current hazardous waste generator fee schedule exempts on-site recycling from fees. This exemption provides some incentive for generators to handle their hazardous waste in a preferred manner. Such handling also results in a lowering of the Agency's costs of regulating, as opposed to the cost of regulating many off-site management options. In general, the current hazadous waste generator fee system does not, however, effectively provide incentives for generators to choose other management methods such as off-site recycling or incineration or neutralization instead of off-site land disposal. When waste is recycled off-site, incinerated, burned for fuel, or neutralized, the Agency's costs of regulating the waste are somewhat reduced. These methods also more effectively safeguard the public's health and the environment more so than less preferred management options such as landfilling. Therefore, the Agency would realize a benefit if generators would be encouraged by the fee system to use the preferred options.

The current fee rules act as a disincentive for generators to disclose, to submit an accurate annual reports, and to update information provided to the Agency. Filing a disclosure or

updates usually results in fees being billed or fees being increased. In effect, generators feel they are being punished for complying with the disclosure rules. There is a need to discourage noncompliance with these disclosure rules.

Small gasoline stations which only conduct incidental repair and maintenance on vehicles, small drycleaners, and others who produce simple and predictable waste streams which are recycled off-site under maintenance agreements are generally not individually burdensome for the Agency to regulate. Experience with the present fee system has shown that fees now assessed to these small generators are excessive compared to the amount of work effort involved in regulating them. Therefore, there is a need to revise the fee schedule for these generators.

The current fee rule requires the Agency to collect retroactive fees from nonmetropolitan area hazardous waste generators who are late in complying with the hazardous waste disclosure requirements. Retroactive fees are assessed for each year in which the generator had generated hazardous waste but had failed to file a disclosure. The fees are calculated based on each year's waste production data and according to each year's fee schedule. In April, 1986, fee statements were sent out for FY 1984, FY 1985, and FY 1986. The retroactive fees for FY 1984 and 1985 were difficult to calculate because waste generation data were generally not available or accurate. Without amending the current fee rules, fee statements for FY 1987 will include

retroactive fees for FY 1984, 1985, and 1986, thereby effectively quadrupling fees for newly disclosed generators. These retroactive fees are likely serving as a great disincentive to disclose, especially for very small quantity generators. Therefore it is necessary to revise the fee rules to reduce those disincentives and provide incentives for proper management and reporting of hazardous waste.

IV. REASONABLENESS OF THE PROPOSED AMENDMENTS

The Agency is required by Minn. Stat. ch. 14 (1984) to make an affirmative presentation of facts establishing the reasonableness of the proposed rule amendments. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Agency's action. The reasonableness of the proposed amendments is discussed below.

Adjusting the Fees to Reduce Overall Fee Revenues

Because projected revenues from hazardous waste fees for FY 1987 are well in excess of the target amount, the Agency must revise its hazardous waste fees to generate $630,000 for FY 1987. The Agency believes that the following steps would result in the collection of the target amount of money for the biennium: 1) amending the fee schedules for nonmetropolitan generators; and 2) lowering the statewide generator surcharge.

The Agency has projected revenues based on the fee schedule contained in the proposed amendments. These figures are shown below.

Facility Fees	$140,000
Nonmetropolitan area generator fees and surcharges	190,000
Nonmetropolitan area generator late and retroactive fees and surcharges	80,000
Metropolitan area generator surcharges	220,000
Total	630,000

It is reasonable to revise the fee schedules as proposed in the rules to collect $630,000 during FY 1987 because the Agency's proposed action is aimed at the legislature's objective that the Agency collect the target amount and nor more than the target amount.

The following discussion addresses the reasonableness of the specific provisions of the proposed amendments to the hazardous waste fee rules.

Repeal of Minn. Rules pt. 7046.0030 and Replacement with pt. 7046.0031

The proposed amendments to part 7046.0030 represents the most major revision to the hazardous waste fee rules and accomplishes most of the needed revenue reductions. Because the amendments represent a major change in the format of the rule, the Agency proposes to repeal existing part 7046.0030 and to replace it with part 7046.0031. The reasonableness of the

provisions of part 7046.0031 is discussed below.

Subparts 1 and 2 of the part 7046.0031 are identical in wording to subparts 1 and 2 of the existing rule, and therefore these subparts are actually only being renumbered. No changes are proposed to the the requirements in these subparts.

Subpart 3, "Retroactive fee collection," replaces the current subpart 2a of the existing part 7046.0030. The proposed amendment establishes a maximum retroactive fee collection period of two calendar years prior to the most current calendar year subject to fees. The proposed rule provides that the calculation of retroactive fees is done by multiplying the current annual fee and surcharge times the number of years the generator had generated the waste. This is reasonable because it accomplishes the objective of retroactive fees (i.e., removing most of the economic advantage nonnotifiers have enjoyed over generators in compliance) without being so overly burdensome that it constitutes a disincentive for disclosure of waste generation. It is also reasonable because it simplifies the calculation of retroactive fees for Agency staff and for generators receiving retroactive fee statements.

Subpart 4 establishes annual fees, which consist of the sum of the review and maintenance fee, waste stream fees, and waste generation volume fees, to be paid by nonmetropolitan area hazardous waste generators. These fees are discussed below.

Subpart 4.A. establishes a review and maintenance fee. This

is a flat fee of $30.00 per calendar year per identification number issued to the generator pursuant to part 7045.0221. This fee is reasonable because the waste produced by each nonmetropolitan generator creates the need for a base level of regulatory effort in maintaining computer files, preparing annual reports, and other routine regulatory functions.

Subpart 4.B. establishes a flat fee for each waste stream generated over ten gallons or one hundred pounds per year. The generator is assessed $20 per calendar year per waste stream. It is reasonable to establish a fee for each waste stream because each waste stream must be evaluated by Agency staff upon initial disclosure to determine whether the generator's evaluation was correct and whether management of the waste is in compliance with hazardous waste rules. Each waste stream must then be reevaluated each year upon submittal of the annual report. Generators of many waste streams require more review than do generators of a few waste streams.

Subpart 4.C. establishes a volume fee based on the amount of unsewered waste generated and the method of waste management or disposal used in the calendar year. The base volume for the first 2,000 gallons or pounds of waste produced is .06 cents per gallon for liquid waste streams and .006 cents per pound for nonliquid waste streams. The base volume fee for 2,001 - 6,000 gallons or pounds produced is $.045 per gallon and $.0045 per pound. The base volume fee for more than 6,000 gallons or pounds

is $.03 per gallon and $.003 per pound. The base volume fee is then multiplied by a factor ranging from 0 to 1, depending on the management method used for disposal or treatment of the waste. Recycle, feedstock or by-product on-site is assigned a factor of 0. The following methods are assigned a factor of 0.67: recycle, feedstock, or by-product off-site; burned for fuel; neutralization; and incineration. Disposal and other methods are assigned a factor of 1.0. Finally, any sludges or residues of recycling, burning for fuel, neutralization, or incineration are subject to the base volume fee.

The volume fee approach is reasonable because large quantity generators typically require more regulatory effort on the part of the Agency staff than do small volume generators. The frequency of inspection, manifest use, and regulatory follow-up is largely dependent on volume of waste production. Large volume waste streams are typically reviewed much more closely than are small volume waste streams.

The proposed amendments charge less per unit volume as the volume increases in order to maintain fees at a level which is less than or equal to the fees charged by the metropolitan counties. This is reasonable because Minn. Stat. §116.12 requires that the Agency's fees not exceed the level of fees charged by the metropolitan counties. This is reasonable for the further reason that, although regulatory costs are related to waste volumes, the relationship of costs to waste volumes is not

a linear one. For example, if the regulatory cost for a given volume is X, the regulatory costs for double that amount is less than 2X.

Varying the fees according to waste management method by using the multiplication factor approach is reasonable because different management methods require different amounts of regulatory effort for review and long-term tracking. Wastes which are recycled on-site or used as feedstock or by-product typically are not as closely tracked by Agency staff. Wastes which are recycled, used as a feedstock or by-product off-site, however, are more closely reviewed and tracked by Agency staff and therefore result in greater costs for regulating these wastes. Similarly, wastes which are burned for fuel, neutralized, or incinerated are destroyed and do not require long term tracking. Therefore, the Agency has normal regulatory costs for initial review and tracking of wastes to their destination, but lesser costs for long term tracking. Wastes which are destined for land disposal or other nondestructive management methods can require more long term effort for review and have more potential for needing subsequent action if disposal is not sufficiently safe. The multiplication factor approach to varying fees for different waste management methods is reasonable for the further reason that it provides incentives for generators to utilize management methods which are considered preferable under Minnesota's waste management policies.

Subpart 5 establishes follow-up action fees to be assessed in the event that a nonmetropolitan generator fails to respond within thirty days of receipt of a registered letter from the Director requesting submission of a disclosure or evaluation report or annual report. If the Director's follow-up action involves sending the generator one or more additional registered letters, the fee for each follow-up registered letter is $25. If the Director's follow-up action is sending a representative of the Agency to make an inspection for the purpose of obtaining the required information, the fee for each inspection is $200. It is reasonable to charge follow-action fees because the generator's failure to comply with the requirement to submit a disclosure, evaluation report, or annual report creates additional work and expense for the Agency. Without follow-up action fees, these extra costs are spread among generators who do comply with hazardous waste rules. Generators are given clear notice of the request to submit information and will be given clear notice of the existence of follow-up action fees for failure to comply with the request. The dollar amounts of the fees are reasonable because they represent general averages of the Agency's estimated cost of carrying out the activities required when a generator fails to comply with requirements to submit information.

Subpart 6 sets forth the payment schedule for fees. It requires nonmetropolitan generators to submit fees within 60 days after receipt of notice from the director that the fees are due.

This payment schedule differs from the payment schedule in the existing rules, which allowed 60 days for payment of fees followed by an additional 30 day period after which the fee was deemed late. Experience with administering the rules has shown that this additional 30 day period in the exising rules created confusion in the regulated community and is unnecessary. Therefore it is reasonable to eliminate this additional 30 day period.

Subpart 6 also requires fees to be paid by check, made payable to the Minnesota Pollution Control Agency. It is reasonable that fees be made payable to the Agency in order to enable the Agency to comply with the statutory requirement that the fees be deposited in the special revenue fund.

Subpart 7 of the proposed amendments, "Failure to submit fees," consists of clarifying amendments to the existing part 7046.0030,subp. 7. The second and third sentences of the existing rule provide:

> "The late fee for each of the three 30 day periods or fraction between the due date and 90 days beyond the due date is ten percent of the total of the annual fee. Beyond 90 days, the late fee for each 30 day period or fraction beyond 90 days is 15 percent of the annual fee.

Generators have found this language confusing. The Agency is proposing to clarify the language as follows:

> The late fees are a percentage of the annual fee: 10 percent for each of the first two 30-day periods and 15 percent for each 30-day period or fraction thereafter.

It is reasonable to clarify the rule language because this will help both the regulated community and Agency staff to properly calculate late fees.

The last sentence of subpart 7 is also proposed for amendment as follows:

> If a nonmetropolitan area generator fails to submit the requested fees ~~within 90 days of~~ by the due date, the generator becomes liable for reasonable additional expenses the agency incurs in collection of the fee, in addition to the fees and late fees.

In this context "due date" refers to sixty days after receipt of the notice from the days that the fees are due. This amendment is reasonable because it conforms the requirements of this sentence to the changes that were made in the previous portion of the rule.

Minn. Rules pt. 7046.0040, Generator Surcharge

The Agency proposes to amend subpart 1 of this rule to reduce the generator surcharge charged to all generators statewide from 50 percent of the annual fee to 45 percent of the annual fee. This reduction is part of the strategy to lower overall revenues collected from the hazardous waste fees. It is reasonable because it will provide some relief from fees but will keep the surcharge within the general estimate of the Agency's workload attributable to metropolitan area generators (40 to 60 percent).

The Agency is proposing to amend subpart 2 of the rule to change the cross reference from the existing part 7046.0030 to

the new 7046.0031. This is reasonable in order to keep the rules as amended internally consistent.

Minn. Rules pt. 7046.0050, Generator Fee Exemptions

The Agency is proposing to repeal subpart 2 of this rule, which provides:

> On site recovery, reuse, or recycle of waste. A generator who recycles, reuses, or recovers a hazardous waste stream for this own use is exempt from the generator fee for the waste stream that is recycled, reused, or recovered. Any sludges or residues from a recovery process that are hazardous are subject to the generator fee.

With the proposed new part 7046.0030, subp. 4.C., this language becomes redundant. Therefore it is reasonable to repeal it.

The Agency is proposing to adopt a new subpart 4. This new supart would exempt from annual fees those small quantity generators and conditionally exempt nonmetropolitan area generators whose sole hazardous wastes are degreasing or drycleaning solvents reclaimed off-site under a maintenance agreement, lead acid batteries, gasoline tank bottoms, and/or scrap metal. Instead, these generators are required to pay a flat annual fee of $25. This is reasonable because these types of generators generally require less regulatory effort by the Agency staff than do other types of generators.

The exemption in proposed new subpart 4 is limited to those calendar years for which the generators submit accurate disclosures pursuant to part 7045.0240 or annual reports by March 1 in accordance with part 7045.0296. It is reasonable to limit

this exemption in this manner because without having received those documents the Agency staff is required to expend regulatory efforts to collect information to determine whether or not the generators are eligible for the exemption and in compliance with hazardous waste rules.

Minn. Rules pt. 7046.0070, Appeal Procedure

The Agency proposes to amend part 7045.0070 to change the cross reference from existing 7046.0030 to the new part 7046.0031. This is reasonable in order to maintain internal consistency within the rules.

V. CONSIDERATION OF SMALL BUSINESS

Minn. Stat. §14.115 (1984) requires Minnesota agencies when proposing amendments to existing rules which may affect small businesses to consider the following methods for reducing the impact of the proposed amendments on small businesses:

(a) the establishment of less stringent compliance or reporting requirements for small businesses;

(b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) the consolidation or simplification of compliance or reporting requirements for small businesses;

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

(e) the exemption of small businesses from any or all requirements of the rules.

While drafting the proposed rule amendments the Agency did consider whether it could make the rules less stringent and simpler with respect to small businesses and yet attain the statutory requirement to collect the target amount. However, the important consideration in the regulation of hazardous waste is not the size of the business but the volume of hazardous waste being generated, stored, treated, or disposed. Differentiations on the basis of business size may or may not reflect the volume of hazardous waste being regulated. Therefore, it is not fair or reasonable to assign fees on the basis of business size, as this may have little relation to the efforts the Agency must expend to regulate its activities, and thus justify the fees charged.

However, it is reasonable to provide for some consideration of small quantity generators, and in many cases these small quantity generators will also be small businesses. The exemption provided in the existing rules for generators who generate less than 10 gallons or 100 pounds of hazardous waste in a year has been retained in the proposed amendments. To the extent that these very small generators are also small businesses, this fee exemption will provide a reduction in their overall cost of managing hazardous waste.

The proposed two-year cut-off on the retroactive payment of generator fees will also result in a reduction of fees paid by

many small businesses. Although the retroactive fee cut-off applies to all generators, it will be most widely applicable to small businesses generating small quantities of hazardous waste. The Agency believes that most of the major hazardous waste generators have been in compliance with the hazardous waste rules and are not subject to retroactive fees. However, the Agency is aware of major categories of small businesses generating small quantities of hazardous waste that have not been involved in the hazardous waste program and have not previously paid the required fees. For these generators, the retroactive fees in the existing rules would be significant if applied from the point when they were first required. The proposed amendments, therefore, provide significant relief to the small businesses that are anticipated to be the primary beneficiaries of the retroactive fee cut-off.

Another feature of the proposed amendments which will benefit some generators who are also small businesses is the substitution of a flat fee for the annual fees applicable to generators of solvents and other simple waste streams recycled off-site under a maintenance agreement. Examples of these businesses include service stations doing only light repair work, most dry cleaners, and many small repair and fabrication shops.

VI. LIST OF EXHIBITS

One exhibit is attached to this Statement of Need and Reasonableness to support the proposed amendments:

Agency Ex. No.	Title
A	Approval of the Commissioner of Finance.

VII. CONCLUSION

The Agency has, in this document and its exhibit, made its presentation of the facts establishing the need for and reasonableness of the proposed amendments to the hazardous waste fee rules.

November 14, 1986

for Barbara Lindsay Sims
Thomas J. Kalitowski
Executive Director

Exhibit A

y 3807

STATE OF MINNESOTA

DEPARTMENT of Finance

Office Memorandum

TO: Thomas J. Kalitowski
Executive Director
Pollution Control Agency

DATE: Dec. 9, 1986

FROM: Bruce Reddemann, Director
Budget Operations and Support

PHONE: 6-5188

BJR

RECEIVED
DEC 17 1986
MPCA, SOLID & HAZ. WASTE DIVISION

SUBJECT: Fee Schedule Approval and Request for Waiver

Your December 4, 1986 request for changes in hazardous waste generator fees is approved as submitted.

Based on Laws of 1985, First Special Session, Chapter 13, Subdivision 1, the requirement in 16A.128 that fees nearly equal the sum of the appropriation for the accounts plus the agency's general support costs, statewide indirect costs and Attorney General costs attributable to the fee function is waived.

The wording of M.S. 116.12, subd. 1 that fees should be established to cover the amount appropriated from the Special Revenue Fund is in conflict with M.S. 16A.128 which states that fees should also recover agency general support costs, statewide indirect costs and Attorney General costs.

Your department should submit legislation to include these costs for the fees referred to in M.S. 116.12. The legislature will then make the determination as to their intent regarding recovery of these costs for hazardous waste generator fees.

TL/BJR/BN/KB/503T

cc: Bart Nelson
Brian Roherty
Doug Watnemo

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Amendment to Rules Governing
Hazardous Waste Generator Fees,
Minn. Rules pts. 7046.0030,
7046.0031, 7046.0040, 7046.0050, and
7046.0070

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Nancy J. Drach, being duly sworn, deposes and says:

That on the 2nd day of January, 1987, at the City of St. Paul, County of Ramsey, State of Minnesota, s/he served the attached Notice of Intent to Adopt Rule Amendments Without a Public Hearing by depositing in the State of Minnesota Central Mail System or in the United States mail for first class mailing at said City of St. Paul, a copy thereof, properly enveloped,. with postage prepaid, on all 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 the Pollution Control Agency.

Nancy J. Drach

Subscribed and sworn to before me this
2 day of January 1987.

Mary Ann Hammer
Notary Public

MARY ANN HAMMER
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES DECEMBER 10, 1991

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments to Rules Governing Hazardous Waste Generator Fees, Minn. Rules pts. 7046.0030, 7046.0031, 7046.0040, 7046.0050, and 7046.0070

NOTICE OF INTENT TO ADOPT RULE AMENDMENTS WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends to adopt, without a public hearing, amendments to rules governing hazardous waste generator fees, Minn. Rules pts. 7046.0030, 7046.0031, 7046.0040, 7046.0050, and 7046.0070. The rules will be adopted in accordance with the provisions of Minn. Stat. § 16A.128 (Supp. 1985) and in accordance with Minn. Stat. §§ 14.22 - 14.28 (1984).

The proposed rules, if adopted, will simplify the existing fee structure, will better reflect the costs of regulating various activities, will promote recycling, discourage land disposal, and make the fees more equitable. The proposed amendments establish annual fees which consist of a review and maintenance fee (a flat fee which must be paid by non-metropolitan area generators), a waste stream fee (a flat fee for each hazardous waste stream generated by each non-metropolitan area generator), and a volume fee (a fee based on the total volume of waste generated and the method used for management of a waste). The proposed amendments also establish fees for follow-up actions if a generator's refusal to submit required information causes the Agency to send additional registered letters or to conduct an inspection for the purpose of obtaining required information. The proposed amendments reduce slightly the surcharge applied to all hazardous waste generators. The proposed amendments establish a new flat fee for certain non-metropolitan area generators whose sole hazardous wastes are begreasing or drycleaning solvents recycled off-site, batteries, gasoline tank bottoms, and scrap metal. Finally, the proposed amendments adjust the fee schedule in a manner that reduces the overall revenues collected by the Agency through hazardous waste fees.

The proposed rules are authorized by Minn. Stat. § 116.12 (Supp. 1985). A copy of the proposed amendments is enclosed. In addition, one free copy of the rules is available from the Agency upon request. Please contact the person whose name and address appears below.

The Agency has prepared a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon by the Agency to support the proposed amendments. Copies of the Statement of Need and Reasonableness and of the proposed amendments are available and may be obtained by contacting:

Laurie Jacobson
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155
Telephone: (612) 296-7227

Interested persons have until 4:30 p.m. on February 4, 1987, to submit comments on the proposed rule amendments. Comments should be submitted to Laurie Jacobson at the address stated above. The proposed amendments may be modified if the data and views received by the Agency before the end of the comment period warrant modification and the modification does not result in a substantial change in the proposed amendments.

Unless the Agency receives, within the comment period, written requests for a hearing on the proposed amendments from twenty percent of the persons who will be required to pay a fee, a public hearing will not be held. In the event that a public hearing is required, the Agency will proceed according to the provisions of Minn. Stat. §§ 14.131 - 14.20 (1984). If a person desires to request a public hearing, the Agency requests that 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.

Upon adoption of the rules by the Agency Board, the rules as proposed, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted will be sent 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 amendments as adopted, should submit a written statement of such request to Laurie Jacobson at the address previously stated.

You are hereby advised, pursuant to Minn. Stat. § 14.115 (1984), "Small business considerations in rulemaking," that the proposed amendments will affect small businesses because most of the businesses whose fees will be changed or that will be subject to a new fee will be small businesses. However, the amendments will benefit most of these small businesses. Additional information on the impact of the proposed amendments on small businesses is set forth in the Agency's Statement of Need and Reasonableness.

for Barbara Lindsey Sims
THOMAS J. KALITOWSKI
Executive Director

Dated: January 2, 1986

Pollution Control Agency

Proposed Permanent Rules Relating to Hazardous Waste Fees

Rules as Proposed (all new material)

7046.0031 NONMETROPOLITAN AREA GENERATOR FEES.

Subpart 1. **Basis of fees.** The agency shall charge nonmetropolitan area generator fees that are based on the annual reports submitted by generators, disclosures, and other appropriate information available to the agency.

Subp. 2. **Small generator exemption.** Nonmetropolitan area generators that generate a total of less than the equivalent of ten gallons or 100 pounds of hazardous waste per year are exempt from the annual fees of this part.

For the purposes of this part, a conversion factor of one gallon of hazardous waste equals ten pounds of hazardous waste will be used.

Subp. 3. **Retroactive fee collection.** Retroactive fees must be paid by the generator for each year in which hazardous waste was generated but not disclosed, for each waste stream for a maximum retroactive period of two calendar years prior to the most current calendar year subject to fees. The retroactive fee is calculated by multiplying the current annual fee and surcharge or the portion of the current annual fee and surcharge subject to retroactive fees, times the number of years, up to a maximum of two years, the generator had generated the waste. Retroactive fees for waste produced for less than two years shall be calculated according to the closest number of years of production.

Subp. 4. **Annual fees.** An annual fee is the sum of the review and maintenance fee, waste stream fees, and waste generation volume fees. Nonmetropolitan area generators shall submit annual fees as follows:

A. A review and maintenance fee must be paid by all nonmetropolitan area generators. The review and maintenance fee

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is $30 per calendar year for each identification number issued to the generator pursuant to part 7045.0221.

B. A waste stream fee must be paid by all nonmetropolitan area generators for each waste stream generated over ten gallons or 100 pounds. The waste stream fee is $20 for each unsewered waste stream per calendar year and $20 for each sewered waste stream per calendar year.

C. A waste generation volume fee must be paid by all nonmetropolitan generators based on the amount of unsewered hazardous waste generated and method of waste management or disposal used in the calendar year. The base volume fee is assessed on a per gallon basis for liquid waste streams or a per pound basis for nonliquid waste streams. The base volume is $0.06 per gallon and $0.006 per pound for the first 2,000 gallons or pounds produced. The base volume fee for 2,001 to 6,000 gallons or pounds is $0.045 per gallon and $0.0045 per pound. The base volume fee for more than 6,000 gallons or pounds is $0.03 per gallon and $0.003 per pound. The base volume fee shall be multiplied by the following factors for waste streams managed by the following methods:

Management Method	Factor
Recycle, feedstock, or by-product on-site	0
Recycle, feedstock, or by-product off-site	0.67
Burned for fuel	0.67
Neutralization	0.67
Incineration	0.67
Disposal and other methods	1.00

Any sludges or residues of recycling, burning for fuel, neutralization, or incineration are subject to the base volume fee.

Subp. 5. **Follow-up action fee.** A nonmetropolitan area generator is subject to payment of a follow-up action fee if the generator fails to respond within 30 days of receipt of a registered letter from the director concerning the generator's noncompliance with part 7045.0240 requiring submission of a disclosure, part 7045.0216 requiring submission of an evaluation

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report, or part 7045.0296 requiring submission of an annual report. The agency shall charge a follow-up action fee only if the director's follow-up action involves sending the generator one or more additional registered letters or causing an authorized representative of the agency to make an inspection for the purpose of obtaining the required information. The fee for each follow-up registered letter, not to include the initial registered letter, is $25. The fee for each follow-up inspection is $200.

Subp. 6. **Payment schedule.** A nonmetropolitan area generator shall submit fees within 60 days after receipt of the notice from the director that the fees are due. Fees submitted after the due date are considered late.

A nonmetropolitan area generator shall submit a check for the required amount to the director, made payable to the Minnesota Pollution Control Agency.

Subp. 7. **Failure to submit fees.** If a nonmetropolitan area generator fails to submit the required fees by the due date, the generator shall pay the fees plus a late fee for each 30-day period or fraction of that period that the fee remains unpaid. The late fee is calculated as a percentage of the annual fee as follows: ten percent of the annual fee for each of the first two 30-day periods, and 15 percent of the annual fee for each 30-day period, or fraction of a 30-day period, thereafter.

If a nonmetropolitan area generator fails to submit the requested fees by the due date, the generator becomes liable for reasonable additional expenses the agency incurs in collection of the fee, in addition to the annual fee and any applicable late fees.

Rules as Proposed

7046.0040 GENERATOR SURCHARGE.

Subpart 1. **In general.** All generators in Minnesota are subject to an annual surcharge equal to ~~50~~ 45 percent of the

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annual fee. Payment must be made as provided in subparts 2 and 3.

Subp. 2. **Nonmetropolitan area generators.** Nonmetropolitan area generators shall pay the surcharge to the director at the time of payment of the annual fee. A nonmetropolitan area generator who fails to pay the annual surcharge is considered delinquent and subject to the late fee penalty provided in part ~~7046.0030~~ 7046.0031, subpart 7.

Subp. 3. [Unchanged.]

7046.0050 GENERATOR FEE EXEMPTIONS.

Subp. 2. [See Repealer.]

Subp. 3. [Unchanged.]

Subp. 4. **Certain nonmetro area generators.** Small quantity nonmetropolitan area generators whose sole hazardous wastes are degreasing or drycleaning solvents reclaimed off-site under a maintenance agreement, lead acid batteries, gasoline tank bottoms, and scrap metal are not subject to annual fees for those calendar years for which they submit accurate disclosures under part 7045.0240, or annual reports by March 1, under part 7045.0296, but rather are subject to a flat annual fee of $25. For the purposes of this part, a maintenance agreement is a written agreement acceptable to the director between a generator and a transporter and a reclaimer under which waste is removed from the generator's site on a regularly scheduled basis for reclamation by distillation.

7046.0070 APPEAL PROCEDURE.

A generator who believes that the fee requested by the director is in error may appeal the fee levy. Within ten days of receipt of the fee statement from the director, the generator shall provide written notice of the error in fee calculation, the fee the generator has calculated, and the method used by the generator in calculating the fee. If the director finds, upon reviewing the data, that the new data presented by the generator is correct, no penalty fee will be assessed. However, if the director finds that the original calculated fee was correct, the

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generator shall be assessed any applicable penalty as provided in part ~~7046.0030~~ 7046.0031, subpart 7 from the date of the director's decision regarding the fee adjustment appeal.

REPEALER. Minnesota Rules, parts 7046.0030 and 7046.0050, subpart 2 are repealed.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Hazardous Waste Fees

AGENCY: Pollution Control Agency

MINNESOTA RULES: Chapter 7046

The attached rules are approved for publication in the State Register

David S. Niss
Assistant Revisor

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Amendment to Rules Governing
Hazardous Waste Generator Fees,
Minn. Rules pts. 7046.0030,
7046.0031, 7046.0040, 7046.0050, and
7046.0070

CERTIFICATE

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minn. Stat. §14.14 (1984), that their names be placed on file with the the Minnesota Pollution Control Agency (Agency) for the purpose of receiving notice of the proposed adoption of rules by the Agency is accurate and complete as of 2:00 p.m., this 31 day of December, 1986.

LaRaine Bengtson

MAYO CLINIC FOUNDATION
DAVID N EASS
HEMATOLOGY RESEARCH
ROCHESTER MN 55901 5

MEEB/REEC
CAROL LANGER REG COORD
UNIVERSITY OF MN MORRIS
PE ANNEX RM 32
MORRIS MN 56267 5

MIDLAND GLASS COMPANY
DONALD F HENNEN
PLANT MANAGER
P O BOX 69
SHAKOPEE MN 55379 5

CITY OF MILTONA
ATTN KEVIN LEE CLERK
MILTONA MN 56354 5

MINNEAPOLIS TRIBUNE
ATTN BOB FRANKLIN
425 PORTLAND AVE
MINNEAPOLIS MN 55488 5

MINNEGASCO
PAUL DENEKA
DR LAB & ENVIRON PRGMS
601 W 61ST ST
MINNEAPOLIS MN 55419 5

MINNEGASCO
GEORGE MASTOR
LEGAL DIVISION
201 SOUTH 7TH STREET
MINNEAPOLIS MN 55402 5

MINNESOTA FARMERS UNION
Attn: Julie Bleyhl
Director of Leg. Serv.
317 York Avenue
St. Paul, MN 55101

THE MINNESOTA PROJECT
ATTN LONI KEMP
2222 ELM STREET S E
MINNEAPOLIS MN 55414 5

MINNKOTA POWER COOP INC
ATTN LOREN L JOHNSON
BOX 1318
GRAND FORKS ND 58201 5

MN AGRI GROWTH COUNCIL
8030 CEDAR AVE S
SUITE 213
BLOOMINGTON MN 55420 5

MN ASSOC HEALTH CARE FAC
ATTN RICK CARTER
2850 METRO DRIVE SUITE 429
MINNEAPOLIS MN 55420 5

MN AUDUBON COUNCIL
330 CITY PLACE
730 HENNEPIN AVE
MINNEAPOLIS MN 55403 5

MN CHAPTER OF ABC
ATTN DAVID JENNINGS
6989 WASHINGTON AVE S #200
MINNEAPOLIS MN 55435 5

MN ENV QUALITY BOARD
GREG LARSON
550 CEDAR STREET
ST PAUL MN 55101 5

MN MOTOR TRANSPORT ASSOC
ATTN JAMES N DENN
1821 UNIVERSITY RM 134N
ST PAUL MN 55104 5

MN MULTI HOUSING ASSOC
ATTN JOHN G HORNER
4740 PARK GLEN ROAD
MINNEAPOLIS MN 55416 5

MN NEWSPAPER ASSOC
845 6TH ST SUITE 400
MINNEAPOLIS MN 55402 5

MN RETAIL MERCHANTS ASSOC
ATTN JOHN E VAN DOORN
180 METRO SQUARE BLDG
ST PAUL MN 55101 5

MOBIL OIL
ATTN PETE GATES
P O BOX 66568
AMF O'HARE IL 60666 5

MOSS & BARNETT LAW OFFICES
MICHAEL J AHERN
1200 PILLSBURY CTR
200 S 6TH ST
MINNEAPOLIS MN 55402 5

MOTORCYCLE INDUSTRY COUNCIL
1235 JEFFERSON DAVIS HWY
SUITE 1410
ARLINGTON VA 22202 5

MPIRG
ATTN JAMES MILLER
2412 UNIVERSITY AVE S E
MINNEAPOLIS MN 55414 5

MPIRG
ATTN KENNETH PETERSON
2412 UNIVERSITY AVE S E
MINNEAPOLIS MN 55414 5

NAT'L SOLID WASTE MGMT ASSN
MARY AYDE
4649 BLOOMINGTON AVE S
MINNEAPOLIS MN 55407 5

NAT'L RENDERERS ASSOC INC
ATTN WILLIAM H PROKOP
2250 EAST DEVON AVE
DES PLAINES IL 60018 5

NCASI
ATTN REID MINER
CENTRAL LAKE ST REG CE
WESTERN MICHIGAN UNIV
KALAMAZOO MI 49008 5

NE IMPROVEMENT COUNT
KAREN VARIAN
722 36½ AVE N E
MINNEAPOLIS MN 55418 5

STEWART NICHOLSON
13150 HARRIET AVE S #378
BURNSVILLE MN 55337 5

NORTH STAR STEEL CO
ATTN R A GARVEY
1678 RED ROCK RD
P O BOX 43189
ST PAUL MN 55164 5

NSP LAW.DEPT
ATTN JOSEPH D BIZZANO JR
414 NICOLLET MALL
MINNEAPOLIS MN 55401 6

NORTHERN STATES POWER CO
ATTN G V WELK MGR
REG COMPL & SERV
414 NICOLLET MALL
MINNEAPOLIS MN 55401 6

OFFICE OF ADMIN HEARI CO
ATTN SAM RUHLE
400 SUMMIT BANK BLDG
30 S FOURTH AVE
MINNEAPOLIS MN 55415 6

OGLEBAY NORTON CO
HENRY CHISHOLM
P O BOX 6508
CLEVELAND OHIO 44101 6

OLMSTED CITIZENS FOR A
BETTER COMMUNITY
P O BOX 504
ROCHESTER MN 55903 6

OLSON GUNN & SERAN LTD
ATTN WAYNE H OLSON
315 PEAVEY BLDG
730 SECOND AVE S
MINNEAPOLIS MN 55402 6

PAUL WEIR CO
ATTN MARY VACULA
20 NORTH WACKER DR
CHICAGO IL 60606 6

PERRY GRUBB ASSOC INC
ATTN CHARLES R SINGER
771 HARDING ST N E
MINNEAPOLIS MN 55413 6

PHILLIPS LEGIS SERVICES
459 RICE ST
ST PAUL MN 55103 6

PICKANDS MATHER & CO
ATTN THOMAS W HAYES
SUITE 811-200 W SUPERIOR ST
DULUTH MN 55802 6

PICKANDS MATHER & CO
ATTN CHUCK HOFFMAN
SUITE 811-200 W SUPERIOR ST
DULUTH MN 55802 6

PICKANDS MATHER & CO
ATTN T J MANTHEY
1100 SUPERIOR AVE N E
CLEVELAND OH 44114 6

THE PILLSBURY COMPANY
ATTN MAHLON SCHNEIDER
MS 3726
THE PILLSBURY CENTER
MPLS MN 55402 6

THOMAS M POLT
ATTORNEY AT LAW
MCCARTHY BLDG
EYOTA MN 55934 6

POPHAM HAIK LAW FIRM
ATTN G ROBERT JOHNSON
4344 IDS CENTER
MINNEAPOLIS MN 55402 6

POTLATCH CORPORATION
ATTN ARCHIE D CHELSETH
BOX 510
CLOQUET MN 55720 6

PRECISION ENV SERV
ATTN JOHN GLEASON
8009 RANCHERS ROAD N E
FRIDLEY MN 55432 6

PUBLIC AFFAIRS INFORMATION
STATE REGULATORY DIV
1024 10TH ST SUITE 300
SACRAMENTO CA 95814 6

PULP & PAPER
ATTN PAULA IRONS
500 HOWARD ST
SAN FRANCISCO CA 94105 6

R C CONSULTANTS OF ANOKA
JAMES D WOLVERTON P E
10666 UNIVERSITY AVE N W
COON RAPIDS MN 55433 6

RAMSEY CO ENVIR HEALTH
ATTN DOUGLAS WOOD
1910 W CO RD B
ROSEVILLE MN 55113 6

SHAILIA REGEHR
R R 1 BOX 419
STEWARTVILLE MN 55976 6

REGION NINE DEVELP COMM
ATTN LYNNETTE RENNEKE WIEST
410 S 5TH ST P O BOX 3367
MANKATO MN 56001 6

NEWS EDITOR
REGISTER-MIRROR
P O BOX 3253
MINNEAPOLIS MN 55403 6

RELIANCE UNIVERSAL INC
ATTN PAUL H WALKER
ROBTSON RESEARCH & DVLP CE
4730 CRITTENDEN DR
LOUISVILLE KY 40209 6

RICE COUNTY PLANNING OFF
610 N W 20TH ST
P O BOX 40
FARIBAULT MN 55021 6

HEDIA RIEKE
2100 28TH AVE S
MINNEAPOLIS MN 55406 6

ROBT J PUGLEASA CO INC
ATTN GENE A BROWN
61 BEDFORD ST S E
MINNEAPOLIS MN 55414 6

CHAMBER OF COMMERCE
TOM CASEY
212 1ST AVE S W
ROCHESTER MN 55901 6

ROCHESTER PUBLIC UTILITIES
ATTN JOSEPH HENSEL
506 FIRST AVE N E
BOX 6057
ROCHESTER MN 55901 6

ROOSEVELT JR HIGH
MARK GUGISBERG
650 N E MAIN ST
BLAINE MN 55434 7

SID SANFORD
7000 PORTLAND AVE
RICHFIELD MN 55423 7

SARGENT & LUNDY ENGINEERS
55 EAST MONROE ST
CHICAGO IL 60603 7

A B SCHAEFER JR
14900 61ST ST N
STILLWATER MN 55082 7

FORREST W SEYMOUR
2870 HUMBOLDT AVE S #2
MINNEAPOLIS MN 55408 7

SHELDAHL
ATTN DAVID MILLER
N HWY 3
NORTHFIELD MN 55057 7

SHELL ENGINEERING & ASSOC
1804 VANDIVER DR
P O BOX 548
COLUMBIA MO 65205 7

THE SHERWIN-WILLIAMS CO
ATTN D A COHAGAN
101 PROSPECT AVE N W
CLEVELAND OH 44115 7

SIERRA CLUB-PROJ ENV
NELSON FRENCH
SUITE 323
1313 5TH ST S E
MINNEAPOLIS MN 55414 7

BETTY SIMS
2149 GOODRICH AVE
ST PAUL MN 55105 7

ST PAUL FIRE DEPT
RUSS POLANSKY
101 E 10TH STREET
ST PAUL MN 55101 7

ST PAUL PUBLIC HEALTH
ATTN DR PAUL J COX
555 CEDAR ST
ST PAUL MN 55101 7

STEARNS COUNTY PLAN DEPT
ATTN KENNETH HOPKE
BOX 604
ST CLOUD MN 56301 7

EDWIN E STERLING
3920 39TH AVE S
MINNEAPOLIS MN 55406 7

TECH SALES CO
ATTN DON REGER
4329 NICOLLET AVE S
MINNEAPOLIS MN 55409 7

TENNECO INC
ATTN B J WHITLEY CEP
1100 MILAM BLDG
HOUSTON TX 77001 7

THERMO-KING
R SCHOENBORN CORP LIB
314 W 90TH ST
MINNEAPOLIS MN 55420 7

TWIN CITY ASSN OF METAL
FINISHERS PHILLIP KLEIN
300 HANOVER BLDG
480 CEDAR ST
ST PAUL MN 55101 7

U OF M
CINDY A McCOMAS
ROOM W-163 BOYNTON
410 CHURCH ST S E
MINNEAPOLIS MN 55455 7

U OF M PHYSICAL PLANT DEPT
ATTN ROBERT SILVAGNI
200 SHOPS BLDG
319 15TH AVE S E
MINNEAPOLIS MN 55455 7

U OF M
ATTN ROBERT SNYDER
248 CLASSROOM OFFICE BLDG
1994 BUFORD AVE
ST PAUL MN 55108 7

UNION CARBIDE CORP
ATTN M WILKINS
39 OLD RIDGEBURY RD E2289
DANBURY CT 06817 7

UNITED POWER ASSOC
ATTN REYNOLD S RAHKO
PROJECTS COORD DIV
ELK RIVER MN 55330 7

UNITED POWER ASSOC
ATTN DAN MCCONNON
ENV & LAND DIV
ELK RIVER MN 55330 7

VAN HOVEN CO INC
ATTN ED VAN HOVEN JR
BOX 56
SO ST PAUL MN 55075 7

RON WALLACE
1790 DAYTON AVE
ST PAUL MN 55104 7

WASHINGTON CO ADMIN
CHARLES SWANSON
14900 61ST ST N
STILLWATER MN 55082 7

WASH CO COMMUNITY
HEALTH SERVICES
ATTN TOM DELLENBACH
2000 INDUSTRIAL BLVD
STILLWATER MN 55082 7

B J WHITLEY JR
1100 MILAM BLDG
P O BOX 2511
HOUSTON TX 77001 7

WILLIAM MITCHELL COLLEGE
OF LAW
ATTN PROF MARCIA GELPE
875 SUMMIT AVE
ST PAUL MN 55102 7

CITY OF WINONA
ATTN ROBERT J BOLLANT
4TH & LAFAYETTE ST
WINONA MN 55987 8

WINTHROP WEINSTINE &
SEXTON
1800 CONWED TOWER
444 CEDAR ST
ST PAUL MN 55101 8

DANIEL D FOLEY M D
427 SOUTH O'DAY CIRCLE
MAPLEWOOD MN 55119 8

JANET C GREEN
10550 OLD N SHORE RD
DULUTH MN 55804 8

DUANE A DAHLBERG PH D
421 HORN AVENUE S
MOORHEAD MN 56560 8

KEITH H LANGMO
618 WEST CRESCENT LANE
LITCHFIELD MN 55355 8

ARNOLD ONSTAD
204 SECOND ST S E
SPRING GROVE MN 55974 8

RUTH ERICSON
80 EDISON BLVD
SILVER BAY MN 55614 8

EDWARD F FAIRBANKS
ROUTE 3 BOX 867
BEMIDJI MN 56601 8

RUSSELL W DOMINO
23 WEST RD
CIRCLE PINES MN 55014 8

DEPT OF AGRICULTURE
AGRONOMY SERVICES
ATTN GARY BRAUN
90 W PLATO BLVD
ST PAUL MN 55107

BRD OF ARCH ENG LAND SURV
AND LANDSCAPE ARCHITECTURE
ATTN LOWELL E TORSETH
500 METRO SQUARE
ST PAUL MN 55101

ATTORNEY GENERAL'S OFFICE
ANTITRUST DIVISION
2ND FLOOR FORD BLDG
117 UNIVERSITY AVE
ST PAUL MN 55155

MN DEPT ECONOMIC SECURITY
ATTN F JAMES RYBAK PHD
690 AM CE 150 E KELLOGG
ST PAUL MN 55101

DEPT OF EDUCATION
ATTN FREDRICK M CHRISTIANSEN
RM 911 CAPITOL SQ BLDG
ST PAUL MN 55101

DEPT OF ENERGY & ECON DVLPMT
ATTN MARK DAYTON
900 AMERICAN CENTER BLDG
150 E KELLOGG BLVD
ST PAUL MN 55101

DEPT OF ENERGY & ECON DVL
ATTN: DAVID SPEER
900 American Center Bldg
150 E. Kellogg Blvd
St. Paul, MN 55101

MN DEPT OF HEALTH
ATTN JAMES WITKOWSKI
717 DELAWARE ST SE
MPLS MN 55440

MN DNR
SAFETY DIR
BOX 16
500 LAFAYETTE RD
ST PAUL MN 55155

LEGISLATIVE COMM ON
WASTE MANAGEMENT
ATTN SUE ROBERTSON
ROOM 85
STATE CAPITOL

LEGISLATIVE COMM TO
REVIEW ADMIN RULES
ATTN MARYANNE V HRUBY
ROOM 55
STATE OFFICE BLDG

MEEB CENTRAL OFFICE
ATTN RAY QUINN
BOX 5 500 LAFAYETTE RD
ST PAUL MN 55146

METROPOLITAN COUNCIL
ATTN JOHN T HOEFT
300 METRO SQ BLDG
7TH ST & ROBERT ST
ST PAUL MN 55101

MN DOT DIRECTOR, ENV SERV
704 TRANSPORTATION BLDG
JOHN IRELAND BLVD
ST PAUL MN 55155

STATE PLANNING AGENCY
ATTN JACK DITMORE
ENV DIV 100 CAPITOL SQ BLDG
550 CEDAR ST
ST PAUL MN 55101

PRESS/MN GOVT REPORT
ATTN JEAN DAWSON
RM B12 CAPITOL BLDG
ST PAUL MN 55155

SENATE COUNCIL OFFICE
ATTN MARK J. HANSON
RM 480
STATE OFFICE BLDG
ST PAUL MN 55155

WATER RESOURCES BOARD
FIRST FLOOR
500 LAFAYETTE ROAD
ST PAUL MN 55146

MPCA HEARING NOTIFICATION MAILING LIST INTER OFFICE

ANGIO MEDICS
ATTN RICK BENNETT
2905 N W BLVD
MINNEAPOLIS MN 55441

MARY AYEDE
1201 N BIRCHLAKE BLVD
WHITE BEAR LK MN 55110 SHW

AL BALDUS
CENEX
BOX 43089
ST PAUL MN 55164 SHW

JOHN FINDLEY
BRAUN ENVIRONMENTAL LAB
6800 S COUNTY RD 18
MINNEAPOLIS MN 55435 SHW

DONALD BURGER
501 22ND AVE N E
MINNEAPOLIS MN 55418 SHW

CHEMFIX INC
ATTN H HUDSON BUZBEE
1675 AIRLINE HWY
P O BOX 1572
KENNER LA 70063 SHW

~~BIEL CLAUSEN~~
~~4511 PILLSBURY AVE~~
~~MINNEAPOLIS MN 55400 SHW~~

JAMES CORBETT
703 S 10TH ST
MINNEAPOLIS MN 55404 SHW

C J SCHULTZ LEGAL ASST
DEWITT SUNDBY HUGGETT
SCHUMACHER & MORGAN
6515 GRAND TETON PLAZA #120
MADISON WI 53719 SHW

RICHARD O'HARA
DNR
P O BOX 7921
MADISON WI 53707 SHW

ECRDC
119 SOUTH LAKE STREET
MORA MN 55051 SHW

ENV HYDROLOGY & ENG
3416 UNIVERSITY AVE S E
MINNEAPOLIS MN 55414 SHW

CHAIRMAN OF FAIRMONT AREA
CHAMBER OF COMMERCE
99 DOWNTOWN PLAZA
FAIRMONT MN 56031 SHW

E C MILTON MGR
GNB BATTERIES INC
FAC ENGRNG METALS DIV
803 BERRY STREET
ST PAUL MN 55114 SHW

BETSY KIMBALL
LEGAL ASSISTANT
GOODWIN, PROCTER & HOAR
28 STATE STREET
BOSTON MA 02109 SHW

HARSTAD & RAINBOW
PATRICIA LEONARD-MAYER
1036 NORWEST MIDLAND BLDG
MINNEAPOLIS MN 55401 SHW

EDITOR
HAZARDOUS MATERIALS
P O BOX 535
CAMBRIDGE MA 02238 SHW

JIM JASKA
HONEYWELL INC-DEFENSE
SYS DIV MN 11-1734
600 2ND ST NE
HOPKINS MN 55343 SHW

ERIKA SITZ
IZAAK WALTON LEAGUE
6521 154TH LANE N W
RAMSEY MN 55303 SHW

RUTH JOHNSON
129 RIVERVIEW BLVD
INT'L FALLS MN 56649 SHW

DR BOB KOOB
1219 4TH AVE S
MOORHEAD MN 56560 SHW

LEGGETTE BRASHEARS & GRAHAM IN
NORTHPARK CORPORATE CENTER
1210 W COUNTY ROAD E SUITE A12
ST PAUL MN 55112 SHW

DAVID E HANSING P E
BRUCE A LIESCH ASSOC
3131 FERNBROOK LANE
MINNEAPOLIS MN 55441 SHW

ROBERT LOCKYEAR
PLANNING COORDINATOR
14900 61ST ST N
STILLWATER MN 55082 SHW

BARBARA LUKERMAN
2211 FOLWELL ST
ST PAUL MN 55103 SHW

DAVID MARQUETTE
MARSH & McLENNAN
1500 NORTHSTAR CENTER
MINNEAPOLIS MN 55402 SHW

McCOY & ASSOCIATES
ATTN JANET MacNEIL
13131 W CEDAR DR
LAKEWOOD CO 80228 SHW

MIDWESTERN GAS TRANS CO
ATTN MICHAEL CATT
P O BOX 2511
HOUSTON TX 77001 SHW

VIRGINIA GREENMAN
MN HOSPITAL ASSOC
2221 UNIVERSITY AVE SE
MINNEAPOLIS MN 55414 SHW

DON PATERICK
MN TAXPAYERS ASSOC
480 CEDAR AVE
ST PAUL MN 55101 SHW

GREGORY WERSAL
7841 WAYZATA BLVD
MINNEAPOLIS MN 55426 SHW

GAIL SUCHMAN
MPIRG
2412 UNIVERSITY AVE SE
MINNEAPOLIS MN 55414 SHW

WINONA DAILY NEWS
ATTN DON STUART
401 N FRANKLIN
WINONA MN 55987 SHW

JOHN KEARNEY
N AMER WATER OFFICE
1519 A EAST FRANKLIN AVE
MINNEAPOLIS MN 55404 SHW

WRIGHT CHEMICAL CO
ATTN PATRICK REILLY
10740 RIVERVIEW PLACE
COON RAPIDS MN 55433 SHW

PORTAGE SANITARY LANDFILL
AUTHORITY
CRANE LAKE MN 55725 SHW

Hayes Contractors
Patsy Anderson
1010 Currie Ave. No.
MPLS., MN 55403

DOUG PROEHL
R F D 2
WINTHROP MN 55396 SHW

PHIL DUFF
RED WING REP EAGLE
P O BOX 15
RED WING MN 55066 SHW

TOM REES
22300 PENN AVENUE
LAKEVILLE MN 55044 SHW

A B SCHAEFER JR
CHAIRMAN WASHINGTON CO
BOARD OF COMMISSIONERS
14900 61ST ST NO
STILLWATER MN 55082 SHW

UNIVERSITY OF MN
ATTN LASZLO FULOP
DIR OF PHYSICAL PLANNING
503 MORRILL HALL
MINNEAPOLIS MN 55455 SHW

ADHESIVE & SEALANT COUNCIL
SUITE 515
1500 NORTH WILSON BLVD
ARLINGTON VA 22209 1

AM INSURANCE ASSOC
ATTN FRED McGARVEY
230 W MONROE ST
CHICAGO IL 60606 1

AM LUNG ASSN RAMSEY COUNTY
ATTN NANCY ZINK
614 PORTLAND AVE
ST PAUL MN 55102 1

AMERICAN CRYSTAL SUGAR
ATTN W W BARR MGR ENV CONTR
101 N THIRD ST
MOORHEAD MN 56560 1

AMOCO PIPELINE CO
ATTN LARRY NEWMAN 1
P O BOX 3548
OAK BROOK, IL 60522-3548

ANOKA CO COMM HEALTH & SOC
SERV DEPT
ATTN GERTRUDE M JAMES
COURTHOUSE 4TH FL
ANOKA MN 55303 1

API INC
ATTN TERRY WOLD
2366 ROSE PLACE
ST PAUL MN 55113 1

ARMOUR & COMPANY
ATTN ROBERT J SHERMAN
CONAGRA CENTER
ONE CENTRAL PARK PLAZA
OMAHA NE 68102-1679 1

ASHLAND PETROLEUM COMPANY
ATTN RICHARD HETLAND
P O BOX 9
ST PAUL PARK MN 55071 1

ASHLAND PETROLEUM CO
ATTN A C MEKO LAW DEPT
P O BOX 391
ASHLAND KY 41114 1

ASSN OF MN COUNTIES
SUITE 300
555 PARK STREET
ST PAUL MN 55103 1

BADGER SAFE ENERGY ALLI
BOX 239
ELLSWORTH WI 54011 1

BARR ENGINEERING CO
7803 GLENROY RD
SUITE 100
MINNEAPOLIS MN 55435 1

BENDIX
ENVIR & PROCESS INST DIV
P O DRAWER 831
LEWISBURG W VA 24901 1

BRUCE E BENSON
ZONING OFFICER
COURTHOUSE
CARLTON MN 55718 1

BIO-CLEAN INC
LANCE CROMBIE
R R 1 BOX 175B
WEBSTER MN 55088 1

BLACK & VEATCH/MICHIGAN
ATTN ENVIRONMENTAL SPECIAL
200 RENAISSANCE CE #1220
DETROIT MI 48243 1

BLANDIN PAPER COMPANY
ATTN W J LICKE
115 FIRST STREET S W
GRAND RAPIDS MN 55744 1

BLANDIN WOOD PRODUCTS CO
ATTN CURT R FIRMAN
WAFERBOARD PLANT SITE BOX N
GRAND RAPIDS MN 55744 1

BOISE CASCADE CORPORATION
ATTN MR RUSS SUMMER
ENVIRONMENTAL ENGINEER
INT'L FALLS MN 56649 1

BOLTON & MENK INC
ATTN THOMAS A ROUSHAR
515 N FRONT ST
MANKATO MN 56001 1

BROEKER HARTFELDT HEDGES &
GRANT ATTORNEY AT LAW
ATTN JOHN M BROEKER
2850 METRO DRIVE SUITE 800
MINNEAPOLIS MN 55420 1

CITY OF BROOKLYN CENTER
ATTN PATTY PAGE
6301 SHINGLE CREEK PKWY
BROOKLYN CE MN 55430 1

BILL BUDD
4270 JEFFERSON STREET
EXCELSIOR MN 55331 1

BUREAU OF NAT'L AFFAIRS
ATTN MARK WOLSKI
1729 HAGUE AVENUE
ST PAUL MN 55104 1

ROBERT S BURK
4344 IDS CENTER
MINNEAPOLIS MN 55402 1

BURLINGTON NORTHERN RLRD CO
9401 INDIAN CREEK PKWY
P O BOX 29136
OVERLAND PARK, KS 66201 1

BURLINGTON NORTHERN
LAW DEPARTMENT
176 EAST FIFTH STREET
ST PAUL MN 55101 1

CALC
ATTN PAM BARBOUR
122 W FRANKLIN AVE RM 302
MINNEAPOLIS MN 55404 1

CENEX
ATTN RALPH SCHLETTY
BOX 43089
ST PAUL MN 55164 1

DAVID CERA
2010 JERSEY AVE SO
ST LOUIS PARK MN 55426 2

DONALD B CRASSWELLER
LAW OFFICES
1000 ALWORTH BUILDING
DULUTH MN 55802 2

CHAMPION INT'L CORP
KATHLEEN M BENNETT
DIR OF REG AFFAIRS
ONE CHAMPION PLAZA
STAMFORD CN 06921 2

D H G & G ATTORNEYS AT LAW
ATTN JOHN HERMAN
TEN SOUTH FIFTH ST
SUITE 930
MINNEAPOLIS MN 55401 2

DEPT OF ARMY
JOHN AULBACH II 2 LT MSC
U S ARMY ENV HYGIENE AGENCY
FITZSIMONS ARMY MED CENTER
AURORA CO 80045 2

CHEMLAWN CORPORATION
MARK W BELICZKY E P
MGR REG & LEG AFFAIRS
3275 NORTH HIGH ST
COLUMBUS OH 43085 2

MARK DAHL
500 MISSION RD
BLOOMINGTON MN 55420 2

DOHERTY RUMBLE & BUTLER
ATTN GARY GANDRUD
3750 IDS CENTER
MINNEAPOLIS MN 55402 2

CITIZENS FOR BETTER ENVIR
SUITE #201
1515 E LAKE ST
MINNEAPOLIS MN 55407 2

DAIRYLAND POWER COOP
ATTN THOMAS A STEELE
P O BOX 817
2615 EAST AVENUE S
LA CROSSE WI 54601 2

DORSEY & WHITNEY LIBRARY
2200 FIRST BANK PLACE E
MINNEAPOLIS MN 55402 2

COLOR-AD PACKAGING INC
ATTN MICHAEL S KECKEISEN
3600 ALABAMA AVE
MINNEAPOLIS MN 55146 2

DAKOTA COUNTY ATTORNEY
ROBERT F CAROLAN
1560 HIGHWAY 55
HASTINGS MN 55033 2

DORSEY & WHITNEY
ATTN BECKY A COMSTOCK
2200 FIRST BANK PLACE EAST
MINNEAPOLIS MN 55402 2

COMM HEALTH SERV BRD
ATTN BRUCE T ROWE
325 LAKE AVENUE S SUITE 604
DULUTH MN 55802 2

DAKOTA COUNTY ENV'L HEALTH
RON SPONG
SUITE 101 33 E WENTWORTH
WEST ST PAUL MN 55118 2

DORSEY & WHITNEY
ATTN JOYCE MARTIN
2200 FIRST BANK PLACE EAST
MINNEAPOLIS MN 55402 2

CONSULTING ENGINEERS DIV
SUITE 200
7200 HEMLOCK LANE N
MAPLE GROVE MN 55369 2

DAMES & MOORE
ATTN LARRY ANNEN
1550 NW HWY
PARK RIDGE IL 60068 2

DORSEY LAW FIRM
ATTN MARK KASTOR
2200 FIRST BANK PLACE E
MINNEAPOLIS MN 55402 2

COOPERATIVE POWER ASSOC
ATTN WILLIAM KAUL
14615 LONE OAK ROAD
EDEN PRAIRIE MN 55344 2

DAMES & MOORE
ATTN GEORGE NICHOLAS
1550 NW HWY
PARK RIDGE IL 60068 2

DULUTH MISSABE & IRON
RANGE RAILWAY CO
210 MISSABE BLDG
DULUTH MN 55802 2

COOPERATIVE POWER ASSOC
ATTN SCOTT SCHULER
14615 LONE OAK ROAD
EDEN PRAIRIE MN 55344 2

DAVID BRASLAU ASSOCIATES
1313 5TH STREET S E #322
MINNEAPOLIS MN 55414 2

E I DU PONT DE NEMOURS CO
ATTN MARILYN MOONEY
LEGAL DEPT (D7082)
1007 MARKET STREET
WILMINGTON DE 19898 2

CORNELIUS CO
JERRY DIRKS
1 CORNELIUS PLACE
HIGHWAY 10 W
ANOKA MN 55303 2

TOM LEHMAN
SUITE #388
HALL OF THE STATES
444 NORTH CAPITOL STREET
WASHINGTON D C 20001 2

ENVIR ENG & POLLUTION
CONTROL/3M 21-2W-06
DAVID M BENFORADO P E
P O BOX 33331
ST PAUL MN 55133 2

ENVIRONMENTAL ENGINEERING
& POLLUTION CONTROL/3M
ATTN THOMAS ZOSEL
P O BOX 33331
ST PAUL MN 55133 3

ENVIRONMENTAL TASK FORCE
1012 FOURTEENTH ST N W
15TH FLOOR
WASHINGTON D C 20005 3

EPA REGION V
OFFICE OF PUBLIC AFFAIRS
230 S DEARBORN ST
CHICAGO IL 60604 3

EPA REGION V
ATTN DAVE ULLRICH
230 S DEARBORN ST
CHICAGO IL 60604 3

LEALLAN ESTREM
1895 ST ANTHONY
ST PAUL MN 55104 3

EWALD CONSULTING GROUP
245 E 6TH STREET
SUITE 248
ST PAUL MN 55101 3

DOUG EWALD
15025 HIGHLAND TRAIL
MINNETONKA MN 55345 3

ERN-NORTH CENTRAL INC
ATTN SUSAN HOGLUND
SUITE 200 835 STERLING AVE
PALATINE IL 60067 3

FINANCE & COMMERCE
THE DAILY BUSINESS NEWS
615 SOUTH 7TH STREET
MINNEAPOLIS MN 55415 3

FMC CORP
NORTHERN ORDINANCE DIV
DOUGLAS HILDRE
4800 E RIVER ROAD
MINNEAPOLIS MN 55421 3

CONRAD M FREDIN
ATTORNEY AT LAW
515 PROVIDENCE BLDG
DULUTH MN 55802 3

FRUNDT FRUNDT & JOHNSON
117 WEST 5TH STREET
BLUE EARTH MN 56013 3

FRIENDS OF THE BOUNDARY
WATER WILDERNESS
ATTN KEVIN PROESCHOLDT
1313 FIFTH ST S E #327
MINNEAPOLIS MN 55414 3

GENERAL MILLS INC
ATTN DONALD J THIMSEN
P O BOX 1113
MINNEAPOLIS MN 55440 3

GEO A HORMEL & CO
ATTN KEVIN C JONES
BOX 800
AUSTIN MN 55912 3

GNB INC
EVERETT MILTON
P O BOX 64100
ST PAUL MN 55164-0100 3

D E GRAMMER
4410 E 4TH AVE
HIBBING MN 55746 3

GRACO INC
DEAN HOWARTH
P O BOX 1441
MINNEAPOLIS MN 55440 3

HAMLINE U LAW SCHOOL
PUBLIC INTEREST CLINIC
ATTN BARBARA JOHNSON
ST PAUL MN 55104 3

HAMLINE U SCHOOL OF LAW
PUBLIC INTEREST AD
ADVOCACY CLINIC
ST PAUL MN 55104 3

HARDRIVES
BOB DANGERS
7200 HEMLOCK LANE
MINNEAPOLIS MN 55369 3

ELLSWORTH HARPOLE
727 15TH AVE S E #41
MINNEAPOLIS MN 55414 3

J WILLIAM HAUN P E
SUITE 343
13911 RUDGEDALE DR
MINNETONKA MN 55343 3

HEALTH & SOCIAL SERVICES
ATTN ROBERT HUTCHISON
COURTHOUSE 4TH FLOOR
ANOKA MN 55303 3

MICHAEL HENNEN
4608 ALDRICH AVE S
MINNEAPOLIS MN 55409 3

DYKE WILLIAMS
HENNEPIN PARKS
3800 CTY RD 24
MAPLE PLAIN MN 55359 3

HDR TECHSERV INC
ATTN JAY JOHNSON
300 PARKDALE 1 BLDG
5401 GAMBLE DRIVE
MINNEAPOLIS MN 55416-1518 3

HESSIAN MCKASY & SODERBERG
ATTN HAROLD J SODERBERG
4700 IDS CENTER
MINNEAPOLIS MN 55402 3

HOLMES & GRAVEN
ATTN LARRY M WERTHEIM
470 PILLSBURY CENTER
MINNEAPOLIS MN 55402 3

PATTY HOOKER
594 E IDAHO AVENUE
ST PAUL MN 55101 3

PAUL J HUBER LTD
1821 UNIVERSITY AVE
ST PAUL MN 55104

IBM CORPORATION
ATTN J P HARMON
DEPT 713/BLDG 658-D
ROCHESTER MN 55901 4

INDEPENDENT BUS ASSOC
OF MN
ATTN CATHY CARSBERG
9062 LYNDALE AVE S
BLOOMINGTON MN 55420 4

INDUST HEALTH ENG ASSOC INC
ATTN KNOWLTON J CAPLAN
P O BOX 9342
MINNEAPOLIS MN 55440 4

INDUSTRIAL FABRICATORS CO
P O BOX 1561
JACKSON TN 38301 4

INTERNATIONAL ECO SOCIETY
ATTN R J F KRAMER
1471 BARCLAY STREET
ST PAUL MN 55106 4

INTERNATIONAL RESEARCH
& EVALUATION
ATTN DR R DANFORD
21098 IRE/CONTROL CENTER
EAGAN MN 55121 4

INTERSTATE POWER CO
PRESIDENT
1000 MAIN ST
DUBUQUE IA 52001 4

IOWA DEPT ENVIRON QUALITY
ATTN STEVEN N WILLIAMS
HENRY A WALLACE BLDG
DES MOINES IA 50319 4

ISAAK WALTON LEAGUE
MATTIE PETERSON
4370 WOODDALE AVE
ST LOUIS PARK MN 55424 4

ISAAK WALTON LEAGUE
RUTH SAARI
5412 FRANCE AVE SO APT H
EDINA MN 55410 4

THE IZAAK WALTON LEAGUE
MN DIVISION
P O BOX 24070
EDINA MN 55424 4

JONES HAUGH & SMITH INC
515 SOUTH WASHINGTON
ALBERT LEA MN 56007 4

KFIL RADIO
ATTN ERNIE HAIN
P O BOX 377
PRESTON MN 55965 4

KIMBERLY-CLARK CORP
ATTN LYNN A BRANBERG
401 N LAKE STREET
NEENAH WI 54956 4

KOPPERS COMPANY INC
ATTN JORDAN M DERN
1201 KOPPERS BLDG
PITTSBURGH PA 15219 4

KSTP AM RADIO
ATTN J B ECKERT
3415 UNIVERSITY AVE
ST PAUL MN 55114 4

AL KURKI
2904 W 3RD ST
DULUTH MN 55806 4

L L P O D LAW OFFICES
ATTN JOHN E DRAWZ
1100 FIRST NAT BANK BLDG
MINNEAPOLIS MN 55402 4

LAKE MINNETONKA CONS DIST
402 E LAKE ST
WAYZATA MN 55391 4

LAKE SUPERIOR
INDUSTRIAL BUREAU
1408 ALWORTH BLDG
DULUTH MN 55802 4

LAND O LAKES
ATTN JAMES A BOSCH
4001 LEXINGTON AVE N
ARDEN HILLS MN 55112 4

LEAGUE OF MINNESOTA CITIES
ATTN DON SLATER
183 UNIVERSITY AVE EAST
ST PAUL MN 55101 4

STEVEN LEBEAU
623 S 9TH ST APT 6
MINNEAPOLIS MN 55404 4

LIBRARY MINISTRY OF ENV
PARLIAMENT BLDG
VICTORIA BRITISH CO
V8V1X4 CANADA 4

LITTON INDUSTRIES
ATTN NATALIE GAULL
P O BOX 9461
MINNEAPOLIS MN 55420 4

ROBERT LOCKYEAR
14900 61ST ST N
STILLWATER MN 55082 4

RACHEL LORD
2323 TALMAGE AVE S E
MINNEAPOLIS MN 55414 4

M & M PROTECT CONSULTANTS
ATTN WM R HOYT
1500 NORTH STAR CENTER
MINNEAPOLIS MN 55402 4

MAC ARTHUR CO
2400 WYCLIFF STREET
ST PAUL MN 55114 4

PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, 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 25 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 the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 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 §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Pollution Control Agency
Division of Solid and Hazardous Waste

Proposed Permanent Rules Relating to Hazardous Waste Fees

Notice of Intent to Adopt Rule Amendments Without a Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends to adopt without a public hearing amendments to rules governing hazardous waste generator fees, Minn. Rules pts. 7046.0030, 7046.0031, 7046.0040, 7046.0050, and 7046.0070. The amendments will be adopted in accordance with the provisions of Minn. Stat. § 16A.128 (Supp. 1985) and in accordance with Minn. Stat. §§ 14.22-14.28 (1984).

The proposed amendments are authorized by Minn. Stat. § 116.12 (Supp. 1985). The proposed amendments are published below. One free copy of the rules is available on request from the Agency. Please contact:

Laurie Jacobson
Minnesota Pollution Control Agency
520 Lafayette Rd North
St. Paul, MN 55101
Telephone: (612) 296-7227

Interested persons have until 4:30 p.m. on February 4, 1987, to submit comments on the proposed amendments. Comments should be submitted to Laurie Jacobson at the address stated above. The proposed amendments may be modified if the data and views received by the Agency before the end of the comment period warrant modification and the modification does not result in a substantial change in the proposed amendments.

Unless the Agency receives, within the public comment period, written requests from twenty percent of the persons who will be required to pay a fee, a public hearing will not be held. If a public hearing is required, the Agency will proceed according to the provisions of Minn. Stat. §§ 14.131-14.20 (Supp. 1985). If a person desires to request a public hearing, the Agency requests that 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.

Upon adoption of the amendments by the Agency Board, the amendments as proposed, this notice, the Statement of Need and Reasonableness, all written comments received, and the final amendments as adopted will be sent 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 amendments as adopted, should submit a written statement of such request to Laurie Jacobson at the address previously stated.

You are hereby advised, pursuant to Minn. Stat. § 14.115 (Supp. 1985), "Small business considerations in rulemaking," that the proposed amendments will affect small businesses because most of the businesses whose fees will be changed or that will be subject

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.

to a new fee will be small businesses. However, the amendments will benefit most of these small businesses. Additional information on the impact of the proposed amendments on small businesses is set forth in the Statement of Need and Reasonableness.

Thomas J. Kalitowski
Executive Director

Rules as Proposed (all new material)

7046.0031 NONMETROPOLITAN AREA GENERATOR FEES.

Subpart 1. **Basis of fees.** The agency shall charge nonmetropolitan area generator fees that are based on the annual reports submitted by generators, disclosures, and other appropriate information available to the agency.

Subp. 2. **Small generator exemption.** Nonmetropolitan area generators that generate a total of less than the equivalent of ten gallons or 100 pounds of hazardous waste per year are exempt from the annual fees of this part.

For the purposes of this part, a conversion factor of one gallon of hazardous waste equals ten pounds of hazardous waste will be used.

Subp. 3. **Retroactive fee collection.** Retroactive fees must be paid by the generator for each year in which hazardous waste was generated but not disclosed, for each waste stream for a maximum retroactive period of two calendar years prior to the most current calendar year subject to fees. The retroactive fee is calculated by multiplying the current annual fee and surcharge or the portion of the current annual fee and surcharge subject to retroactive fees, times the number of years, up to a maximum of two years, the generator had generated the waste. Retroactive fees for waste produced for less than two years shall be calculated according to the closest number of years of production.

Subp. 4. **Annual fees.** An annual fee is the sum of the review and maintenance fee, waste stream fees, and waste generation volume fees. Nonmetropolitan area generators shall submit annual fees as follows:

A. A review and maintenance fee must be paid by all nonmetropolitan area generators. The review and maintenance fee is $30 per calendar year for each identification number issued to the generator pursuant to part 7045.0221.

B. A waste stream fee must be paid by all nonmetropolitan area generators for each waste stream generated over ten gallons or 100 pounds. The waste stream fee is $20 for each unsewered waste stream per calendar year and $20 for each sewered waste stream per calendar year.

C. A waste generation volume fee must be paid by all nonmetropolitan generators based on the amount of unsewered hazardous waste generated and method of waste management or disposal used in the calendar year. The base volume fee is assessed on a per gallon basis for liquid waste streams or a per pound basis for nonliquid waste streams. The base volume is $0.06 per gallon and $0.006 per pound for the first 2,000 gallons or pounds produced. The base volume fee for 2,001 to 6,000 gallons or pounds is $0.045 per gallon and $0.0045 per pound. The base volume fee for more than 6,000 gallons or pounds is $0.03 per gallon and $0.003 per pound. The base volume fee shall be multiplied by the following factors for waste streams managed by the following methods:

Management Method	Factor
Recycle, feedstock, or by-product on-site	0
Recycle, feedstock, or by-product off-site	0.67
Burned for fuel	0.67
Neutralization	0.67
Incineration	0.67
Disposal and other methods	1.00

Any sludges or residues of recycling, burning for fuel, neutralization, or incineration are subject to the base volume fee.

Subp. 5. **Follow-up action fee.** A nonmetropolitan area generator is subject to payment of a follow-up action fee if the generator fails to respond within 30 days of receipt of a registered letter from the director concerning the generator's noncompliance with part 7045.0240 requiring submission of a disclosure, part 7045.0216 requiring submission of an evaluation report, or part 7045.0296 requiring submission of an annual report. The agency shall charge a follow-up action fee only if the director's follow-up action involves sending the generator one or more additional registered letters or causing an authorized representative of the agency to make an inspection for the purpose of obtaining the required information. The fee for each follow-up registered letter, not to include the initial registered letter, is $25. The fee for each follow-up inspection is $200.

Subp. 6. **Payment schedule.** A nonmetropolitan area generator shall submit fees within 60 days after receipt of the notice from the director that the fees are due. Fees submitted after the due date are considered late.

A nonmetropolitan area generator shall submit a check for the required amount to the director, made payable to the Minnesota Pollution Control Agency.

Subp. 7. **Failure to submit fees.** If a nonmetropolitan area generator fails to submit the required fees by the due date, the generator shall pay the fees plus a late fee for each 30-day period or fraction of that period that the fee remains unpaid. The late fee is calculated as a percentage of the annual fee as follows: ten percent of the annual fee for each of the first two 30-day periods, and 15 percent of the annual fee for each 30-day period, or fraction of a 30-day period, thereafter.

If a nonmetropolitan area generator fails to submit the requested fees by the due date, the generator becomes liable for reasonable additional expenses the agency incurs in collection of the fee, in addition to the annual fee and any applicable late fees.

Rules as Proposed

7046.0040 GENERATOR SURCHARGE.

Subpart 1. **In general.** All generators in Minnesota are subject to an annual surcharge equal to ~~50~~ 45 percent of the annual fee. Payment must be made as provided in subparts 2 and 3.

Subp. 2. **Nonmetropolitan area generators.** Nonmetropolitan area generators shall pay the surcharge to the director at the time of payment of the annual fee. A nonmetropolitan area generator who fails to pay the annual surcharge is considered delinquent and subject to the late fee penalty provided in part ~~7046.0030~~ 7046.0031, subpart 7.

Subp. 3. [Unchanged.]

7046.0050 GENERATOR FEE EXEMPTIONS.

Subp. 2. [See Repealer.]

Subp. 3. [Unchanged.]

Subp. 4. **Certain nonmetro area generators.** Small quantity nonmetropolitan area generators whose sole hazardous wastes are degreasing or drycleaning solvents reclaimed off-site under a maintenance agreement, lead acid batteries, gasoline tank bottoms, and scrap metal are not subject to annual fees for those calendar years for which they submit accurate disclosures under part 7045.0240, or annual reports by March 1, under part 7045.0296, but rather are subject to a flat annual fee of $25. For the purposes of this part, a maintenance agreement is a written agreement acceptable to the director between a generator and a transporter and a reclaimer under which waste is removed from the generator's site on a regularly scheduled basis for reclamation by distillation.

7046.0070 APPEAL PROCEDURE.

A generator who believes that the fee requested by the director is in error may appeal the fee levy. Within ten days of receipt of the fee statement from the director, the generator shall provide written notice of the error in fee calculation, the fee the generator has calculated, and the method used by the generator in calculating the fee. If the director finds, upon reviewing the data, that the new data presented by the generator is correct, no penalty fee will be assessed. However, if the director finds that the original calculated fee was correct, the generator shall be assessed any applicable penalty as provided in part ~~7046.0030~~ 7046.0031, subpart 7 from the date of the director's decision regarding the fee adjustment appeal.

REPEALER. Minnesota Rules, parts 7046.0030 and 7046.0050, subpart 2 are repealed.

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CERTIFICATE OF RESOLUTION ADOPTING RULES

I, Thomas J. Kalitowski, do hereby certify that I am the Executive Director 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 March, 1987, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

> BE IT RESOLVED, that the Minnesota Pollution Control Agency (Agency) hereby approves and adopts the amendments to the Agency's hazardous waste rules governing the collection of fees from hazardous waste generators, Minn. Rules pts. 7046.0030, 7046.0031, 7046.0040, 7046.0050, and 7046.0070, pursuant to the authority vested in the Agency by Minn. Stat. § 116.12 (1986).
>
> BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Executive Director is authorized to make any form changes in the rules that the Revisor of Statutes requires the Agency to make in order to obtain the Revisor's Certificate as required by Minn. Stat. § 14.28 (1986).
>
> BE IT FURTHER RESOLVED, that the Agency adopts the attached Findings of Fact, Conclusions, and Order Adopting Rules and that the Executive Director is hereby authorized to sign the above-mentioned documents on behalf of the Agency.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 24th day of March, 1987.

Marlene Roberts
for THOMAS J. KALITOWSKI
Executive Director

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments to Rules Governing Hazardous Waste Generator Fees, Minn. Rules pats. 7046.0030, 7046.0031, 7046.0040, 7046.0050, and 7046.0070

FINDINGS OF FACT CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (Agency) on the 25th day of March, 1987. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the Agency, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering all the evidence adduced upon the records, files and proceedings herein, the Agency, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions, and Order:

FINDINGS OF FACT

1. Notice of the Minnesota Pollution Control Agency's intent to adopt the above-entitled rules without a public hearing was published in the State Register on January 5, 1987, and was sent by mail to all persons on the list maintained by the Agency pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 (1986) on January 2, 1987.

2. The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public.

3. All persons were given the opportunity to submit

comments on the rule for 30 days after notice of proposed rulemaking. The 30 day comment period, as set out in the notice, expired on February 4, 1987.

4. During the comment period the Agency received no requests for public hearing.

5. One request for notice of submission to the Attorney General was received by the Agency.

6. During the comment period the Agency received one written comment. The Agency finds that the following modifications to the proposed rules are justified by the record in this proceeding:

a. Part 7046.0031, subp. 4, item C

The Agency finds that the following modifications are needed and reasonable with respect to proposed Minn. Rules part 7046.0031, subp. 4, item C:

> A waste generation volume fee must be paid by all nonmetroplitan generators based on the amount of unsewered hazardous waste generated and method of waste management or disposal used in the calendar year. The base volume fee is assessed on a per gallon basis for liquid waste streams or a per pound basis for nonliquid waste streams. The base volume fee is $0.06 per gallon and $0.006 per pound for the first 2,000 gallons or pounds produced. The base volume fee for 2,001 to 6,000 gallons or pounds is $0.045 per gallon and $0.0045 per pound. The base volume fee for more than 6,000 gallons or pounds is $0.03 per gallon and $0.003 per pound. There shall be no volume fee charged for that portion of any waste stream in excess of 100,000 gallons or 1,000,000 pounds. The base volume fee shall be multiplied by the following factors for waste

streams managed by the following methods:

Management Method	Factor
Recycle, feedstock, or by-product on-site	0
Recycle, feedstock, or by-product off-site	0.67
Burned for fuel	0.67
Neutralization	0.67
Incineration	0.67
Disposal and other methods	1.00

Any sludges or residues of recycling, burning for fuel, neutralization, or incineration are subject to the base volume fee.

The addition of the word "fee" in the third sentence of the rule is needed and reasonable in order to complete the phrase "base volume fee," which is a term used throughout this rule. The word "fee" was inadvertently left out of the rules as proposed. This modification is not a substantial change because it is merely a clarification of the rule and makes no change in the requirements for payment of fees.

The addition of the statement that there shall be no volume fee charged for that portion of any waste stream in excess of 100,000 gallons or 1,000,000 pounds is based on the written comments of David Miller from Sheldahl, Inc., dated January 23, 1987. In his comments Mr. Miller opposed the unlimited aspect of the volume fee schedule on the grounds that there is no linear relationship between the fee charged for a high-volume waste stream and the Agency time

required to regulate it. As stated in the Statement of Need and Reasonableness at page 14, large quantity generators typically do require more regulatory effort on the part of the Agency staff than do small volume generators, and thus the volume approach is reasonable. However, the Agency agrees that, at some point, additional volumes do not significantly affect regulatory costs. Therefore, the Agency is modifying the rules to establish a cap on volume fees on a per-waste-stream basis. The rule as modified eliminates a volume fee for that portion of any waste stream in excess of 100,000 gallons or 1,000,000 pounds of unsewered hazardous waste generated. This is needed and reasonable because it will result in lower fees for certain very large quantity generators while still enabling the Agency to collect the costs of regulating those generators. The modification of the rule does not constitute a substantial change to the rule as proposed because it does not change the basic structure of the fee system but only puts an upper limit on the amount of money the Agency can collect per waste stream.

b. Part 7046.0050, subp. 4

The Agency finds that the following modifications are needed and reasonable with respect to proposed Minn. Rules part 7046.0050, subp. 4:

> Certain nonmetro area generators. Small quantity nonmetropolitan area generators whose sole hazardous wastes are degreasing or drycleaning ~~solvents~~ solvent related wastes reclaimed off-site under a maintenance agreement, lead acid batters, gasoline tank bottoms,

> and scrap metal are not subject to annual fees for those calendar years for which they submit accurate disclosures under part 7045.0240, or annual reports by March 1, under part 7045.0296, but rather are subject to a flat annual fee of $25. For the purposes of this part, a maintenance agreement is a written agreement acceptable to the director between a generator and a transporter and a reclaimer under which waste is removed from the generator's site on a regularly scheduled bases for reclamation by distillation.

The substitution of the term "solvent related wastes" for the word "solvents" is needed and reasonable because using the word "solvents" may imply that solvents absorbed in solid matter are not included in the exemption provided in this rule. This potential misreading of the rule was pointed out to the Agency orally by Lee Holden of Ramsey County during the comment period. Changing the term "solvent related wastes" is not a substantial change because it is merely a clarification of the rule as adopted and changes none of the requirements of the rule.

7. The Agency adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed rules. The Agency hereby incorporates the Statement of Need and Reasonableness, into these findings, except as modified in Finding No. 6 above.

8. The above-captioned rule is needed and reasonable.

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 intent to adopt the rules without a public hearing.

3. All relevant legal and procedural requirements of statute and rule have been complied with.

4. The modifications to the proposed rules are supported by the record and do not result in a substantial change in the proposed rules.

ORDER

NOW, THEREFORE, IT IS ORDER, that the attached amendments to Minn. Rules pts. 7046.0030, 7046.0031, 7046.0040, 7046.0050, and 7046.0070, rules governing hazardous waste generator fees, are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. §116.12 (1986).

MINNESOTA POLLUTION CONTROL AGENCY

Thomas J. Kalitowski
for Executive Director

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments to Rules Governing Hazardous Waste Generator Fees, Minn. Rules pats. 7046.0030, 7046.0031, 7046.0040, 7046.0050, and 7046.0070

FINDINGS OF FACT CONCLUSIONS, AND ORDER ADOPTING RULES

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FINDINGS OF FACT

1. Notice of the Minnesota Pollution Control Agency's intent to adopt the above-entitled rules without a public hearing was published in the State Register on January 5, 1987, and was sent by mail to all persons on the list maintained by the Agency pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 (1986) on January 2, 1987.

2. The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public.

3. All persons were given the opportunity to submit

comments on the rule for 30 days after notice of proposed rulemaking. The 30 day comment period, as set out in the notice, expired on February 4, 1987.

4. During the comment period the Agency received no requests for public hearing.

5. One request for notice of submission to the Attorney General was received by the Agency.

6. During the comment period the Agency received one written comment. The Agency finds that the following modifications to the proposed rules are justified by the record in this proceeding:

a. Part 7046.0031, subp. 4, item C

The Agency finds that the following modifications are needed and reasonable with respect to proposed Minn. Rules part 7046.0031, subp. 4, item C:

> A waste generation volume fee must be paid by all nonmetroplitan generators based on the amount of unsewered hazardous waste generated and method of waste management or disposal used in the calendar year. The base volume fee is assessed on a per gallon basis for liquid waste streams or a per pound basis for nonliquid waste streams. The base volume fee is $0.06 per gallon and $0.006 per pound for the first 2,000 gallons or pounds produced. The base volume fee for 2,001 to 6,000 gallons or pounds is $0.045 per gallon and $0.0045 per pound. The base volume fee for more than 6,000 gallons or pounds is $0.03 per gallon and $0.003 per pound. There shall be no volume fee charged for that portion of any waste stream in excess of 100,000 gallons or 1,000,000 pounds. The base volume fee shall be multiplied by the following factors for waste

streams managed by the following methods:

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Burned for fuel	0.67
Neutralization	0.67
Incineration	0.67
Disposal and other methods	1.00

Any sludges or residues of recycling, burning for fuel, neutralization, or incineration are subject to the base volume fee.

The addition of the word "fee" in the third sentence of the rule is needed and reasonable in order to complete the phrase "base volume fee," which is a term used throughout this rule. The word "fee" was inadvertently left out of the rules as proposed. This modification is not a substantial change because it is merely a clarification of the rule and makes no change in the requirements for payment of fees.

The addition of the statement that there shall be no volume fee charged for that portion of any waste stream in excess of 100,000 gallons or 1,000,000 pounds is based on the written comments of David Miller from Sheldahl, Inc., dated January 23, 1987. In his comments Mr. Miller opposed the unlimited aspect of the volume fee schedule on the grounds that there is no linear relationship between the fee charged for a high-volume waste stream and the Agency time

required to regulate it. As stated in the Statement of Need and Reasonableness at page 14, large quantity generators typically do require more regulatory effort on the part of the Agency staff than do small volume generators, and thus the volume approach is reasonable. However, the Agency agrees that, at some point, additional volumes do not significantly affect regulatory costs. Therefore, the Agency is modifying the rules to establish a cap on volume fees on a per-waste-stream basis. The rule as modified eliminates a volume fee for that portion of any waste stream in excess of 100,000 gallons or 1,000,000 pounds of unsewered hazardous waste generated. This is needed and reasonable because it will result in lower fees for certain very large quantity generators while still enabling the Agency to collect the costs of regulating those generators. The modification of the rule does not constitute a substantial change to the rule as proposed because it does not change the basic structure of the fee system but only puts an upper limit on the amount of money the Agency can collect per waste stream.

b. Part 7046.0050, subp. 4

The Agency finds that the following modifications are needed and reasonable with respect to proposed Minn. Rules part 7046.0050, subp. 4:

> Certain nonmetro area generators. Small quantity nonmetropolitan area generators whose sole hazardous wastes are degreasing or drycleaning ~~solvents~~ solvent related wastes reclaimed off-site under a maintenance agreement, lead acid batters, gasoline tank bottoms,

> and scrap metal are not subject to annual fees for those calendar years for which they submit accurate disclosures under part 7045.0240, or annual reports by March 1, under part 7045.0296, but rather are subject to a flat annual fee of $25. For the purposes of this part, a maintenance agreement is a written agreement acceptable to the director between a generator and a transporter and a reclaimer under which waste is removed from the generator's site on a regularly scheduled bases for reclamation by distillation.

The substitution of the term "solvent related wastes" for the word "solvents" is needed and reasonable because using the word "solvents" may imply that solvents absorbed in solid matter are not included in the exemption provided in this rule. This potential misreading of the rule was pointed out to the Agency orally by Lee Holden of Ramsey County during the comment period. Changing the term "solvent related wastes" is not a substantial change because it is merely a clarification of the rule as adopted and changes none of the requirements of the rule.

7. The Agency adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed rules. The Agency hereby incorporates the Statement of Need and Reasonableness, into these findings, except as modified in Finding No. 6 above.

8. The above-captioned rule is needed and reasonable.

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 intent to adopt the rules without a public hearing.

3. All relevant legal and procedural requirements of statute and rule have been complied with.

4. The modifications to the proposed rules are supported by the record and do not result in a substantial change in the proposed rules.

ORDER

NOW, THEREFORE, IT IS ORDER, that the attached amendments to Minn. Rules pts. 7046.0030, 7046.0031, 7046.0040, 7046.0050, and 7046.0070, rules governing hazardous waste generator fees, are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. §116.12 (1986).

MINNESOTA POLLUTION CONTROL AGENCY

Michael Roberts

Thomas J. Kalitowski
for Executive Director

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Amendments to Rules Governing
Hazardous Waste Generator Fees,
Minn. Rules pts. 7046.0030,
7046.0031, 7046.0040, 7046.0050, and
7046.0070

DECLARATION OF COUNSEL

I, Jocelyn F. Olson, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rules and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules ch. 2010 have been followed. For Attorney General billing purposes, the four-digit docket client code is F167.

March 25, 1987

Jocelyn F. Olson
Special Assistant
Attorney General

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of Proposed Amendments to Rules Governing Hazardous Waste Generator Fees, Minn. Rules pts. 7046.0030, 7046.0031, 7046.0040, 7046.0050, and 7046.0070	NOTICE OF SUBMISSION OF RULES ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minn. Stat. § 14.26 (1986):

PLEASE TAKE NOTICE that the above-captioned rules as adopted has been submitted to the Office of the Attorney General on this date, March 25, 1987, for review as to legality and form to the extent form relates to legality. The proposed rules, the rules as adopted, all the notices, the Statement of Need and Reasonableness, all written comments and request for a hearing received, and other required documents also have been submitted to the Attorney General.

The proposed rules which were published in the State Register and made available to the public on January 5, 1987, have been modified. A free copy of the rules as modified as well as the findings of fact, conclusions, and order explaining the amendments and adopting the rules is available upon request from Laurie Jacobson, Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, Minnesota 55155, telephone (612) 296-7227.

The rules must be approved or disapproved by the Attorney General within 14 calendar days of the date of submission to the Attorney General. You may submit written comments to the Attorney General on the legality of the rules. Any written comments must be submitted within eight calendar days of the date of the submission of the rules to the Attorney General. Your comments must address only the issue of legality of the rules or the legality of the specific parts or subparts of the rules. The Attorney General standards for review are set forth in Minnesota Rules, pt. 2010.1000. You may receive a copy of the Attorney General decision upon written request to the Attorney General. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
204 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155
Telephone: (612) 296-1288

Any written comments submitted to the Attorney General must be submitted to Laurie Jacobson at the address stated above.

Dated: March 25, 1987.

Jocelyn F. Olson
Special Assistant
Attorney General

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments to Rules Governing Hazardous Waste Generator Fees, Minn. Rules pts. 7046.0030, 7046.0031, 7046.0040, 7046.0050, and 7046.0070

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Mary Ann Hammer, being duly sworn says:

That on the 25th day of March, 1987, in the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States Mailing or in the United States Mail a copy thereof, with postage prepaid, to all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General, as follows:

David B. Miller
Sheldahl
Box 170
Northfield, MN 55057

Mary Ann Hammer

Subscribed and sworn to before me this 25th day of March, 1987.

Notary Public

JACALYN STAHL
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES MAY 31, 1992

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

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

ADDRESS REPLY TO:
SUITE 200
520 LAFAYETTE ROAD
ST. PAUL, MN 55155
TELEPHONE: (612) 297-1075

March 25, 1987

Mr. Mike Miles
Assistant Attorney General
Office of the Attorney General
204 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

Re: In the Matter of Proposed Amendments to Rules Governing Hazardous Waste Generator Fees, Minn. Rules pts. 7046.0030, 7046.0031, 7046.0040, 7046.0050, and 7046.0070

Dear Mr. Miles:

On March 24, 1987, the Minnesota Pollution Control Agency adopted the above-captioned rule amendments governing hazardous waste generator fees. Enclosed for your review are the following:

1. Rule amendments as adopted (original and three copies).
2. Findings of Fact, Conclusions, and Order Adopting Rules (two copies).
3. Certificate of Resolution Adopting Rules.
4. Notice of Intent to Solicit Outside Opinion (11 S.R. 146, August 4, 1987).
5. Copies of written comments received pursuant to Notice of Intent to Solicit Outside Opinion.
6. Certificate of Authorizing Resolution.
7. Notice of Intent to Adopt Rule Amendments Without a Public Hearing and rule amendments as proposed (11 S.R. 1273, January 5, 1987).
8. Comment received during the comment period.
9. Notice of Intent to Adopt Rule Amendments Without a Public Hearing, as mailed.
10. Affidavit of Mailing , mailing list, and Certificate concerning mailing list.

11. Rule amendments as proposed.

12. Statement of Need and Reasonableness.

13. Declaration of Counsel.

14. Approval of Fee Schedule by Department of Finance.

15. Notice of Submission of Rule Adopted Without Public Hearing to the Attorney General.

16. Affidavit of Mailing of Notice of Submission of Rule Adopted Without Public Hearing to the Attorney General.

Very truly yours,

Jocelyn F. Olson

Jocelyn F. Olson
Special Assistant
Attorney General

RECEIVED
ATTORNEY GENERAL'S OFFICE
MAR 25 1987
204 ADMINISTRATION BLDG.
50 SHERBURNE AVENUE
ST. PAUL, MN 55155

SF-00006-03

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT

ATTORNEY GENERAL

TO: LAURIE JACOBSON
P.C.A.

DATE: 4/09/87

FROM: MIKE MILES
Assistant Attorney General

PHONE: 6-6555

SUBJECT: In the Matter of the Adopted Rules Relating to Hazardous Waste Fees

The above-referenced rule has been approved as to its legality by the Attorney General on April 8, 1987.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

JMM:nah

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Adminsitrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

Finding of Fact + Order

Even though the Order is not dated, the date, Mar 25, 1987, is on the first page of the Finding of Fact. So that is the date which I used for the Order.

Authority
11C.12

Notice of Intent

Does not include a statement that each comment should identify the portion of the proposed rule addressed, the reason for comment + any change proposed.

3.13

y 3807

STATE OF MINNESOTA

DEPARTMENT of Finance

Office Memorandum

TO: Thomas J. Kalitowski
Executive Director
Pollution Control Agency

DATE: Dec. 9, 1986

FROM: Bruce Reddemann, Director
Budget Operations and Support

BJR

PHONE: 6-5188

RECEIVED
DEC 17 1986
MPCA, SOLID & HAZ
WASTE DIVISION

SUBJECT: Fee Schedule Approval and
Request for Waiver

Your December 4, 1986 request for changes in hazardous waste generator fees is approved as submitted.

Based on Laws of 1985, First Special Session, Chapter 13, Subdivision 1, the requirement in 16A.128 that fees nearly equal the sum of the appropriation for the accounts plus the agency's general support costs, statewide indirect costs and Attorney General costs attributable to the fee function is waived.

The wording of M.S. 116.12, subd. 1 that fees should be established to cover the amount appropriated from the Special Revenue Fund is in conflict with M.S. 16A.128 which states that fees should also recover agency general support costs, statewide indirect costs and Attorney General costs.

Your department should submit legislation to include these costs for the fees referred to in M.S. 116.12. The legislature will then make the determination as to their intent regarding recovery of these costs for hazardous waste generator fees.

TL/BJR/BN/KB/503T

cc: Bart Nelson
Brian Roherty
Doug Watnemo