

Minnesota Attorney General: Administrative Rules Proceedings

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SF-00006-05 (4/86)

DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : September 8, 1989

TO : ALAN R. MITCHELL
Special Assistant Attorney General
520 Lafayette Road, Suite 200

FROM : JULIE A. LEPPINK
Special Assistant Attorney General
515 Transportation Building

PHONE : 296-9422

SUBJECT : In the Matter of the Adopted Rule Relating to Hazardous Waste

The above-referenced rule has been approved as to its legality by the Attorney General on September 8, 1989.

Enclosed is your 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, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published 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.

JAL:BBL.AA6
Enclosures

cc: William Brown, Chief Judge
MaryAnn Hruby
Gerald L. Willet, Commissioner PCA

JAZ

RULE REVIEW CHECKLIST

File No. 1622 — Docket No. 05.0009.0697

DATE RECEIVED 8-25-89 — ADOPTED W/O HEARING ✓

REVIEW DATE ~~9-3-89~~ 9-5-89 — EMERGENCY RULE _____

DUE DATE 9-8-89 — To Revisor 8-28-89

REVISOR APPROVED _____

APPROVED [signature] 9/8/89 — REVISOR DISAPPROVED _____

DISAPPROVED _____ — FILED W/SEC. OF STATE 9/8/89

WITHDRAWN _____ — RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

_____ ~~Notice to Solicit Outside Information/Opinion (if applicable)~~
- _____ ~~Date published in State Register~~
- _____ ~~Comments~~

_____ ~~Petition for Adoption of a Rule (if applicable)~~

✓ Board's Authorizing Resolution
- 5-23-89 Date adopted

✓ Proposed Rule
- yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule
- 116.07(4) Statutory Authority
- yes Small Business Statement
- no Expenditure of public money statement
- yes Signature

✓ Statement of Need and Reasonableness (if applicable)
- yes Small Business Statement
- 0 Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
- 6-8-89 Date 30/25 days before adoption
- no Notice attached
- no Copy of rule or summary attached

NO Publication in State Register
- 6-12-89 Date 30/25 days before adoption

✓ 180-day deadline from:
- ? Effective date of law requiring rule (14.12) (both rules)
- 7-12-89 yes end of comment period (§ 14.26) (rules without hearing)
- _____ ~~effective date of statutory authority (§ 14.29) (emergency rules)~~

✓ Resolution Adopting
- 7-25-89 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
- 8-10-89 Date

✓ Written requests, submissions or comments one comment

✓ Declaration of attorney
- Alan R. Mitchell Name of SAAG representing agency
- 520 Lafayette Rd.

NO Notice of Submission to Atty. Gen. (if applicable)

NO Aff. of Mailing Notice to Atty. Gen. (if applicable)

Pollution Control Agency

Adopted Permanent Rules Relating to Hazardous Waste

Rules as Adopted

7001.0650 INTERIM STATUS.

Subpart 1. to 6. [Unchanged.]

Subp. 7. **Termination of interim status.** Interim status terminates automatically when the agency has taken final administrative action on the permit application or when terminated by Code of Federal Regulations, title 40, section 270.73(c) to (f). The following constitute justification for the commissioner to commence proceedings to terminate interim status:

A. and B. [Unchanged.]

7045.0065 AVAILABILITY OF REFERENCES.

The documents referred to in this chapter may be obtained by contacting the appropriate offices as listed in this part.

A. to F. [Unchanged.]

G. Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, publication number SW 846 (Second Edition, 1982, as amended by Update I, April 1984, and Update II, April 1985) of the Office of Solid Waste, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. The Second Edition of SW-846 and Updates I and II available at the Minnesota Law Library and from the National Technical Information Service, 5285 Port Royal Road, Springfield, Va. 22161, (703) 487-4600 as Document number PB 87-120-291; and

H. [Unchanged.]

7045.0125 MANAGEMENT OF WASTE BY USE, REUSE, RECYCLING, AND RECLAMATION.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Requirements for use of hazardous wastes as**

Approved by Revisor

feedstock.

A. and B. [Unchanged.]

C. Transporters of hazardous wastes for use as feedstock must comply with all applicable requirements of Minnesota Statutes, sections 221.033 ~~to~~ and 221.034, and with 221.035 if applicable, and Code of Federal Regulations, title 49, parts 171 to 179.

D. [Unchanged.]

Subp. 6. **Requirements for reclamation of specific hazardous wastes.**

A. A by-product or a sludge that is hazardous only because it exhibits a characteristic of hazardous waste and is reclaimed is subject to the following requirements:

(1) [Unchanged.]

(2) Transporters of such a hazardous waste must comply with all applicable requirements of Minnesota Statutes, sections 221.033 ~~to~~ and 221.034, and with 221.035 if applicable, and Code of Federal Regulations, title 49, parts 171 to 179.

(3) [Unchanged.]

B. [Unchanged.]

Subp. 7. to 12. [Unchanged.]

7045.0371 TRANSPORTATION OF HAZARDOUS WASTE.

Hazardous waste shall be transported in accordance with all applicable requirements of Minnesota Statutes, sections 221.033 ~~to~~ and 221.034, and with 221.035 if applicable, and Code of Federal Regulations, title 49, parts 171 to 179 (1983).

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY

Sept 8 19 89

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

SEP 8 - 1989

Joan Anderson Growe
Secretary of State

4:07 pm

CERTIFICATION OF RESOLUTION AUTHORIZING RULES

I, Gerald L. Willet, do hereby certify that I am the Commissioner 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 23rd day of May 1989, 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 Commissioner of the Minnesota Pollution Control Agency is hereby granted the authority to sign and to give notice of the Minnesota Pollution Control Agency's intent to adopt, without a public hearing, the attached amendments to the Minnesota Pollution Control Agency's permit rules and hazardous waste rules governing the management, storage, treatment and disposal of hazardous waste, Minn. Rules pts. 7001.0650, 7045.0065, 7045.0125, and 7045.0371, to all persons who have registered their names with the Minnesota Pollution Control Agency for that purpose and publish the notice and the rule amendments in the State Register, and to perform any acts incidental thereto, including making any form changes in the rule amendments that the Revisor of Statutes requires the Minnesota Pollution Control Agency to make in order to obtain the Revisor's certification as required by Minn. Stat. § 14.07, subd. 2 (1988).
>
> BE IT FURTHER RESOLVED, that in the event a public hearing becomes necessary, the Commissioner is hereby granted the authority and directed to call a hearing for the purpose of promulgating said rule amendments as well as to perform any and all acts incidental thereto, including but not limited to signing an Order for the Notice of Hearing, as well as acting as the Minnesota Pollution Control Agency's representative at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 23 day of May 1989.

Gerald L. Willet

GERALD L. WILLET
Commissioner

Pollution Control Agency

Proposed Permanent Rules Relating to Hazardous Waste

Rules as Proposed

7001.0650 INTERIM STATUS.

Subpart 1. to 6. [Unchanged.]

Subp. 7. **Termination of interim status.** Interim status terminates automatically when the agency has taken final administrative action on the permit application or when terminated by Code of Federal Regulations, title 40, section 270.73(c) to (f). The following constitute justification for the commissioner to commence proceedings to terminate interim status:

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H. [Unchanged.]

7045.0125 MANAGEMENT OF WASTE BY USE, REUSE, RECYCLING, AND RECLAMATION.

Approved by Revisor

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Requirements for use of hazardous wastes as feedstock.**

A. and B. [Unchanged.]

C. Transporters of hazardous wastes for use as feedstock must comply with all applicable requirements of Minnesota Statutes, ~~section~~ sections 221.033 to 221.035, and Code of Federal Regulations, title 49, parts 171 to 179.

D. [Unchanged.]

Subp. 6. **Requirements for reclamation of specific hazardous wastes.**

A. A by-product or a sludge that is hazardous only because it exhibits a characteristic of hazardous waste and is reclaimed is subject to the following requirements:

(1) [Unchanged.]

(2) Transporters of such a hazardous waste must comply with all applicable requirements of Minnesota Statutes, ~~section~~ sections 221.033 to 221.035, and Code of Federal Regulations, title 49, parts 171 to 179.

(3) [Unchanged.]

B. [Unchanged.]

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Hazardous waste shall be transported in accordance with all applicable requirements of Minnesota Statutes, ~~section~~ sections 221.033 to 221.035 and Code of Federal Regulations, title 49, parts 171 to 179 (1983).

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Hazardous Waste

AGENCY: Pollution Control Agency

MINNESOTA RULES: Chapters 7001 and 7045

The attached rules are approved for publication
in the State Register

Carla M. Riehle
Assistant Revisor

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of Proposed Rule Amendments Governing the Termination of Interim Status, the Incorporation of Transportation Related Statutes, and the Correction of Information Regarding a Reference Document, Minn. Rules Chs. 7001 and 7045

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) intends to adopt the above-entitled rule amendments without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minn. Stat. §§ 14.22 to 14.28 (1988). The MPCA's authority to adopt the rule amendments is set forth in Minn. Stat. § 116.07, subd. 4 (1988).

All persons have until 4:30 p.m. on July 12, 1989, to submit comments in support of or in opposition to the proposed rule amendments or any part or subpart of the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rule amendments addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the proposed amendments within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the MPCA will proceed pursuant to Minn. Stat. §§ 14.131 to 14.20 (1988).

Comments or written requests for a public hearing must be submitted to:

Carol Nankivel
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
612/296-7260

The proposed rule amendments may be modified if the modifications are supported by data and views submitted to the MPCA and do not result in a substantial change in the proposed rule amendments as noticed.

The proposed rule amendments, if adopted, will incorporate existing federal deadlines terminating eligibility for interim status for unpermitted hazardous waste treatment, storage and disposal facilities. The proposed rule amendments will also add references to two existing Minnesota statutes which establish requirements applicable to transporters of hazardous waste. These statutes relate to the transporter's duty to notify the Department of Public Safety in the event of a spill of hazardous waste and the requirement for hazardous waste transporters to be licensed and insured as required by the

Department of Transportation. Also, the proposed rule amendments include a correction that updates the information provided for obtaining a test procedures manual that is referenced in the hazardous waste rules. Questions regarding the content of the proposed rules should be directed to Carol Nankivel at the address and telephone number stated above.

11 One free copy of the proposed rule amendments is available upon request from Carol Nankivel at the address and telephone number stated above.

12 A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule amendments has been prepared and is available from Carol Nankivel at the address and telephone number stated above.

14 You are hereby advised, pursuant to Minn. Stat. § 14.115 (1988), "Small business considerations in rulemaking," that the proposed rule amendments will have no effect on small businesses. The deadlines for the termination of interim status eligibility and the transporter requirements are already in effect in Minnesota through other state and federal authorities.

9 If no hearing is required, upon adoption of the amendments, the rule amendments and the supporting documents will be submitted to the Attorney General for review as to legality and form to the extent that form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 rule amendments as adopted, must submit a written request to Carol Nankivel at the address stated above.

Dated: June 7, 1989

Gerald L. Willet
Commissioner

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of Proposed
Amendments of Rules Governing
the Permitting, Management, Storage,
Treatment, and Disposal of Hazardous Waste,
Minn. Rules Pts. 7001.0650, 7045.0065,
7045.0125, and 7045.0371.

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of this proceeding is the amendment of the rules of the Minnesota Pollution Control Agency (hereinafter "Agency") governing the permitting, management, treatment, storage, and disposal of hazardous waste. These amendments to the state hazardous waste rules will incorporate two amendments to the federal hazardous waste regulations promulgated by the U.S. Environmental Protection Agency (hereinafter "EPA") and one amendment to reflect changes in the regulations of the Minnesota Department of Transportation (hereinafter "MnDOT"). The proposed amendments pertain to the following:

A. Termination of eligibility for interim status. The amendments establish specific deadlines by which the owners or operators of interim status facilities must initiate permit activities.

B. Correction of the source of a reference manual cited in the rules. The rules provide information regarding specific documents and manuals referenced within the chapter. The source identified for obtaining one of the manuals has changed and the amendment reflects the new source.

C. Addition of references to MnDOT requirements. The rules currently reference the Minnesota Statutes that establish MnDOT requirements applicable to hazardous waste transportation. A reference to two additional transportation related statutes will be added by the amendment.

The amendment that addresses the termination of interim status is based on revisions to the federal permit program published in the July 15, 1985, Federal Register (see Exhibit 1). This amendment was promulgated by EPA under the authority of the Hazardous and Solid Waste Amendments (HSWA) of 1984. The amendment that addresses the revision to the reference manual is based on a federal amendment published in the March 16, 1985, Federal Register (see Exhibit 2).

These state rule amendments are proposed pursuant to the Agency's authority under Minn. Stat. § 116.07, subd. 4 (1988).

This Statement of Need and Reasonableness is divided into seven parts. Following this introduction, Part II contains the Agency's explanation of the need for the proposed amendments. Part III discusses the reasonableness of the proposed amendments. Part IV documents how the Agency has considered the methods of reducing the impact of the proposed amendments on small businesses as required by Minn. Stat. § 14.115 (1988). Part V documents the economic factors the Agency considered in drafting the amendments as required by Minn. Stat. § 116.07, subd. 6 (1988). Part VI sets forth the Agency's conclusion regarding the amendments. Part VII contains a list of 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 North, St. Paul, Minnesota 55155.

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

Minn. Stat. ch. 14, (1988) requires an agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules or amendments proposed. In general terms, this means that an agency must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate,

need has come to mean that a problem exists which requires administrative attention and reasonableness means that the solution proposed by an agency is appropriate.

Need is a broad test that does not easily lend itself to evaluation of each proposed revision. In the broad sense, the need for amendments to the Agency's rules has two bases: (1) the need for consistency with the federal hazardous waste regulations; and (2) the need for the state rules to accurately reflect the requirements imposed on hazardous waste transporters.

A. Need For Consistency with Federal Regulations.

In 1976, Congress adopted the Resource Conservation and Recovery Act (RCRA) to regulate the management of hazardous waste. 42 U.S.C. § 6901 et seq. In adopting RCRA, Congress provided for eventual state control of the hazardous waste program and set up the mechanism for the EPA to grant authority to states to operate the program. In states that receive authorization, the state environmental agency administers the state program in lieu of the federal program. To receive and maintain authorization, the state program must be "equivalent" to the federal program and consistent with federal or state programs applicable to other states. The EPA has defined equivalent to mean that the state requirements are at least as stringent as federal requirements. In terms of consistency, the EPA's goal is to achieve an integrated national program which requires that final state programs do not conflict with each other or with the federal program.

Minnesota received final authorization from the EPA for its hazardous waste program pursuant to RCRA effective February 11, 1985. See 50 FR 3756 (January 28, 1985). A state with final authorization administers its hazardous waste program in lieu of the EPA program for those regulations which were promulgated pursuant to RCRA as adopted in 1976 and as amended in 1980.

Federal regulations promulgated under RCRA are not in effect in Minnesota until the state rules are amended to incorporate the federal changes.

The authorization Minnesota received on February 11, 1985, did not extend to those federal requirements promulgated by EPA pursuant to HSWA. Federal amendments promulgated under HSWA are in effect in Minnesota and are enforced by EPA until Minnesota modifies their program to adopt the HSWA amendments. Once a state modifies its program to adopt HSWA amendments, the state must apply for and receive authorization specifically under HSWA in order to enforce the HSWA provisions in lieu of EPA as part of the authorized state program. The federal hazardous waste program establishes specific time frames for the adoption of state rules intended to maintain equivalency to the federal rules.

B. Need for the State Rules to Accurately Reflect the Requirements Imposed on Hazardous Waste Transporters.

The Minnesota Department of Transportation has the authority to regulate the transportation of hazardous waste in Minnesota. In recognition of this authority, the state hazardous waste rules reference the statutes that establish the MnDOT requirements. However, the reference in the state rules does not include an existing statute that required that spills of hazardous waste be reported to the Department of Public Safety nor does it include a new statute that establishes requirements for hazardous waste transporter licensing and insurance. In order to provide a complete reference to the statutes applicable to hazardous waste transporters, it is necessary to add these two references.

III. REASONABLENESS OF THE PROPOSED AMENDMENTS TO THE HAZARDOUS WASTE RULES

The Agency is required by Minn. Stat. ch. 14 (1988) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules or amendments. The agency proposes to incorporate specific federal amendments

into the state rules. A complete discussion of the reasonableness of the federal amendments is presented in exhibits 1 and 2 listed in part VII of this document, which are hereby incorporated by reference. The reasonableness of each of the proposed amendments to the state hazardous waste rules is discussed below.

A. Minn. Rules Pt. 7001.0650 (Interim Status).

Minn. Rules pt. 7001.0650 is entitled "Interim Status" and establishes conditions for the owners or operators of unpermitted hazardous waste facilities. Although the hazardous waste rules require a permit for facilities that treat, store or dispose of hazardous waste, the rules allow a facility to continue to operate without a permit if specific conditions are met. Until the required permit is issued, a facility is considered to be operating under interim status.

In amendments to the federal regulations, 40 CFR § 270.73, the EPA established specific deadlines for terminating the eligibility to operate under interim status. It is the EPA's intention that facilities be permitted as expeditiously as possible and that the ability of facilities to operate under interim status should be limited. To achieve this, EPA has set specific dates after which a facility must either enter into the process of obtaining a hazardous waste permit or must stop operating. The deadlines established by EPA were promulgated under HSWA and as such have been in effect in Minnesota since the federal effective dates.

Minn. Rules pt. 7001.0650, subp. 7 currently states that interim status terminates automatically when the agency has taken final administrative action on the permit application or when terminated by 40 CFR § 270.73 (c). This is an incomplete citation to the federal regulations. 40 CFR § 270.73 (c) addresses the automatic termination of interim status for land disposal

facilities. However, 40 CFR § 270.73 (d), (e), and (f) provide additional deadlines that must be addressed in the state rules to maintain consistency with the federal program.

The requirements of 40 CFR § 270.73 (d) apply to land disposal facilities that become subject to regulation at a future date. If a currently unregulated facility becomes subject to the requirement to obtain a permit through some change in the scope of the hazardous waste rules, the owners and operators of that facility must initiate the permit process within 12 months of the date they became subject to regulation. Although the state rules require that such a facility begin the permit process, they do not provide for the automatic termination of interim status within 12 months.

The requirements of 40 CFR § 270.73 (e) address the termination of interim status at incinerator facilities. Minnesota has only one hazardous waste incinerator facility at this time but it is reasonable to provide the specific deadline applicable to incinerators to maintain consistency with the federal regulations.

The requirements of 40 CFR § 270.73 (f) address the termination of interim status at all other hazardous waste facilities. The state permit rules do not include a specific date for terminating interim status for such hazardous waste facilities so it is therefore reasonable to include a reference to the applicable federal provision.

It is reasonable to incorporate the same deadlines into the state permit rules to provide consistency with the federal regulations and to eliminate any confusion regarding eligibility for interim status. Because the proposed amendments do not alter any provision of the corresponding federal requirements, it is also reasonable to incorporate the applicable federal

regulations by a direct reference and to not incorporate the full text of those same requirements again in the state rules.

B. Minn. Rules Pt. 7045.0065 (Availability of References).

Minn. Rules pt. 7045.0065 provides information on all reference documents identified throughout Minn. Rules ch. 7045. This information is provided so that the regulated community can have ready access to any information needed to comply with the requirements of the hazardous waste rules. Item G of this part identifies the source for obtaining the Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, publication number SW-846. However, in the March 16, 1987, Federal Register, the EPA published a notice of availability of a document which changed the source for obtaining this manual. It is reasonable to amend the rules to provide accurate information to the regulated community regarding the documents addressed in the hazardous waste rules.

C. Minn. Rules Pts. 7045.0125 (Management of Waste by Use, Reuse, Recycling and Reclamation) and 7045.0371 (Transportation of Hazardous Waste).

Minn. Rules pt. 7045.0371 currently requires that transporters of hazardous waste comply with the requirements of Minn. Stat. § 221.033. This statute provides the basis of MnDOT regulations by incorporating the federal transportation code into the MnDOT requirements for transportation of hazardous waste. Minnesota statutes provide two additional conditions for the transportation of hazardous waste that are appropriately referenced in the hazardous waste rules.

Minn. Stat. § 221.034 requires the transporters of hazardous materials, including hazardous waste, to provide notification of spills to the Department of Public Safety. This notification is in addition to the notification requirements in the federal transportation codes and the notification required under Minn. Rules pt. 7045.0395 which requires that spills that will cause

pollution be reported to the MPCA. It is reasonable to include a reference to this statutory requirement to avoid confusion by clearly identifying the MnDOT requirements that are applicable.

Minn. Stat. § 221.035 was added to Minnesota statutes during the 1987 legislative session. This statute establishes a licensing program, to be conducted by MnDOT, for all hazardous waste transporters. As part of the license conditions, hazardous waste transporters must obtain adequate liability insurance. This requirement for licensing and insurance is a significant new requirement for hazardous waste transporters and is appropriately addressed in the hazardous waste rules. It is reasonable to provide a reference to this new statute to clarify the applicable requirements and alert the regulated community to the presence of this new condition for the transport of hazardous waste.

Minn. Rules pt. 7045.0125 governs the management of waste by use, reuse, recycling and reclamation. It contains the same references to the MnDOT statutes as Minn. Rules pt. 7045.0371 and the same additions are proposed to these references.

IV. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1988) requires the Agency, when proposing amendments to existing rules which may affect small businesses, to consider the impact of the rules amendments on small business. However, the goal of Minn. Stat. ch. 116 (1988) is to protect the public health and welfare and the environment from the adverse effects which will result when hazardous waste is mismanaged. Application of less stringent standards to the hazardous wastes generated or managed by small business would be contrary to the Agency's mandate since small business' hazardous waste can cause the same environmental harm as that of larger businesses.

The volume of hazardous waste generated by a business is not directly proportional to the size of the business. Many large businesses generate very small quantities of hazardous waste and conversely, a small business may generate a very large volume of hazardous waste. Therefore, it is not reasonable to impose regulations based on the size of the business because this may have little relation to the potential for mismanagement or the extent of the adverse effects on human health and the environment if the waste is mismanaged.

The amendments pertaining to the termination of interim status are based on federal regulations promulgated under HSWA. As HSWA provisions these amendments are currently in effect in Minnesota, even though the amendments must still be incorporated into the state rules and must be equivalent to the federal level of regulation. The amendments to incorporate the transportation statutes are already in effect in Minnesota and their adoption into the state rules does not affect the obligation of small businesses to comply with those statutes. The amendments to correct the source of the reference manual are necessary to provide accurate information to the regulated community and do not represent a regulatory burden. The incorporation of these requirements into the state rules will not impose any additional requirements on small business that would not be otherwise imposed by existing state or federal requirements.

Therefore, the Agency believes that these additional regulations are justifiable and do not present a burden to small business that may be subject to these requirements.

V. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers the Agency is required by Minn. Stat. § 116.07, subd. 6, (1988), to give due consideration to economic factors. The statute provides:

> In exercising all its powers the Pollution Control Agency shall give due consideration to the establishment , maintenance, operation, and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicality of any proposed action, including, but not limited to, the burden on a municipality of any tax that may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

In proposing the requirements of these amendments, the Agency has given due consideration to available information as to any economic impacts the proposed amendments would have. Those amendments that impose a requirement on the regulated community have already been in effect through federal regulation and statutory authority and their inclusion in the state hazardous waste rules will not impose a further economic burden.

VI. CONCLUSION

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

VII. LIST OF EXHIBITS

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

Agency Ex. No.	Title
1	Federal Register, Vol. 50, No. 135, Pages 28702-28755, July 15, 1985.
2	Federal Register, Vol. 52, No. 50, Pages 8072-8073, March 16, 1987.

Date: May 12, 1989

for Barbara Lindsey Sims
Gerald L. Willet
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing the Termination of Interim Status, the Referencing of Statutes, and the Correction of Reference Document Information, Minn. Rules Parts 7001.0650, 7045.0065, 7045.0125, and 7045.0371.

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

Carol Nankivel, being duly sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 (1988) that their names be placed on the Minnesota Pollution Control Agency's rulemaking mailing list is accurate, complete, and current as of this 8th day of June 1989.

That on the 8th day of June 1989, at the city of St. Paul, county of Ramsey, state of Minnesota, I mailed the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System or in the United States mail for first class mailing a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Carol R Nankivel

Subscribed and sworn to before me
this 5 day of July, 1989.

Ardith M. Vos
Notary Public

ARDITH M. VOS
NOTARY PUBLIC — MINNESOTA
ANOKA COUNTY
My commission expires 1-12-94

Moss & Barnett
4800 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402-4119
Attn: Michael J. Ahern

Mr. Stewart C. Allen
Wilbur-Ellis Company
191 West Shaw Avenue
Suite 107
Fresno, CA 93704

Mr. Donald Anderson
Oil Services, Inc.
13808-293rd Avenue
Zimmerman, MN 55398

Mr. Jeffrey Anderson
Blooming Prairie
4644 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

Ms. Christine Babka
PPG Industries, Inc.
260 Kappa Drive
Pittsburgh, PA 15238

Ms. Marian J. Barnes
Groundwater Technology, Inc.
2113 Stonington Avenue
Hoffman Estates, IL 60195

Mr. David A. Becker
Kolstad Company, Inc.
2507 Walnut Street
St. Paul, MN 55113

Mr. Joe Becker
Becker HiWay Frate
Route 5, Box 10 B
Albert Lea, MN 56007

Mr. Conrad Berg
3636 Lakeside Drive
Eveleth, MN 55734

D. J. Berg
D. J. Berg-Consulting Serv.
P.O. Box 12082
New Brighton, MN 55112

Mr. Edward Besaw
Iberite Corporation
501 West 3rd Street
P.O. Box 468
Winona, MN 55987

Mr. William Bider
Trans World Airlines
Room 1-482 MCI
P.O. Box 20126
Kansas City, MO 64195

Mr. David Bonistall
Champion International
100 East Sartell Street
P.O. Box 338
Sartell, MN 56377

Mr. David Brickley
Circuit Chemistry
5129 Industrial Street
P.O. Box 476
Maple Plain, MN 55359

Ms. Patricia Bursay IO
Minnesota Department of
Transportation
704 Transportation Bldg
St. Paul, MN 55155

Mr. Tim Butler
Lindquist & Vennum
4200 IDS
80 South 8th Street
Minneapolis, MN 55402

Mr. David Carlson
McLaughlin Gormley King Co.
8810 Tenth Avenue North
Minneapolis, MN 55427

Ms. Diane Carlton
Minnesota Power
30 West Superior Street
Duluth, MN 55802

Mr. David Cera IO
MPCA-Office of Waste Mgmt.
1350 Energy Lane
St. Paul, MN 55108

Mr. Gary Christiansen
Minnesota Department of
Transportation, District 9
3485 Hadley Avenue North
Oakdale, MN 55109

J.C. Clasing
Amoco Corporation
200 East Randolph Drive
MC 1604
Chicago, Illinois 60601

Mr. Robert Clough
Northern States Power Co.
414 Nicollet Mall
Minneapolis, MN 55401

Mr. Richard Clute
WCI Freezer Division
701 33rd Avenue North
St. Cloud, MN 56303

Ms. Ann Cole
B/R Instrument Corp.
12861 Hamlet Avenue
Apple Valley, MN 55124

Mr. Michael Costello
IT Corporation
3570 North Lexington
Suite 200
St Paul, MN 55126

Mr. Gene Currie
Imperial Inc.
1102 West 6th Avenue
P.O. Box 98
Shenandoah, IA 51601

Mr. James Czaja
Circuit Chemistry Corp.
5129 Industrial Street
Maple Plain, MN 55359

Mr. Luke Davich
Federal-Hoffman, Inc.
900 Ehlen Drive
Anoka, MN 55303

Mr. William DeBelly
Southern Minnesota Sugar
Cooperative
P.O. Box 500
Renville, MN 56284

HW RULE AMENDMENTS

Ms. Katie DeBoer IO
Legislative Commission
on Waste Management
85 State Office Bldg.
St. Paul, MN 55155

C. M. Douglass
St. Mary's Hospital
1216 - 2nd Street, SW
P.O. Box 911
Rochester, MN 55903-0911

Mr. C. A. Douthitt
Milwaukee Solvents
& Chemicals
P.O. Box 444
Butler, MN 53007

Mr. David Downs
Control Data Corp.
8100 34th Avenue South
P.O. Box 0
Minneapolis, MN 55440

Mr. Richard Dunn
Etchit Inc.
643-13th Avenue South
Hopkins, MN 55343

Mr. Todd Dykton
Envirite Corporation
16435 South Center Ave.
Harvey, IL 60426

Mr. Tom Eley
Great Lakes Env. Services
22077 Mound Road
Warren, Michigan 48091

Mr. Brian Ettesvold
MSSA/MTOA
1705 Marion Street
St. Paul, MN 55113

Mr. John T. Fakler
Circuit Chemistry Corp.
5129 Industrial Street
Maple Plain, MN 55359

Mr. Greg Falk
Jones Petroleum Company
2930 North 33rd Street
P.O. Box 30225
Lincoln, NE 68503

L. M. Ferdinandsen
Watkins Incorporated
150 Liberty Street
Winona, MN 55987

Ms. Rebecca Flood IO
Metropolitan Waste Control
Mears Park Centre
230 East Fifth Street
St. Paul, MN 55101

Mr. Kenneth Ford
Honeywell Inc.
Honeywell Plaza 3175
Minneapolis, MN 55408

Forester Welding
1726 South Broadway
New Ulm, Minnesota 56073

W. L. Fuerstenberg
Interstate Power Company
129 North St. Paul Avenue
P.O. Box 246
Fulda, MN 56131

Mr. Douglas Fullen
(MN29-3610)
Honeywell
Building 103, TCAAP
New Brighton, MN 55112

Mr. James Gencauski
Waste Management-Blaine
10050 Naples Street NE
Blaine, MN 55434

Mr. Ken Grant
3M
Building 21-2W-05
P.O. Box 33331
St. Paul, MN 55133

Terry Graumann
Otter Tail Power Company
215 South Cascade Street
Fergus Falls, MN 56537

Ms. Cathy Griffith
Rexnord Chemical
Resin Systems Division
6180 East 58th Avenue
Commerce City, CO 80022

Mr. Merlyn Gutz
Geo. A. Hormel & Company
501 Northeast 16th Avenue
P.O. Box 800
Austin, MN 55912

Ms. Vonny Hagen IO
MN DNR
500 Lafayette
St. Paul, MN

A. G. Hale
Minnesota Solvents and
Chemicals Corporation
2340 Rose Place
Roseville, MN 55113

Mr. Dale Halverson
Dana Corporation
600 Hoover Strett NE
Minneapolis, MN 55413

Ms. Anne Harri
Special Resource Mgmt, Inc.
1131 Westrac Drive
Suite 201
Fargo, MN 58103

G. W. Harries
Hanft, Fride, O'Brien,
Harries, Swelbar & Burns
1000 First Bank Place
Duluth, MN 55802

Mr. Brian J. Hauge
Round River Environ-
mental Services
Route 2, Box 179
Fertile, MN 56540

Ms. Debra Herel
Interstate Power Company
1000 Main Street
P.O. Box 769
Dubuque, IA 52004-0769

Mr. Douglas Hildre
FMC
4800 East River Road
P.O. Box 59043
Minneapolis, MN 55459-0043

Mr. Jay Hill
Ashland Petroleum Company
P.O. Box 391
Ashland, KY 41114

Mr. John Hodgson
Solvent Systems
14581 Grand Avenue South
Burnsville, Minnesota 55337

Terry Hoffman
Bio Trol
386 North Wabasha
Suite 840
St. Paul, MN 55102

Mr. Earl Jackelen
Warden Oil Company Inc
187 Humboldt Avenue N
Minneapolis, MN 55405

Gene Jameson
Waste Research and
Reclamation Co. Inc.
Route 7
Eau Claire, WI 54701

Mr. Jay Johnson
7496 Saratoga Drive
P.O. Box 537
Chanhassen, MN 55317

Mr. Larry Johnson
Foth & Van Dyke
6474 City West Parkway
Eden Prairie, MN 55344

Terry Johnston
Prometheus Company
Route 1
P.O. Box 231
Wells, MN 56097

Mr. Michael Jost
Bay West Inc.
5 Empire Drive
St. Paul, MN 55103

Mr. Dennis Jurewicz
Stone Container Corp
2150 Parklake Drive
Suite 400
Atlanta, GA 30345

R. A. Kaiser
Pace Laboratories, Inc.
1710 Douglas Drive N
Minneapolis, MN 55422

Mr. R. J. Kale
Soo Line Railroad Co.
Soo Line Bldg., Room 300
P.O. Box 530
Minneapolis, MN 55440

Mr. John Keenan
Ecolab Incorporated
Ecolab Center
St. Paul, MN 55102

Mr. Paul Klinge
Honeywell Systems and
Research Center
3660 Technology Drive
Minneapolis, MN 55440

Mr. Alan Knutson
Safety and Security
Saint Marys Hospital
1216-2nd Street SW
Rochester, MN 55902

Ms. Jean Krueger
Unisys Corp. Semi-
conductor Operations
P.O. Box 64724 MS H2N26
St. Paul, MN 55164

Mr. Allen Kuebelbeck
Larson Boats
702 West Mississippi
River Drive
Little Falls, MN 56345

Ms. Carol Kuehn
Serco Laboratories
1931 West County Rd. C-2
St. Paul, MN 55113

Mr. Terry Lahti IO
Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4016

Ms. Karen Lampert
Minnegasco, Inc.
700 West Linden Avenue
P.O. Box 1165
Minneapolis, MN 55440-1165

Ms. Inez Lange
Land O'Lakes Inc
P.O. Box 116
Minneapolis, MN 55440

Dr. Linda W. Little
Governor's Waste Mgmt. Board
325 North Salisbury Street
Raleigh, NC 27611

Mr. Jeffrey Leed
Exide Corporation
645 Penn Street
P.O. Box 14205
Reading, PA 19612-4205

Mr. Joseph Maccani
Jostens
5501 Norman Center Drive
Minneapolis, MN 55437

MAK Oil Company
10020 Olive Street NW
Coon Rapids, MN 55433

Ms. Margaret McCourtney
Environmental Information Ltd
7400 Metro Boulevard
Suite 400
Minneapolis, MN 55435

Mr. Charles McDuff
Ecolab Incorporated
Ecolab Center
St. Paul, MN 55118

Mr. Barry McGrath
Soo Line Railroad Co.
105 South Fifth Street
Suite 1000
Minneapolis, MN 55440

Mr. Kevin McNew
Sentinel Chemical
7714 Beech Street
Fridley, MN 55432

Mr. Farook Meah
Advance Circuits Inc.
560 16th Avenue S
Hopkins, MN 55343

B. K. Meierbachtol
Anchor Glass Container Corp.
4108 Valley Industrial Blvd
P.O. Box 69
Shakopee, MN 55379-0069

M. A. Mikovich
Union Carbide Corporation
10 South Riverside Plaza
22cd Floor
Chicago, IL 60606-3882

Mr. Dave Miller
Sheldahl, Inc.
Highway 3 North
P.O. Box 170
Northfield, MN 55057

Mr. Marvin Miller
Eaton Corporation
15151 Highway 5
Eden Prairie, MN 55344

Mr. Terry Miller
Waste Mgmt of Minn, Inc
14730 Sunfish Lake Blvd
P.O. Box 67
Anoka, MN 55303

Mr. William Miller, Jr.
Ashland Oil Inc.
5 West Broadway
P.O. Box 9
St. Paul Park, MN 55071

Mr. Everett Milton
GNB Incorporated
1110 Highway 110
P.O. Box 64100
St. Paul, MN 55164-0100

Mr. Edward M. Moersfelder
Leonard, Street and Deinard
100 South Fifth Street
Suite 1500
Minneapolis, MN 55402

Mr. David Moline
NCR Comten
2700 North Snelling Ave
Rosevelle, MN 55113

Mr. Joe Muller
Northern States Power
414 Nicollet Mall
Minneapolis, MN 55401

Mr. Ronald Nelson
Valley Track Service
235 2nd Avenue S
P.O. Box 123
Bayport, MN 55003

Mr. Larry Nowak
U.S. Air Force Reserve
934th TAG/DEEV
Minneapolis-St. Paul IAP,
Minnesota 55450

Mr. John Nyhlen
Nyhlen's Used Oil Service
16996 Patrica Street
Paynesville, MN 56362

Ms. Anne Ochs
Braun Environmental Lab.
6800 South County Road 18
P.O. Box 35108
Minneapolis, MN 55435-0108

Mr. Dennis O'Connell
Telex Communications Inc
9600 Aldrich Avenue S
Minneapolis, MN 55420

Ms. Ruth O'Connell
Worum Chemical Co.
2130 Energy Park Drive
St. Paul, MN 55108

Mr. Albert Orr
Environmental Trans.
Services, Inc.
P.O. Box 36118
Oklahoma City, OK 73136

Mr. Barry Owen
Badger Foundry Co
1058 East Mark Street
P.O. Box 1306
Winona, MN 55987

Mr. James Payne
Popham Haik et al
3300 Piper Jeffray Tower
Minneapolis, MN 55402

Mr. Paul Pederson
Safety-Kleen Corporation
777 Big Timber Road
Elgin, IL 60123

Ms. Jan Perlowski
Bureau of Engraving, Inc.
3311 Broadway Northeast
Minneapolis, MN 55413

Ms. Donna Peterson
MNTAP
University of MN
Box 197 Mayo
Minneapolis, MN 55455

Ms. Doris Polson
Tapemark Company
223 East Marie
West St. Paul, MN 55118

C. H. Porter
Ford Motor Company
15201 Century Drive
#608
Dearborn, MI 48120

Mr. Paul Pyzdrowski
Watt/Peterson, Inc.
15020-27th Avenue N
Plymouth, MN 55441

RMT Inc.
1406 E. Washington Ave
Suite 124
Madison, WI 53703
Attn: Library

Mr. Steven A. Reed
H. B. Fuller Company
3530 Lexington Avenue N
Shoreview, MN 55126

Mr. Robert J. Reid
DPRA Incorporated
245 East 6th Street
Suite 813
St. Paul, MN 55101

Mr. Steve Riner
MN Department of
Transportation
704 Transportation Bldg.
St. Paul, MN 55155

Mr. Neil Ruddy
City of Redwood Falls
P.O. Box 10
333 South Washington
Redwood Falls, MN 56283

Mr. Greg St. Hilaire
Electric Equipment Service
4751 Mustang Circle
St. Paul, MN 55112

Mr. Craig Sallstrom
MN Plant Food and
Chemicals Association
1821 University Avenue #253
St. Paul, MN 55104

Mr. Jerry Samson
Big Dipper Enterprises, Inc.
1016 11th Avenue S
P.O. Box 640
Wahpeton, ND 58074

S.M. Sanford
7000 Portland Avenue
Richfield, MN 55423

Mr. Peter M. Schmitt
Scott County Environmental
Health
Courthouse A102
Shakopee, MN 55379

Mr. Dan Schoepke
City of Richfield
6700 Portland Avenue S
Richfield, MN 55423

Ms. Sheila Schuman
Environmental Information
7400 Metro Boulevard
Suite 400
Minneapolis, MN 55435

Mr. Jim Schutjer
Minnesota Automobile
Dealers Association
277 University Avenue
St. Paul, MN 55103

Mr. Donald Seeberger
Hennepin County
Environment & Energy
822 3rd Street, Suite 300
Minneapolis, MN 55415

Mr. Thomas W. Segar
Koch Refining Company
P.O. Box 64596
St. Paul, MN 55164

Mr. James (Ted) Shields
Outdoors Committee
P.O. Box 88
Longville, MN 56655

Sierra Club
1313 5th Street SE
#323
Minneapolis, MN 55414

Mr. John Smith
Director of Envr. Affairs
S. B. Foot Tanning Co
Bench Street
Red Wing, MN 55066

Mr. Byron E. Starns
Leonard, Street and Deinard
100 South Fifth Street
Suite 1500
Minneapolis, MN 55402

Mr. Larry Tarara
B&F Companies
1830 3rd Avenue SE
P.O. Box 6536
Rochester, MN 55904

Ms. Barbara Thomas
Boise Cascade
P.O. Box 50
Boise, ID 83728

Mr. Ron Thompson
MN Department of Health
717 Delaware Street
P.O. Box 9441
Minneapolis, MN 55440

Mr. David Tollefson
Solv-Oil Service & Supply
P.O. Box 5477
Hopkins, MN 55343

Mr. William Trygstad, P.E.
Zenk, Read, Trygstad, & Assoc
Old Highway 65 North
P.O. Box 689
Albert Lea, MN 56007

Mr. Edward Van Hoven, Jr.
Van Hoven Company
505 Hardman Avenue
P.O. Box 56
South St. Paul, MN 55075

Ms. Janice Walls
ISRI
1627 K Street, NW
Suite 700
Washington, D.C. 20006

Mr. Walter Wagoner, Jr.
American Chemical
Service Inc.
P.O. Box 190
Griffith, IN 46319-0190

Mr. Lee Walz
DeZurik Corporation
250 Riverside Avenue
Sartell, MN 56377

Mr. Bryan Weinzierl
Safety Consultant
Healtheast
559 Capitol Boulevard
St. Paul, MN 55103

Mr. Greg Weisjahn
Unisys
P.O. Box 64525
Mail Station U1N14
St. Paul, MN 55164-0525

Mr. Lloyd West
Thermo King Corporation
314 West 90th Street
Minneapolis, MN 55420

Mr. Don Whitehurst
Buckbee-Mears, St. Paul
245 East Sixth Street
St. Paul, MN 55101

Mr. Lester Wilsey III
Indianhead Truck Line, Inc.
P.O. Box 64355
St. Paul, MN 55164

Mr. Lester Wilsey, Jr.
Indianhead Truck Line, Inc.
1947 West County Road C
P.O. Box 64355
St. Paul, MN 55164

Dames & Moore
1900 Silver Lake Road
Suite 302
New Brighton, MN 55112

Ms. JoAnne Musumeci IO
State Planning Agency
300 Centennial Bldg.

Mr. Joe Goslinga
Wespling Manufacturer
705 Highway 18 South
Princeton, Minnesota 55371

Frank Hollenbach
J. J. Keller and Associates
145 West Wisconsin Avenue
Post Office Box 368
Neenah, WI 54957-0368

00852

William Bryson
Rural Route 2
Box 181
Alden, MN 56009

00853

Barbara Hughes
American Lung Association
Ramsey County
480 Concordia Avenue
Saint Paul, MN 55103

00856

Christine Olsenius
2327 Lafayette Road
Minnetonka Beach, MN 55391

00866

Laura Weaver
3341 17th Avenue South
Saint Paul, MN 55155

00867

Brett Robinson
Stout Environmental Inc.
Rural Route 4
Box 140
North Woodbury Road
Sewell, NJ 08080

00869

Deborah Tilque
Aqua Tech/Groce Laboratories
5202 148th Street West
Apple Valley, MN 55124

00870

Greg Korstad
Larkin Hoffman Daly & Lindgren Ltd
7900 Xerxes Avenue South
Suite 1500
Bloomington, MN 55431

00872

Sam Ruhle 00469
Office of Administrative Hearings
500 Flour Exchange
310 South 4th Avenue
Minneapolis, MN 55415

Henry Chisholm 00470
Jebay Norton Company
st Office Box 6508
Cleveland, OH 44101

llips Legislative Services 00471
Rice Street
Saint Paul, MN 55103

Thomas W. Hayes 00472
Pickands Mather & Company
Suite 811-200 West Superior Street
Duluth, MN 55802

David Fisher 00473
The Pillsbury Company
MS 3726
Pillsbury Center
Minneapolis, MN 55402

Mark F. Teneyck 00474
Popham Haik Law Firm
3300 Piper Jaffray Tower
222 South 9th Street
Minneapolis, MN 55402

John Gleason 00475
Precision Environmental Services
8251 Main Street North East
Minneapolis, MN 55432-1849

R. McGrath 00476
Pulp & Paper
500 Howard Street
San Francisco, CA 94105

00477
Rice County Planning Office
Post Office Box 40
610 North West 20th Street
Faribault, MN 55021

Tim McSweeney 00478
Screen Printing Assoc, Inc
10015 Main Street
Fairfax, VA 22031

00479
Shell Engineering & Association
Post Office Box 548
Staircase Office #8
Parkade Plaza
Columbia, MO 65205

Peter Kishel 00480
Saint Paul Division of Public
5551Cedar
Saint Paul, MN 55101

Robert Snyder 00481
3943 Pleasant Avenue South
Minneapolis, MN 55409

Dean Rebuffoni 00482
Star Tribune
Newsroom
425 Portland Avenue
Minneapolis, MN 55488

Bruce Detlefsen 00483
State Regulation Report
951 Pershing Drive
Silver Springs, MD 20910

L. W. Patterson 00484
Tenneco, Inc.
Post Office Box 2511
Houston, TX 77252

Ms. Barbara Thomas 00485
Post Office Box 50
Boise, ID 83728

Dan McConnon 00486
United Power Assoc
Environment & Land Division
17845 East Highway 10
Elk River, MN 55330-0800

Zack Hansen 00488
Washington County
Public Health
Post Office Box 6
14900 North 61st Street
Stillwater, MN 55082

Sally Evert
Washington County
Board of Commissioners
14900 61st Street North
Stillwater, MN 55082

00489
Robert J. Bollant 00490
City of Winona
4th & Lafayette Street
Winona, MN 55987

00491
News Editor
Winona Daily News
Box 147
Winona, MN 55987

00492
Winthrop & Weinstine
1800 Meritor Tower
444 Cedar Street
Saint Paul, MN 55101

Dr. Daniel D. Foley 00494
1581 Tamberwood Trail
Woodbury, MN 55125

Janet C. Green 00495
10550 Old North Shore Road
Duluth, MN 55804

Van R. Ellig 00496
Post Office Box E
106 East Washington Avenue
Fergus Falls, MN 56537

Keith H. Langmo 00497
618 West Crescent Lane
Litchfield, MN 55355

Ruth Erickson 00499
80 Edison Boulevard
Silver Bay, MN 55614

Milton Radjenovich 00500
Post Office Box 667
604 Jones Avenue
Buhl, MN 55713

Russell W. Domino 00501
23 West Road
Circle Pines, MN 55014

The Honorable Michael O. Freeman 0084696-Tom7Balf
Minnesota State Senator
122 Capitol
Saint Paul, MN 55155

23 Empire Drive
Saint Paul, MN 55103

00849
Christine Kneeland 00850
305 Hanover Building
480 Cedar Street
Saint Paul, MN 55101

Mark Wolski
Bureau of National Affairs
2126 Hartford Avenue
Saint Paul, MN 55116

00402

Donald Burger
[illegible] 22nd Avenue North East
[illegible]neapolis, MN 55418

00403

[illegible]homas Spence
[illegible]lington Northern
[illegible] Department
[illegible]oom 600
325 Cedar Street
Saint Paul, MN 55101

00404

Bernard Noonan
Burlington Northern Railroad
PostaOffice Box 29136
Overland Park, KS 66201-9136

00405

Richard W. Wigger
V P of Environmental Affairs
Champion International Corporation
One Champion Plaza
Stamford, CN 06921

00406

Robert L. Roberts
Chemlawn Services Corporation
8275 North High Street
Columbus, OH 43085

00407

Susan Mudd
Citizens For A Better Environment
Suite 303
647 West Virginia Street
Milwaukee, WI 53204

00408

Michael S. Keckeisen
Color-Ad Packaging, Inc.
3600 Alabama Avenue
Minneapolis, MN 55416

00409

Scott Schuler
Cooperative Power Association
14615 Lone Oak Road
Eden Prairie, MN 55344

00410

John Herman
D H G & G
Attorneys at Law
Suite 930
Ten South Fifth Street
Minneapolis, MN 55401

00411

James C. Backstrom
Dakota County Attorney
1560 HigHway 55
Hastings, MN 55033

00412

Ron Spong
Dakota County
Environmental Health
Suite 345
33 East Wentworth
West Saint Paul, MN 55118

00413

Lawrence Annen
Dames & Moore
1900 Silver Lake Road
Suite 302
New Brighton, MN 55112

00414

Steve Holland
Dateline Environmental
5353 Gamble Drive Suite 311
Minneapolis, MN 55416

00415

David Braslau Associates
#322
1313 5th Street South East
Minneapolis, MN 55414

00416

Jeanne Stebbins
Legal Assistant
Dewitt Sundby Huggett Schumacher
#120an
6515 Grand Teton Plaza
Madison, WI 53719

00417

Carol Langer
DNR/MEEB
701 Iowa Avenue
Morris, MN 56267

00418

Donohue & Associates, Inc.
Consulting Engineers Division
Suite 200
7200 Hemlock Lane North
Maple Grove, MN 55369

00419

Gregg Fontaine
Dorsey & Whitney
2200 First Bank Place East
Minneapolis, MN 55402

00420

Bill Keppel
Dorsey & Whitney
2200 First Bank Place East
Minneapolis, MN 55402

00421

D. R. Harris
Mgr Government & Environmental
DuluthsMissabe & Iron Range Railway
500 Missabe Building
Duluth, MN 55802

00422

Pamela Meitner
E. I. Du Pont de Nemours Company
Legal Department
1007 Market Street
Wilmington, DE 19898

00423

ECRDC
100 South Park Street
Mora, MN 55051

00424

David M Benforado, PE
3M
Environmental Eng & Pollution
21-2W-06
900 Bush Avenue
Saint Paul, MN 55144

00425

EPA Region V
Office of Public Affairs
230 South Dearborn Street
Chicago, IL 60604

00426

Dave Ullrich
EPA Region V
5C-TUB-3
230 South Dearborn Street
Chicago, IL 60604

00427

Roy O. Ball
ERN-North Central, Inc.
102 Wilmot
Suite 300
Deerfield, IL 60015

00428

Ewald Consulting Group
26 East Exchange Street
Fifth Floor
Saint Paul, MN 55101

00429

Chairman
Fairmont Area Chamber Of Commerce
Post Office Box 102
101 South Main
Fairmont, MN 56031

00430

Finance & Commerce Daily
Attn Editor News Room
615 South 7th Street
Minneapolis, MN 55415

00431

FMC Corporation
Naval Systems Division
Post Office Box 50943
4800 East River Road
Minneapolis, MN 55059-9943

00432

Frundt Frundt Johnson & Roverud Ltd
117 West 5th Street
Blue Earth, MN 56013

00433

William T. Taylor
General Mills, Inc.
Post Office Box 1113
Minneapolis, MN 55440

00434

Kevin C. Jones
George A. Hormel & Company
Box 800
Austin, MN 55912

00435

[illegible]erett Milton
[illegible]3
[illegible]st Office Box 64100
Saint Paul, MN 55164-0100

00436

[illegible]an Howarth
[illegible]co, Inc.
[illegible]t Office Box 1441
Minneapolis, MN 55440

00437

H. A. Wood
GSX Series, Inc.
Route 11 Box 3
Wathington Industrial Road
Reidsville, NC 27320

00438

G. W. Harries
Hanft, Etc. Law Office
1000 First Bank Place
130 West Superior Street
Duluth, MN 55802-2094

00439

Hardrives, Inc.
7200 Hemlock Lane North
Minneapolis, MN 55369

00440

David K. Weaver
Hennepin Parks
12615 County Road 9
Plymouth, MN 55441

00441

Terri Hoffman
Suite 840
386 North Wabasha
Saint Paul, MN 55102

00442

Knowlton J. Caplan
Industrial Health Engineering Assoc
5945 Maplewood Lane
Minnetonka, MN 55345

00443

Intern Mineral & Chemical
Environmental & Safety Operations
421 East Hawley Street
Mundelein, IL 60060

00444

R. J. F. Kramer
International Eco Society
1471 Barclay Street
Saint Paul, MN 55106-1405

00445

Earl Forslund
Interstate Power Company
Post Office Box 769
Dubuque, IA 52004-0769

00446

The Izaak Walton League of America
Minnesota Division
#101
525 Park Street
Saint Paul, MN 55103

00447

Rebecca P. Judge, PhD
Saint Olaf College
Assistant Professor
Department of Economics
Northfield, MN 55057

00448

Lake Superior Industrial Bureau
1408 Alworth Building
Duluth, MN 55802

00449

James A. Bosch
Land O' Lakes
Post Office Box 116
Minneapolis, MN 55440

00450

Joel Jomnik
League of Minnesota Cities
183 University Avenue East
Saint Paul, MN 55101

00451

Tom Lehman
Suite #322
Hall of The States
400 North Capitol Street North West
Washington, DC 20001

00452

Lisa Kalodrich
Bruce A. Liesch Associates
3020 Harbor Lane
Plymouth, MN 55447

00453

Robert Lockyear
Planning Coordinator
14900 61st Street North
Stillwater, MN 55082

00454

Rachel Lord
2323 Talmage Avenue South East
Minneapolis, MN 55414

00455

Thomas Mastalez
5595 Arbutus Court
Greendale, WI 53129

00456

John R. Meyers
Medical Disposal Systems
206 North River Ridge Circle
Minneapolis, MN 55337

00457

Miggie Cramblit
Senior Attorney
Minnegasco
Legal Division
201 South 7th Street
Minneapolis, MN 55402

00458

The Minnesota Project
2222 Elm Street South East
Minneapolis, MN 55414

00459

Minnesota Agricultural Growth
Suitei213
8030 Cedar Avenue South
Bloomington, MN 55425

00460

Kenneth G. Paulson
P E
Minnesota Asphalt Pavement
Suitei136on
155 South Wabasha Street
Saint Paul, MN 55107

00461

Minnesota Environmental Quality
Roomd300 Centennial Building
658 Cedar Street
Saint Paul, MN 55155

00462

Francis M. Fitzgerald II
Minnesota Retail Merchants
Suitei150on
Mears Park Place
405 Sibley
Saint Paul, MN 55101

00463

Pete Gates
Mobil Oil Corporation
4N508
3225 Gallows Road
Fairfax, VA 22037

00464

William H. Prokop
National Renderers Assoc Inc
2250 East Devon Avenue
Des Plaines, IL 60018

00466

Bill Uffelman
National Solid Waste Managment
920nSouth Spring Street
Springfield, IL 62704

00467

Joseph D. Bizzano Jr.
Northern States Power
Law Department
414 Nicollet Mall
Minneapolis, MN 55401

00468

Gary Braun 00369
Dept of Agriculture
Agronomy Services
90 West Plato Boulevard
Saint Paul, MN 55107

'owell E. Torseth 00370
ard of Architectural Engineering
and Survey And Landscape
402hMetrouSquare
Saint Paul, MN 55101

orney General's Office 00371
itrust Division
2nd Floor Ford Building
117 University Avenue
Saint Paul, MN 55155

Floyd Erickson 00372
Dept of Education
936 Capitol Square Building
Saint Paul, MN 55101

Abby McKenzie 00373
Dept of Trade & Economic
900eAmerican Center Building
150 East Kellogg Boulevard
Saint Paul, MN 55101

Pat Bloomgren 00374
Minnesota Dept of Health
717 Delaware Street South East
Post Office Box 9441
Minneapolis, MN 55440

Kim Austrian 00375
Legislative Commission on Waste
Room.85 State Office Building
Saint Paul, MN 55155

Maryanne V. Hruby 00376
Legislative Commission to
Review Administrative Rules
Room 55
State Office Building
Saint Paul, MN 55155

00377
Director
MEEB Central Office
Box 5
500 Lafayette Road
Saint Paul, MN 55155-4005

00378
Director, Env. Services
Minnesota Department of
704nTransportation Building
John Ireland Boulevard
Saint Paul, MN 55155

Charles Schaffer 00379
Minn. Small Business Assistance
900iAmerican Center Building
150 East Kellogg Boulevard
Saint Paul, MN 55101

Tom Rulland 00380
State Planning Agency
Environmental Division
300 Centennial Building
658 Cedar Street
Saint Paul, MN 55155

Jean Dawson 00381
Press/Minnesota Government Report
Room B12 Capitol Building
Saint Paul, MN 55155

Mark J. Hanson 00382
Senate Council Office
Room 480
State Office Building
Saint Paul, MN 55155

Michael J. O'Connor 00383
Adhesive & Sealant Council
1627 K Street North West
Suite 1000
Washington, DC 20006

F. A. Heinbaugh 00384
American Crystal Sugar
Manager Environmental Control
101 North Third Street
Moorhead, MN 56560

00385
Coord-Regulations
Amoco Pipeline Company
Post Office Box 3548
Oak Brook, IL 60522-3548

J. V. Stier 00386
Manager Environmental Affairs
Anheuser-Busch Company, Inc.
One Busch Place
202-4
Saint Louis, MO 63118-1852

Lois Hacker 00387
Anoka County
Community Health & Social Services
Courthouse 4th Floor
325 East Main Street
Anoka, MN 55303

Robert J. Sherman 00388
Armour & Company
Conagra Center
One Central Park Plaza
Omaha, NE 68102-1679

Richard Hetland 00389
Ashland Petroleum Company
Post Office Box 9
Saint Paul Park, MN 55071

A. C. Meko 00390
Ashland Petroleum Co
Law Dept
Post Office Box 391
Ashland, KY 41114

David Weirens 00391
Physical Dev. Policy Analyst
Association of Minnesota Counties
Suite 404
525 Park Street
Saint Paul, MN 55103

Mary Ayde 00392
1201 North Birch Lake Boulevard
White Bear Lake, MN 55110

00393
Badger Safe Energy Alliance
Box 239
Ellsworth, WI 54011

Martha Ballou 00394
155 South Wabasha
Saint Paul, MN 55107

Dale Wikre 00395
Barr Engineering Company
7803 Glenroy Road
Suite 100
Minneapolis, MN 55435

John Beskar 00396
1351 Etna Street
Saint Paul, MN 55106

W. J. Licke 00397
Blandin Paper Company
115 First Street South West
Grand Rapids, MN 55744

Curt R. Firman 00398
Blandin Wood Products Company
502 County Road 63
Grand Rapids, MN 55744

Al Meadows 00399
Boise Cascade Corporation
Environmental Engineer
International Falls, MN 56649

Robert M. Brown 00400
Bolton & Menk, Inc.
515 North Front Street
Mankato, MN 56001

Diane Heldt 00401
Broeker Geer Fletcher & LaFond Ltd.
8500 Normandale Lake Boulevard
Suite 1510
Bloomington, MN 55437

W. W. Judkins 00236
Director of Physical Development
Region Nine Development Commission
Post Office Box 3367
410 South 5th Street
Mankato, MN 56001

David B. Miller 00254
eldahl Incorporated
ost Office Box 170
North Highway 3
Northfield, MN 55057

ss Polansky 00287
nt Paul Fire Department
East Eleventh Street
Saint Paul, MN 55101

Ross L. Ohman 00288
Vice-President
MEC
3901 University Avenue
Minneapolis, MN 55421

Stephanie Schwartz 00291
Senator Leroy Stumpf's Office
Room 306 Capitol
Saint Paul, MN 55155

Julie Ostrow 00293
Thermo King Corp
314 West 90th Street
Minneapolis, MN 55420

R. S. Rahko 00297
Manager
United Power Association
Project Coordination Division
East Highway 10
Elk River, MN 55330

Robert A. Silvagni 00299
University of Minnesota
319 15th Avenue South East
200 Shops Building
Minneapolis, MN 55455

E. G. Van Hoven, Jr. 00302
Van Hoven Company Incorporated
Box 56
South Saint Paul, MN 55075

T. J. Dellenbach 00305
Washington County
Public Health
Post Office Box 6
Stillwater, MN 55082

Walter R. Norkus 00315
Westinghouse Electric Corporation
10 South Riverside Plaza
Chicago, IL 60606

Jack Wimmer 00316
Zoning Administrator
Stearns County
Box 604
Saint Cloud, MN 56302

Ralph Schletty 00334
CENEX Land O Lakes
Box 64089
Saint Paul, MN 55164

David Cera 00335
2325 Sumter Avenue South
Saint Louis Park, MN 55426

Donald B. Crassweller 00336
Law Offices
1000 Alworth Building
Duluth, MN 55802

Andy Piilola 00344
Minnesota Trucking Association
1821 University Room 134N
Saint Paul, MN 55104

Fred McGarvey 00347
American Insurance Association
#2060 South
3005 South Riverside Plaza
Chicago, IL 60606

Lance Crombie 00348
Bio-Clean, Inc.
#130G
201 West Burnsville Parkway
Burnsville, MN 55337

Rick Carter 00349
Care Providers of Minnesota
2850 Metro Drive
Suite 200
Minneapolis, MN 55425

Al Baldus 00350
CENEX
Post Office Box 64089
Saint Paul, MN 55164

James McLimans 00351
Wisconsin Dept. of Natural Resouces
SW/3
Post Office Box 7921
Madison, WI 53707

00352
Leggette Brashears & Graham, Inc.
Northpark Corporate Center
Suite A1211
1210 West County Road E
Saint Paul, MN 55112

Marilyn Ellison 00353
McCoy & Associates
Suite 252
13701 West Jewell Avenue
Lakewood, CO 80228

R. Eelkema 00354
Legal Counsel
Minnesota Medical Association
Suite 400
2221 University Avenue South East
Minneapolis, MN 55414

John G. Horner 00355
Minnesota Multi Housing Association
4250 Park Glen Road
Minneapolis, MN 55416

00356
Portage Sanitary Landfill Authority
Director
Crane Lake, MN 55725

Richard D. Ragan 00357
Ramsey County
Environmental Health
1910 West County Road B
Roseville, MN 55113

Dan Schoepke 00358
City of Richfield
6700 Portland Avenue South
Richfield, MN 55423

Bob Holmes 00359
Saint Louis County Health
1001rEasttFirst Street
Duluth, MN 55805

Edwin E. Sterling 00360
3920 39th Avenue South
Minneapolis, MN 55406

Cindy McComas 00361
Univeristy of Minnesota
MNTAP
Box 197 Mayo Building
420 Delaware Street South East
Minneapolis, MN 55455

00362
Water & Soil Resources Board
First Floor
90 West Plato Boulevard
Saint Paul, MN 55107

David Marquette 00368
Marsh & McLennan
1500 Northstar West
Minneapolis, MN 55402

R. M. Hutchison
Anoka County Health Department
Courthouse 4th Floor
Anoka, MN 55303

00008

Bruce E. Benson
st Office Box 220
rlton County Courthouse
Carlton, MN 55718

00016

l Wright
ck & Veatch Engineers
te 1240
600 Renaissance Center
Detroit, MI 48243

00019

A. L. Ochs
Braun Environmental Labs
6800 South County Road 18
Post Office Box 35108
Minneapolis, MN 55435-0108

00024

Citizens For a Better Environment
1515 East Lake Street
Suite 201
Minneapolis, MN 55407

00038

P. D. Brick
Manager Government Relations
Cleveland-Cliffs Incorporated
1100 Superior Avenue
Cleveland, OH 44114

00041

M. J. Duffy
Director
Community Health Services Board
Suite 604
325 Lake Avenue South
Duluth, MN 55802

00042

G. L. Dirks
Manager of Plant Services
Cornelius Company
1 Cornelius Place Highway 10 West
Anoka, MN 55303

00044

T. Lahti
Safety Adminstrator
DNR Bureau Of Field Services
500 Lafayette Road
Box 16
Saint Paul, MN 55155-4016

00061

Robert Beltrame
Donohue & Associates
7200 Hemlock Lane
Maple Grove, MN 55369

00062

M. R. Kaster
Dorsey & Whitney Law Firm
2200 1st Bank Place East
Minneapolis, MN 55402

00065

John E. Drawz
2000 1st Bank Place West
120 South 6th Street
Minneapolis, MN 55402

00067

Hild Sandstede
Greenpeace
2637 Nicollet Avenue South
Minneapolis, MN 55408

00107

Ellsworth Harpole
727 15th Avenue South East #30
Minneapolis, MN 55414

00110

Patricia Leonard-Mayer
Harstad & Rainbow
268 Cecelia Place
St. Paul, MN 55105

00112

Dr. J. William Haun, PE
6912 East Fish Lake Road
Maple Grove, MN 55369

00113

Harold J. Soderberg
Hessian Mckasy & Soderberg
4700 IDS Center
Minneapolis, MN 55402

00119

Dr. R. Danford
International Research & Eval
21098 Ire Control Center
Eagan, MN 55121

00126

Ruth A. Johnson
129 Riverview Blvd
International Falls, MN 56649

00133

Karen Studders Lampert
Minnegasco Incorporated
Post Office Box 1165
700 West Linden Avenue
Minneapolis, MN 55440-1165

00166

Jim Ertl
Minnesota Earth/PAS Office
515 Capitol Square Building
550 Cedar Street
Saint Paul, MN 55101

00174

M. J. Ahern
Moss & Barnett
4800 Norwest Center
90 South 7th Street
Minneapolis, MN 55402

00181

Dr. Michael Lee
Research Director
MPIRG
2512 Delaware Street South East
Minneapolis, MN 55414

00183

Helen Boyer
Metropolitan Waste Control
MearssPark Centre
230 East Fifth Street
Saint Paul, MN 55101

00187

M. D. Thompson
General Counsel
Metropolitan Waste Control
MearssPark Centre
230 East Fifth Street
Saint Paul, MN 55101

00188

Reid A. Miner
NCASI
Western Michigan University
Kalamazoo, MI 49008

00194

G. Crocker
North American Water Office
Post Office Box 174
Lake Elmo, MN 55042-0174

00203

Charles B. Hoffman
Pickands Mather & Company
Suite 811
200 West Superior Street
Duluth, MN 55802

00214

Robert S. Burk
Popham-Haik Law Firm
3300 Piper Jaffray Tower
222 South 9th Street
Minneapolis, MN 55402

00222

G. Robert Johnson
Popham-Haik Law Firm
3300 Piper Jaffray Tower
222 South 9th Street
Minneapolis, MN 55402

00223

Archie D. Chelseth
Potlatch Corporation
Box 510
207 Avenue C
Cloquet, MN 55720

00225

Gayle Peterson
Project Environment Foundation
1313 5th Street South East
Suite 323
Minneapolis, MN 55414

00227

J. Pumarlo
Editor
Red Wing Republican Eagle
Red Wing, MN 55066

00234

Subp. 3. **Changes in employment or address.** All registered ~~apprentices~~ pipefitter trainees shall inform the ~~Division of Steamfitting Standards~~ department of changes of employment and their address.

5230.0130 DUTIES OF LICENSED CONTRACTING STEAMFITTERS.

A contracting steamfitter employing a journeyman steamfitter or ~~an apprentice steamfitter~~ a pipefitter trainee shall comply with all the laws, rules, and minimum standards of the state of Minnesota, paying promptly for labor and material furnished an owner, and reporting income tax and conforming to the laws governing the relationship of master and servant, including the carrying or workmen's compensation insurance, paying the Social Security tax, paying wages when due, furnishing written contracts of employment, and employing licensed steamfitters on high pressure pipe work.

REVISOR'S INSTRUCTION. In the next edition of *Minnesota Rules*, the Revisor of Statutes shall substitute the term "pipefitter" wherever the term "steamfitter" appears in chapter 5230, including headnotes.

REPEALER. *Minnesota Rules*, part 5230.0110, subparts 1 and 2, are repealed.

Pollution Control Agency

Proposed Permanent Rules Relating to Hazardous Waste

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY given that the Minnesota Pollution Control Agency (MPCA) intends to adopt the above-entitled rule amendments without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes* §§ 14.22 to 14.28 (1988). The MPCA's authority to adopt the rule amendments is set forth in *Minnesota Statutes* § 116.07, subd. 4 (1988).

All persons have until 4:30 p.m. on July 12, 1989, to submit comments in support of or in opposition to the proposed rule amendments or any part or subpart of the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rule amendments addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the proposed amendments within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any changes proposed. If a public hearing is required, the MPCA will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1988).

Comments or written requests for a public hearing must be submitted to:

Carol Nankivel
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
612/296-7260

The proposed rule amendments may be modified if the modifications are supported by data and views submitted to the MPCA and do not result in a substantial change in the proposed rule amendments as noticed.

The proposed rule amendments, if adopted, will incorporate existing federal deadlines terminating eligibility for interim status for unpermitted hazardous waste treatment, storage and disposal facilities. The proposed rule amendments will also add references to two existing Minnesota statutes which establish requirements applicable to transporters of hazardous waste. These statutes relate to the transporters' duty to notify the Department of Public Safety in the event of a spill of hazardous waste and the requirement for hazardous waste transporters to be licensed and insured as required by the Department of Transportation. Also, the proposed rule amendments include a correction that updates the information provided for obtaining a test procedures manual that is referenced in the hazardous waste rules. Questions regarding the content of the proposed rules should be directed to Carol Nankivel at the address and telephone number stated above.

The proposed rule amendments are published below. One free copy of the proposed rule amendments is available upon request from Carol Nankivel at the address and telephone number stated above.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule amendments has been prepared and is available from Carol Nankivel at the address and telephone number stated above.

You are hereby advised, pursuant to *Minnesota Statutes* § 14.115 (1988), "Small business considerations in rulemaking," that the proposed rule amendments will have no effect on small businesses. The deadlines for the termination of interim status eligibility and the transporter requirements are already in effect in Minnesota through other state and federal authorities.

If no hearing is required, upon adoption of the amendments, the rule amendments and the supporting documents will be submitted to the Attorney General for review as to legality and form to the extent that form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 rule amendments as adopted, must submit a written request to Carol Nankivel at the address stated above.

Gerald Willet
Commissioner

Rules as Proposed

7001.0650 INTERIM STATUS.

Subpart 1. to 6. [Unchanged.]

Subp. 7. **Termination of interim status.** Interim status terminates automatically when the agency has taken final administrative action on the permit application or when terminated by Code of Federal Regulations, title 40, section 270.73(c) to (f). The following constitute justification for the commissioner to commence proceedings to terminate interim status:

A. and B. [Unchanged.]

7045.0065 AVAILABILITY OF REFERENCES.

The documents referred to in this chapter may be obtained by contacting the appropriate offices as listed in this part.

A. to F. [Unchanged.]

G. Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, publication number SW 846~~,~~ (Second Edition, 1982, as amended~~,~~ by Update I, April 1984, and Update II, April 1985) of the Office of Solid Waste, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460~~,~~. The Second Edition of SW-846 and Updates I and II available at the ~~state of~~ Minnesota Law Library and ~~by subscription~~ from the ~~Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402, (202) 783-3238~~ National Technical Information Service, 5285 Port Royal Road, Springfield, Va. 22161, (703) 487-4600 as Document number PB 87-120-291; and

H. [Unchanged.]

7045.0125 MANAGEMENT OF WASTE BY USE, REUSE, RECYCLING, AND RECLAMATION.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Requirements for use of hazardous wastes as feedstock.**

A. and B. [Unchanged.]

C. Transporters of hazardous wastes for use as feedstock must comply with all applicable requirements of *Minnesota Statutes,* ~~section~~ sections 221.033 to 221.035, and Code of Federal Regulations, title 49, parts 171 to 179.

D. [Unchanged.]

Subp. 6. **Requirements for reclamation of specific hazardous wastes.**

A. A by-product or a sludge that is hazardous only because it exhibits a characteristic of hazardous waste and is reclaimed is subject to the following requirements:

(1) [Unchanged.]

(2) Transporters of such a hazardous waste must comply with all applicable requirements of *Minnesota Statutes,* ~~section~~ sections 221.033 to 221.035, and Code of Federal Regulations, title 49, parts 171 to 179.

(3) [Unchanged.]

B. [Unchanged.]

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.

Subp. 7. to 12. [Unchanged.]

7045.0371 TRANSPORTATION OF HAZARDOUS WASTE.

Hazardous waste shall be transported in accordance with all applicable requirements of *Minnesota Statutes*, ~~section~~ sections 221.033 to 221.035 and Code of Federal Regulations, title 49, parts 171 to 179 (1983).

Adopted Rules

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

Board of Boxing

Adopted Rules Relating to Amateur and Professional Boxing, Full Contact Karate, and Kick Boxing

The rules proposed and published at *State Register*, Volume 12, Number 26, pages 1288-1296, December 28, 1987 (12 S.R. 1288) and Volume 12, Number 43, page 2337, April 25, 1988 (12 S.R. 2337) are adopted with the following modifications:

Rules as Adopted

2200.3900 APPLICABLE RULES.

The official rules of the United States of America Amateur Boxing Federation shall govern all amateur exhibitions, matches, and contests except when in conflict with parts 2200.0100 to 2200.9800. The board may suspend, modify, or withdraw any rule of the United States of America Amateur Boxing Federation ~~it determines appropriate~~ when in conflict with the rules of the Minnesota Board of Boxing. These suspensions, modifications, or withdrawals may pertain to individual situations or to all exhibitions, matches, and contests.

2200.8300 FOULS.

Subp. 5. **Intentional butt.** If a fighter's natural style is to bob and weave with much head movement, a butt will probably be unintentional; if later in the fight, a fighter greatly increases his head movement, he may be trying to butt his opponent. If it cannot be decided whether the butt is intentional, it must be ruled unintentional. The butt rule must be dealt with in the same way as rules for other fouls.

The penalty for intentional butting is a ~~one-half~~ one point deduction, unless the butting is deliberate and repeated, in which case the fighter is disqualified.

If a cut from an intentional butt stops a fight within three rounds, and the offender is not disqualified, the result of the fight is a technical draw.

If a cut from an intentional butt stops a fight or becomes enlarged later and stops the fight after three rounds, the scores must be tallied and if the cut fighter is ahead, he wins by decision. If the cut fighter is behind, the result is a technical draw. In no event shall a fighter cut from an intentional butt lose.

If a fighter who intentionally butts cuts himself and the fight is then or subsequently stopped because of the cut, the result is a technical draw if within three rounds. If later than three rounds, the score cards must be tallied, and the other fighter must be awarded the fight if he is ahead. If not, the result is a technical draw.

Pollution Control Agency

Adopted Permanent Rules Relating to Hazardous Waste

Rules as Adopted

7001.0650 INTERIM STATUS.

Subpart 1. to 6. [Unchanged.]

Subp. 7. **Termination of interim status.** Interim status terminates automatically when the agency has taken final administrative action on the permit application or when terminated by Code of Federal Regulations, title 40, section 270.73(c) to (f). The following constitute justification for the commissioner to commence proceedings to terminate interim status:

A. and B. [Unchanged.]

7045.0065 AVAILABILITY OF REFERENCES.

The documents referred to in this chapter may be obtained by contacting the appropriate offices as listed in this part.

A. to F. [Unchanged.]

G. Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, publication number SW 846 (Second Edition, 1982, as amended by Update I, April 1984, and Update II, April 1985) of the Office of Solid Waste, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. The Second Edition of SW-846 and Updates I and II available at the Minnesota Law Library and from the National Technical Information Service, 5285 Port Royal Road, Springfield, Va. 22161, (703) 487-4600 as Document number PB 87-120-291; and

H. [Unchanged.]

7045.0125 MANAGEMENT OF WASTE BY USE, REUSE, RECYCLING, AND RECLAMATION.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Requirements for use of hazardous wastes as**

Approved by Revisor

feedstock.

A. and B. [Unchanged.]

C. Transporters of hazardous wastes for use as feedstock must comply with all applicable requirements of Minnesota Statutes, sections 221.033 ~~to~~ and 221.034, and with 221.035 if applicable, and Code of Federal Regulations, title 49, parts 171 to 179.

D. [Unchanged.]

Subp. 6. Requirements for reclamation of specific hazardous wastes.

A. A by-product or a sludge that is hazardous only because it exhibits a characteristic of hazardous waste and is reclaimed is subject to the following requirements:

(1) [Unchanged.]

(2) Transporters of such a hazardous waste must comply with all applicable requirements of Minnesota Statutes, sections 221.033 ~~to~~ and 221.034, and with 221.035 if applicable, and Code of Federal Regulations, title 49, parts 171 to 179.

(3) [Unchanged.]

B. [Unchanged.]

Subp. 7. to 12. [Unchanged.]

7045.0371 TRANSPORTATION OF HAZARDOUS WASTE.

Hazardous waste shall be transported in accordance with all applicable requirements of Minnesota Statutes, sections 221.033 ~~to~~ and 221.034, and with 221.035 if applicable, and Code of Federal Regulations, title 49, parts 171 to 179 (1983).

Approved by Revisor _____

Pollution Control Agency

Adopted Permanent Rules Relating to Hazardous Waste

Rules as Adopted

7001.0650 INTERIM STATUS.

Subpart 1. to 6. [Unchanged.]

Subp. 7. **Termination of interim status.** Interim status terminates automatically when the agency has taken final administrative action on the permit application or when terminated by Code of Federal Regulations, title 40, section 270.73(c) to (f). The following constitute justification for the commissioner to commence proceedings to terminate interim status:

A. and B. [Unchanged.]

7045.0065 AVAILABILITY OF REFERENCES.

The documents referred to in this chapter may be obtained by contacting the appropriate offices as listed in this part.

A. to F. [Unchanged.]

G. Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, publication number SW 846 (Second Edition, 1982, as amended by Update I, April 1984, and Update II, April 1985) of the Office of Solid Waste, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. The Second Edition of SW-846 and Updates I and II available at the Minnesota Law Library and from the National Technical Information Service, 5285 Port Royal Road, Springfield, Va. 22161, (703) 487-4600 as Document number PB 87-120-291; and

H. [Unchanged.]

7045.0125 MANAGEMENT OF WASTE BY USE, REUSE, RECYCLING, AND RECLAMATION.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Requirements for use of hazardous wastes as**

Approved by Revisor

feedstock.

A. and B. [Unchanged.]

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D. [Unchanged.]

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(1) [Unchanged.]

(2) Transporters of such a hazardous waste must comply with all applicable requirements of Minnesota Statutes, sections 221.033 ~~to~~ and 221.034, and with 221.035 if applicable, and Code of Federal Regulations, title 49, parts 171 to 179.

(3) [Unchanged.]

B. [Unchanged.]

Subp. 7. to 12. [Unchanged.]

7045.0371 TRANSPORTATION OF HAZARDOUS WASTE.

Hazardous waste shall be transported in accordance with all applicable requirements of Minnesota Statutes, sections 221.033 ~~to~~ and 221.034, and with 221.035 if applicable, and Code of Federal Regulations, title 49, parts 171 to 179 (1983).

Approved
by Revisor _____

CERTIFICATE OF RESOLUTION ADOPTING RULES

I, Gerald L. Willet, do hereby certify that I am the Commissioner 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 July, 1989, 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 (MPCA) hereby approves and adopts the attached amendments to the MPCA's hazardous waste rules governing the management, storage, treatment and disposal of hazardous waste, Minn. Rules, pts. 7001.0650, 7045.0065, 7045.0125 and 7045.0371

BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Commissioner is authorized to make 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, (1988).

BE IT FURTHER RESOLVED, that the MPCA adopts the Findings of Fact, Conclusions, and Order Adopting Rule Amendments and that the Commissioner is hereby authorized to sign the above-mentioned document on behalf of the MPCA and to perform the necessary acts to provide that the rule amendments shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 10th day of August, 1989.

Gerald L. Willet

GERALD L. WILLET
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Rules Governing the Permitting, Management, Storage, Treatment, and Disposal of Hazardous Waste, Minn. Rules Pts. 7001.0650, 7045.0065, 7045.0125, and 7045.0371

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (MPCA) on the twenty-fifth day of July 1989. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the MPCA, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering the Statement of Need and Reasonableness, after considering all of the evidence adduced upon the records, files and proceedings herein, the MPCA, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions, and Order:

FINDINGS OF FACT

(1) 1. Notice of the MPCA's intent to adopt the above entitled rule amendments without a public hearing was published in the State Register on June 12, 1989, and was sent by mail to all persons on the list maintained by the MPCA pursuant to Minn. Stat. §§ 14.14, subd. 1a. and 14.22 (1988) on June 9, 1989.

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

(4) 3. All persons were given the opportunity to submit comments on the proposed rule amendments for 30 days after notice of proposed rulemaking. The 30 day comment period, as set out in the notice, expired on July 12, 1989.

(5) 4. No requests for public hearing were received during the comment period.

(5) 5. No requests for notice of submission to the Attorney General were received by the MPCA.

(5) 6. During the comment period the MPCA received one written comment letter, that being from the Minnesota Department of Transportation (MnDOT). The MPCA finds that two modifications to the proposed rule amendments are justified by the record in this proceeding, as follows:

(6)

a. Minn. Rules pt. 7045.0125, subp. 5, item C.

The first correction is in the proposed amendment to Minn. Rules pt. 7045.0125, subp. 5, item C. The proposed amendment to item C of subpart 5 would have added the requirement that hazardous waste transporters comply with all applicable requirements of Minn. Stat. §§ 221.033 to 221.035. The MnDOT commented that this could be misunderstood as requiring that all transporters comply with the requirements of Minn. Stat. § 221.035 when in fact only certain transporters are required to meet those requirements. The MPCA agrees with this comment and item C is modified to rephrase the language to require compliance with Minn. Stat. § 221.035 if applicable. The MPCA supports the proposed modification because it does not result in a substantial change. The modification does not change the regulatory nature of the amendment and merely provides clarification of the applicability of the requirement.

Minn. Rules pt. 7045.0125, subp. 5, item C is modified to read:

Subp. 5. Requirements for use of hazardous wastes as feedstock.

A. and B. Unchanged

C. Transporters of hazardous wastes for use as feedstock must comply with all applicable requirements of Minnesota Statutes, sections 221.033 ~~to~~ and 221.034, and with 221.035 if applicable, and Code of Federal Regulations, title 49, parts 171 to 179.

D. Unchanged

b. Minn. Rules pt. 7045.0125, subp. 6, item A (2)

The second correction addresses the same concern as discussed in part a. above. The proposed amendment to subitem (2) of item A of subpart 6 provides that the transporters of a by-product or sludge must comply with Minn. Stat. §§ 221.033 to 221.035. The MnDOT commented that this could be misunderstood as requiring that all transporters of by-product or sludge comply with the requirements of Minn. Stat. § 221.035 when in fact only certain transporters are required to meet those requirements. The MPCA agrees with this comment and item A (2) is modified to rephrase the language to require compliance with Minn. Stat. § 221.035 if applicable. The MPCA supports the proposed modification because it does not result in a substantial change. The modification does not change the regulatory nature of the amendment and merely provides clarification of the applicability of the requirement.

Minn. Rules pt. 7045.0125, subp. 6, item A (2) is modified to read:

Subp. 6. Requirements for reclamation of specific hazardous wastes.

A. A by-product or a sludge that is hazardous only because it exhibits a characteristic of hazardous waste and is reclaimed is subject to the following requirements:

(1) Unchanged

(2) Transporters of such a hazardous waste must comply with all applicable requirements of Minnesota Statutes, sections 221.033 ~~to~~ and 221.034, and with 221.035 if applicable, and Code of Federal Regulations, title 171 to 179.

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

8. The above-captioned rule amendments, together with the modifications made by the MPCA in Finding No. 6. above to respond to comments received during the comment period, are needed and reasonable.

CONCLUSIONS

1. The MPCA duly acquired and has jurisdiction over this proceeding.

2. The MPCA published and served due, timely, and adequate notice of the intent to adopt amendments to 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 rule amendments are supported by the record and do not result in a substantial change in the proposed rule amendments.

NOW THEREFORE, IT IS ORDERED, that the attached amendments to Minn. Rules pts. 7001.0650, 7045.0065, 7045.0125, and 7045.0371, governing the termination (9) of interim status, the transportation of hazardous waste, and the source of a reference document, are adopted pursuant to the authority vested in the MPCA by Minn. Stat. § 116.07, subd. 4 (1988).

Gerald L. Willet

Gerald L. Willet
Commissioner

Dated: August 10, 1989

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Rules Governing the Permitting, Management, Storage, Treatment, and Disposal of Hazardous Waste, Minn. Rules Parts 7001.0650, 7045.0065, 7045.0125 and 7045.0371.

DECLARATION OF COUNSEL

In accordance with the requirements of Minnesota Rules Part 2010.0300, Item M., I, Alan R. Mitchell, Special Assistant Attorney General, 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, chapter 2010, have been followed in the adoption of these rules.

August 18, 1989

Alan R. Mitchell

ALAN R. MITCHELL
Special Assistant Attorney General

Attachment 2

Minnesota Department of Transportation
Motor Carrier Safety and Compliance
151 Livestock Exchange Building
100 Stockyard Road
South St. Paul, MN 55075

Celebrate MINNESOTA 1990

RECEIVED
JUL 12 89
MPCA, Hazardous Waste Division

July 12, 1989

Carol Nankivel
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155

Dear Ms. Nankivel:

I have reviewed the proposed amendments of rules governing the permitting, management, storage, treatment, and disposal of hazardous waste, Minn. Rules Pts. 7001.0650, 7045.0065, 7045.0125, and 7045.0371, published in the State Register on June 12, 1989.

We appreciate your assistance in helping the Minnesota Department of Transportation (MNDOT) inform hazardous waste transporters of the reporting and license requirements contained in Minnesota Statutes, sections 221.034 and 221.035. We are glad to see that you propose to add those references in Minn. Rule part 7045.0371 Transportation of Hazardous Waste.

With respect to the proposed addition of the reference to Minnesota Statutes, section 221.035 to Minn. Rules part 7045.0125, Subp. 5.C. and Subp. 6.A.(2), we have some reservations. It appears that transporters of the hazardous wastes described in those subparts are exempt from the manifest requirement and exempt from shipping paper requirements unless the material transported is classified as a hazardous material by the United States Department of Transportation. We fear that persons who are exempt from the manifest and shipping paper requirements and therefore, exempt from the requirement to obtain a hazardous waste transporter license, will see the references to section 221.035 in Minn. Rule 7045.0125, Subparts 5 and 6, and assume that they must obtain a transporter license from MNDOT.

Perhaps it would be less confusing to reword both 7045.0125, Subp. 5.C. and Subp. 6.A.(2) as follows:

> "Transporters of ... must comply with all applicable requirements of Minnesota Statutes, ~~section~~ sections 221.033, 221.034, and with section 221.035 if applicable, and Code of Federal Regulations, title 49, parts 171 to 179."

That would show that the transporter must determine whether section 221.035 is applicable.

I know that you talked with Mike Ritchie about this subject yesterday. Please feel free to call me or Mike if you want to discuss this further.

Thank you for the opportunity to comment on the proposed amendments to the rules.

Sincerely,

Elizabeth M. Parker

Elizabeth M. Parker
Assistant Director

EMP/sm

cc. Darryl Durgin
Gordon Boldt
Mike Ritchie

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

August 21, 1989

Christie B. Eller
Assistant Attorney General
Attorney General's Office
Public Finance Division
515 Transportation Building
St. Paul, Minnesota 55155

Re: In the Matter of the Proposed Amendment of Rules Governing the Permitting, Management, Storage, Treatment, and Disposal of Hazardous Waste, Minn. Rules Parts 7001.0650, 7045.0065, 7045.0125 and 7045.0371

Dear Ms. Eller:

On July 25, 1989, the Minnesota Pollution Control Agency adopted the above-captioned rules governing hazardous waste management. Enclosed for your review are the following:

1. Certificate of Resolution Authorizing Rules;
2. Rules as proposed with the Revisor's Certificate;
3. Notice of Intent to Adopt Rule Without a Public Hearing, as mailed;
4. Statement of Need and Reasonableness;
5. Affidavit of Mailing the Notice of Intent to Adopt Rules Without a Public Hearing and Certificate of Mailing List;
6. Notice of Intent to Adopt Rules Without a Public Hearing, and rules as proposed as published in the State Register (13 S.R. 2930-2932, June 12, 1989);
7. Rules as adopted (original and three copies);
8. Certificate of Resolution Adopting Rules;
9. Findings of Fact, Conclusions and Order Adopting Rules (two copies);
10. Comments received during the comment period; and
11. Declaration of Counsel.

The MPCA did not publish a Notice of Intent to Solicit Outside Opinion for these minor rule amendments. Also, no Notice of Submission of Rule Adopted Without Public Hearing to the Attorney General or Affidavit of Mailing of Notice of Submission of Rule Adopted Without Public Hearing to the Attorney General is included in this transmittal. No requests for such notification were received.

For your information, the four-digit docket client code is ~~F098.~~ 0697.

Very truly yours,

Alan Mitchell

ALAN R. MITCHELL
Special Assistant
Attorney General

Environmental Protection Division

ARM:ha
encs.