

Minnesota Attorney General: Administrative Rules Proceedings

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SF-00006-05 (4/86)

DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : February 26, 1990

TO : ALAN R. MITCHELL
Special Assistant Attorney General
520 Lafayette Road, Suite 200 (55155)

FROM : MARTHA J. CASSERLY
Special Assistant Attorney General
525 Park Street, Suite 404 (55103)

PHONE : 296-6839

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

The above-referenced Permanent rule has been approved as to its legality by the Attorney General on February 23, 1990.

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.

CH:bbl
Enclosures
cc: William Brown, Chief Judge (memo only)
MaryAnn Hruby " "

Pollution Control Agency

Solid and Hazardous Waste Division

Adopted Permanent Rules Relating to Hazardous Waste

Rules as Adopted

7001.0520 PERMIT REQUIREMENTS.

Subpart 1. **Permit required.** Except as provided in subpart 2, no person may do any of the following without obtaining a hazardous waste facility permit from the agency:

A. treat, store, or dispose of hazardous waste;

B. establish, construct, operate, close, or provide post-closure care at a hazardous waste facility;

C. make an expansion, a production increase, or a process modification that results in new or increased capabilities of a permitted hazardous waste facility; or

D. operate a permitted hazardous waste facility or part of a facility that has been changed, added to, or extended, or that has new or increased capabilities.

Owners or operators of surface impoundments, landfills, land treatment units, and waste piles that received wastes after July 26, 1982, or that certified closure according to part 7045.0596, subpart 4, after January 26, 1983, must have a hazardous waste facility permit from the agency, unless they demonstrate closure by removal as provided in subparts 5 and 6. If a permit is required, the permit must address the applicable groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements in chapter 7045.

[For text of subps 2 to 6, see M.R. 1989]

7045.0020 DEFINITIONS.

[For text of subps 1 to 96, see M.R. 1989]

Subp. 96a. **Treatability study.** "Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:

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A. whether the waste is amenable to the treatment process;

B. what pretreatment might be required;

C. the optimal process conditions needed to achieve the desired treatment;

D. the efficiency of a treatment process for a specific waste or wastes; or

E. the characteristics and volumes of residuals from a particular treatment process.

Also included in this definition, for the purpose of the exemptions of part 7045.0121, are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous waste.

[For text of subps 97 to 109, see M.R. 1989]

7045.0075 PETITIONS.

[For text of subpart 1, see M.R. 1989]

Subp. 2. **Petitions to exclude a waste produced at a particular facility.** Petitions to exclude a waste produced at a particular facility are as follows:

[For text of items A to G, see M.R. 1989]

H. After receiving a petition for an exclusion, the agency or the commissioner may request any additional information which may reasonably be required to evaluate the petition. An exclusion will only apply to the waste generated at the individual facility and covered by the demonstration and will not apply to waste from any other facility. The agency may limit the exclusion to portions of the waste for which sufficient affirmative demonstration is provided when it has reason to believe that the hazardous characteristics may not be consistent throughout the waste or that the demonstration may not be representative of the entire petitioned waste.

[For text of subps 3 to 10, see M.R. 1989]

Subp. 11. **Petition for additional treatability study**

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quantities. The commissioner may grant requests for quantity limits in excess of those specified in part 7045.0121, subpart 2, item A, for up to an additional 500 kilograms of nonacute hazardous waste, one kilogram of acute hazardous waste, and 250 kilograms of soils, water, or debris contaminated with acute hazardous waste, to conduct further treatability study evaluation. Item A of this subpart prescribes the conditions which the petitioner must meet in order for the commissioner to grant a petition to increase the quantity limits for waste, destined for use in treatability studies, to a maximum of the limits described in this subpart. Item B of this subpart prescribes what the petition must contain.

A. Conditions for granting a petition to increase quantity limits of waste for use in a treatability study are:

(1) there has been an equipment or mechanical failure during the conduct of a treatability study;

(2) there is a need to verify the results of a previously conducted treatability study;

(3) there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or

(4) there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

B. The generator or sample collector must apply to the commissioner and provide in writing the following information:

(1) the reason why the generator or sample collector requires additional quantity of sample for the treatability study evaluation and the additional quantity needed;

(2) documentation accounting for all samples of hazardous waste from the waste stream that have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which

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it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(3) a description of the technical modifications or change in specifications that will be evaluated and the expected results; ~~and~~

(4) if a further study is required due to equipment or mechanical failure, the applicant shall include information regarding the reason for the failure or breakdown and include what procedures or equipment improvements have been made to protect against further breakdowns; and

(5) any additional information requested by the commissioner which may reasonably be required to evaluate the petition.

C. Upon receiving approval of the petition, the generator must manage the additional samples as specified in part 7045.0121.

7045.0120 EXEMPT WASTES.

The following wastes may be stored, labeled, transported, treated, processed, and disposed of without complying with the requirements of this chapter:

[For text of items A to I, see M.R. 1989]

J. wastes resulting from spills if the exemption is determined by the commissioner to be necessary to expedite the proper management of the spilled material and to prevent, abate, or control pollution as an immediate response to an emergency provided the waste is ultimately taken to a hazardous waste facility as specified in part 7045.0219, subpart 5, item B, subitem (8);

[For text of items K to Q, see M.R. 1989]

7045.0121 TREATABILITY STUDY EXEMPTIONS.

Subpart 1. **Applicability.** Except as provided in subpart 2, persons who generate or collect samples for the purpose of conducting treatability studies, as defined in part 7045.0020, are not subject to any requirement of parts 7045.0100 to

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7045.0397, or to the notification requirements of the Resource Conservation and Recovery Act, United States Code, title 42, section 6930, nor are such samples included in the quantity determinations of part 7045.0219 when:

A. the sample is being collected and prepared for transportation by the generator or sample collector;

B. the sample is being accumulated or stored by the generator or sample collector before transportation to a laboratory or testing facility; or

C. the sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

Subp. 2. **Conditions of exemption.** The exemption in subpart 1 is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

A. no more than 1,000 kilograms of nonacute hazardous waste, one kilogram of acute hazardous waste, or 250 kilograms of soils, water, or debris contaminated with acute hazardous waste is used for each process being evaluated for each generated waste stream;

B. each sample shipment does not exceed 1,000 kilograms of nonacute hazardous waste, one kilogram of acute hazardous waste, or 250 kilograms of soils, water, or debris contaminated with acute hazardous waste;

C. the sample is packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of either of the following subitems are met:

(1) the transportation of each sample shipment complies with United States Department of Transportation, United States Postal Service, and any other applicable shipping requirements; or

(2) if the United States Department of Transportation, United States Postal Service, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample: the name,

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mailing address, and telephone number of the originator of the sample; the name, address, and telephone number of the facility that will perform the treatability study; the quantity of the sample; the date of shipment; and a description of the sample, including its Environmental Protection Agency hazardous waste number;

D. the sample is shipped to a laboratory or testing facility that is exempt under this part, or has an appropriate permit under the Resource Conservation and Recovery Act, United States Code, title 42, section 6901 et seq., or interim status;

E. the generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:

(1) copies of shipping documents;

(2) a copy of the contract with the facility conducting the treatability study; and

(3) documentation showing the amount of waste shipped under this exemption; the name, address, and Environmental Protection Agency identification number of the laboratory or testing facility that received the waste; the date the shipment was made; and whether or not unused samples and residues were returned to the generator.

F. the generator reports the information required under item E, subitem (3), in its report to the commissioner as specified in part 7045.0296.

Subp. 3. **Facilities and sample handling.** A mobile treatment unit may qualify as a laboratory or testing facility subject to requirements of this subpart. Where a group of mobile treatment units are located at the same site, the limitations specified in this subpart apply to the entire group of mobile treatment units involved in treatability studies collectively as if the group were one mobile treatment unit. Samples undergoing treatability studies and the laboratory or testing facility conducting the treatability studies, to the extent the facilities are engaged directly in treatability studies and are not otherwise subject to the Resource

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Conservation and Recovery Act, United States Code, title 42, section 6901 et seq. requirements, are not subject to any requirements of Code of Federal Regulations, title 40, part 124; parts 7045.0100 to 7045.0685 except this part and applicable references; parts 7045.1300 to 7045.1380; chapter 7001; or to the notification requirements of the Resource Conservation and Recovery Act, United States Code, title 42, section 6930, providing that the conditions in items A to K are met.

A. No less than 45 days before conducting treatability studies, the facility operator notifies the commissioner in writing that it intends to conduct treatability studies under this item.

B. The laboratory or testing facility conducting the treatability study has an Environmental Protection Agency identification number.

C. No more than a total of 250 kilograms of hazardous waste sample of which no more than one kilogram may be acute hazardous waste, as received, is subjected to initiation of treatment in all treatability studies in any single day. The term "as received" refers to the hazardous waste sample in the form received in the shipment from the generator or sample collector for the purpose of evaluation in treatability studies.

D. The quantity of as received hazardous waste sample stored at the facility for the purpose of evaluation in treatability studies does not exceed 1,000 kilograms, the total of which can include 500 kilograms of soils, water, or debris contaminated with acute hazardous waste or one kilogram of acute hazardous waste. This quantity limitation does not include:

(1) treatability study residues; and

(2) treatment materials, including nonhazardous solid waste, added to as received hazardous waste sample.

E. Any unused sample or residues generated from the treatability study must be returned to the generator or sample collector, or must be sent to a designated facility with a current Environmental Protection Agency identification number within 90 days after completion of the treatability study or

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within one year of the date the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date occurs first.

F. The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

G. The facility maintains records for three years following completion of each treatability study conducted and these records track compliance with the limits on treatment rate, storage time, and quantity ~~limits~~ and also include the following information:

(1) the name, address, and Environmental Protection Agency identification number of the generator or sample collector of each hazardous waste sample;

(2) the date the waste sample shipment was received;

(3) the quantity of waste sample accepted;

(4) the quantity of as received waste sample in storage each day;

(5) the date the treatment study was initiated, and the amount of as received waste sample introduced to treatment each day;

(6) the date the treatability study was concluded; and

(7) the date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and its Environmental Protection Agency identification number.

H. The facility must keep, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

I. The facility prepares and submits a report to the commissioner by March 15 of each year that estimates the number

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of studies and the amount of waste expected to be used in treatability studies during the current year and includes the following information for the previous calendar year:

(1) the name, address, and Environmental Protection Agency identification number of the facility conducting the treatability studies;

(2) the types, by process, of treatability studies conducted;

(3) the names and addresses of persons for whom studies have been conducted, including their Environmental Protection Agency identification numbers;

(4) the total quantity of waste in storage each day;

(5) the quantity and types of waste subjected to treatability studies;

(6) when each treatability study was conducted; and

(7) the final disposition of residues and unused sample from each treatability study.

J. The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under parts 7045.0100 to 7045.0143, and, if so, are subject to chapters 7001 and 7045, unless the residues and unused samples are returned to the sample originator, in which case the sample originator is responsible to make this determination.

K. The facility notifies the commissioner by letter when the facility is no longer planning to conduct any treatability studies at the site.

7045.0255 ONE-TIME DISPOSAL REQUIREMENTS.

Except for persons who are generators under part 7045.0205, subparts 2 and 3, a person having hazardous waste subject to regulation under these parts who is only a hazardous waste generator for the one-time disposal of hazardous waste which is not currently being produced, must comply with this chapter

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except parts 7045.0205, subpart 3; 7045.0211; 7045.0212; 7045.0292; and 7045.0296. This kind of hazardous waste generator is exempt from parts 7045.0220 to 7045.0249 except that the generator must obtain an identification number and a management plan must be submitted to the commissioner for approval on the forms provided.

7045.0290 HAZARDOUS WASTE MANAGEMENT.

Subpart 1. **Proper hazardous waste management.** The generator shall ensure treatment, storage, or disposal of its hazardous waste in an on-site facility or delivery to an off-site treatment, storage, or disposal facility in accordance with all applicable requirements. The generator shall ensure that any off-site facility to which the waste is being shipped for treatment, storage, or disposal is capable of managing the waste and is authorized to receive the waste. If located in the United States, the facility used must be:

A. permitted to accept hazardous waste under the agency's permitting procedures;

B. in interim status under parts 7045.0552 to 7045.0642;

C. authorized to manage hazardous waste by the United States Environmental Protection Agency or by a state with a hazardous waste management program authorized by the Environmental Protection Agency; or

D. a facility that under part 7045.0125 beneficially uses, reuses, legitimately recycles, or reclaims the waste or treats the waste before beneficial use, reuse, legitimate recycling, or reclamation.

Subp. 2. **Improper hazardous waste management.** No generator shall relinquish control of a hazardous waste when the generator has reason to believe that the hazardous waste is not being properly managed.

Subp. 3. **Effect on liability.** Nothing in subpart 1 or 2 is intended to restrict or enlarge or affect in any way, any liability the generator may have to correct the mismanagement of

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the hazardous waste or pay for damages or alleviate any pollution caused by the mismanagement of the hazardous waste.

7045.0292 ACCUMULATION OF HAZARDOUS WASTE.

Subpart 1. **When allowed without a permit.** A generator may accumulate hazardous waste on-site without a permit or without having interim status if:

[For text of item A, see M.R. 1989]

B. the waste is placed in containers which meet the standards of part 7045.0270, subpart 4 and are managed in accordance with part 7045.0626; or in tanks provided the generator complies with the requirements of part 7045.0628 except part 7045.0628, subpart 9, item C, and subpart 12;

C. tanks and containers are clearly labeled with the waste accumulation start date; alternatively, containers are so labeled while a clearly designated and legible log of tank transactions which includes accumulation start dates is maintained; all of these dates must be available for inspection;

[For text of items D and E, see M.R. 1989]

F. containers in outdoor storage areas which hold free liquids are placed on a curbed containment surface which is impermeable to the wastes stored;

G. containers holding hazardous wastes which exhibit the characteristics of ignitability or reactivity or which exhibit the potential for creating vapor pressures capable of causing containers to leak, deform, or otherwise fail if not shaded are shaded from direct sunlight; however, nothing in this item shall relieve the generator from the obligation to comply with any local, state, or federal law governing storage of these wastes;

H. the requirements of parts 7045.0558 and 7045.0566 to 7045.0576 are fulfilled regarding personnel training, preparedness, prevention, and contingency planning; and

I. all waste containers and tanks are labeled with the words "Hazardous Waste" and a description that clearly identifies their contents to employees and emergency personnel.

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[For text of subp 2, see M.R. 1989]

Subp. 3. **Accumulation requiring a permit.** A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of parts 7045.0450 to 7045.0642 and the agency's permitting procedures in chapter 7001 unless the generator has been granted an extension to the 90-day period. An extension may be granted by the commissioner if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the commissioner on a case-by-case basis.

Subp. 4. **Accumulation of waste by generator.** The following apply to generators of hazardous waste:

[For text of item A, see M.R. 1989]

B. The generator must:

(1) comply with part 7045.0626;

(2) clearly label each container with the words "Hazardous Waste" and a description which clearly identifies its contents to employees and emergency personnel; and

(3) clearly label each container with the earliest of either the date on which the container became full or the date on which the volume limits prescribed in item A are reached.

C. A generator who accumulates either hazardous waste or acutely hazardous waste listed in part 7045.0135, subpart 4, item E in excess of the amounts listed in item A of this subpart at or near any point of generation must, with respect to the amount of excess waste, comply within three days with subpart 1 or, if applicable, part 7045.0219 or other applicable provisions of this chapter. During the three-day period for compliance the generator must continue to comply with item B.

7045.0454 PERSONNEL TRAINING.

[For text of subps 1 to 5, see M.R. 1989]

Subp. 6. **Personnel records.** The following documents and

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records must be maintained at the facility:

[For text of items A to C, see M.R. 1989]

D. records that document that the training or job experience required under subparts 1 to 5 has been given to, and completed by, facility personnel.

[For text of subp 7, see M.R. 1989]

7045.0526 USE AND MANAGEMENT OF CONTAINERS.

[For text of subps 1 to 6, see M.R. 1989]

Subp. 7. **Special requirements for ignitable or reactive waste.** Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line. Nothing in this subpart shall relieve the facility owner or operator from the obligation to comply with any local, state, or federal law governing storage of these wastes.

[For text of subps 8 and 9, see M.R. 1989]

7045.0558 PERSONNEL TRAINING.

[For text of subps 1 to 5, see M.R. 1989]

Subp. 6. **Personnel records.** The following documents and records must be maintained at the facility:

[For text of items A to C, see M.R. 1989]

D. Records that document that the training or job experience required under subparts 1 to 5 has been given to, and completed by, facility personnel.

[For text of subp 7, see M.R. 1989]

7045.0574 EMERGENCY PROCEDURES.

[For text of subps 1 to 4, see M.R. 1989]

Subp. 5. **Report on released material.** If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health or the environment outside the facility, the findings must be reported as provided in items A and B:

A. If the assessment indicates that evacuation of local areas may be advisable, the appropriate local authorities

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must be immediately notified, and the emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated.

B. The agency's emergency response unit must be immediately notified at the 24-hour telephone number, (612) 296-8100, and notification must also be given to either the governmental official designated as the on-scene coordinator for that geographical area in the applicable regional contingency plan under Code of Federal Regulations, title 40, part 1510 (1983) or to the National Response Center using their 24-hour toll free telephone number, (800) 424-8802. The report must include:

(1) name and telephone number of reporter;

(2) name and address of facility;

(3) time and type of incident;

(4) name and quantity of material involved, to the extent known;

(5) the extent of injuries, if any; and

(6) the possible hazards to human health or the environment outside the facility.

Subp. 6. **Duty to notify.** The emergency coordinator shall immediately notify the agency if the released hazardous waste may cause pollution of the air, land resources, or waters of the state. The emergency coordinator shall use the agency's 24-hour telephone number (612) 296-8100.

[For text of subps 7 and 8, see M.R. 1989]

7045.0626 USE AND MANAGEMENT OF CONTAINERS.

[For text of subps 1 to 4, see M.R. 1989]

Subp. 5. **Inspections.** The owner or operator shall inspect hazardous waste containers and areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors and shall keep a written record of the dates and findings of these inspections.

[For text of subp 6, see M.R. 1989]

Subp. 7. **Special requirements for ignitable or reactive**

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waste. Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line. Nothing in this subpart shall relieve the facility owner or operator from the obligation to comply with any local, state, or federal law governing storage of these wastes.

[For text of subp 8, see M.R. 1989]

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY

February 23 19 90

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY M J Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

FEB 26 1990

Joan Anderson Growe
Secretary of State

MJC

RULE REVIEW CHECKLIST

File No. 1666

Docket No. 05-0009-0697

DATE RECEIVED 2-9-90

ADOPTED W/O HEARING X

REVIEW DATE ~~2-18-90~~ 2-20-90

EMERGENCY RULE _____

DUE DATE 2-23-90

To Revisor on 2-13-90

REVISOR APPROVED 2-20-90

APPROVED 2-23-90 mjc

REVISOR DISAPPROVED _____

DISAPPROVED _____

FILED W/SEC. OF STATE _____

WITHDRAWN _____

RETURNED TO AGENCY _____

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4 Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
May 8, 1989 Date published in State Register
_____ Comments

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

✓ Board's Authorizing Resolution
Oct 30, 1989 Date adopted

_____ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
116.07 subd 4 Statutory Authority
NA Small Business Statement - no impact
NA Expenditure of public money statement
11-6-89 Signature

✓ Statement of Need and Reasonableness (if applicable)
✓ Small Business Statement doesn't apply
_____ Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
Nov 17 89 Date 30/25 days before adoption
✓ Notice attached
_____ Copy of rule or summary attached

✓ Publication in State Register
Nov 20 89 Date 30/25 days before adoption

_____ 180-day deadline from:
NA Effective date of law requiring rule (14.12) (both rules) not new not mandatory
✓ end of comment period (§ 14.26) (rules without hearing) Dec 20 - Feb 9
NA effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting
Jan 31 89 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
Jan 31 89 Date

✓ Written requests, submissions or comments request Nov 7, 89
Letter from U.S. Environmental Protection Agency

✓ Declaration of attorney
Alan Mitchell Name of SAAG representing agency

_____ Notice of Submission to Atty. Gen. (if applicable)

_____ Aff. of Mailing Notice to Atty. Gen. (if applicable)

Stat Authority

116.07 sub 4

Pollution control may adopt rules for the prevention, abatement, & control of air pollution

Did make changes justification in Statement of need and Reasonables

Pollution Control Agency

Solid and Hazardous Waste Division

Proposed Permanent Rules Relating to Hazardous Waste

Rules as Proposed

7001.0520 PERMIT REQUIREMENTS.

Subpart 1. **Permit required.** Except as provided in subpart 2, no person may do any of the following without obtaining a hazardous waste facility permit from the agency:

A. treat, store, or dispose of hazardous waste;

B. establish, construct, operate, ~~or~~ close, or provide post-closure care at a hazardous waste facility;

C. make an expansion, a production increase, or a process modification that results in new or increased capabilities of a permitted hazardous waste facility; or

D. operate a permitted hazardous waste facility or part of a facility that has been changed, added to, or extended, or that has new or increased capabilities.

Owners or operators of surface impoundments, landfills, land treatment units, and waste piles that received wastes after July 26, 1982, or that certified closure according to part 7045.0596, subpart 4, after January 26, 1983, must have ~~post-closure permits~~ a hazardous waste facility permit from the agency, unless they demonstrate closure by removal as provided in subparts 5 and 6. If a ~~post-closure~~ permit is required, the permit must address the applicable groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements in chapter 7045.

[For text of subps 2 to 6, see M.R. 1989]

7045.0020 DEFINITIONS.

[For text of subps 1 to 96, see M.R. 1989]

Subp. 96a. **Treatability study.** "Treatability study" means a study in which a hazardous waste is subjected to a treatment

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process to determine:

A. whether the waste is amenable to the treatment process;

B. what pretreatment might be required;

C. the optimal process conditions needed to achieve the desired treatment;

D. the efficiency of a treatment process for a specific waste or wastes; or

E. the characteristics and volumes of residuals from a particular treatment process.

Also included in this definition, for the purpose of the exemptions of part 7045.0121, are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous waste.

[For text of subps 97 to 109, see M.R. 1989]

7045.0075 PETITIONS.

[For text of subpart 1, see M.R. 1989]

Subp. 2. **Petitions to exclude a waste produced at a particular facility.** Petitions to exclude a waste produced at a particular facility are as follows:

[For text of items A to G, see M.R. 1989]

H. After receiving a petition for an exclusion, the agency or the commissioner may request any additional information which ~~it~~ may reasonably ~~require~~ be required to evaluate the petition. An exclusion will only apply to the waste generated at the individual facility and covered by the demonstration and will not apply to waste from any other facility. The agency may ~~exclude only part of the waste for which the demonstration is submitted when it has reason to believe that variability of the waste justifies a partial exclusion.~~ limit the exclusion to portions of the waste for which sufficient affirmative demonstration is provided when it has reason to believe that the hazardous characteristics may not

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be consistent throughout the waste or that the demonstration may not be representative of the entire petitioned waste.

[For text of subps 3 to 10, see M.R. 1989]

Subp. 11. **Petition for additional treatability study quantities.** The commissioner may grant requests for quantity limits in excess of those specified in part 7045.0121, subpart 2, item A, for up to an additional 500 kilograms of nonacute hazardous waste, one kilogram of acute hazardous waste, and 250 kilograms of soils, water, or debris contaminated with acute hazardous waste, to conduct further treatability study evaluation. Item A of this subpart prescribes the conditions which the petitioner must meet in order for the commissioner to grant a petition to increase the quantity limits for waste, destined for use in treatability studies, to a maximum of the limits described in this subpart. Item B of this subpart prescribes what the petition must contain.

A. Conditions for granting a petition to increase quantity limits of waste for use in a treatability study are:

(1) there has been an equipment or mechanical failure during the conduct of a treatability study;

(2) there is a need to verify the results of a previously conducted treatability study;

(3) there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or

(4) there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

B. The generator or sample collector must apply to the commissioner and provide in writing the following information:

(1) the reason why the generator or sample collector requires additional quantity of sample for the treatability study evaluation and the additional quantity needed;

(2) documentation accounting for all samples of

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hazardous waste from the waste stream that have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(3) a description of the technical modifications or change in specifications that will be evaluated and the expected results; and

(4) if a further study is required due to equipment or mechanical failure, the applicant shall include information regarding the reason for the failure or breakdown and include what procedures or equipment improvements have been made to protect against further breakdowns.

C. Upon receiving approval of the petition, the generator must manage the additional samples as specified in part 7045.0121.

7045.0120 EXEMPT WASTES.

The following wastes may be stored, labeled, transported, treated, processed, and disposed of without complying with the requirements of this chapter:

[For text of items A to I, see M.R. 1989]

J. wastes resulting from spills if the exemption is determined by the commissioner to be necessary to expedite the proper management of the spilled material and to prevent, abate, or control pollution as an immediate response to an emergency provided the waste is ultimately taken to a hazardous waste facility as specified in part 7045.0219, subpart 5, item G~~, subitems (1) to (4)~~ B, subitem (8);

[For text of items K to Q, see M.R. 1989]

7045.0121 TREATABILITY STUDY EXEMPTIONS.

Subpart 1. **Applicability.** Except as provided in subpart 2, persons who generate or collect samples for the purpose of conducting treatability studies, as defined in part 7045.0020,

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are not subject to any requirement of parts 7045.0100 to 7045.0397, or to the notification requirements of the Resource Conservation and Recovery Act, United States Code, title 42, section 6930, nor are such samples included in the quantity determinations of part 7045.0219 when:

A. the sample is being collected and prepared for transportation by the generator or sample collector;

B. the sample is being accumulated or stored by the generator or sample collector before transportation to a laboratory or testing facility; or

C. the sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

Subp. 2. **Conditions of exemption.** The exemption in subpart 1 is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

A. no more than 1,000 kilograms of nonacute hazardous waste, one kilogram of acute hazardous waste, or 250 kilograms of soils, water, or debris contaminated with acute hazardous waste is used for each process being evaluated for each generated waste stream;

B. each sample shipment does not exceed 1,000 kilograms of nonacute hazardous waste, one kilogram of acute hazardous waste, or 250 kilograms of soils, water, or debris contaminated with acute hazardous waste;

C. the sample is packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of either of the following subitems are met:

(1) the transportation of each sample shipment complies with United States Department of Transportation, United States Postal Service, and any other applicable shipping requirements; or

(2) if the United States Department of Transportation, United States Postal Service, or other shipping requirements do not apply to the shipment of the sample, the

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following information must accompany the sample: the name, mailing address, and telephone number of the originator of the sample; the name, address, and telephone number of the facility that will perform the treatability study; the quantity of the sample; the date of shipment; and a description of the sample, including its Environmental Protection Agency hazardous waste number;

D. the sample is shipped to a laboratory or testing facility that is exempt under this part, or has an appropriate permit under the Resource Conservation and Recovery Act, United States Code, title 42, section 6901 et seq., or interim status;

E. the generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:

(1) copies of shipping documents;

(2) a copy of the contract with the facility conducting the treatability study; and

(3) documentation showing the amount of waste shipped under this exemption; the name, address, and Environmental Protection Agency identification number of the laboratory or testing facility that received the waste; the date the shipment was made; and whether or not unused samples and residues were returned to the generator.

F. the generator reports the information required under item E, subitem (3), in its report to the commissioner as specified in part 7045.0296.

Subp. 3. **Facilities and sample handling.** A mobile treatment unit may qualify as a laboratory or testing facility subject to requirements of this subpart. Where a group of mobile treatment units are located at the same site, the limitations specified in this subpart apply to the entire group of mobile treatment units involved in treatability studies collectively as if the group were one mobile treatment unit. Samples undergoing treatability studies and the laboratory or testing facility conducting the treatability studies, to the extent the facilities are engaged directly in treatability

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studies and are not otherwise subject to the Resource Conservation and Recovery Act, United States Code, title 42, section 6901 et seq. requirements, are not subject to any requirements of Code of Federal Regulations, title 40, part 124; parts 7045.0100 to 7045.0685 except this part and applicable references; parts 7045.1300 to 7045.1380; chapter 7001; or to the notification requirements of the Resource Conservation and Recovery Act, United States Code, title 42, section 6930, providing that the conditions in items A to K are met.

A. No less than 45 days before conducting treatability studies, the facility operator notifies the commissioner in writing that it intends to conduct treatability studies under this item.

B. The laboratory or testing facility conducting the treatability study has an Environmental Protection Agency identification number.

C. No more than a total of 250 kilograms of hazardous waste sample of which no more than one kilogram may be acute hazardous waste, as received, is subjected to initiation of treatment in all treatability studies in any single day. The term "as received" refers to the hazardous waste sample in the form received in the shipment from the generator or sample collector for the purpose of evaluation in treatability studies.

D. The quantity of as received hazardous waste sample stored at the facility for the purpose of evaluation in treatability studies does not exceed 1,000 kilograms, the total of which can include 500 kilograms of soils, water, or debris contaminated with acute hazardous waste or one kilogram of acute hazardous waste. This quantity limitation does not include:

(1) treatability study residues; and

(2) treatment materials, including nonhazardous solid waste, added to as received hazardous waste sample.

E. Any unused sample or residues generated from the treatability study must be returned to the generator or sample collector, or must be sent to a designated facility with a current Environmental Protection Agency identification number

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within 90 days after completion of the treatability study or within one year of the date the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date occurs first.

F. The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

G. The facility maintains records for three years following completion of each treatability study conducted and these records track compliance with the treatment rate, storage time, and quantity limits and also include the following information:

(1) the name, address, and Environmental Protection Agency identification number of the generator or sample collector of each hazardous waste sample;

(2) the date the waste sample shipment was received;

(3) the quantity of waste sample accepted;

(4) the quantity of as received waste sample in storage each day;

(5) the date the treatment study was initiated, and the amount of as received waste sample introduced to treatment each day;

(6) the date the treatability study was concluded; and

(7) the date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and its Environmental Protection Agency identification number.

H. The facility must keep, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

I. The facility prepares and submits a report to the

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commissioner by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year and includes the following information for the previous calendar year:

(1) the name, address, and Environmental Protection Agency identification number of the facility conducting the treatability studies;

(2) the types, by process, of treatability studies conducted;

(3) the names and addresses of persons for whom studies have been conducted, including their Environmental Protection Agency identification numbers;

(4) the total quantity of waste in storage each day;

(5) the quantity and types of waste subjected to treatability studies;

(6) when each treatability study was conducted; and

(7) the final disposition of residues and unused sample from each treatability study.

J. The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under parts 7045.0100 to 7045.0143, and, if so, are subject to chapters 7001 and 7045, unless the residues and unused samples are returned to the sample originator, in which case the sample originator is responsible to make this determination.

K. The facility notifies the commissioner by letter when the facility is no longer planning to conduct any treatability studies at the site.

7045.0255 ONE-TIME DISPOSAL REQUIREMENTS.

Except for persons who are generators under part 7045.0205, subparts 2 and 3, a person having hazardous waste subject to regulation under these parts who is only a hazardous waste generator for the one-time disposal of hazardous waste which is

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not currently being produced, must comply with this chapter except parts 7045.0205, subpart 3; 7045.0211; 7045.0212; 7045.0292; and 7045.0296. This kind of hazardous waste generator is exempt from parts 7045.0220 to ~~7045.0255~~ 7045.0249 except that the generator must obtain an identification number and a management plan must be submitted to the commissioner for approval on the forms provided.

7045.0290 HAZARDOUS WASTE MANAGEMENT.

Subpart 1. **Proper hazardous waste management.** The generator shall ensure treatment, storage, or disposal of its hazardous waste in an on-site facility or delivery to an off-site treatment, storage, or disposal facility in accordance with all applicable requirements. The generator shall ensure that any off-site facility to which the waste is being shipped for treatment, storage, or disposal is capable of managing the waste and is authorized to receive the waste. If located in the United States, the facility used must be:

A. permitted to accept hazardous waste under the agency's permitting procedures;

B. in interim status under parts 7045.0552 to 7045.0642;

C. authorized to manage hazardous waste by the United States Environmental Protection Agency or by a state with a hazardous waste management program authorized by the Environmental Protection Agency; or

D. a facility that under part 7045.0125 beneficially uses, reuses, legitimately recycles, or reclaims the waste or treats the waste before beneficial use, reuse, legitimate recycling, or reclamation.

~~Subpart 1~~ Subp. 2. **Improper hazardous waste management.** No generator shall relinquish control of a hazardous waste when the generator has reason to believe that the hazardous waste is not being properly managed.

Subp. ~~2~~ 3. **Effect on liability.** Nothing in subpart 1 or 2 is intended to restrict or enlarge or affect in any way, any

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liability the generator may have to correct the mismanagement of the hazardous waste or pay for damages or alleviate any pollution caused by the mismanagement of the hazardous waste.

7045.0292 ACCUMULATION OF HAZARDOUS WASTE.

Subpart 1. **When allowed without a permit.** A generator may accumulate hazardous waste on-site without a permit or without having interim status if:

[For text of item A, see M.R. 1989]

B. the waste is placed in containers which meet the standards of part 7045.0270, subpart 4 and are managed in accordance with part 7045.0626~~, subparts 4 to 6~~; or in tanks provided the generator complies with the requirements of part 7045.0628 except part 7045.0628, subpart 9, item C, and subpart 12;

C. ~~the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container or the generator maintains a record of the accumulation starting date for each tank used for storage and the words "Hazardous Waste" are clearly labeled or marked and visible for inspection on each container or tank~~ tanks and containers are clearly labeled with the waste accumulation start date; alternatively, containers are so labeled while a clearly designated and legible log of tank transactions which includes accumulation start dates is maintained; all of these dates must be available for inspection;

[For text of items D and E, see M.R. 1989]

F. ~~all~~ containers in outdoor storage areas which hold free liquids are placed on a curbed containment surface which is impermeable to the wastes stored;

G. containers holding hazardous wastes ~~displaying the characteristic~~ which exhibit the characteristics of ignitability or reactivity or which exhibit the potential for creating vapor pressures capable of causing containers to leak, deform, or otherwise fail if not shaded are shaded from direct sunlight ~~in outdoor storage areas; and~~ however, nothing in this item shall

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relieve the generator from the obligation to comply with any local, state, or federal law governing storage of these wastes;

H. the requirements of parts 7045.0558 and 7045.0566 to 7045.0576 are fulfilled regarding personnel training, preparedness, prevention, and contingency planning; and

I. all waste containers and tanks are labeled with the words "Hazardous Waste" and a description that clearly identifies their contents to employees and emergency personnel.

[For text of subp 2, see M.R. 1989]

Subp. 3. **Accumulation requiring a permit.** A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of parts 7045.0450 to 7045.0642 and the agency's permitting procedures in chapter 7001 unless ~~he or she~~ the generator has been granted an extension to the 90-day period. An extension may be granted by the commissioner if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the commissioner on a case-by-case basis.

Subp. 4. **Accumulation of waste by generator.** The following apply to generators of hazardous waste:

[For text of item A, see M.R. 1989]

B. The generator must:

(1) comply with part 7045.0626~~, subparts 2, 3, and 4; and~~

(2) ~~mark~~ clearly label each container with the words "Hazardous Waste~~,~~" and a description which clearly identifies its contents to employees and emergency personnel; and

(3) clearly label each container with the earliest of either the date on which the container became full or the date on which the volume limits prescribed in item A are reached.

C. A generator who accumulates either hazardous waste or acutely hazardous waste listed in part 7045.0135, subpart 4,

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item E in excess of the amounts listed in item A of this subpart at or near any point of generation must, with respect to the amount of excess waste, comply within three days with subpart 1 or, if applicable, part 7045.0219 or other applicable provisions of this chapter. During the three-day period for compliance the generator must continue to comply with item B. ~~The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.~~

7045.0454 PERSONNEL TRAINING.

[For text of subps 1 to 5, see M.R. 1989]

Subp. 6. **Personnel records.** The following documents and records must be maintained at the facility:

[For text of items A to C, see M.R. 1989]

D. records that document that the training or job experience required under subparts 1 to ~~4~~ 5 has been given to, and completed by, facility personnel.

[For text of subp 7, see M.R. 1989]

7045.0526 USE AND MANAGEMENT OF CONTAINERS.

[For text of subps 1 to 6, see M.R. 1989]

Subp. 7. **Special requirements for ignitable or reactive waste.** Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line. Nothing in this subpart shall relieve the facility owner or operator from the obligation to comply with any local, state, or federal law governing storage of these wastes.

[For text of subps 8 and 9, see M.R. 1989]

7045.0558 PERSONNEL TRAINING.

[For text of subps 1 to 5, see M.R. 1989]

Subp. 6. **Personnel records.** The following documents and records must be maintained at the facility:

[For text of items A to C, see M.R. 1989]

D. Records that document that the training or job

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experience required under subparts 1 to ~~4~~ 5 has been given to, and completed by, facility personnel.

[For text of subp 7, see M.R. 1989]

7045.0574 EMERGENCY PROCEDURES.

[For text of subps 1 to 4, see M.R. 1989]

Subp. 5. **Report on released material.** If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health or the environment outside the facility, the findings must be reported as provided in items A and B:

A. If the assessment indicates that evacuation of local areas may be advisable, the appropriate local authorities must be immediately notified, and the emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated.

B. The agency's emergency response unit must be immediately notified at the 24-hour telephone number, (612) ~~296-7373~~ 296-8100, and notification must also be given to either the governmental official designated as the on-scene coordinator for that geographical area in the applicable regional contingency plan under Code of Federal Regulations, title 40, part 1510 (1983) or to the National Response Center using their 24-hour toll free telephone number, (800) 424-8802. The report must include:

(1) name and telephone number of reporter;

(2) name and address of facility;

(3) time and type of incident;

(4) name and quantity of material involved, to the extent known;

(5) the extent of injuries, if any; and

(6) the possible hazards to human health or the environment outside the facility.

Subp. 6. **Duty to notify.** The emergency coordinator shall immediately notify the agency if the released hazardous waste may cause pollution of the air, land resources, or waters of the

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state. The emergency coordinator shall use the agency's 24-hour telephone number (612) ~~296-7373~~ 296-8100.

[For text of subps 7 and 8, see M.R. 1989]

7045.0626 USE AND MANAGEMENT OF CONTAINERS.

[For text of subps 1 to 4, see M.R. 1989]

Subp. 5. **Inspections.** The owner or operator shall inspect hazardous waste containers and areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors and shall keep a written record of the dates and findings of these inspections.

[For text of subp 6, see M.R. 1989]

Subp. 7. **Special requirements for ignitable or reactive waste.** Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line. Nothing in this subpart shall relieve the facility owner or operator from the obligation to comply with any local, state, or federal law governing storage of these wastes.

[For text of subp 8, see M.R. 1989]

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STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Rules Governing the Management, Storage, Treatment and Disposal of Hazardous Waste; Minnesota Rules, Parts: 7001.0520, 7045.0020, 7045.0075, 7045.0120, 7045.0121, 7045.0255, 7045.0290, 7045.0292, 7045.0454, 7045.0526, 7045.0558, 7045.0574, and 7045.0626

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 management, treatment, storage, and disposal of hazardous waste. The rulemaking incorporates various clarifications, corrections, and revisions into existing state rule language and incorporates one set of federal hazardous waste regulations promulgated by the United States Environmental Protection Agency (hereinafter "EPA"). The rule parts affected by these proposed amendments and the subjects of those parts are listed below in order of their part numbers:

7001.0520 PERMIT REQUIREMENTS: clarifies existing permit provisions respecting post-closure care.

7045.0020 DEFINITIONS: incorporates the federal definition of "treatability study."

7045.0075 PETITIONS: incorporates a federal rule governing petitions to increase quantities of waste for treatability studies, and clarifies existing rules governing petitions to exclude from regulation certain tested wastes.

7045.0120 EXEMPT WASTES: corrects existing provisions affecting disposition of spilled wastes.

7045.0121 TREATABILITY STUDY EXEMPTIONS: incorporates the federal rule provisions governing such studies.

7045.0255 ONE TIME DISPOSAL REQUIREMENTS: corrects existing provisions governing the exemption of one time disposal of wastes.

7045.0290 HAZARDOUS WASTE MANAGEMENT: adds provisions which prescribe proper management of hazardous waste.

7045.0292 ACCUMULATION OF HAZARDOUS WASTE: revises and clarifies existing provisions which govern container management, labeling, containment surfaces, storage of special wastes, and hazard labeling.

7045.0454 PERSONNEL TRAINING: revises existing language governing the documentation of training.

7045.0526 USE AND MANAGEMENT OF CONTAINERS: revises existing language governing storage of ignitable or reactive wastes.

7045.0558 PERSONNEL TRAINING: (see 7045.0454 for identical revision)

7045.0574 EMERGENCY PROCEDURES: corrects error in existing rules governing reporting of emergencies.

7045.0626 USE AND MANAGEMENT OF CONTAINERS: revises existing language governing inspections and their documentation, and revises language which governs the storage of ignitable or reactive wastes (see 7045.0526 for identical revision).

The federal rule governing treatability studies was promulgated by EPA under the authority of the Resource Conservation and Recovery Act (RCRA). The amendments to existing state rules are proposed pursuant to the Agency's authority under Minnesota Statutes § 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.

Minnesota Statutes Chapter 14 (1988) requires the proposing agency to make an affirmative presentation of facts establishing the need for, and the reasonableness of, the rules or amendments proposed. In general terms, this means that the agency must state the reasons for its proposal, and the reasons must not be arbitrary or capricious. Here, need has come to mean that a problem exists which requires administrative attention, and reasonableness to mean that the solution proposed by the agency is appropriate.

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

The need for these amendments to the Agency's rules governing the management, treatment, storage, and disposal of hazardous waste is broadly satisfied in either of the following precepts: (1) the need for consistency with the federal hazardous waste program and within existing state rules; and (2) the need to update the hazardous waste regulations so they continue to be protective of human health and the environment. These are discussed below:

A. Need for Consistency with Federal Regulations.

In 1976, Congress adopted 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 must adopt rules that are "equivalent" to the federal regulations to foster consistency of hazardous waste regulation among the states. EPA has defined equivalent to mean that the state requirements are at least as stringent as federal requirements. In terms of consistency, 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 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. Generally, the federal regulations promulgated under RCRA do not take effect in Minnesota until state rules are amended to incorporate the federal rules.

States may maintain more stringent hazardous waste regulations than those regulations either promulgated by EPA or not addressed by EPA. One effect on generators involved in interstate commerce is that they must often comply with separate sets of these regulations from various regulating authorities. The Agency, recognizing that there are benefits to providing consistency in these regulations, seeks to incorporate federally promulgated language into Minnesota's hazardous waste rules to the extent practicable.

Incorporation of the federally promulgated rule governing treatability studies was adopted verbatim except where minor changes were required in order to provide consistency with Minnesota rule format and usage, and where minor clarifying language was added. This provision was adopted into Minn. Rules

pts. 7045.0020 (Definitions), 7045.0075 (Petitions), and the new part 7045.0121 (Treatability Study Exemption).

B. Need for Rules Protective of Human Health and the Environment.

The federal rule addressing treatability studies is designed by EPA to promote research and development of innovative technologies for managing hazardous waste. Human health and the environment benefit from improved hazardous waste management technologies derived as a result of the research this provision is designed to promote. The amendments to existing Minnesota rule language are based on deficiencies identified by various people who use or are affected by the existing rules. These amendments revise, clarify, and rectify the parts of the rules identified as being deficient or in error. These amendments will help regulators, generators, and facility owners and operators to insure continued protection of human health and the environment by providing clear, correct, and strong hazardous waste rule language.

III. REASONABLENESS OF THE PROPOSED AMENDMENTS

The Agency is required by Minn. Stat. § 14 (1988) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules or amendments. The Agency proposes to incorporate a federal rule promulgated by EPA as part of this rulemaking. A complete discussion of the reasonableness of the federal rule is presented in Exhibit 1 listed in Part VII of this document, which is hereby incorporated by reference. The reasonableness of the proposed amendments to the state hazardous waste rules is discussed below in the order of their Minnesota Rules part numbers.

7001.0520 PERMIT REQUIREMENTS

Existing language in subpart 1 of this part sets forth activities which require persons to obtain a hazardous waste facility permit from the agency. Item B of subpart 1 lists activities requiring a permit; namely, anyone who

would "...establish, construct, operate, or close a hazardous waste facility."

The amendment of item B reiterates that those who would "provide post-closure care" are also required to obtain permits. It is reasonable to reiterate this requirement in this list because it provides completeness to the list of activities requiring a permit. This requirement is set forth in existing language at the end of this subpart. It removes a possible source of confusion and keys the reader to read further for details of applicability.

The last paragraph of subpart 1 states, "Owners or operators...that received wastes after July 26, 1982, or that certified closure according to part 7045.0596, subpart 4, after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal as provided in subparts 5 and 6. If a post-closure permit is required, the permit must address..."

The amendment eliminates the use of the phrase "post-closure permit." The reason for this change is that in the opening paragraph of subpart 1, the subject permit is referred to as a "hazardous waste facility permit." Referring to this same permit as a "post-closure permit" in the last paragraph of this subpart could be misinterpreted to mean there are separate permits involved. The single hazardous waste facility permit includes provisions for language to reflect post-closure care. It is reasonable to eliminate a possible source of confusion which results from the existing language.

7045.0020 DEFINITIONS

This rule contains the definitions of a number of words and terms that are used throughout chapter 7045. It is generally reasonable to include definitions in the proposed rules to provide a consistent interpretation of terms used by all parties. Where the intended meaning of terms can be understood differently by persons, depending on their backgrounds, it is important that one meaning be established. By defining potentially confusing

terms, the Agency provides the regulated community with an understanding of what is expected of them in order to comply with the proposed rules.

This addendum incorporates a federal definition for the term "Treatability study" into Minn. Rules pt. 7045.0020, subp. 96a, which is equivalent to the federal definition under 40 CFR § 260.10. This is a study in which a hazardous waste is subjected to a treatment process to determine amenability to the process, pretreatment requirements, optimal treatment conditions, treatment efficiencies, or the characteristics of residuals from the process. Also included in this definition, for the purposes of the exemptions of part 7045.0121, are liner compatibility studies, corrosion studies, and other material compatibility studies and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous waste.

It is reasonable to define the term treatability study to clarify what constitutes such a study and to clarify what types of related studies are exempt from regulation under the balance of the hazardous waste rules. It is also reasonable to adopt this definition for consistency among the states.

7045.0075 PETITIONS

Existing language in part 7045.0075, subpart 2, sets forth provisions for petitioning the commissioner to exclude a waste from regulation under Chapter 7045. Item H of this subpart addresses the following: it provides the commissioner or the agency the right to require additional information to support a petition review; it limits the scope of the exclusion to that waste at a particular facility demonstrated to be entitled to the exemption; and it provides the agency the right to limit the exclusion to demonstrated portions of the petitioned waste when it has reason to believe that the waste may exhibit variable hazard characteristics.

The purpose of amending subpart 2.H. is to clarify those three objectives. The new language more specifically provides that the Agency will examine the variability of a waste when reviewing a petition for exemption. If the Agency is not assured that the waste is entitled to be exempt, the petition will be denied or granted only in part. This amendment does not change the existing intent of the rule.

The amendment proposed for subpart 11 of this part incorporates federal language from the treatability study provisions. This language governs petitioning for increased waste sample quantities under the treatability study provision. Item A of this subpart sets forth the conditions under which a petition may be considered. Item B sets forth the items which the petition must contain.

This provision was adopted verbatim except where revisions were made in accordance with comments provided by the Revisor's Office to correct an inconsistency with Minnesota rulewriting guidelines regarding the limiting of discretionary power. The existing federal rule gives the state decision maker excessive discretionary power. Language was made more specific in the second and third sentences of the introductory paragraph--from that of stating conditions for considering petitions to that of specifying conditions for granting petitions. Also, a non-specific requirement which would have been subitem (5) of item B, which stated that "the commissioner can require such other information as is deemed necessary," is deleted from the rule.

Adopting this portion of the federal provision governing treatability studies in this part is reasonable as it provides consistency in the way Chapter 7045 is organized. The revisions to this provision are reasonable in order to provide a level of discretionary power consistent with that of other

Minnesota rules. A discussion of the reasonableness of the federal rule is presented in Exhibit 1 as listed in Part VII of this document.

7045.0120 EXEMPT WASTES

This part describes wastes which may be stored, labeled, transported, treated, processed, and disposed of without complying with the requirements of Chapter 7045. Item J governs conditions for exempting spilled wastes and how the waste is ultimately disposed of.

Existing language incorrectly cites a non-existing item and subitems. The proposed amendment cites Minn. Rule pt. 7045.0219, subpart 5, item B, subitem (8), which prescribes proper waste management. The amendment is reasonable because it retains the original intent of, and rectifies an error in, existing rule language and eliminates a potential source of confusion.

7045.0121 TREATABILITY STUDY EXEMPTIONS

This new part 7045.0121 (Treatability Study Exemptions) incorporates federal provisions governing treatability studies under United States Code, title 42, section 261.4, paragraphs [e] and [f]. These provisions were published as an immediately effective final rule in the Federal Register on July 19, 1988 (see Exhibit 1). The rule exempts persons who generate or collect samples for the purpose of conducting treatability studies from regulation under the hazardous waste provisions and from the notification requirements of the Resource Conservation and Recovery Act, United States Code, title 42, section 6930.

Laboratories and testing facilities conducting treatability studies are exempted from requirements for obtaining a treatment permit; however, EPA emphasizes that the purpose of this exemption is for conducting treatability studies, not for the commercial management of hazardous waste. Facilities for which an excessively large number of studies need to be conducted, or those

having numerous treatment units on which many concurrent studies may be conducted will fall under the requirements of existing provisions for obtaining a Research, Development, and Demonstration permit under Minn. Rules pt. 7001.0712.

Incorporation of this federal provision is optional but strongly encouraged by EPA in authorized states such as Minnesota. It is beneficial and reasonable to adopt the rule for purposes of maintaining program equivalency and for the reasons EPA provides; that is, that it will facilitate evaluation of remediation alternatives for CERCLA clean ups and the RCRA Corrective Action Program and will help speed research and development for treatment alternatives to land disposal and waste minimization, recycling, and reuse.

This federal language was adopted verbatim except for minor additional language and format modifications necessary to provide clarity and consistency with existing Minnesota rules. Appropriate portions of the federal rule were placed into existing Minn. Rules pts. 7045.0020 (Definitions) and 7045.0075 (Petitions). The balance of the federal rule was placed into this new part 7045.0121 (Treatability Study Exemption). The proposed amendments meet the EPA requirement for equivalent language.

Revisions to the federal language to provide format consistency and language clarity are reasonable because they provide consistency with existing Minnesota rules and they make the rules more understandable. The federal discussion of the reasonableness of the rule is presented in Exhibit 1 as listed in Part VII of this document.

7045.0255 ONE TIME DISPOSAL REQUIREMENTS

Existing language in this part erroneously includes its own part number in a range of parts from which certain one-time generators are exempted. The

amendment rectifies this condition. The amendment is reasonable because it corrects an error in the rule and eliminates potential confusion.

7045.0290 HAZARDOUS WASTE MANAGEMENT

The existing part contains two subparts which address improper management and liability due to mismanagement of hazardous waste. Specifically, these parts provide that the generator must not relinquish control of waste when there is reason to believe the waste is not being properly managed and that the generator may be held liable in the event the waste is mismanaged. The amendment adds a new subpart which prescribes proper waste management.

Proposed language is consistent with related language in Minn. Rules pt. 7045.0219 (Special Requirements for Small Quantity Generators of Hazardous Waste), subp. 5, item B, subitem (8). It clarifies the responsibilities of the generator to assure that waste is managed in accordance with all applicable requirements both at on-site and off-site facilities.

The proposed amendment is reasonable because it clarifies that which constitutes proper waste management. With this amendment, the generator has a basis for determining whether waste is being properly managed, and the greater specificity of the language eliminates confusion.

7045.0292 ACCUMULATION OF HAZARDOUS WASTE

Subpart 1 of part 7045.0292 lists conditions under which generators may accumulate hazardous waste on site without obtaining a permit or being regulated under interim status rules. These conditions are spelled out in items A to I of this subpart. Items B, C, F, G, H, and item I are amended in this rulemaking and are discussed in order below.

Item B of subpart 1 discusses acceptable containerization and management practices. It states that containers are to be "...managed in accordance with part 7045.0626 (Use and Management of Containers), subparts 4 to 6;..." The

amendment revises this language to require management in accordance with all the subparts of part 7045.0626. The subparts of part 7045.0626 govern: 1) conditions under which container provisions apply (scope); 2) container specifications; 3) requirement to use containers compatible with the types of wastes stored; 4) general container management; 5) container inspection; 6) requirements for separating incompatible wastes or their residues; 7) special storage requirements for ignitable or reactive wastes; and 8) requirements for closing a storage facility (closure).

It is reasonable to require compliance with the entire part 7045.0626 because the additional subparts do not appear particularly burdensome and following these provisions could significantly reduce the potential for hazard exposures and waste mismanagement.

Item C of subpart 1 governs the recording of waste transactions for wastes stored in tanks and containers and the labeling of these tanks or containers with the words "Hazardous Waste." Generators who store hazardous wastes in tanks and containers really have two unique and separable conditions to comply with. These two requirements are to maintain a record of the date the generator begins to accumulate waste in the tank or container and to label the tank or container with the words "Hazardous Waste."

Therefore, the first amendment to this item removes the language requiring tanks or containers to be labeled with the words "Hazardous Waste" from item C and places it into a separate new item I. This is reasonable since the items in this subpart constitute a list of conditions, and providing a separate item for each condition provides clarity and consistency with the rest of the subpart and removes potential confusion.

The second amendment to item C addresses the requirement for record-keeping regarding the accumulation start date of the waste. The existing

language provides that the accumulation start date must be clearly marked and visible for inspection on each container and that a record of the accumulation start date must be kept for all tanks.

The proposed amendment revises this language to clarify and affirm that the generator is responsible for maintaining these prescribed records of accumulation start dates and keeping them available for inspection. The amendment allows generators using tanks to either label the accumulation start date on the tanks in the same fashion as for containers or to keep a separate record. If a separate record for tanks is kept, the record must be in the form of a log.

It is reasonable to clarify the language in item C. This was accomplished by changing the sentence structure to use active voice, limiting the focus of the item to recording and presenting accumulation start dates, and clarifying what is expected in terms of recording and presenting these dates. It is further reasonable to allow the generator the choice of labeling tanks in the same fashion as containers when the same recordkeeping objectives are achieved.

Item F of subpart 1 states "...all containers in outdoor storage areas which hold free liquids are placed on a curbed surface which is impermeable to the wastes stored;..." The amendment removes the word 'all' in order to provide consistency with common usage in Minnesota rules. It also inserts the word 'containment' into the phrase "curbed [containment] surface" in order to clarify the purpose of the 'curbed surface.' It is reasonable to revise this item for the sake of consistency and clarity.

Item G of subpart 1 addresses special storage requirements for wastes exhibiting ignitability. Existing language provides that "...containers of hazardous waste displaying the characteristic of ignitability are shaded from

direct sunlight in outdoor storage areas..." This language is unclear respecting whether the test for ignitability applies to the containers or to the hazardous waste they may contain. The proposed amendment clarifies that it is the characteristics of the waste that are of concern. Also, the Agency has found during inspections that the waste's potential for reactivity and its potential for developing high vapor pressures may also be affected by shading. The tendency of these waste characteristics to cause a container to fail is exacerbated by the heating effects of exposure to direct sunlight. The rule is proposed to be changed to include wastes with these characteristics as well. Comprehensive codes exist under various auspices which also govern storage of these wastes.

The amendment first clarifies that the storage requirement is for containers that hold wastes which exhibit specified characteristics. Next, the amendment extends this requirement to include those wastes which exhibit the characteristic of reactivity, or which exhibit the potential for creating vapor pressures capable of causing a container to fail if not shaded. Finally, the amendment adds language which clarifies that this provision does not relieve facilities from having to comply with fire, building, or other applicable codes established by other governmental bodies, such as a municipality or the State Fire Marshal, with jurisdiction in this area.

The amendment is reasonable in that it clarifies language in this item. It is reasonable, and consistent with the original intent of the provision, to extend this provision to wastes exhibiting characteristics for which the capacity to damage their container can be diminished by shading. Finally, it is reasonable to provide clarification that this provision does not relieve the facility from complying with other applicable codes which might regulate storage of these materials.

Item H of subpart 1 is amended in order to accommodate the addition of item I in this subpart. The amendment replaces existing ending punctuation with "; and" to accommodate the new item I. This is reasonable in that it prevents a punctuation error.

Item I of subpart 1 is created by relocating a provision--that of labeling containers with the words "Hazardous Waste"--from existing language in item C of this subpart. Also, a new provision requiring generators to label containers with the identification of their contents is added to this item.

The discussion of reasonableness for relocating a condition from item C is provided in the reasonableness discussion for item C above. A provision requiring content labeling is reasonable because it does not constitute a significant burden in light of the widespread use of easily marked labels, it provides employees and emergency personnel with information important to their safe handling of these containers, and it provides generators and inspectors with a means of tracking whether certain waste streams might be more effectively managed.

Subpart 3 of part 7045.0292 governs situations in which the generator must obtain a permit due to accumulation. The amendment is reasonable as it replaces the phrase, "he or she" with the phrase, "the generator" which more clearly describes who the condition applies to.

Subpart 4 of part 7045.0292 governs accumulation of hazardous wastes at their point of generation (satellite containers). Item B of subpart 4 lists conditions generators must meet regarding container management. Existing language in subitem (1) of item B requires compliance with the Use and Management of Containers provisions set forth in part 7045.0626, subparts 2, 3, and 4.

As was done, and discussed above, for item B of subpart 1 of this same part 7045.0292, the amendment extends requirements of this provision to include all of part 7045.0626 (adding the provisions in subparts 1, 5, 6, 7, and 8).

It is reasonable to require compliance with the entire part 7045.0626 because the additional subparts do not appear particularly burdensome and following these provisions could significantly reduce the potential for hazard exposures and waste mismanagement.

Subitem B(2) of subpart 4 of this part addresses labeling of container contents. Existing language requires each container to be marked with the words "Hazardous Waste."

As provided in, and discussed for, proposed item I of subpart 1 of this part above, a new provision requiring generators to label containers with the identification of their contents is added to this item.

Also as discussed above, the Agency believes that this provision is reasonable because it does not constitute a significant burden in light of the widespread use of easily marked labels, it provides employees and emergency personnel with information important to their safe handling of these containers, and it provides generators and inspectors with a means of tracking whether certain waste streams might be more effectively managed.

A new subitem (3) for subpart 4.B. is created from a provision relocated from the final sentence in item C of this subpart. Existing language prescribes labeling containers with the date they began to hold excess waste. This language is potentially confusing. The proposed revision of this relocated provision requires labeling containers with the earliest of either the date the container becomes full or the date on which the volume limits prescribed in item A are reached.

Relocating this condition is reasonable because item B already lists conditions addressing container labeling and item C, which otherwise addresses storage limits, already references the conditions provided in item B. The amendment is reasonable in that it provides clarity to language which is otherwise potentially confusing.

Existing language in the first sentence of item C of subpart 4 of part 7045.0292 refers the reader to another part. A clarifying phrase is added to this sentence to bring the reader back from the preceding reference. Adding this clarifying phrase is reasonable because it eliminates a possible point of confusion.

7045.0454 PERSONNEL TRAINING

Subpart 6 lists types of personnel records related to hazardous waste which must be maintained at the facility. Existing language in item D requires generators to document the mandatory training of facility personnel regarding hazardous wastes with which they deal in their jobs. The existing requirement to document that appropriate personnel have completed training required under subparts 1 to 4 is erroneous and should read, "...subparts 1 to 5." The amendment is reasonable because it corrects an apparent error and retains the intent of the rule. This amendment will not result in a significant burden to the regulated community.

7045.0526 USE AND MANAGEMENT OF CONTAINERS

Subpart 7 addresses special storage requirements for ignitable and reactive wastes. Existing language is derived from federal language which requires that containers holding these wastes must be stored at least 50 feet from the facility's property boundary. The Agency recognizes that the setback requirement is not practicable in some instances due to physical property constraints (such as for properties 100 feet wide or less). The intent of this

federally promulgated requirement is the protection of public safety. There are existing laws under other authorities which address this same intent regarding storage of these wastes in Minnesota.

For example, in Minnesota the Uniform Fire Code addresses storage of both hazardous materials and of flammable and combustible liquids. It regulates containers and their storage both inside and outside of buildings everywhere in the state. The Uniform Building Code works in conjunction with these fire codes to regulate quantities and storage conditions statewide when containers are stored under a roof (enclosed or non-enclosed structures). There is an established inspection and enforcement capability associated with these codes.

The intent of the setback provision to protect public safety is comprehensively addressed by existing law in Minnesota. While Minnesota is not proposing at this time to replace or substitute existing law regarding the federal setback requirement, it is reasonable to amend existing language to make it clear that the ability to comply with the setback requirement does not relieve facility owners and operators from having to comply with other applicable local, state, or federal laws. This provides facility owners and operators a clear understanding that the setback is not the only requirement regulating storage of these wastes.

7045.0558 PERSONNEL TRAINING

See the discussion under part 7045.0454 for an identical revision proposal.

7045.0574 EMERGENCY PROCEDURES

The 24-hour telephone number listed in subparts 5 and 6 for reporting to the agency's emergency response unit is erroneous. The amendment replaces the erroneous (612) 296-7373 number with the correct (612) 296-8100 number. The amendment reasonably provides the correct telephone number.

7045.0626 USE AND MANAGEMENT OF CONTAINERS

First, existing language in subpart 5 of this part provides for inspections of areas where hazardous waste containers are stored. The proposed amendment provides that the hazardous waste containers themselves must also be inspected, and that the dates and findings of these inspections must be documented.

The amendment is reasonable because it clarifies the original intent of the provision, namely, that inspections are conducted to identify container failures. This intent is evidenced by existing language in this subpart requiring visual inspection for "leaks and for deterioration caused by corrosion or other factors." It is also reasonable to require documentation of these mandatory inspections. This provides evidence that the inspections are being conducted and of their results.

Second, see discussion for subpart 7 of part 7045.0526 of this rulemaking for an identical proposed amendment of subpart 7 of part 7045.0626 pertaining to the existing setback requirement.

IV. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

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

The volume of hazardous waste generated by a business is not necessarily proportional to the size of the business. The size of the business may have little relation to its potential for mismanagement or for potential adverse effects on human health and the environment. A large business may generate little hazardous waste and, conversely, a small business may generate large amounts of hazardous waste. Therefore, while it is reasonable to weigh the effects of rules on small businesses, it may not be reasonable to base hazardous waste regulations simply on the size of a business.

The federal rule governing treatability studies was promulgated by EPA under the authority of RCRA. This federal rule must be incorporated into Minnesota rules and EPA must authorize the state to administer it before it takes effect in Minnesota. EPA strongly encourages adoption of this optional rule. Other existing rule language amended in this rulemaking was originally promulgated by EPA pursuant to RCRA and/or HSWA. The amendments meet the EPA requirement for equivalency.

Proposed incorporation of the federal rule and amendments to existing state hazardous waste rules will impose equivalent and nearly identical requirements on small businesses as would be in effect if the federal program were in effect in lieu of the state program. Therefore, the agency believes these amendments are justifiable and do not present an unreasonable burden to small businesses.

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 practicability 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 these amendments, the agency has given due consideration to available information as to any economic impacts the proposed amendments would impose. The federally promulgated treatability study exemption will reduce the financial burden to those conducting such studies and may result in new, more cost-effective hazardous waste management technologies. Further, the state hazardous waste program is substantially equivalent to the federal hazardous waste program. The federal regulations promulgated under RCRA and HSWA would govern in the absence of an equivalent state program. Where proposed amendments make additional reasonable requirements, the associated burdens are not significant in nature. Therefore, incorporating and correcting these federally based provisions in the state rules will not impose significant additional burdens to the regulated community.

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. EXHIBITS

1. Federal Register (Vol. 53, No. 138, dated Tuesday, July 19, 1988) entitled: Identification and Listing of Hazardous Waste Treatability Studies Sample Exemption.

Date: October 13, 1989

for Ann M Klumac
Gerald L. Willet
Commissioner

EXHIBIT 1

federal register

Tuesday
July 19, 1988

Part IV

Environmental Protection Agency

40 CFR Parts 260 and 261
Identification and Listing of Hazardous Waste Treatability Studies Sample Exemptions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[SWH-FRL-3350-4]

Identification and Listing of Hazardous Waste Treatability Studies Sample Exemption

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On September 18, 1987, the Environmental Protection Agency (EPA) published a Notice of Data Availability, which requested comment on whether the sample exclusion provision should be expanded to include waste samples used in small-scale treatability studies. The sample exclusion provision exempts from regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA) waste samples collected solely for the purpose of monitoring or testing to determine their characteristics or composition. The Notice also presented information and requested comment concerning the appropriate limitations that could be imposed if the sample exclusion were expanded.

As a result of comments received, EPA is today issuing a final rule that conditionally exempts waste samples used in small-scale treatability studies from Subtitle C regulation. Consequently, generators of the waste samples and owners or operators of laboratories or testing facilities conducting such treatability studies will be exempt from the Subtitle C hazardous waste regulations, including the permitting requirements, when certain conditions are met.

DATE: This regulation becomes effective on July 19, 1988.

ADDRESSES: The OSW Docket is located in the sub-basement at the following address and is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays: EPA RCRA Docket (sub-basement), 401 M Street, SW., Washington, DC 20460.

The public must make an appointment (to review docket materials) by calling (202) 475-9327. Refer to Docket number F-88-TSSE-FFFFF when making appointments to review any background documentation for this rulemaking. Copies cost $0.15 per page. Copies of the background document entitled "Summary and EPA Responses to Public Comments on the September 18, 1987 Notice of Data Availability and Request for Comment, and the September 25, 1981 Interim Final Rule" are available for viewing in the OSW Docket Room. For Further documentation and information, see Docket Number F-87-TSEF-FFFFF.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline toll free at (800) 424-9346 in Washington, DC, or at (202) 382-3000. For technical information contact Mike Petruska, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475-9888.

SUPPLEMENTARY INFORMATION:

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I. Background

On September 25, 1981 (see 46 FR 47428), EPA issued an interim final rule that conditionally exempted from the Subtitle C hazardous waste regulations any waste samples collected solely for the purpose of monitoring or testing to determine their characteristics or composition. These regulations include the generator and transporter requirements of Parts 262 and 263 and the treatment, storage, and permitting requirements of Parts 264, 265, and 270. In particular, the regulations exempt waste samples from the Subtitle C requirements when: (1) The sample is being transported to the laboratory for testing or is being transported back to the sample collector after the testing; (2) the sample is being stored by the sample collector or laboratory before testing or after testing prior to its return to the generator; (3) the sample is being analyzed to determine its characteristics or composition; or (4) the sample is being stored at the laboratory for a specific purpose such as a court case or enforcement action. However, samples subject to the exemption must still comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or other applicable shipping requirements. The sample must be packaged so that it does not leak, spill, or vaporize from its packaging.

The Agency granted this exclusion because of the *de minimis* public health and environmental risks involved. In particular, the Agency found that certain incentives already existed that would assure protection of human health and the environment without requiring these samples to be subject to the full set of Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. These incentives include (1) the costs associated with sample collection, shipping, analysis, and storage; (2) the generator's need to obtain results of analyses to determine if and how they must comply with the RCRA hazardous waste requirements; and (3) the considerable likelihood that a testing laboratory would return the sample to the generator as part of a contractual agreement (partly based on the generator's desire to protect proprietary information and partly based on the testing laboratory's desire to avoid the costs of disposal), reducing the concern that the sample would be indiscriminately disposed. The preamble stated that the exclusion did not cover large-size samples that are used in treatability or other testing at pilot scale or experimental facilities. However, the preamble did not specify whether the exclusion applied to small- or bench-scale treatability studies at laboratories or other testing facilities. Today's final rule directly addresses this issue.

The preamble of the 1981 interim final rule also stated that the Agency had considered and rejected a quantity limit for the samples subject to the exclusion. Its basis for this was that the available information indicated that the size of samples shipped for characterization or analytical purposes usually did not exceed 1 gallon. Therefore, the Agency saw no need to set a specific quantity limit. However, the preamble also stated that EPA would consider imposing a

limit on sample size if comments or experience indicated that such a limit was necessary (46 FR 47427).

While the comments received on the 1981 interim final rule generally supported the exclusion for samples shipped for waste characterization, a large percentage of commenters also recommended that the sample exclusion provision be expanded to include waste samples used in treatability studies, including large-size samples used in pilot-scale units or at experimental facilities.

Furthermore, on June 2, 1987, the Hazardous Waste Treatment Council (HWTC) submitted a rulemaking petition requesting that the Agency promulgate regulations to provide limited exemptions from the permitting requirements of RCRA to facilities conducting treatability studies. The petition proposed a three-part solution: (1) Expand the sample exclusion provision to allow treatability tests to be conditionally exempted from regulation; (2) expand the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) permits exclusion at 40 CFR 300.68(a)(3) to include off-site treatability testing when performed at the direction of an EPA or State on-scene coordinator to implement a response consistent with CERCLA section 121; and (3) issue interim guidance to implement, at least in part, the suggested changes described in (1) and (2) above (*i.e.*, interpret the existing sample exclusion in 40 CFR 261.4(d) to include treatability studies, and issue interim guidance to on-scene coordinators regarding off-site treatability studies). The petition proposed several limitations for small-scale treatability studies. The petition also recommended regulatory changes that would allow large-scale treatability studies to be conducted provided that the facility complies with the manifesting requirements and certain interim status standards. (See section II.C., Limitations, discussed below.)

The petition asserted that immediate regulatory relief was needed because the present RCRA Subtitle C permitting requirements unnecessarily interfere with the experimentation and research necessary to evaluate the various treatment options for CERCLA cleanup activities. HWTC further argued that these same problems will have a similar effect on RCRA corrective action. Agency experience with the Superfund Innovative Technology Evaluation (SITE) program and CERCLA cleanup actions support the HWTC's assertion.

Based on these factors (*i.e.*, comments on the sample exclusion interim final rule, the HWTC petition, and EPA's own experience), EPA published a Notice of Data Availability and Request for Comment on September 18, 1987 (50 FR 35279). The Notice reopened the comment period on the earlier interim final rule and specifically asked whether EPA should expand the sample exclusion provision in 40 CFR 261.4(d) to include waste samples used in small-scale treatability studies. The Notice also presented information and requested comment concerning the appropriate limitations that could be imposed if the sample exclusion provision were expanded.

Almost all commenters to the notice recommended that the Agency expand the sample exclusion provision to include waste samples used in small-scale treatability studies. The commenters generally agreed that the Agency could promulgate such an exclusion and allow meaningful studies to be conducted because of the *de minimis* risk to human health and the environment. However, a number of commenters argued that the limitations discussed in the Notice were overly stringent and suggested that higher limitations be allowed.

Based on the Agency's own experience and the comments received, EPA is today issuing a final rule that conditionally exempts waste samples used in small-scale treatability studies from regulation under Subtitle C of RCRA. The Agency will address the second part of HWTC's petition concerning larger scale studies at a later date. The remainder of the preamble discusses the major comments received on the Notice of Data Availability and EPA's response to them. All other comments, both from the Notice of Data Availability and to the original interim final rule, are discussed in a background document that is available in the docket to this rulemaking. (See EPA RCRA docket address in preceding section.)

II. Discussion of Major Issues

A. Introduction

A total of 40 comments were received in response to the Notice of Data Availability. The commenters in general agreed with HWTC that the Agency should expand the sample exclusion provision to apply to waste samples used in small-scale treatability studies. However, there was a wide range of opinion as to the scope of activities that should be allowed under the exemption and the appropriate limitations that the Agency should impose. Before discussing these, however, it is appropriate to discuss the need and rationale for today's rulemaking.

1. *Need and Rationale for Today's Rulemaking*

In the Agency's experience, permitting requirements for offsite treatability studies have resulted in delays in evaluating remediation alternatives for both CERCLA site clean-ups and the RCRA corrective action program. Additionally, the current and upcoming Land Disposal Restrictions Program is another factor arguing strongly for a need to develop alternative treatment technologies.

The overriding objective of Congress in the 1984 RCRA Amendments—to reduce land disposal of hazardous wastes—has already resulted both in heavy demands for existing treatment technologies and in increased urgency for developing new and better treatment methods as an alternative to the land disposal of hazardous waste. In addition, developing techniques to minimize the generation of hazardous waste, and to promote recycling and reuse of waste, are all important Agency goals and Congressional mandates. EPA is committed to facilitating research and development activities that will help meet these objectives.

The Agency believes the current regulatory framework that sets forth RCRA permitting requirements for Subtitle C facilities is unnecessarily stringent for regulating certain activities, *e.g.*, small-scale treatability studies. As noted above, comments in 1981 suggested a need to extend the sample exclusion provision to treatability studies because of the low risk and the large benefits of conducting these studies if RCRA permits were not required.

The HWTC petition summarizes this position on behalf of many facilities that conduct treatability studies as part of their research activities. In addition, HWTC stressed that the development of new treatment capacity, needed to meet the demands placed on industry as the land disposal restrictions take effect, is not facilitated by the current regulations. The potential lack of treatment capacity, using either new or improved existing technologies, means that EPA may have to issue additional variances to the land disposal restrictions, posing an increased threat of ground water and surface water contamination.

Maintaining unnecessary regulatory barriers to conducting treatability studies is, therefore, contrary to the Agency's implementation of the mandated land disposal restrictions. Furthermore, these regulatory barriers send the wrong message to the regulated

community. The Agency intends to promote, not defeat, research and development in support of the national objectives to reduce land disposal of hazardous wastes and to increase reliance on waste minimization and treatment technologies that reduce risk to human health and the environment. However, the Agency remains pledged to carry out its primary statutory obligation to ensure that removing regulatory barriers does not result in unwarranted or increased risks to human health and the environment. The Agency has determined that this balance can be properly maintained in promulgating a RCRA exemption for small scale treatability studies.

2. *Determination of De Minimis Risk*

Since Congress passed RCRA in 1976, the Agency has developed and implemented a "cradle to grave" program to protect human health and the environment from the improper management of hazardous wastes. A principal purpose of the RCRA hazardous waste regulations is to ensure that hazardous wastes are safely transported to facilities properly designed and operated to manage these wastes in a manner that will minimize the threat to human health and the environment. Hazardous waste generators, transporters, and owners and operators of treatment, storage, and disposal facilities (TSDFs) each have specific responsibilities for properly managing those wastes defined as hazardous.

The Agency believes that it can exempt hazardous waste that is used in small-scale treatability studies from the RCRA hazardous waste regulations because a number of factors will combine to ensure that the risks to human health and the environment are *de minimis*. These factors include: (1) A limitation on the size of the sample that is exempted; (2) the high cost of collecting and shipping the sample; (3) a limitation on the quantity of waste that can be shipped at any one time; (4) the applicability of the Department of Transportation (DOT), U.S. Postal Service (USPS), or other regulations governing the transportation of hazardous materials; (5) a limitation on the amount of hazardous waste that can be stored at a laboratory or testing facility; (6) a limitation on the amount of hazardous waste that may be processed (*i.e.*, tested in a treatability unit) in any one day; (7) the prohibitive costs involved in conducting legitimate treatability studies as an alternative to commercial treatment and disposal; (8) a limitation on the time that a waste sample used in a treatability study or any residues generated from such studies may remain at the laboratory or testing facility without being subject to the hazardous waste regulations; (9) the RCRA requirement that any unused sample and residues from a treatability study must still be managed as a hazardous waste (if, in fact, it is still hazardous); and (10) certain reporting and recordkeeping requirements that will enable the Agency to conduct inspections and bring enforcement actions against persons who abuse this exemption. In addition, regulations and requirements administered by other Federal agencies such as the Occupational Safety and Health Administration (OSHA) also ensure proper management.

The Agency believes that all the above factors contribute to an argument for *de minimis* risk. Some factors, such as the sample size, shipment size, transportation standards, and storage limitations, directly relate to the *de minimis* risk in each phase of the treatability study process. Other factors such as the recordkeeping and reporting requirements and the one-time 1000 kg per waste stream limitation ensure that treatment and disposal of hazardous waste do not occur under the guise of conducting treatability studies.

More specifically, under the conditional exemption being promulgated today, the generator or sample collector may not ship more than one of the following in any single shipment: (1) 1000 kg of non-acute hazardous waste; (2) 1 kg of acute hazardous waste (see 40 CFR 261.33(e)); or (3) 250 kg of acute hazardous waste that is contained in contaminated soils, water, or some other contaminated medium. Since the shipments remain subject to DOT, USPS, or other applicable shipping regulations, they must be packaged and labeled in the same manner as other shipments of hazardous materials. One difference is that these waste samples will not require a manifest. EPA believes that a manifest is not required in this situation, since the generator is spending large sums of money to obtain the results of a treatability study. Thus, it is highly unlikely that the sample would be indiscriminately disposed. Furthermore, the generator or sample collector is likely to have a contractual arrangement with the laboratory or testing facility conducting the treatability study either to have the facility return any unused sample and/or any residues that are generated from the treatability study for subsequent manifesting and shipment to a designated facility (see 40 CFR 260.10) or recycling facility or to have the laboratory or testing facility directly manifest and ship the wastes to an appropriate designated facility within specified time limits. Unless the context otherwise requires, the use of this term in today's preamble and rule does not imply that the facility is required to be permitted or to have interim status. The generator must also maintain copies of the shipping papers and the contract with the testing facility for a period ending 3 years from the completion date of the study.

The operator of a vehicle transporting waste samples is still required to comply with the applicable DOT requirements, including notification of the National Response Center in the event of a hazardous material spill of more than a reportable quantity and initiation of cleanup measures in accordance with 49 CFR 171.15.

Owners and operators of a laboratory or testing facility conducting such treatability studies must comply with the limitations regarding shipment, storage, treatment rate, and disposition of unused sample and residues after completion of the studies. The overall limitations on storage and treatment rates, discussed later in today's preamble, are sufficiently restrictive to compel a laboratory or testing facility to carefully coordinate the size and timing of treatability sample shipments. The owners and operators of these laboratories or testing facilities must also comply with applicable regulations promulgated by OSHA.

Further business and financial incentives compelling a laboratory or testing facility to properly handle these samples include the cost-intensive nature of conducting treatability studies, the need to provide the client with documented test results, the desire of the laboratory or testing facility to maintain its corporate reputation, and the desire to avoid any liability. After the treatability study is completed, the owners or operators of a laboratory or testing facility must either return the unused sample and residues to the generator or manifest and ship them to a RCRA designated facility (if the material is a RCRA hazardous waste) within the time limitations specified. A laboratory or testing facility not operating within these limitations must comply with the appropriate RCRA requirements.

Finally, the Agency is stipulating recordkeeping and reporting requirements that will document compliance with the limitations and will allow the Agency to take enforcement action against persons who attempt to abuse the exemption. The specific reporting and recordkeeping

requirements are discussed later in today's preamble.

B. Scope of the Exemption

1. Definition of Treatability Study

In the Notice of Data Availability, the Agency included a definition of "treatability study" similar to that proposed by HWTC. According to this definition, a treatability study is one in which a relatively small amount of hazardous waste is subjected to a known treatment process to determine the following: (1) Whether the waste is amenable to a treatment process; (2) what pretreatment (if any) is required; (3) the optimal process conditions needed to achieve the desired treatment; (4) the efficiency of the treatment process; or (5) the characteristics and volume of residuals from a particular treatment process. (See 52 *FR* 35280.)

The commenters generally agreed with the definition of treatability study. However, many commenters expressed concern that the use of the term "known treatment process" was overly restrictive and might hinder the development of innovative technologies. Thus, these commenters recommended that the word "known" be deleted from the definition in the final rule. HWTC's proposed regulatory language did not include a restriction to "known" technologies.

The Agency agrees with these commenters. As stated earlier, it is important to promote the development of treatment technologies that will reduce the land disposal of hazardous waste and increase the reliance on waste minimization and treatment technologies that reduce risk to human health and the environment. In so doing, EPA does not want to restrict industry to the technologies that are already established or "known"; rather, it wants to promote the development of innovative technologies. Therefore, the Agency has modified the definition of "treatability study" accordingly. At the same time, it is concerned that the treatability study sample exemption may be improperly used as a means to avoid regulation when regulation is warranted. To prevent this, EPA has included specific language in the definition of treatability study to guard against such abuse. This language makes it clear that the exemption is for the examination of a treatment process and is not to be used for commercial treatment or disposal of hazardous waste. Furthermore, the Agency emphasizes that the definition of treatability studies covered under the exemption does not apply where the practice could result in a significant uncontrolled release of hazardous constituents to the environment. It would, therefore, include neither open burning nor any type of treatment involving placement of a hazardous waste on the land (*e.g.*, in situ stabilization).

Several commenters also suggested that the Agency list, in the rule, the types of treatment studies to be included in the final definition. Although the Agency can see some merit in this suggestion, it has decided not to incorporate a specific list into the regulations. EPA believes that such a list could hinder the development of innovative technologies. For example, if it included a list in the rule, the Agency would be required to go through rulemaking before new or innovative treatment technologies would get the benefit of the treatability exemption. As previously discussed, the Agency believes that as long as the limitations imposed in today's rule are met, any treatability study will pose a *de minimis* risk. Examples of the types of treatability studies included in the exemption are physical/chemical/biological treatment, thermal treatment (incineration, pyrolysis, oxidation, combustion) solidification, sludge dewatering, volume reduction, toxicity reduction, and recycling feasibility.

2. Inclusion of Liner Compatibility and Other Studies

In the Notice of Data Availability, the Agency solicited comment as to whether the exemption should include other waste testing studies, such as liner compatibility studies. Many commenters agreed that the exemption should be expanded to include other types of studies. The commenters argued that, in addition to liner compatibility studies, the exemption should also include studies of corrosion, toxicological and health effects, and other material compatibility studies (*e.g.* pumps and personal protective equipment). While such studies are not strictly treatability studies under the proposed definition, the commenters argued that waste testing is necessary to develop improved hazardous waste management technologies.

The Agency agrees with the commenters that such studies, although not strictly treatability studies, are necessary for the further development of hazardous waste management technologies. Furthermore, the Agency believes that such studies can be conducted using small quantities of hazardous waste under laboratory conditions. Also, these types of studies are subject to the same financial and business incentives for safe handling as are treatability studies. Therefore, with the imposition of the limitations in this final rule, these studies will involve only *de minimis* risk and need not be subject to RCRA permitting regulations. The Agency is, therefore, allowing the following types of studies to be conducted and exempted under the hazardous waste regulations: liner compatibility studies, corrosion studies, toxicological and health effects studies, and other material compatibility studies (*e.g.*, relating to leachate collection systems, geotextile materials, other land disposal unit requirements, pumps and personal protective equipment).

3. Effects on Exporters of Hazardous Waste

EPA, in today's rule, is exempting samples sent for treatability studies from Subtitle C requirements. These include the requirement to notify EPA prior to export of hazardous waste (40 CFR 262.50 *et seq.*). At the time export requirements were promulgated, EPA discussed in the preamble its rationale for allowing the export, without notification, of wastes exempt from manifesting requirements (51 FR 28664, August 8, 1986). In this discussion on export notification requirements, EPA specifically focussed on the sample exemption in 40 CFR 261.4(d).

The rule promulgated today expands the scope of this exemption as contemplated in 1986. For the same reasons discussed in the August 8, 1986, rule relating to § 261.4(d) samples (51 FR 28664 *et seq.*), exporters of treatability study samples who comply with the limitations of today's rule are also exempt from the export notification requirements of Subpart E of Part 262.

While the Agency is exempting these treatability study samples from the export notification requirements at this time, the Agency is revisiting the question as to whether it should exclude unmanifested waste from the export notification requirements and may modify its position in the future.

C. Limitations

In the Notice of Data Availability, the Agency requested specific comment on what types of limitations should be placed on the exemption if it were to be expanded to include treatability studies. In addition, EPA specifically requested comment on the limitations suggested by the HWTC in its petition. The HWTC suggested quantity limits for shipping, storage, and treatment of hazardous waste samples for the purpose of conducting a treatability study. In particular, the Notice suggested the following limits: (1) No shipment may

exceed 250 kg; (2) no more than 1000 kg of exempted waste (including residues derived from the treatability study) may be present at the laboratory or testing facility conducting the treatability study at any one time; and (3) no more than 250 kg of exempted waste may be introduced into the treatability study in any one day.

A wide range of opinions concerned appropriate limitations that would provide for meaningful treatability studies. While most commenters believed that the limitations they suggested were necessary to conduct treatability studies, no commenters provided data indicating that their suggested limits were protective of human health and the environment. The following indicates the range of quantity limits proposed by commenters for shipment, treatment, and storage:

Shipment:
- mean quantity: 554 kg
- standard deviation: 794 kg
- range: 250 to 4000 kg
- most frequently cited suggestion: 250 kg

Treatment:
- mean: 448 kg
- standard deviation: 417 kg
- range: 250 to 2000 kg
- most frequently cited suggestion: 250 kg

Storage:
- mean: 2000 kg
- standard deviation: 2285 kg
- range: 250 to 10,000 kg
- most frequently cited suggestion: 1000 kg

Many commenters were supportive of the limitations suggested by HWTC in its petition. However, some commenters argued that the limitations suggested in the notice were not sufficient; although these commenters provided no data suggesting that their limits were protective of human health and the environment, they maintained that larger quantities of waste sample were necessary to conduct treatability studies. In particular, some commenters argued that the storage limitations were unnecessarily restrictive. Additionally, some commenters urged that a higher treatability study limit was necessary as some of the treatability tests required quantities of waste in excess of 1000 kg. Finally, some commenters recommended that the Agency include a mechanism for approval of case-by-case variances from the HWTC quantity limitations or the quantity limitations ultimately chosen.

Nevertheless, all commenters generally agreed that suitable limitations combined with economic forces would prevent the exemption from becoming a means to circumvent the RCRA Subtitle C regulations for treatment and disposal of hazardous waste. Additionally, many commenters noted that it would not be economically feasible for a person to perform an endless series of tests, since treatability study costs are much higher than commercial treatment or disposal costs on a per pound basis. In particular, Shirco (TSEF-001) stated that most treatability tests had unit costs greatly in excess of costs associated with treatment and disposal options. Shirco cited an example where treatability study costs were about $1,000 per pound versus $0.80 to $1.20 per pound for disposal at a commercial facility. Numerous other commenters stated that the high costs associated with performing treatability studies would render invalid any concern the Agency had that the exemption could become a "loophole" in the RCRA Subtitle C regulations.

The Agency believes that the limitations established in this exemption will ensure that it does not become a "loophole" and will ensure *de minimis* risk so that no significant threat to human health and the environment will occur. The following sections discuss the limits selected by the Agency and present the rationale for the limitations adopted.

1. Quantity Limits per Waste Stream per Treatment Process

In response to the Notice of Data Availability, several commenters recommended that limits should be set for each generated waste stream to guard against the possibility that generators and facilities might conduct a plethora of treatability studies in lieu of hazardous waste treatment or disposal. While data was provided that would suggest this would not happen, the Agency has decided that some limitations should be imposed as an extra precaution. Thus, to avoid the potential for such an abuse, the Agency has first made it clear in the definition of "treatability study" that the exemption is for the evaluation of a treatment process and is not to be utilized as a commercial treatment option. In addition, the Agency has placed limits on the amount of waste that can be subject to a treatability study evaluation per generated waste stream. Thus, the rule provides for an exemption of 1000 kg of non-acute hazardous waste per waste stream per treatment process; 1 kg of acute hazardous waste per waste stream per treatment process; or 250 kg of soils, water, or debris contaminated by acute hazardous waste per waste stream per treatment process. The Agency, in making this decision, realizes that a generator may need to evaluate alternative treatment processes for a particular waste stream. EPA believes that the limits set will be adequate to allow sufficient studies to be conducted. Furthermore, the quantity limits are consistent with other limits discussed elsewhere in today's preamble.

The Agency is broadly defining "waste stream" such that a waste stream and the quantity limit are not based on the EPA waste code alone; rather, the Agency will interpret and apply the quantity limit for each medium or physical form in which the waste appears. The Agency believes that this broad interpretation is necessary since each medium (*i.e.*, soils, water, or debris) might require a different treatability study and may need to be shipped to a different laboratory or testing facility for such studies to be conducted. The Agency is also broadly defining "treatment process" to allow a generator to evaluate various alternative approaches. For example, a generator could send 1000 kg of non-acute hazardous waste, or 1 kg of acute hazardous waste, or 250 kg of soils, water, or debris contaminated with acute hazardous waste for each generated waste stream to a number of different processes: biological treatment, incineration, fixation, etc. As allowed by this exemption, the generator or sample collector would be limited to a total of 1000 kg of nonacute hazardous waste of a particular waste stream to investigate alternative fixation processes (or, as applicable, 250 kg of soils, water, or debris contaminated with acute hazardous waste, or 1 kg of acute hazardous waste). The Agency has selected the above limits recognizing that in some instances there may be a need to evaluate alternative treatment processes. Finally, the Agency has decided not to put any limits on the number of treatability studies that a laboratory or testing facility can perform per year. However, if this proves to be a problem, the Agency may consider additional regulations.

As noted above, some commenters suggested that higher quantity limits are necessary in order to evaluate certain treatability study processes or that additional amounts of waste may be necessary in instances where unforeseen circumstances have affected the results of all or part of a treatability study evaluation. They suggested that case-by-case allowances in excess of the amounts specified above should be made available if need can be demonstrated. The Agency agrees that some flexibility should be made

available to allow studies to be completed properly. However, the Agency wishes to ensure that adequate controls are placed on all such evaluations to protect human health and the environment. Accordingly, the Agency has included a provision that allows the Regional Administrator to grant requests for waste stream quantity limits in excess of those specified above, up to an additional 500 kg of non-acute hazardous waste, 1 kg of acute hazardous waste, and 250 kg of soils, water, and debris contaminated with acute hazardous waste. The Regional Administrator shall only allow additional quantities of hazardous waste when it can be demonstrated that one of the following circumstances or situations exist: (1) That there has been an equipment or mechanical failure and that additional waste is needed to conduct a study; (2) that there is a need to verify the results of a previously evaluated treatment process; (3) that there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or (4) that there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment. These adjustments may be authorized only if the 1000 kg (or 250 kg for soils, water, or debris contaminated with acute hazardous waste, or 1 kg for acute hazardous waste) quantity limit per waste stream per treatment process has been subjected to a treatability study evaluation and insufficient data are available to properly design a treatment process. When authorizing additional quantities, the Regional Administrator will only authorize adjustments for the minimum quantity necessary to complete the treatability study evaluation. The Agency believes that most treatability studies can be completed utilizing an extra 250 kg of sample or less, and only in unusual circumstances will quantities greater than 250 kg be required.

Generators and/or sample collectors seeking such an authorization for additional quantities must furnish sufficient information to the Regional Administrators to verify that they have met the conditions allowing for quantity adjustments. Generators and/or sample collectors will be required to submit, in writing, the specific reason why an additional quantity of sample for the treatability study evaluation is necessary (*i.e.*, one of the four situations described above). He or she shall also provide: (1) Verification of the additional quantity necessary; (2) documentation accounting for all samples of hazardous waste from the waste stream which have previously been sent for treatability study evaluation; (3) a description of the technical modifications or change in specifications which will be evaluated and the expected results; and, (4) if further study is being required due to equipment or mechanical failure, the generator and/or sample collector must include information from the laboratory or testing facility indicating what handling procedures or equipment improvements have been made to protect against further breakdowns.

The Regional Administrator may perform or require additional analyses and investigations as are necessary to determine the minimal amount of additional waste necessary to conduct the study and yield the additional data necessary to properly design and/or evaluate the performance of the treatment process.

2. Transportation Shipment Limits—Generator and Facility

The HWTC, in its petition, suggested that shipments of waste samples weighing less than 250 kg (approximately one standard 55-gallon drum) should be exempted when such samples are being shipped for the purpose of conducting treatability studies. The petition also recognized that larger size samples might be necessary for conducting treatability studies on contaminated soils or water; hence, the HWTC recommended that a provision for exempting larger size samples should be available. A number of commenters indicated that the 250-kg shipment limit was too restrictive and suggested that the limit be increased to 1000 kg. These commenters argued that the risk associated with shipping a larger amount (*e.g.*, 1000 kg) is no greater than that associated with four shipments of 250 kg each when one considers the potential for transportation accidents.

After careful consideration of all the issues, the Agency has decided to set a single shipment limitation of 1000 kg of non-acute hazardous waste; 1 kg of acute hazardous waste; or 250 kg of soils, water, or debris contaminated with acute hazardous waste. These shipment limitations (which, in effect, govern the exemption from the RCRA hazardous waste transporter regulations and manifesting requirements) will apply to the shipment of waste samples from the generator or sample collector to the laboratory or testing facility when such samples are being sent for the purpose of conducting a treatability study. The exemption will also apply when unused waste samples and residues generated by the treatability study are returned to the generator or sample collector following completion of the study.

The Agency is setting this limit to be consistent with the quantity limits set on generators for the amount of waste that can be subject to the treatability study sample exemption as discussed in the previous section. The Agency agrees with commenters that the risk associated with shipping the maximum limit of 1000 kg is no greater than that associated with four shipments of 250 kg each. However, it also believes these levels will pose *de minimis* risk.

In addition, as already discussed, the Agency believes other factors exist that will ensure safe delivery of the waste samples to and from the laboratory or testing facility. For example, the waste samples will still be subject to the applicable DOT or USPS regulations regarding shipment of hazardous materials. If the shipments do not fall under DOT or USPS jurisdiction, the generator or sample collector and the laboratory or testing facility must follow the requirements for labeling and packaging as set forth by EPA in this amendment. The requirements state that a sample must be packaged so that it does not leak, spill, or vaporize from its packaging. In addition, the following information must accompany the sample: (1) The sample collector's name, address, telephone number, and EPA identification number; (2) the laboratory or testing facility's name, mailing address, telephone number, and EPA identification number; (3) the quantity of the sample; (4) the date of shipment; and (5) a description of the sample. Finally, the Agency believes that most shipments will be considerably smaller than the limit, since other forces, such as storage limits and treatment rates at the laboratory or testing facility, will require careful control of the amount of waste shipped to the laboratory or testing facility. The costs to conduct the study and to collect, pack, and ship the sample will tend to limit the sample size to the smallest amount practicable.

3. Treatment Rate Limit

The HWTC, in its petition, suggested that the treatment rate limit should be 250 kg per day per laboratory or testing facility. Many of the commenters agreed; however, others argued that the limit should be larger and that it should be based on either the number of treatment units or the number of treatment processes that the laboratory or testing facility was capable of conducting. For example, if a facility was capable of conducting several soil fixation studies or biological treatment studies at one

time, then the limit should be 250 kg per process. Other commenters argued for even higher limits, indicating that it should be 250 kg per unit.

After reviewing the available information and considering the comments, the Agency has adopted a treatment rate limit of 250 kg per day of "as received" waste for the entire laboratory or testing facility. The term "as received" has been chosen by the Agency because some of the treatment processes involve the addition of non-waste material to reduce the environmental mobility of hazardous constituents. "As received" refers to the waste shipped by the generator or sample collector as it arrives at the laboratory or testing facility. Based on the information provided by the HWTC, information submitted by other commenters in response to the Notice of Data Availability, and EPA's own experience, the Agency believes that most treatability studies can be conducted at or below the treatment rate limit of 250 kg per day.

The Agency believes this level will allow many wastes to be treated and evaluated as part of a treatability study, while posing only a *de minimis* risk to human health and the environment. For example, if a laboratory or testing facility were to conduct a treatability study on a waste using bench-scale incineration and the study achieved a 99% destruction removal efficiency, only a small amount of toxic material would be released into the environment. In most instances, the amount released is much lower than any level of concern. In addition, since in most cases these studies will be conducted on an intermittent basis, there is less concern with repeated exposure.

Laboratories or testing facilities that are conducting treatability studies and that meet the treatment rate limit are exempted from the requirements to obtain a Subtitle C treatment permit. The Agency wants to emphasize that the purpose of the exemption is for conducting treatability studies, not for the commercial management of hazardous waste. The Agency believes that facilities anticipating the need to conduct an excessively large number of studies, or those having numerous treatment units allowing them to conduct many studies concurrently, will probably need to obtain a Research, Development, and Demonstration permit (40 CFR 270.65). It should also be noted that the Agency recently promulgated a new set of permitting standards under Subpart X of Part 264 (52 FR 46946, December 10, 1987) for miscellaneous hazardous waste management units. The Agency is also considering developing regulations under Subpart Y that would establish permitting standards for experimental facilities conducting research and development on the storage, treatment, or disposal of hazardous waste.

4. Storage Limits

The HWTC, in its petition, recommended that a facility be allowed to store 1000 kg of hazardous waste on site without a storage permit, as long as such waste is for the purpose of conducting treatability studies. HWTC argued that this amount is essentially equal to the small quantity generator (SQG) limits and that the 1000 kg of waste included all waste (both received waste and treated residue). Many commenters argued that the 1000-kg storage limit would not allow them sufficient inventory to conduct certain treatability studies or argued that the storage limit should be based on the number of units present at the facility.

After evaluating this issue, the Agency has decided to adopt a storage limitation of 1000 kg per laboratory or testing facility. However, the Agency has also decided to specify the 1000-kg storage limitation for "as received waste. The 1000-kg storage limitation per laboratory or testing facility can include 500 kg of soils, water, or debris contaminated with acute hazardous waste or 1 kg of acute hazardous waste. The Agency is making it clear in this rule that the storage exemption only applies to laboratories or testing facilities conducting treatability studies. The quantity limitations allow sufficient inventory to conduct small-scale treatability studies while ensuring *de minimis* risk to human health and the environment. Higher storage limits would not give us this same assurance. Also the Agency notes, as discussed previously, financial and business incentives are present that help to ensure *de minimis* risk levels are maintained.

The Agency limits for soils, water, and other debris contaminated with acute hazardous waste were selected to allow small-scale treatability studies to be conducted on media contaminated with dioxin wastes and certain pesticides such as aldrin and aldicarb. Although the 500-kg storage limit is higher than that currently established for SQGs, the Agency believes that the 500-kg limit will still be protective of human health and the environment and pose *de minimis* risk, since in most instances the sample will only be stored for a short period of time prior to being utilized in a study. Furthermore, this category is limited to materials in which the acute hazardous waste involves a contaminant in a medium such as water or soil. Therefore, EPA would expect the concentration of the acute hazardous waste to be very low. Furthermore, the contaminant may be bound to the medium itself. For other acute hazardous wastes (*i.e.*, the actual listed waste), the Agency has adopted a 1-kg limit consistent with the SQG regulations.

5. Residues and Unused Samples-Time Limitations

Although the Notice of Data Availability did not propose any time limitations for completion of a treatability study, some commenters strongly recommended that appropriate time limits be placed on the storage of the "as received" waste samples and the residues generated from the treatability study. Suggestions on appropriate time limits varied widely. However, the commenters generally indicated that 1 year provides ample time to complete most treatability studies.

The Agency is in agreement with commenters that specific time limits for completing treatability studies are necessary. Time limitations are necessary to guard against potential abuses such as use of a laboratory or testing facility for long-term storage to avoid treatment and disposal. Any untreated sample and any residue generated during the treatability study must be returned to the generator within 90 days of study completion or within 1 year from the date of shipment by the generator to the laboratory or testing facility, whichever is earlier. Otherwise, these materials must be managed, by the laboratory or testing facility conducting the treatability study, as a RCRA hazardous waste (unless the waste is no longer hazardous). These time limits provide the laboratory or testing facility conducting the treatability study enough time to do the evaluation, but at the same time do not allow persons to store these wastes indefinitely. The 1-year time limit proved to be noncontroversial when adopted in other areas. For example, the 1-year time limit is consistent with the speculative accumulation provision and the closed-loop tank provision. Under these provisions, persons or facilities holding materials have 1 year to accumulate them before they are potentially subject to regulation.

Laboratories or testing facilities that do not return the unused sample or the residues to the generator or sample collector within the specified time limits are subject to appropriate regulation. Facilities must determine if they meet

the SQG requirements of § 261.5 or the accumulation requirements of § 262.34, and they may need to obtain a storage permit and comply with its conditions. Once samples and residues are returned to the generator, they are no longer exempt under today's rule. Ultimately, the unused sample and residues that are still hazardous must be manifested and disposed of in a RCRA-designated facility by the laboratory or testing facility, the waste generator, or sample collector.

6. Mobile Treatment Units

Although the issue of mobile treatment units (MTUs) was not addressed in the Notice of Data Availability and Request for Comment, concern was expressed over how this exemption applies to MTUs. EPA has determined that MTUs conducting treatability studies may qualify for this exemption. However, each MTU or group of MTUs operating at the same location is subject to the treatment rate, storage, and time limitations and the notification, recordkeeping, and reporting requirements that are applicable to stationary laboratories or testing facilities conducting treatability studies. That is, a group of MTUs operating at one location will be treated as one MTU facility for purposes of § 261.4 (e) and (f). Furthermore, these requirements apply to each location where an MTU will conduct treatability studies.

D. Reporting and Recordkeeping Requirements

Although the Notice of Data Availability did not specifically recommend that reporting and recordkeeping provisions be adopted, some commenters suggested that some form of reporting and recordkeeping should be required in the treatability study exemption. They argued that, without some form of reporting or recordkeeping requirements, EPA would not have a means of determining who is violating the exemption or the amount of waste subjected to treatability studies.

The Agency strongly agrees with the commenters and believes that reporting and recordkeeping requirements are necessary to facilitate inspector review and, if necessary, to assist in enforcement action. In fact, 40 CFR 216.2(f) already requires that persons who claim that their waste is conditionally exempt from regulation must provide appropriate documentation that they meet the conditions of the exemption. Therefore, the Agency is stipulating specific reporting and recordkeeping requirements that will document compliance with the quantity and time limitations set forth in this rulemaking. The reporting and recordkeeping requirements stipulated below are the minimum requirements necessary to ensure compliance with the limitations in the treatability sample exemption.

1. The generator of the sample (who may also be the shipper or sample collector) and the laboratory or testing facility conducting the treatability study must keep the following records for 3 years after the completion of the study:

a. A copy of the contract (between the generator and the laboratory or testing facility) to conduct the treatability study;

b. Copies of all shipping documents. (If the waste was shipped to an MTU, copies of the shipping papers must be kept with the unit for inspector review.)

2. Generators and sample collectors must also maintain records indicating the following: (1) The amount of waste (per waste stream and treatment process) shipped under the exemption; (2) to whom the shipment was sent (name, address, and EPA identification number of the laboratory or testing facility conducting the study); (3) the date shipment was made; and (4) whether or not any unused sample or any residue generated from the treatability study was returned. In addition, beginning in 1989, generators must report this information in their biennial reports.

3. In addition, laboratories or testing facilities conducting or intending to conduct treatability studies must accomplish the following:

a. Send a letter to the EPA Regional Administrator or the authorized State informing the Agency that the laboratory or testing facility intends to conduct small-scale treatability studies. This letter must be received no less than 45 days before the facility begins conducting treatability studies. The letter should indicate the address and EPA identification number of the laboratory or testing facility conducting studies and the types of treatability studies anticipated. Owners and operators of facilities that do not have an EPA identification number must obtain one before conducting any treatability studies under this exemption. This reporting requirement and the requirement to obtain an EPA identification number apply to owners and operators of MTUs at every treatability study location (except at CERCLA sites where, under CERCLA section 121(e)(1) and 40 CFR 300.68(a)(3), RCRA permits are not required).

b. Maintain appropriate records and documentation for a period of 3 years following completion of each treatability study that show compliance with the appropriate quantity and time limitations addressed in the final rule. The records must indicate that the laboratory or testing facility is meeting the requirements for shipment limits, treatment rate limits, and storage limits. Specific minimum information, by treatability study, that must be maintained include the following:

- The name, address, and EPA identification number of the generator or sample collector of the waste samples;
- The date the shipment was received;
- The quantity of waste accepted;
- The quantity of "as received" waste in storage each day;
- The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;
- The date the treatability study was concluded; and
- The date the unused sample and residue were returned to the generator or, if sent to a designated facility, the name of the facility and its EPA identification number. As noted above, the laboratory or testing facility must keep copies of all shipping documents associated with transport of the waste to and from the facility.

c. By March 15 of each year, submit a report to the authorized State or Regional Administrator that includes an estimate of the number of studies and the amount of waste expected to be used in treatability studies during the current year and the following information for the previous calendar year:

- The name, address, and EPA identification number of the generator or sample collector of each waste sample;
- The date the shipment was received;
- The quantity of waste accepted;
- The total quantity of "as received" waste in storage each day;
- The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;
- The date the treatability study was concluded; and
- The date any unused sample and residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

d. Notify the Regional Administrator or authorized State by letter when and if the laboratory or testing facility is no longer planning to conduct any

treatability studies at the site. (For example, when an MTU completes a treatability study at a site, the owners or operators must submit the required notice that they will no longer be conducting treatability studies at that site.)

E. EPA Identification Numbers—Applicability of OSHA Training Requirements

Some commenters suggested that any laboratory or testing facility conducting treatability studies should be required to have an EPA identification number. These commenters argued that such a restriction would ensure that the facility is in compliance with the requirements to have a facility contingency plan, has established emergency procedures, and is in compliance with OSHA's hazardous waste workers' training and medical monitoring requirements. (See 29 CFR 1910.120, 51 FR 45654, December 19, 1986.)

The Agency partially agrees and is requiring any laboratory or testing facility conducting treatability studies to notify the Agency and obtain an EPA identification number if the facility does not already have one. However, as already explained, the Agency believes laboratories or testing facilities conducting treatability studies within the limits specified present a *de minimis* risk. For example, the OSHA hazardous waste operators and emergency response requirements (29 CFR 1910.120) are applicable except for SQGs and facilities complying with the accumulation time requirements of 40 CFR 262.34. Other OSHA requirements, such as the OSHA laboratory standards and general duty clause (29 USC 654(a)(1)), may apply depending on the type of laboratory or testing facility and the nature of its activities. Thus, EPA believes requirements such as contingency plans and emergency procedures are not necessary for the protection of human health and the environment.

F. Incentives for Safe Transport

In the Notice of Data Availability, the Agency specifically requested comment on whether the incentives for safe transport and storage of waste characterization samples would also apply to treatability samples. Most commenters agreed that suitable incentives exist to ensure proper handling and shipping of treatability study samples.

The Agency generally agrees. In particular, a principal purpose of the generator and transporter requirements is to assure that shipments of hazardous wastes are safely delivered to an appropriate destination (*i.e.*, a permitted or interim status hazardous waste management facility). This is accomplished through the requirements for manifesting, recordkeeping, packaging, and labeling of hazardous waste. The principal purpose of the manifest system is to ensure "cradle to grave" accountability for shipments of hazardous waste from the generator to a TSDF.

In the case of treatability study samples, EPA wants to ensure that the samples are delivered to the facility conducting the treatability study, and that both the unused sample and all residues generated in the treatability study are sent back to the generator or sample collector or, alternatively, shipped to a designated facility if the waste remains hazardous.

The Agency believes that sufficient incentives and requirements are in place to provide for the safe shipment of samples to and from laboratories and testing facilities conducting treatability studies. In particular, they include:

1. Maintenance of corporate reputation and public confidence;
2. The high cost of these studies coupled with the generator's or sample collector's need for properly documented results;
3. The need for the generator or sample collector to verify results of a treatability study; and
4. Requirements in today's rule for either returning the unused samples and residues to the generator or sample collector, or for manifesting and shipping these materials to a TSDF for ultimate disposal.

The Agency believes that the above incentives and requirements will guard against any facility not complying with the limitations or conducting bogus treatability studies. Furthermore, DOT or other regulations and guidelines control the transportation of such samples even in the absence of EPA regulation. The requirements to comply with DOT shipping regulations regarding packaging and labeling will be substantially the same as present requirements for shipping hazardous waste. Additionally, the USPS has stringent guidelines governing the shipment of hazardous materials, including samples. (See the "Domestic Mail Manual," Part 124 and Publication 52, "Acceptance of Hazardous or Perishable Articles.") For the above reasons, the Agency believes that the transport of small quantities of hazardous waste poses *de minimis* risk during shipment to a laboratory or testing facility or when being returned to the generator or sample collector.

III. Today's Amendment

The Agency believes that the full complement of the hazardous waste regulations found in 40 CFR, Parts 260 through 268 and 270, when applied to waste samples used in small-scale treatability studies, are more comprehensive than necessary to adequately protect human health and the environment. In addition, the Agency believes that it needs to promote research and the development of innovative technologies to manage hazardous wastes. Therefore, EPA is amending the regulations to conditionally exempt waste samples processed in small-scale treatability studies from the hazardous waste regulations under certain conditions.

In particular, EPA is today adding new paragraphs (e) and (f) to 40 CFR 261.4 which accomplish the following: First, persons who generate samples are exempted from the generator and transporter requirements when samples are shipped by the generator, or any other person who collects the sample (the "sample collector"), to a laboratory or testing facility for the purpose of conducting a treatability analysis, or when shipped from the facility back to the sample collector, provided that certain packaging and labeling requirements are met. Second, any laboratory or testing facility that conducts treatability studies may store these waste samples and residues generated from the treatability study within the quantity and time limits specified and not be subject to the requirements of 40 CFR, Parts 264, 265, and 270. Third, the actual testing of the samples does not require a permit, provided the laboratory or testing facility complies with the limitations specified in today's rule.

Laboratories and testing facilities that conduct treatability studies must also keep records and documents regarding each treatability study as enumerated in II.D.3.a. above. Additionally, today's rule requires facilities conducting treatability studies to submit an annual report to the authorized State or Administrator of the EPA Region in which the laboratory or testing facility is located. The required annual report must be a distinct document prepared by the owner and/or operator of the laboratory or testing facility indicating the previous calendar year's activities regarding treatability studies. The report must be submitted by March 15 of each year and must identify the laboratory or testing facility by name, EPA identification number, and the location (site address) at which the treatability

studies were conducted. Paragraph II.D.3.c. above lists specific information required in the report. The obligation to submit annual reports continues until the laboratory or testing facility discontinues treatability studies, returns all unused "as received" samples and any residues generated in the treatability studies back to the generator or sample collector, and notifies the Regional Administrator or State Director that the laboratory or testing facility no longer plans to conduct any treatability studies at the site.

Paragraph (e), Treatability Study Samples, provides an exemption for generators of samples of hazardous waste to be evaluated in treatability studies, while they are being prepared for transport or being transported, provided that these samples and their residues are returned to the generator within specified time limits. The exemption limits the sample collector or generator from shipping more than 1000 kg per non-acute hazardous waste stream per treatment process (or 250 kg of soils, water, or debris contaminated with acute hazardous waste, or 1 kg of acute hazardous waste). Shipments must comply with the applicable DOT, USPS, or other applicable regulations for shipping hazardous materials.

The generator or sample collector must also maintain records indicating the amount of waste shipped under the exemption, the name and address of the laboratory or testing facility, the facility EPA identification number, type of study, and the expected duration of the study. Beginning in 1989, the generator or sample collector must also include the above information in its biennial report.

Paragraph (f), Samples Undergoing Treatability Studies at Laboratories or Testing Facilities, describes the limitations that apply to a facility conducting treatability studies under this exemption. The facility may subject no more than 250 kg of "as received" waste to treatability studies in any one day. The facility may store a maximum of 1000 kg of "as received" waste, of which 500 kg can be soils, water, or debris contaminated with acute hazardous waste or 1 kg of acute hazardous waste. The facility must also return any unused sample and residues to the generator within 90 days after completion of the study or within 1 year after initial shipment (whichever is earlier), or otherwise manage the sample and residue as a RCRA hazardous waste, if the residue is still hazardous.

The facility must meet certain specified reporting requirements. The facility must provide notification (by letter) to the Regional Administrator or authorized State indicating that the facility intends to conduct treatability studies under the exemption. It must obtain an EPA identification number if it does not have one. The facility must also maintain records documenting compliance with the specified time and quantity limits for treatment and storage and must keep records of all shipping documents for 3 years from the completion of the treatability study.

The owner or operator of a facility conducting treatability studies must also submit a report to the Regional Administrator or authorized State indicating the type and number of treatability studies conducted during the previous calendar year, for whom each study was conducted, the quantity of hazardous waste utilized in each treatability study, when each study was conducted, and the final disposition of residue and any unused sample. The report must include an estimate of the number of treatability studies to be conducted and the quantity of hazardous waste expected to be used in treatability studies during the coming year. The facility must also notify the Regional Administrator or authorized State by letter when and if the facility is no longer planning to conduct any treatability studies at the site.

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to implement those requirements and prohibitions in an authorized State, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

B. Effect of State Authorizations

Today's announcement promulgates regulations that are not effective under HSWA in authorized States, since this rulemaking does not impose requirements or prohibitions contained in HSWA. Thus, the regulations will be applicable only in those States that do not have final authorization. In an authorized State, the regulations will not be applicable until the State revises its program to adopt equivalent regulations under State law.

40 CFR 271.21(e)(2) requires that States having final authorization must modify their programs to include equivalent regulations within a year of promulgation of these regulations if only regulatory changes are necessary, or within 2 years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have regulations similar to those in today's rule. These State regulations have not been compared with the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these regulations in lieu of EPA until the State program modification is submitted to EPA and approved. Of course, States with existing regulations may continue to administer and enforce their regulations as a matter of State law.

Authorized States are only required to modify their programs when EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized State regulations. For these changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. This is a result of section 3009 of RCRA, which allows States to impose more stringent or broader regulations than the Federal program. The regulations promulgated today at

§§ 261.4 (e) and (f) are considered to be less stringent than or reduce the scope of the existing Federal regulations because today's rule exempts certain activities now within the purview of RCRA. Therefore, authorized States are not required to modify their programs to adopt regulations consistent with and equivalent to this rulemaking.

Even though States are not required to adopt today's rulemaking, EPA strongly encourages States to do so as quickly as possible. As already explained in this preamble, today's rule is needed to facilitate evaluating remediation alternatives for CERCLA clean-ups and the RCRA Corrective Action Program, and to speed research and development for treatment alternatives to land disposal and waste minimization, recycling, and reuse. States are, therefore, urged to consider the adoption of today's rule; EPA will expedite review of authorized State program revision applications.

States are also encouraged to use existing authorities to provide for comparable treatability exemptions prior to adopting and receiving authorization for today's rule. Some States may have authority comparable to RCRA Section 7003, which allows EPA to order response action in the case of imminent and substantial endangerment to health or the environment "notwithstanding any other provision of this Act." An authorized State may use comparable section 7003-type authority to authorize treatability studies and may waive the generator, transporter, notification, and permit requirements consistent with today's rulemaking.

In addition to, or in lieu of, a section 7003-type authority, a State may have general waiver, permit waiver, or emergency permit authority. Consistent with this rule, states are encouraged to use any such authority to grant treatability exemptions in a manner consistent with today's rule.

V. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions to those regulations take effect 6 months after promulgation. The purpose of this requirement is to allow facilities that handle hazardous wastes sufficient lead time to prepare for and to comply with major new regulatory requirements. Given the potential of this rule to increase the timeliness of CERCLA remedial clean-up activities, RCRA corrective actions, and compliance with the land disposal restrictions, the Agency believes that an effective date of 6 months after promulgation would unnecessarily disrupt implementation of the regulations and would not be in the public interest. Since this amendment reduces, rather than increases, the existing requirements for facilities that handle waste samples, there is no basis for allowing a lengthy time period to prepare for compliance. The same reasons provide good cause to make this rule effective immediately upon publication notwithstanding section 4(d) of the Administrative Procedure Act, 5 U.S.C. 553(d). Therefore, this amendment takes effect immediately upon publication in the Federal Register.

The application of this final rule is prospective only. Any treatability studies covered by this final rule that were conducted before the effective date of this regulation are subject to the Subtitle C hazardous waste regulations, including permitting requirements.

VI. Regulatory Analyses

A. Executive Order No. 12291

Under Executive Order No. 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This final regulation is not major because it will not result in an effect on the economy of $100 million or more, and it will not increase costs or prices to industry. Rather, this regulation will reduce the overall costs and economic impact of EPA's hazardous waste management regulations by eliminating permitting requirements for laboratories and testing facilities intending to conduct treatability studies. The Agency estimates that perhaps 400 facilities and laboratories nationwide will be affected by promulgation of this rule. Facilities and laboratories will be spared the time (as much as 2 years) and the costs (estimated to be between $100,000 and $200,000) otherwise necessary to obtain a RCRA permit. In addition, there will be no adverse effect on the ability of U.S.-based enterprises to compete with the non-U.S.-based enterprises in domestic or export markets. Because this amendment is not a major regulation, no Regulatory Impact Analysis has been conducted.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an Agency is required to publish general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities. As noted previously in this preamble, the universe of facilities affected is estimated to total about 400; of these, perhaps 200 are small business entities. By eliminating time-consuming and costly permitting requirements, the Agency anticipates that promulgation of this rule will have a positive effect on small entities.

This amendment will have no adverse economic impact on small entities. In fact, it should reduce the burden imposed on small entities that conduct treatability studies and comply with the provisions of this rulemaking. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities. This regulation therefore does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et. seq.*, and have been assigned the OMB control number 2050–0088 (Treatability Studies Notification and Recordkeeping).

Public reporting burden for this collection of information is estimated to vary from 90 to 250 hours per response, with an average of 155 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

VII. Supporting Documentation

A background document in which EPA responds to any comments not addressed in this preamble, entitled "Summary and EPA Responses to Public Comments on the September 18, 1987 Notice of Data Availability and Request for Comment, and the September 25,

1981 Interim Final Rule," dated June 1988, is available in the RCRA docket at EPA (LG-100), 401 M St., SW., Washington, DC 20460. The docket number for this rulemaking is F-88-TSSE-FFFFFF. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. Copies cost $0.15 per page.

VIII. List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous waste.

40 CFR Part 261

Hazardous waste, Recycling.

Date: July 11, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The Authority Citation for Part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939 and 6974.

2. Section 260.10 is amended by adding the following definition in alphabetical order:

§ 260.10 Definitions.

* * * * *

"Treatability Study" means a study in which a hazardous waste is subjected to a treatment process to determine: (1) Whether the waste is amenable to the treatment process, (2) what pretreatment (if any) is required, (3) the optimal process conditions needed to achieve the desired treatment, (4) the efficiency of a treatment process for a specific waste or wastes, or (5) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of the § 261.4 (e) and (f) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The Authority Citation for Part 261 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

4. Section 261.4 is amended by adding two new paragraphs (e) and (f) to read as follows:

§ 261.4 Exclusions.

* * * * *

(e) *Treatability Study Samples.* (1) Except as provided in paragraph (e)(2) of this section, persons who generate or collect samples for the purpose of conducting treatability studies as defined in section 260.10, are not subject to any requirement of Parts 261 through 263 of this chapter or to the notification requirements of Section 3010 of RCRA, nor are such samples included in the quantity determinations of § 261.5 and § 262.34(d) when:

(i) The sample is being collected and prepared for transportation by the generator or sample collector; or

(ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in paragraph (e)(1) of this section is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses (in "treatability studies") no more than 1000 kg of any non-acute hazardous waste, 1 kg of acute hazardous waste, or 250 kg of soils, water, or debris contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and

(ii) The mass of each sample shipment does not exceed 1000 kg of non-acute hazardous waste, 1 kg of acute hazardous waste, or 250 kg of soils, water, or debris contaminated with acute hazardous waste; and

(iii) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of paragraph A or B of this subparagraph are met.

(A) The transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:

(1) The name, mailing address, and telephone number of the originator of the sample;

(2) The name, address, and telephone number of the facility that will perform the treatability study;

(3) The quantity of the sample;

(4) The date of shipment; and

(5) A description of the sample, including its EPA Hazardous Waste Number.

(iv) The sample is shipped to a laboratory or testing facility which is exempt under § 261.4(f) or has an appropriate RCRA permit or interim status.

(v) The generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:

(A) Copies of the shipping documents;

(B) A copy of the contract with the facility conducting the treatability study;

(C) Documentation showing:

(1) The amount of waste shipped under this exemption;

(2) The name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(3) The date the shipment was made; and

(4) Whether or not unused samples and residues were returned to the generator.

(vi) The generator reports the information required under paragraph (e)(v)(C) of this section in its biennial report.

(3) The Regional Administrator, or State Director (if located in an authorized State), may grant requests, on a case-by-case basis, for quantity limits in excess of those specified in paragraph (e)(2)(i) of this section, for up to an additional 500 kg of non-acute hazardous waste, 1 kg of acute hazardous waste, and 250 kg of soils, water, or debris contaminated with acute hazardous waste, to conduct further treatability study evaluation when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment. The additional quantities allowed are subject to all the provisions in paragraphs (e)(1) and (e)(2)(ii)(vi) of this section. The generator or sample collector must apply to the Regional Administrator in the Region where the sample is collected and provide in writing the following information:

(i) The reason why the generator or sample collector requires additional quantity of sample for the treatability study evaluation and the additional quantity needed;

(ii) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the data each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(iii) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(iv) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(v) Such other information that the Regional Administrator considers necessary.

(f) *Samples Undergoing Treatability Studies at Laboratories and Testing Facilities.* Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to RCRA requirements) are not subject to any requirement of this Part, Part 124, Parts 262–266, 268, and 270, or to the notification requirements of Section 3010 of RCRA provided that the conditions of paragraphs (f) (1) through (11) of this section are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to paragraphs (f) (1) through (11) of this section. Where a group of MTUs are located at the same site, the limitations specified in (f) (1) through (11) of this section apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Regional Administrator, or State Director (if located in an authorized State), in writing that it intends to conduct treatability studies under this paragraph.

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 250 kg of "as received" hazardous waste is subjected to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 1000 kg, the total of which can include 500 kg of soils, water, or debris contaminated with acute hazardous waste or 1 kg of acute hazardous waste. This quantity limitation does not include:

(i) Treatability study residues; and

(ii) Treatment materials (including nonhazardous solid waste) added to "as received" hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year has elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for 3 years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:

(i) The name, address, and EPA identification number of the generator or sample collector of each waste sample;

(ii) The date the shipment was received;

(iii) The quantity of waste accepted;

(iv) The quantity of "as received" waste in storage each day;

(v) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(vi) The date the treatability study was concluded;

(vii) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending 3 years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Regional Administrator, or State Director (if located in an authorized State), by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(i) The name, address, and EPA identification number of the facility conducting the treatability studies;

(ii) The types (by process) of treatability studies conducted;

(iii) The names and addresses of persons for whom studies have been conducted (including their EPA identification numbers);

(iv) The total quantity of waste in storage each day;

(v) The quantity and types of waste subjected to treatability studies;

(vi) When each treatability study was conducted;

(vii) The final disposition of residues and unused sample from each treatability study.

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under § 261.3 and, if so, are subject to Parts 261 through 268, and Part 270 of this Chapter, unless the residues and unused samples are returned to the sample originator under the § 261.4(e) exemption.

(11) The facility notifies the Regional Administrator, or State Director (if located in an authorized State), by letter when the facility is no longer planning to conduct any treatability studies at the site.

(Approved by the Office of Management and Budget under control number 2050-0068)

[FR Doc. 88-16188 Filed 7-18-88; 8:45 am]

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tion to such factors as the intensity of noises, the types of noises, the frequency with which noises recur, the time period for which noises continue, the times of day during which noises occur, and such other factors as could affect the extent to which noises may be injurious to human health or welfare, animal or plant life, or property, or could interfere unreasonably with the enjoyment of life or property. In adopting standards, the pollution control agency shall give due recognition to the fact that the quantity or characteristics of noise or the duration of its presence in the outdoor atmosphere, which may cause noise pollution in one area of the state, may cause less or not cause any noise pollution in another area of the state, and it shall take into consideration in this connection such factors, including others which it may deem proper, as existing physical conditions, zoning classifications, topography, meteorological conditions and the fact that a standard which may be proper in an essentially residential area of the state, may not be proper as to a highly developed industrial area of the state. Such noise standards shall be premised upon scientific knowledge as well as effects based on technically substantiated criteria and commonly accepted practices. No local governing unit shall set standards describing the maximum levels of sound pressure which are more stringent than those set by the pollution control agency.

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

A person who generates less than 100 kilograms of hazardous waste per month is exempt from the agency hazardous waste rules relating to transportation, manifesting, storage, and labeling for photographic fixer and X-ray negative wastes that are hazardous solely because of silver content. Nothing in this paragraph exempts the generator from the agency's rules relating to on-site accumulation or outdoor storage. A political subdivision or other local unit of government may not adopt management requirements that are more restrictive than this paragraph.

[For text of subds 2a and 3, see M.S.1988]

Subd. 4. **Rules and standards.** Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1969, chapter 1046, for the prevention, abatement, or control of air pollution. Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to sources or emissions of air contamination or air pollution, to the quality or composition of such emissions, or to the quality of or composition of the ambient air or outdoor atmosphere or to any other matter relevant to the prevention, abatement, or control of air pollution.

Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1969, chapter 1046, for the collection, transportation, storage, processing, and disposal of solid waste and the prevention, abatement, or control of water, air, and land pollution which may be related thereto, and the deposit in or on land of any other material that may tend

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nces, or conditions in order to
ıitation, rules or standards may
air pollution, to the quality or
composition of the ambient air
t to the prevention, abatement,

: 14, and the provisions hereof,
;cind rules and standards having
'ovisions of Laws 1969, chapter
;sing, and disposal of solid waste
r, and land pollution which may
ny other material that may tend

to cause pollution. The agency shall adopt such rules and standards for sewage sludge, addressing the intrinsic suitability of land, the volume and rate of application of sewage sludge of various degrees of intrinsic hazard, design of facilities, and operation of facilities and sites. The agency shall promulgate emergency rules for sewage sludge pursuant to sections 14.29 to 14.36. Notwithstanding the provisions of sections 14.29 to 14.36, the emergency rules shall be effective until permanent rules are promulgated or March 1, 1982, whichever is earlier. Any such rule or standard may be of general application throughout the state or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to collection, transportation, processing, disposal, equipment, location, procedures, methods, systems or techniques or to any other matter relevant to the prevention, abatement or control of water, air, and land pollution which may be advised through the control of collection, transportation, processing, and disposal of solid waste and sewage sludge, and the deposit in or on land of any other material that may tend to cause pollution. By January 1, 1983, the rules for the management of sewage sludge shall include an analysis of the sewage sludge determined by the commissioner of agriculture to be necessary to meet the soil amendment labeling requirements of section 17.716.

Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1971, chapter 727, for the prevention, abatement, or control of noise pollution. Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances or conditions in order to make due allowances for variations therein. Without limitation, rules or standards may relate to sources or emissions of noise or noise pollution, to the quality or composition of noises in the natural environment, or to any other matter relevant to the prevention, abatement, or control of noise pollution.

As to any matters subject to this chapter, local units of government may set emission regulations with respect to stationary sources which are more stringent than those set by the pollution control agency.

Pursuant to chapter 14, the pollution control agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of this chapter for generators of hazardous waste, the management, identification, labeling, classification, storage, collection, treatment, transportation, processing, and disposal of hazardous waste and the location of hazardous waste facilities. A rule or standard may be of general application throughout the state or may be limited as to time, places, circumstances, or conditions. In implementing its hazardous waste rules, the pollution control agency shall give high priority to providing planning and technical assistance to hazardous waste generators. The agency shall assist generators in investigating the availability and feasibility of both interim and long-term hazardous waste management methods. The methods shall include waste reduction, waste separation, waste processing, resource recovery, and temporary storage.

The pollution control agency shall give highest priority in the consideration of permits to authorize disposal of diseased shade trees by open burning at designated sites to evidence concerning economic costs of transportation and disposal of diseased shade trees by alternative methods.

In addition to the provisions under section 14.115, before the pollution control agency adopts or repeals rules that affect farming operations, the agency must provide a copy of the proposed rule change and a statement of the effect of the rule change on farming operations to the commissioner of agriculture for review and comment and hold public meetings in agricultural areas of the state.

[For text of subds 4a to 4i, see M.S.1988]

Subd. 4j. **Permits; solid waste facilities.** (a) The agency may not issue a permit for new or additional capacity for a mixed municipal solid waste resource recovery or

@ Wish List - I

Pollution Control Agency

Division of Hazardous Waste

Notice of Intent to Solicit Outside Information Regarding Proposed Amendments to Rules Governing the Management of Hazardous Waste, *Minnesota Rules* Chapters 7001 and 7045

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) is seeking information or opinions from outside sources in preparing to propose the amendment of rules governing the management of hazardous waste. Amendment of the rules is authorized by *Minnesota Statutes* § 116.07, subd. 4 (1988). The MPCA staff has collected suggestions for correcting, clarifying, and modifying the hazardous waste rules to improve their consistency with related state and federal language. Some of the changes being considered include:

- Clarification of waste disposal restrictions (*Minnesota Rules* pt. 7045.0290)
- Conditions for conducting laboratory scale treatability studies
- Labeling and management of containers and tanks used to accumulate hazardous waste
- Records of inspections (7045.0626)
- Clarification of post-closure care permit requirements

The MPCA requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views in writing or orally. Written or oral statements or comments should be directed to:

Nathan Cooley
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
Telephone: 612/296-7437

Oral statements will be received during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday.

All statements of information and opinion will be accepted until June 8, 1989. Any written materials received by the MPCA shall become part of the rulemaking record in the event that the rule is amended.

Gerald L. Willet
Commissioner

Department of Public Safety

Driver and Vehicle Services Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Amendments to Rules Governing Driver Training Programs

NOTICE IS HEREBY GIVEN that the State Department of Public Safety is seeking information or opinions from sources outside the agency in preparing to amend rules governing driver training programs.

On December 29, 1986, the Department of Public Safety published two notices in the *State Register* concerning amending or adopting rules governing driver education. The first notice stated the department was "preparing to amend rules governing driver education instructor licensing standards to eliminate inconsistencies between the Department of Education's rules and the Department of Public Safety rules." The second notice stated the department was "preparing to promulgate rules governing motorcycle training curriculum requirement for commercial schools."

In the process of working on the rules, the department has found other areas in which the rules could be improved. The goals of the Department of Public Safety now are:

(1) to regulate driver training programs at private and parochial high schools and other nonpublic schools by formally promulgated rule, rather than policy;

(2) to make the Department of Public Safety rules governing driver training programs and instructors more similar, where appropriate, to the rules of the Department of Education and the Board of Teaching;

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rule Amendments Governing the Management, Storage, Treatment, and Disposal of Hazardous Waste, Minn. Rules Pts. 7001.0520, 7045.0020, 7045.0075, 7045.0120, 7045.0121, 7045.0255, 7045.0290, 7045.0292, 7045.0454, 7045.0526, 7045.0558, 7045.0574, and 7045.0626

AFFIDAVIT DECLARING NO COMMENTS WERE RECEIVED PURSUANT TO NOTICE OF INTENT TO SOLICIT OUTSIDE INFORMATION (13 SR 2719, MAY 8, 1989)

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Nathan Cooley, being duly sworn says:

1. That he is the person named in the Notice of Intent to Solicit Outside Information (13 SR 2719, May 8, 1989) as the person to receive data or views concerning the above-entitled matter.

2. That there were no submittals of data or views received from outside by the Minnesota Pollution Control Agency pursuant to the above notice concerning the above-entitled matter during the comment period provided.

Nathan B. Cooley

Subscribed and sworn to before me
this _____ day of February, 1990.

_____
Notary Public

CERTIFICATE OF AGENCY'S AUTHORIZING RESOLUTION

I, Gerald 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 24th day of October, 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 hazardous waste rules governing the management, storage, treatment, and disposal of hazardous waste, Minn. Rules pts. 7001.0520, 7045.0020, 7045.0075, 7045.0120, 7045.0121, 7045.0255, 7045.0290, 7045.0292, 7045.0454, 7045.0526, 7045.0558, 7045.0574, and 7045.0626, 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 (1986)

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 and 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 30 day of October, 1989.

Gerald L. Willet

Gerald L. Willet
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In The Matter Of The Proposed
Rule Amendments Governing The
Management, Treatment, Storage,
And Disposal Of Hazardous Waste
Minn. Rules Parts 7001.0520,
7045.0020, 7045.0075, 7045.0120,
7045.0121, 7045.0255, 7045.0290,
7045.0292, 7045.0454, 7045.0526,
7045.0558, 7045.0574, and 7045.0626.

NOTICE OF INTENT TO
ADOPT RULES WITHOUT
A PUBLIC HEARING

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

(2) All persons have until 4:30 p.m. on December 20, 1989, to submit comments in support of or in opposition to the proposed rules. Comment is encouraged. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

(4) Any person may make a written request for a public hearing on the proposed rules within the comment period. (4) If 25 or more such requests are so received, a public hearing will be held, unless a sufficient number withdraw their requests in writing. (5) (6) Any person requesting a public hearing shall 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. (7) If a public hearing is required, the MPCA will proceed pursuant to Minn. Stat. §§ 14.131 to 14.20 (1988).

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

Nathan Brooks Cooley
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
or telephone (612) 296-7437

(8) The proposed rule may be modified without re-noticing if modifications are supported by data and views submitted to the MPCA and if changes are not substantial. If substantial changes are made, rulemaking must be reinitiated.

The proposed rules, if adopted, will incorporate a federal rule governing treatability studies into Minnesota rules and will amend Minnesota rules to correct, clarify, and strengthen existing rule language. (1) A copy of the proposed rule amendments is enclosed. Additional copies may be obtained from the above addressee (one free).

(12) A Statement of Need and Reasonableness that describes the need for and the reasonableness of each provision of the proposed rules has been prepared and is available if requested from the above addressee.

(14) You are hereby advised, pursuant to Minn. Stat. § 14.115 (1988), "Small Business Considerations In Rulemaking," that the proposed rule amendments will result in no significant additional burdens to small businesses. The federal treatability study rule streamlines requirements for those small businesses involved in such studies. Its goal of promoting development of improved technologies for managing hazardous wastes may also result in benefits to affected small businesses. Amendments to existing rule language are expected to pose no significant new burdens to small businesses.

(9) If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to their legality and their 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 so notified, or who wish to receive a copy of the rules as adopted, must submit a written request to the above addressee.

Dated: 11-6-89

Barbara Lindsey Sims
for Gerald L. Willet
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rule Amendments Governing the Management, Treatment, Storage, and Disposal of Hazardous Waste, Minn. Rules Parts 7001.0520, 7045.0020, 7045.0075, 7045.0120, 7045.0121, 7045.0255, 7045.0290, 7045.0292, 7045.0454, 7045.0526, 7045.0558, 7045.0574, and 7045.0626.

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)

Nathan B. Cooley, 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 17th day of November, 1989.

That on the 17th day of November, 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.

Nathan B. Cooley

Subscribed and sworn to before me
this 17th day of November, 1989.

Jodi Rasmussen
Notary Public

JODI D. RASMUSSEN
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires 10-23-94

Subp. 3. **Reimbursement for emergency services.** A special needs rate exception for the costs identified in part 9510.1090, subpart 2, item A or B, ~~for staff~~ approved in accordance with subpart 2 shall be reimbursable for a period not to exceed ~~two weeks.~~ 30 days from the date the county notifies the commissioner of the emergency. ~~The provider shall submit an application to the county completed in accordance with parts 9510.1020 to 9510.1140, for continuation of the special needs rate exception for more than two weeks. The county shall notify the commissioner if the provider fails to submit the application required in subpart 2, item B, and the commissioner shall discontinue the emergency special needs rate exception payment.~~ No payment shall be authorized by the commissioner for services provided during an emergency until an application is submitted to the commissioner by the county delineating actual costs of the intervention. The total amount authorized for payment by the commissioner is subject to the per diem limitations under part 9510.1090, subpart 4.

INSTRUCTION TO REVISOR

Subpart 1. **Cross references.** In each part of Minnesota Rules referred to in column A, the revisor of statutes shall delete the reference in column B and insert the reference in column C.

Column A	Column B	Column C
9510.1040, subpart 4, item D	9500.0750 to 9500.1080	9505.0170 to 9505.0475
9510.1050, subpart 4, item A	9500.0750 to 9500.1080	9505.0170 to 9505.0475
9510.1090, subpart 2	9500.0750 to 9500.1080	9505.0170 to 9505.0475
	12 MCAR S 2.05311 [Temporary] A	9553.0010 to 9553.0080
9510.1130, subpart 1	12 MCAR SS 2.05301 to 2.05315 [Temporary]	9553.0010 to 9553.0080
	9525.1200 to 9525.1330	*Minnesota Statutes*, section 252.46

Subp. 2. **Change of terms.** The revisor of statutes is directed to change the words "state hospital" and "state hospitals" where they appear in Minnesota Rules, parts 9510.1020 to 9510.1140 to "regional treatment center" or "regional treatment centers."

The revisor of statutes is directed to remove the word "[Emergency]" wherever it appears in brackets in Minnesota Rules, parts 9510.1020 to 9510.1140.

Pollution Control Agency

Solid and Hazardous Waste Division

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 (rules) without a public hearing following the procedures set forth in the Administrative Procedure Act as it governs adopting rules without a public hearing as set forth in *Minnesota Statutes* §§ 14.22 to 14.28 (1988). The MPCA's authority to adopt the rules is set forth in *Minnesota Statutes* § 116.07, subd. 4 (1988).

All persons have until 4:30 p.m. on December 20, 1989, to submit comments in support of or in opposition to the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the proposed rules within the comment period. If 25 or more such requests are so received, a public hearing will be held, unless a sufficient number withdraw their requests in writing. Any persons requesting a public hearing shall 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).

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.

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

Nathan Brooks Cooley
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
or telephone (612) 296-7437

The proposed rule may be modified without re-noticing if modifications are supported by data and views submitted to the MPCA and if changes are not substantial. If substantial changes are made, rulemaking must be reinitiated.

The proposed rules, if adopted, will incorporate a federal rule governing treatability studies into *Minnesota Rules* and will amend *Minnesota Rules* to correct, clarify, and strengthen existing rule language. The proposed rules are published below. Additional copies may be obtained from the above addressee (one free).

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and the reasonableness of each provision of the proposed rules has been prepared and is available if requested from the above addressee.

YOU ARE HEREBY ADVISED, pursuant to *Minnesota Statutes* § 14.115 (1988), "Small Business Considerations In Rulemaking," that the proposed rule amendments will result in no significant additional burdens to small businesses. The federal treatability study rule streamlines requirements for those small businesses involved in such studies. Its goal of promoting development of improved technologies for managing hazardous wastes may also result in benefits to affected small businesses. Amendments to existing rule language are expected to pose no significant new burdens to small businesses.

If no hearing is required, upon adoption of the rule, the rule and the required documents will be submitted to the Attorney General for review as to their legality and their 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 so notified, or who wish to receive a copy of the rules as adopted, must submit a written request to the above addressee.

Gerald L. Willet
Commissioner

Rules as Proposed

7001.0520 PERMIT REQUIREMENTS.

Subpart 1. **Permit required.** Except as provided in subpart 2, no person may do any of the following without obtaining a hazardous waste facility permit from the agency:

A. treat, store, or dispose of hazardous waste;

B. establish, construct, operate, ~~or~~ close, or provide post-closure care at a hazardous waste facility;

C. make an expansion, a production increase, or a process modification that results in new or increased capabilities of a permitted hazardous waste facility; or

D. operate a permitted hazardous waste facility or part of a facility that has been changed, added to, or extended, or that has new or increased capabilities.

Owners or operators of surface impoundments, landfills, land treatment units, and waste piles that received wastes after July 26, 1982, or that certified closure according to part 7045.0596, subpart 4, after January 26, 1983, must have ~~post-closure permits~~ a hazardous waste facility permit from the agency, unless they demonstrate closure by removal as provided in subparts 5 and 6. If a ~~post-closure~~ permit is required, the permit must address the applicable groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements in chapter 7045.

[For text of subps 2 to 6, see M.R. 1989]

7045.0020 DEFINITIONS.

[For text of subps 1 to 96, see M.R. 1989]

Subp. 96a. **Treatability study.** "Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:

A. whether the waste is amenable to the treatment process;

B. what pretreatment might be required;

C. the optimal process conditions needed to achieve the desired treatment;

D. the efficiency of a treatment process for a specific waste or wastes; or

E. the characteristics and volumes of residuals from a particular treatment process.

Also included in this definition, for the purpose of the exemptions of part 7045.0121, are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous waste.

[For text of subps 97 to 109, see M.R. 1989]

7045.0075 PETITIONS.

[For text of subpart 1, see M.R. 1989]

Subp. 2. **Petitions to exclude a waste produced at a particular facility.** Petitions to exclude a waste produced at a particular facility are as follows:

[For text of items A to G, see M.R. 1989]

H. After receiving a petition for an exclusion, the agency or the commissioner may request any additional information which ~~it~~ may reasonably ~~require~~ be required to evaluate the petition. An exclusion will only apply to the waste generated at the individual facility and covered by the demonstration and will not apply to waste from any other facility. The agency may ~~exclude only part of the waste for which the demonstration is submitted when it has reason to believe that variability of the waste justifies a partial exclusion.~~ limit the exclusion to portions of the waste for which sufficient affirmative demonstration is provided when it has reason to believe that the hazardous characteristics may not be consistent throughout the waste or that the demonstration may not be representative of the entire petitioned waste.

[For text of subps 3 to 10, see M.R. 1989]

Subp. 11. **Petition for additional treatability study quantities.** The commissioner may grant requests for quantity limits in excess of those specified in part 7045.0121, subpart 2, item A, for up to an additional 500 kilograms of nonacute hazardous waste, one kilogram of acute hazardous waste, and 250 kilograms of soils, water, or debris contaminated with acute hazardous waste, to conduct further treatability study evaluation. Item A of this subpart prescribes the conditions which the petitioner must meet in order for the commissioner to grant a petition to increase the quantity limits for waste, destined for use in treatability studies, to a maximum of the limits described in this subpart. Item B of this subpart prescribes what the petition must contain.

A. Conditions for granting a petition to increase quantity limits of waste for use in a treatability study are:

(1) there has been an equipment or mechanical failure during the conduct of a treatability study;

(2) there is a need to verify the results of a previously conducted treatability study;

(3) there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or

(4) there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

B. The generator or sample collector must apply to the commissioner and provide in writing the following information:

(1) the reason why the generator or sample collector requires additional quantity of sample for the treatability study evaluation and the additional quantity needed;

(2) documentation accounting for all samples of hazardous waste from the waste stream that have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(3) a description of the technical modifications or change in specifications that will be evaluated and the expected results; and

(4) if a further study is required due to equipment or mechanical failure, the applicant shall include information regarding the reason for the failure or breakdown and include what procedures or equipment improvements have been made to protect against further breakdowns.

C. Upon receiving approval of the petition, the generator must manage the additional samples as specified in part 7045.0121.

7045.0120 EXEMPT WASTES.

The following wastes may be stored, labeled, transported, treated, processed, and disposed of without complying with the requirements of this chapter:

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.

[For text of items A to I, see M.R. 1989]

J. wastes resulting from spills if the exemption is determined by the commissioner to be necessary to expedite the proper management of the spilled material and to prevent, abate, or control pollution as an immediate response to an emergency provided the waste is ultimately taken to a hazardous waste facility as specified in part 7045.0219, subpart 5, item ~~G, subitems (1) to (4)~~ B, subitem (8);

[For text of items K to Q, see M.R. 1989]

7045.0121 TREATABILITY STUDY EXEMPTIONS.

Subpart 1. **Applicability.** Except as provided in subpart 2, persons who generate or collect samples for the purpose of conducting treatability studies, as defined in part 7045.0020, are not subject to any requirement of parts 7045.0100 to 7045.0397, or to the notification requirements of the Resource Conservation and Recovery Act, United States Code, title 42, section 6930, nor are such samples included in the quantity determinations of part 7045.0219 when:

A. the sample is being collected and prepared for transportation by the generator or sample collector;

B. the sample is being accumulated or stored by the generator or sample collector before transportation to a laboratory or testing facility; or

C. the sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

Subp. 2. **Conditions of exemption.** The exemption in subpart 1 is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

A. no more than 1,000 kilograms of nonacute hazardous waste, one kilogram of acute hazardous waste, or 250 kilograms of soils, water, or debris contaminated with acute hazardous waste is used for each process being evaluated for each generated waste stream;

B. each sample shipment does not exceed 1,000 kilograms of nonacute hazardous waste, one kilogram of acute hazardous waste, or 250 kilograms of soils, water, or debris contaminated with acute hazardous waste;

C. the sample is packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of either of the following subitems are met:

(1) the transportation of each sample shipment complies with United States Department of Transportation, United States Postal Service, and any other applicable shipping requirements; or

(2) if the United States Department of Transportation, United States Postal Service, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample: the name, mailing address, and telephone number of the originator of the sample; the name, address, and telephone number of the facility that will perform the treatability study; the quantity of the sample; the date of shipment; and a description of the sample, including its Environmental Protection Agency hazardous waste number;

D. the sample is shipped to a laboratory or testing facility that is exempt under this part, or has an appropriate permit under the Resource Conservation and Recovery Act, United States Code, title 42, section 6901 et seq., or interim status;

E. the generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:

(1) copies of shipping documents;

(2) a copy of the contract with the facility conducting the treatability study; and

(3) documentation showing the amount of waste shipped under this exemption; the name, address, and Environmental Protection Agency identification number of the laboratory or testing facility that received the waste; the date the shipment was made; and whether or not unused samples and residues were returned to the generator.

F. the generator reports the information required under item E, subitem (3), in its report to the commissioner as specified in part 7045.0296.

Subp. 3. **Facilities and sample handling.** A mobile treatment unit may qualify as a laboratory or testing facility subject to requirements of this subpart. Where a group of mobile treatment units are located at the same site, the limitations specified in this subpart apply to the entire group of mobile treatment units involved in treatability studies collectively as if the group were one mobile treatment unit. Samples undergoing treatability studies and the laboratory or testing facility conducting the treatability studies, to the extent the facilities are engaged directly in treatability studies and are not otherwise subject to the Resource Conservation and Recovery Act, *United States Code*, title 2, section 6901 et seq. requirements, are not subject to any requirements of *Code of Federal Regulations*, title 40, part 124; parts 7045.0100 to 7045.0685 except this part and applicable references; parts 7045.1300 to 7045.1380; chapter 7001; or to the notification requirements of the Resource Conservation and Recovery Act, *United States Code*, title 42, section 6930, providing that the conditions in items A to K are met.

A. No less than 45 days before conducting treatability studies, the facility operator notifies the commissioner in writing that it intends to conduct treatability studies under this item.

B. The laboratory or testing facility conducting the treatability study has an Environmental Protection Agency identification number.

C. No more than a total of 250 kilograms of hazardous waste sample of which no more than one kilogram may be acute hazardous waste, as received, is subjected to initiation of treatment in all treatability studies in any single day. The term "as received" refers to the hazardous waste sample in the form received in the shipment from the generator or sample collector for the purpose of evaluation in treatability studies.

D. The quantity of as received hazardous waste sample stored at the facility for the purpose of evaluation in treatability studies does not exceed 1,000 kilograms, the total of which can include 500 kilograms of soils, water, or debris contaminated with acute hazardous waste or one kilogram of acute hazardous waste. This quantity limitation does not include:

(1) treatability study residues; and

(2) treatment materials, including nonhazardous solid waste, added to as received hazardous waste sample.

E. Any unused sample or residues generated from the treatability study must be returned to the generator or sample collector, or must be sent to a designated facility with a current Environmental Protection Agency identification number within 90 days after completion of the treatability study or within one year of the date the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date occurs first.

F. The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

G. The facility maintains records for three years following completion of each treatability study conducted and these records track compliance with the treatment rate, storage time, and quantity limits and also include the following information:

(1) the name, address, and Environmental Protection Agency identification number of the generator or sample collector of each hazardous waste sample;

(2) the date the waste sample shipment was received;

(3) the quantity of waste sample accepted;

(4) the quantity of as received waste sample in storage each day;

(5) the date the treatment study was initiated, and the amount of as received waste sample introduced to treatment each day;

(6) the date the treatability study was concluded; and

(7) the date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and its Environmental Protection Agency identification number.

H. The facility must keep, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

I. The facility prepares and submits a report to the commissioner by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year and includes the following information for the previous calendar year:

(1) the name, address, and Environmental Protection Agency identification number of the facility conducting the treatability studies;

(2) the types, by process, of treatability studies conducted;

(3) the names and addresses of persons for whom studies have been conducted, including their Environmental Protection Agency identification numbers;

(4) the total quantity of waste in storage each day;

(5) the quantity and types of waste subjected to treatability studies;

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.

(6) when each treatability study was conducted; and

(7) the final disposition of residues and unused sample from each treatability study.

J. The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under parts 7045.0100 to 7045.0143, and, if so, are subject to chapters 7001 and 7045, unless the residues and unused samples are returned to the sample originator, in which case the sample originator is responsible to make this determination.

K. The facility notifies the commissioner by letter when the facility is no longer planning to conduct any treatability studies at the site.

7045.0255 ONE-TIME DISPOSAL REQUIREMENTS.

Except for persons who are generators under part 7045.0205, subparts 2 and 3, a person having hazardous waste subject to regulation under these parts who is only a hazardous waste generator for the one-time disposal of hazardous waste which is not currently being produced, must comply with this chapter except parts 7045.0205, subpart 3; 7045.0211; 7045.0212; 7045.0292; and 7045.0296. This kind of hazardous waste generator is exempt from parts 7045.0220 to ~~7045.0255~~ 7045.0249 except that the generator must obtain an identification number and a management plan must be submitted to the commissioner for approval on the forms provided.

7045.0290 HAZARDOUS WASTE MANAGEMENT.

Subpart 1. **Proper hazardous waste management.** The generator shall ensure treatment, storage, or disposal of its hazardous waste in an on-site facility or delivery to an off-site treatment, storage, or disposal facility in accordance with all applicable requirements. The generator shall ensure that any off-site facility to which the waste is being shipped for treatment, storage, or disposal is capable of managing the waste and is authorized to receive the waste. If located in the United States, the facility used must be:

A. permitted to accept hazardous waste under the agency's permitting procedures;

B. in interim status under parts 7045.0552 to 7045.0642;

C. authorized to manage hazardous waste by the United States Environmental Protection Agency or by a state with a hazardous waste management program authorized by the Environmental Protection Agency; or

D. a facility that under part 7045.0125 beneficially uses, reuses, legitimately recycles, or reclaims the waste or treats the waste before beneficial use, reuse, legitimate recycling, or reclamation.

~~Subpart 1~~ Subp. 2. **Improper hazardous waste management.** No generator shall relinquish control of a hazardous waste when the generator has reason to believe that the hazardous waste is not being properly managed.

Subp. ~~2~~ 3. **Effect on liability.** Nothing in subpart 1 or 2 is intended to restrict or enlarge or affect in any way, any liability the generator may have to correct the mismanagement of the hazardous waste or pay for damages or alleviate any pollution caused by the mismanagement of the hazardous waste.

7045.0292 ACCUMULATION OF HAZARDOUS WASTE.

Subpart 1. **When allowed without a permit.** A generator may accumulate hazardous waste on-site without a permit or without having interim status if:

[For text of item A, see M.R. 1989]

B. the waste is placed in containers which meet the standards of part 7045.0270, subpart 4 and are managed in accordance with part 7045.0626~~, subparts 4 to 6~~; or in tanks provided the generator complies with the requirements of part 7045.0628 except part 7045.0628, subpart 9, item C, and subpart 12;

C. ~~the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container or the generator maintains a record of the accumulation starting date for each tank used for storage and the words "Hazardous Waste" are clearly labeled or marked and visible for inspection on each container or tank~~ tanks and containers are clearly labeled with the waste accumulation start date; alternatively, containers are so labeled while a clearly designated and legible log of tank transactions which includes accumulation start dates is maintained; all of these dates must be available for inspection;

[For text of items D and E, see M.R. 1989]

F. ~~all~~ containers in outdoor storage areas which hold free liquids are placed on a curbed containment surface which is impermeable to the wastes stored;

G. containers holding hazardous wastes ~~displaying the characteristic~~ which exhibit the characteristics of ignitability or reactivity or which exhibit the potential for creating vapor pressures capable of causing containers to leak, deform, or otherwise fail if not shaded are shaded from direct sunlight ~~in outdoor storage areas; and~~ however, nothing in this item shall relieve the generator from the obligation to comply with any local, state, or federal law governing storage of these wastes;

H. the requirements of parts 7045.0558 and 7045.0566 to 7045.0576 are fulfilled regarding personnel training, preparedness, prevention, and contingency planning; and

I. all waste containers and tanks are labeled with the words "Hazardous Waste" and a description that clearly identifies their contents to employees and emergency personnel.

[For text of subp 2, see M.R. 1989]

Subp. 3. **Accumulation requiring a permit.** A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of parts 7045.0450 to 7045.0642 and the agency's permitting procedures in chapter 7001 unless ~~he or she~~ the generator has been granted an extension to the 90-day period. An extension may be granted by the commissioner if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the commissioner on a case-by-case basis.

Subp. 4. **Accumulation of waste by generator.** The following apply to generators of hazardous waste:

[For text of item A, see M.R. 1989]

B. The generator must:

(1) comply with part 7045.0626~~, subparts 2, 3, and 4~~; ~~and~~

(2) ~~mark~~ clearly label each container with the words "Hazardous Waste~~.~~" and a description which clearly identifies its contents to employees and emergency personnel; and

(3) clearly label each container with the earliest of either the date on which the container became full or the date on which the volume limits prescribed in item A are reached.

C. A generator who accumulates either hazardous waste or acutely hazardous waste listed in part 7045.0135, subpart 4, item E in excess of the amounts listed in item A of this subpart at or near any point of generation must, with respect to the amount of excess waste, comply within three days with subpart 1 or, if applicable, part 7045.0219 or other applicable provisions of this chapter. During the three-day period for compliance the generator must continue to comply with item B. ~~The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.~~

7045.0454 PERSONNEL TRAINING.

[For text of subps 1 to 5, see M.R. 1989]

Subp. 6. **Personnel records.** The following documents and records must be maintained at the facility:

[For text of items A to C, see M.R. 1989]

D. records that document that the training or job experience required under subparts 1 to ~~4~~ 5 has been given to, and completed by, facility personnel.

[For text of subp 7, see M.R. 1989]

7045.0526 USE AND MANAGEMENT OF CONTAINERS.

[For text of subps 1 to 6, see M.R. 1989]

Subp. 7. **Special requirements for ignitable or reactive waste.** Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line. Nothing in this subpart shall relieve the facility owner or operator from the obligation to comply with any local, state, or federal law governing storage of these wastes.

[For text of subps 8 and 9, see M.R. 1989]

7045.0558 PERSONNEL TRAINING.

[For text of subps 1 to 5, see M.R. 1989]

Subp. 6. **Personnel records.** The following documents and records must be maintained at the facility:

[For text of items A to C, see M.R. 1989]

D. Records that document that the training or job experience required under subparts 1 to ~~4~~ 5 has been given to, and completed by, facility personnel.

[For text of subp 7, see M.R. 1989]

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7045.0574 EMERGENCY PROCEDURES.

[For text of subps 1 to 4, see M.R. 1989]

Subp. 5. **Report on released material.** If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health or the environment outside the facility, the findings must be reported as provided in items A and B:

A. If the assessment indicates that evacuation of local areas may be advisable, the appropriate local authorities must be immediately notified, and the emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated.

B. The agency's emergency response unit must be immediately notified at the 24-hour telephone number, (612) ~~296-7373~~ 296-8100, and notification must also be given to either the governmental official designated as the on-scene coordinator for that geographical area in the applicable regional contingency plan under Code of Federal Regulations, title 40, part 1510 (1983) or to the National Response Center using their 24-hour toll free telephone number, (800) 424-8802. The report must include:

(1) name and telephone number of reporter;

(2) name and address of facility;

(3) time and type of incident;

(4) name and quantity of material involved, to the extent known;

(5) the extent of injuries, if any; and

(6) the possible hazards to human health or the environment outside the facility.

Subp. 6. **Duty to notify.** The emergency coordinator shall immediately notify the agency if the released hazardous waste may cause pollution of the air, land resources, or waters of the state. The emergency coordinator shall use the agency's 24-hour telephone number (612) ~~296-7373~~ 296-8100.

[For text of subps 7 and 8, see M.R. 1989]

7045.0626 USE AND MANAGEMENT OF CONTAINERS.

[For text of subps 1 to 4, see M.R. 1989]

Subp. 5. **Inspections.** The owner or operator shall inspect hazardous waste containers and areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors and shall keep a written record of the dates and findings of these inspections.

[For text of subp 6, see M.R. 1989]

Subp. 7. **Special requirements for ignitable or reactive waste.** Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line. Nothing in this subpart shall relieve the facility owner or operator from the obligation to comply with any local, state, or federal law governing storage of these wastes.

[For text of subp 8, see M.R. 1989]

Pollution Control Agency

Proposed Permanent Rules Relating to Hazardous Waste Facility Fee Amendments

Notice of Intent to Adopt Rule Amendments Without a Public Hearing and Notice of Intent to Adopt Rule Amendments with a Public Hearing if 25 or More Persons Request a 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 Procedure Act for adopting rule amendments without a public hearing in *Minnesota Statutes* §§ 14.22 to 14.28 (1988). The effect of the amendments is to lower the fees assessed to hazardous waste land disposal facilities in which waste remains after closure. The MPCA's authority to adopt the rule amendments is set forth in *Minnesota Statutes* § 116.12 (1988).

All persons have until 4:30 p.m. on December 20, 1989, to submit comments in support of or in opposition to the proposed rule amendments or any part or subpart of the 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.

MINNESOTA POLLUTION CONTROL AGENCY
Hazardous Waste Division

Agenda Item Control Sheet

MEETING DATE: January 23, 1990 Agenda # 20

APPEARANCE ITEM: YES: ____ NO: X SCHEDULED TIME: ____

PREPARED BY: Nathan B. Cooley DATE MAILED: January 12, 1990

TITLE: Request For Adoption Of Amendments To Minn. Rules Chs. 7001 And 7045 Governing The Management, Treatment, Storage, And Disposal of Hazardous Waste

LOCATION: St. Paul (CITY) Ramsey (COUNTY)

TYPE OF ACTION: Rulemaking

RECOMMENDED ACTION: Approval

ISSUE STATEMENT: Staff request the Minnesota Pollution Control Agency to adopt rules incorporating into Minnesota's hazardous waste rules the federal provisions governing hazardous waste treatability studies, and various minor corrections, revisions, and clarifications to existing rules. Two comment letters were received on the proposed rules. Staff recommend two minor modifications based on the comments received. Staff believe these modifications will improve clarity, and will ensure consistency with the federal rule.

ATTACHMENTS:

1. Findings of Fact, Conclusions, and Order Adopting Rules
2. Written Comments Received
3. Rule Amendments

MINNESOTA POLLUTION CONTROL AGENCY
Hazardous Waste Division
Program Development Section

Request For Adoption Of Amendments To Minn. Rules Chs. 7001 And 7045 Governing The Management, Treatment, Storage, And Disposal Of Hazardous Waste

January 23, 1990

ISSUE STATEMENT

Staff request the Minnesota Pollution Control Agency to adopt rules incorporating into Minnesota's hazardous waste rules the federal provisions governing hazardous waste treatability studies, and various minor corrections, revisions, and clarifications to existing rules. Two comment letters were received on the proposed rules. Staff recommend two minor modifications based on the comments received. Staff believe these modifications will improve clarity, and will ensure consistency with the federal rule.

I. Background:

The Minnesota Pollution Control Agency (MPCA) staff are proposing various hazardous waste rule amendments in this rulemaking with a variety of purposes. The purpose and content of these proposed amendments is discussed below.

First, as the largest part of this rulemaking, staff propose incorporating the federal rule which governs treatability study exemptions. This provision governs laboratories or testing facilities which conduct hazardous waste treatability studies. The federal rule became effective immediately upon its publication in the July 19, 1988, Federal Register. Adoption of this rule is optional but strongly encouraged by the U.S. Environmental Protection Agency (EPA). Staff believe it is valuable to adopt this rule both to provide for treatability studies and because it maintains state and federal program equivalency.

Second, staff propose correcting certain errors found in existing rule text. Through application of the rules, staff, counties, and the regulated

community have identified erroneous or ambiguous rule language. Errors include such things as incorrect telephone numbers, references, described ranges of text, and grammatical errors.

Third, staff propose to clarify rule language where the current meaning is either unclear or questionable. Again, through application, confusing or unclear language has been identified to staff. These revisions are intended to clarify existing rule language. This will clarify compliance requirements for the regulated community and will assure unambiguous and therefore more enforceable rule language.

Fourth, staff propose revisions needed to provide consistency with existing Minnesota rule language. Proposed language was modified in order to meet requirements set by the Minnesota Office of the Revisor of Statutes for consistency in usage and for the level of authority or discretion that a state agency may assume in rule.

Finally, staff propose to strengthen existing language in instances where this appears appropriate. Here again, staff have received suggestions from persons directly affected by the rules.

These amendments were presented at the MPCA Board meeting held on October 24, 1989. Authorization was received to enter into rulemaking. The rules were duly published in the State Register on November 20, 1989, and were mailed to interested and affected parties for the purpose of providing a 30-day comment period. This period ended December 20, 1989.

Two comment letters were received on the proposed rules. Both letters commented on the proposed adoption of the federal treatability study exemption provisions. One letter, from the Minnesota Office of Waste Management, generally supports adoption of the rule because it benefits an existing grant program which that office administers. The other letter, from the EPA, was

received just prior to the 30-day notice period and commented on a previous draft of the proposed rule language. The two comments which remained pertinent to the proposed rule as noticed are detailed under the Discussion section below.

II. Discussion:

A. Treatability Study Exemption:

This federally promulgated provision governs laboratories or testing facilities which conduct hazardous waste treatability studies. Persons who generate, collect, or handle samples in accordance with this provision are exempted from having to comply with the balance of the hazardous waste rules. The rule is incorporated into existing Minn. Rules pts. 7045.0020 (Definitions) and 7045.0075 (Petitions), and into a new part 7045.0121 (Treatability Study Exemption).

The federal language is incorporated verbatim except for minor revisions required to provide consistency with Minnesota rules in the areas of format, clarity, or level of authority. In order to provide the appropriate level of authority, language was modified to clarify the conditions for granting petitions, and to provide limits on when the commissioner may require additional information.

The federal language which constitutes subitem (5) of Minn. Rules pt. 7045.0075 (Petitions), subp. 11, item B, had been removed from the proposed rule text based on an earlier recommendation from the Minnesota Office of the Revisor of Statutes. That office's opinion was that, under Minnesota rules, the subitem was too broad, that it enabled an unacceptable level of authority, and that it was unnecessary. This federally promulgated language read "and such other information that the [Commissioner] considers necessary."

The EPA commented that the state must either adopt equivalent language or demonstrate equivalent existing authority. In order to address both the Revisor's and the EPA's concerns, closely related language was borrowed from existing subpart 2, item H of this same part. The proposed rule is modified to read "any additional information requested by the commissioner which may reasonably be required to evaluate the petition."

The MPCA staff believes that this language is needed and reasonable in order to provide consistency with the federal rule, and to clarify the intent that additional information may be requested in support of a petition request. This language is acceptable to the EPA, and the Revisor's Office. It clarifies the rule's intent and makes no substantial changes to the rule.

The original federal language which constitutes Minn. Rules pt. 7045.0121 (Treatability Study Exemptions), subp. 3 (Facilities and sample handling), item G, read "...records track compliance with the treatment rate limits and the storage time [limits] and [the] quantity limits..." (the bracketed words show the MPCA's interpretation of the intent). The proposed rule language read "...records track compliance with the treatment rate, storage time, and quantity limits..." wherein the term 'limits' has implied applicability to all three parameters.

The EPA commented that the term 'limits' was missing from the phrase "treatment rate limits" in the proposed language. Staff expressed to EPA their belief that the term 'limits' was missing from the original federal language respecting the "storage time" parameter, and that the intent of the proposed language was to imply limits to each of the three parameters. The EPA concurred with the MPCA staff's interpretation of intent.

To clarify the language, the proposed rule was modified to read "...records track compliance with limits on the treatment rate, storage time, and quantity ~~limits~~..." This was determined to provide the clearest, mutually satisfactory expression of the EPA's intent.

This language is needed and reasonable in order to provide consistency with, and clarify the intent of, the federal rule. It clarifies the rule's intent and makes no substantial changes.

The EPA emphasizes that the purpose of the treatability study exemption is to promote research and development of innovative technologies for managing hazardous waste through treatability studies, not for the commercial management of hazardous waste. To this end, waste quantity limits allowed under this provision are restricted in order to make commercial management of waste through treatability studies uneconomical. Also, there are existing provisions for obtaining Research, Development, and Demonstration permits for facilities needing to conduct larger studies.

Conditions of the exemption include restrictions which govern the following: quantities of samples, handling, shipping, storage, testing facilities, record keeping, and reporting. Sample quantities are limited to 1,000 kilograms (kg) of non-acute hazardous wastes; 1 kg of acute hazardous wastes; and 250 kg of soils, water, or debris contaminated with acute hazardous wastes. Provisions are included in Minn. Rules pt. 7045.0075 for petitioning the Commissioner to increase the quantity of samples in these studies by up to 500 kg, 1 kg, and 250 kg respectively.

B. Amendments to Existing Minnesota Rule Language:

The following amendments correct, clarify, provide consistency, and strengthen existing rule language. These amendments address substantive comments and needs identified by staff or persons affected by the rules. The

amendments are listed below in the order in which they appear in the attached Statement of Need and Reasonableness (Attachment 2).

7001.0520 PERMIT REQUIREMENTS. Existing language in subpart 1, item B requires anyone who establishes, constructs, operates, or closes a hazardous waste facility to obtain a permit. The proposal clarifies this list by including the existing permit requirement for anyone who provides post-closure care at a facility. This does not change the meaning or intent of this rule.

Another clarification removes a potentially confusing reference to "post-closure permits." There is actually a single hazardous waste facility permit process. Existing language could be misunderstood to mean there are separate processes or permits issued for post-closure care.

7045.0075 PETITIONS. Existing language in subp. 2, item H, pertains to agency determinations on petitions to exclude from regulation tested waste at a particular facility. It contains potentially confusing language. Staff believe language provided in the proposed revision clarifies the original intent.

7045.0120 EXEMPT WASTE. These provisions affect the disposition of spilled wastes. In item J, an existing reference to, "...part 7045.0219, subpart 5, item G, subitems (1) to (4)" is in error; the cited item does not exist. Proposed language corrects this erroneous cite to read, "...part 7045.0219, subpart 5, item B, subitem (8)."

7045.0255 ONE-TIME DISPOSAL REQUIREMENTS. This part provides an exemption for one time disposal of wastes. Existing language in this part errantly exempts generators from complying with the provisions of the part. Proposed language corrects this error by changing the reference to still require compliance with this part.

7045.0290 HAZARDOUS WASTE MANAGEMENT. The existing language of this rule addresses improper management of hazardous waste by providing that no generator shall knowingly facilitate improper management of hazardous waste, and that the generator retains liability for mismanagement of its waste. The proposed amendment supplements this provision with language which affirmatively addresses proper waste management.

The proposed amendment requires the generator to ensure treatment, storage, and disposal of hazardous waste in an on-site facility or to ensure delivery to an off-site facility in accordance with all applicable requirements. It also requires the generator to ensure that any off-site facility is capable of managing the waste and is authorized to receive the waste. The provision also lists certain minimum criteria for designated facilities.

The benefit of this proposed amendment is that it provides the generator with a clear understanding of what is expected for proper waste management. The added language clearly restates existing requirements from various hazardous waste rule parts in the same part which prohibits improper waste management. Staff believe this provision strengthens and clarifies existing rule language but does not represent a change in policy.

7045.0292 ACCUMULATION OF HAZARDOUS WASTE. This part governs management of waste, labeling, containment surfaces, storage of wastes with special characteristics, and hazard labeling. The following amendments are proposed for this part:

- Subpart 1, item B. An existing cite requires containers to be, "...managed in accordance with part 7045.0626, subparts 4 to 6." Subparts 4 to 6 specifically address the management of containers, inspections, and incompatible wastes, respectively. Staff propose expanding this cite to

require compliance with all eight subparts of part 7045.0626. Proposed added provisions govern the following regarding container management: scope, condition of containers, compatibility of waste with containers, special requirements for ignitable or reactive waste, and closure. Staff believe including provisions of the entire part strengthens rule language by adding to safe container management without adding significant burdens to generators.

- Subpart 1, item C. Existing language provides that containers must be labeled with the accumulation start date and that a record of this date must be maintained for tanks. Proposed language provides the generator the option of either labeling tanks in the same fashion as containers or maintaining a log of transactions which includes the accumulation start date. Also, language addressing hazard labeling is consolidated under a newly created item I. Staff believe the amendment makes the rule more clear and that the intent of the rule is retained while allowing a management option to generators.

- Subpart 1, item F. Existing language is clarified by removing the unnecessary term "all," and inserting the word "containment" into the phrase "curbed [containment] surface" to clarify the purpose of the provision.

- Subpart 1, item G. Existing language states that hazardous wastes displaying the characteristic of ignitability must be shaded from direct sunlight. The proposed rule amendment clarifies that the containers holding these wastes must be shaded. The provision is made more restrictive by adding two additional characteristics for which shading might prevent container failures, namely, reactivity and potentially high vapor pressures. Also, language is added which states that this provision does not relieve generators from complying with fire, building, or other applicable codes.

- Subpart 1, item I. This new item is added to consolidate hazard labeling requirements for containers and tanks. This includes labeling with the words

"Hazardous Waste" (from Subpart 1, item C, above) and a new requirement for a description of container contents. Staff believe this new labeling requirement provides significant benefits for waste management, waste handling, and emergency response personnel. In light of the widespread use of gummed hazardous waste labels, and of requirements for content labeling prior to shipping, this should not pose a significant burden to generators.

- Subpart 3. The existing phrase "he or she" is proposed to be replaced with the equivalent but more specific phrase "the generator."

- Subpart 4, item B, subitem (1). Existing language cites requirements for generators accumulating waste to comply with Minn. Rules pt. 7045.0626, subps. 2, 3, and 4 respecting use and management of containers. These subparts govern the condition of containers, compatibility of waste with containers, and management of containers. As was proposed under subpart 1, item B of this part, staff propose adding the requirement of compliance with all eight subparts provided in part 7045.0626. Proposed added provisions govern the following regarding container management: scope, inspections, special requirements for incompatible wastes, special requirements for ignitable or reactive waste, and closure. Similarly, staff believe including provisions of the entire part strengthens rule language by adding to safe container management without significant additional burdens to generators.

- Subpart 4, item B, subitem (2). Existing language requires labeling point of generation (satellite) containers for accumulating hazardous wastes with the words "Hazardous Waste." Proposed language strengthens this provision to require a description which clearly identifies container contents. As previously discussed for subpart 1, item (I) of this part, staff believe this requirement provides significant benefits for waste management, waste handling, and emergency response personnel. Here also, in light of the widespread use of

gummed hazardous waste labels, and because of requirements for content labeling prior to shipping, this should not pose a significant burden to generators.

- Subpart 4, item B. Staff propose relocating a portion of the language presently in item C of this subpart into a new subitem (3) of item B. Item B already contains language addressing container labeling so it is reasonable to re-format these requirements into one item. Existing language, which requires the labeling of containers holding excess accumulation with the date the excess accumulation began, is confusing. Staff propose clarifying language to require generators to label these satellite containers with the earliest of either the date on which they become full or the date on which the volume limits prescribed in item A are reached. Staff believe the amendment provides clarity and retains the original intent of the provision.

7045.0454 PERSONNEL TRAINING [facility standards]. This provision governs the documentation of training. Existing language requires generators to document the mandatory training of facility personnel regarding hazardous wastes with which they deal in their jobs. Proposed language extends this documentation requirement to also cover the mandatory training reviews or refreshers. Staff believe this requirement fits with the intent of the provision and should not pose a significant burden.

7045.0526 USE AND MANAGEMENT OF CONTAINERS [facility standards]. This provision governs special requirements for storage of ignitable or reactive wastes. Existing language provides that containers holding ignitable or reactive waste must be located at least 50 feet from the facility's property line. Language is added which states that this provision does not relieve generators from complying with fire, building, or other applicable codes. Staff believe this is consistent with the intent of this rule.

7045.0558 PERSONNEL TRAINING [interim status standards]. See discussion under part 7045.0454 above for an identical revision proposal.

7045.0574 EMERGENCY PROCEDURES. The proposed revision corrects the erroneous telephone number provided for the agency's emergency response unit in subparts 5 and 6.

7045.0626 USE AND MANAGEMENT OF CONTAINERS [interim status standards]. This provision governs use and management of containers. Existing language in subpart 5 provides that the owner or operator shall inspect areas where containers are stored. Staff believe the intent is more properly conveyed by stating that the containers should also be inspected in order to detect potential failure. Also, a provision is added which establishes a requirement for documenting these inspections. Staff believe it is reasonable to have required inspections documented. See discussion under part 7045.0526 for identical revisions proposed for subpart 7 of this part.

III. Conclusions:

MPCA staff believe that the proposed rules are needed and reasonable (see Statement of Need and Reasonableness) and that it is appropriate to amend the hazardous waste rules to include the specified provisions.

Staff also believe that it is justified and reasonable to modify the proposed rule language based on comments received. The EPA, the Minnesota Office of the Revisor of Statutes, and the MPCA staff are in agreement on the language modifications. These modifications provide clarity to existing subject matter and do not result in a substantial change in the proposed rule amendments. Therefore, the modifications may be made at this point in the administrative rulemaking process without republishing for public comment. Adoption of the amendments (as modified) will ensure consistency with the

federal hazardous waste regulations and will provide an appropriate level of hazardous waste regulation.

IV. Recommendation:

MPCA staff recommend that the MPCA adopt the suggested staff resolution and the amendments to the hazardous waste rules proposed in this rulemaking.

SUGGESTED STAFF RESOLUTION

BE IT RESOLVED, that the Minnesota Pollution Control Agency hereby approves and adopts the attached amendments to the Minnesota Pollution Control Agency's rules governing the management, storage, treatment, and disposal of hazardous waste, Minn. Rules pts. 7001.0520, 7045.0020, 7045.0075, 7045.0120, 7045.0121, 7045.0255, 7045.0290, 7045.0292, 7045.0454, 7045.0526, 7045.0558, 7045.0574, and 7045.0626, pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. § 116.07, subp. 4 (1988).

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 to the rules 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 the Minnesota Pollution Control Agency 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 Minnesota Pollution Control Agency and to perform the necessary acts to provide that the rule amendments shall have the force and effect of law.

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rule Amendments Governing the Management, Treatment, Storage, and Disposal of Hazardous Waste, Minn. Rules Pts. 7001.0520, 7045.0020, 7045.0075, 7045.0120, 7045.0121, 7045.0255, 7045.0290, 7045.0292, 7045.0454, 7045.0526, 7045.0558, 7045.0574, and 7045.0626

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-third day of January, 1990. 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. Notice of the MPCA's intent to adopt the above-entitled rule amendments without a public hearing was published in the State Register on November 20, 1989, (14 SR 1203), 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 November 17, 1989.

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

3. All persons were given the opportunity to submit comments on the proposed rule amendments for 30 days after notice of the proposed rulemaking. The 30 day comment period, as set out in the notice, expired on December 20, 1989.

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

5. No requests for notice of submission of the adopted rule amendments to the Attorney General were received by the MPCA.

6. The MPCA received one comment letter during the 30-day comment period. This letter from the Minnesota Office of Waste Management supports the MPCA's incorporation of the federal treatability study rule. It also explains that Waste Management administers a grant program which similarly encourages studies of new hazardous waste management technologies. Finally, it requests consideration of its program in future rulemakings.

A comment letter was also received from the U.S. Environmental Protection Agency (EPA) on November 7, 1989, just prior to opening of the 30-day comment period. This letter was based on an earlier draft of rule language. Two comments remained pertinent to the rule as noticed. The MPCA finds that two modifications to the proposed rule amendments are justified, based on EPA's comments, as follows:

A. Minn. Rules pt. 7045.0075 (Petitions), subp. 11, item B, subitem (5).

The federal language which constitutes subitem (5) had been removed from the proposed rule text based on an earlier recommendation from the Minnesota Office of the Revisor of Statutes. That office's opinion was that, under Minnesota rules, the subitem was too broad, that it enabled an unacceptable level of authority and that it was unnecessary. This federally promulgated language reads "and such other information that the [Commissioner] considers necessary."

The EPA commented that the state must either adopt equivalent language or demonstrate equivalent existing authority. In order to address both the Revisor's and the EPA's concerns, closely related language was borrowed from existing subp. 2, item H of this same part. The proposed rule is modified to read "<u>any additional information requested by the commissioner which may reasonably be required to evaluate the petition</u>."

The MPCA believes that this language is needed and reasonable in order to provide consistency with the federal rule, and to clarify the intent that additional information may be requested in order to evaluate a petition request. It clarifies the rule's intent and makes no subtantial changes to the rule.

B. Minn. Rules pt. 7045.0121 (Treatability Study Exemptions), subp. 3 (Facilities and sample handling), item G.

The original federal language read "...records track compliance with the treatment rate limits and the storage time [limits] and [the] quantity limits..." (the bracketed words show the MPCA's interpretation of the rule's intent). The proposed rule language reads "...records track compliance with the treatment rate, storage time, and quantity limits..." wherein the term "limits" has implied applicability to all three parameters.

The EPA commented that the term "limits" was missing from the phrase "treatment rate limits" in the proposed language. Staff expressed to EPA their belief that the term "limits" was missing from the original federal language respecting the "storage time" parameter, and that the intent of the proposed language was to imply limits to each of the three parameters. The EPA concurred with the MPCA's interpretation of intent.

To clarify the language, the proposed rule was modified to read "...records track compliance with the <u>limits on</u> treatment rate, storage time, and quantity ~~limits~~..." This was determined to provide the clearest, mutually satisfactory expression of the EPA's intent.

This language is needed and reasonable in order to provide consistency with, and clarify the intent of, the federal rule. It clarifies the rule's intent and makes no subtantial changes to the rule.

7. The MPCA adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed 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 prior to close of 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 the rule amendments 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.

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached amendments to Minn. Rules pts. 7001.0520, 7045.0020, 7045.0075, 7045.0120, 7045.0121, 7045.0255, 7045.0290, 7045.0292, 7045.0454, 7045.0526, 7045.0558, 7045.0574, and 7045.0626, governing the management of hazardous waste, are adopted pursuant to the authority vested in the MPCA by Minn. Stat. § 116.07, subd. 4 (1988).

Dated:

_____

Gerald L. Willet
Commissioner

MINNESOTA
OFFICE
OF WASTE
MANAGEMENT

1350 Energy Lane
St. Paul, Minnesota 55108
(612) 649-5750
MN Toll Free
1-800-652-9747

ATTACHMENT 2

RECEIVED
DEC 20 89
MPCA, Hazardous
Waste Division

December 18, 1989

Nathan Coolie
Minnesota Pollution Control Agency
Hazardous Waste Division
520 Lafayette Road, MN 55155

Dear Mr. Coolie:

The intent of this letter is to provide comments on the Minnesota Pollution Control Agency's (MPCA) proposal to amend Minn. Rules pts. 7045.0020 (Definitions) and 7045.0075 (Petitions) to incorporate Federal Rule provisions (Federal Register, July 19, 1988) governing treatability study exemptions.

The OWM supports the amendments to Minn. Rules to include federal treatability study exemptions.

As you are aware, Minn. Stat. § 115A.154, subd. 1 (1988) authorizes the Office of Waste Management (OWM) to award Industrial Waste Reduction Grants to generators of hazardous and nonhazardous wastes to determine the feasibility of specific methods and technologies to reduce the generation of these wastes. This grant program is designed to promote research and development of innovative technologies for managing hazardous waste and appears consistent with the intent of a treatability study exemption provision.

Because of the innovative nature of our grant program, we are concerned that the treatability study exemptions may not cover projects potentially funded by the grants program. This could possibly restrict innovative research in the development of waste reduction technologies. For this reason the OWM encourages the MPCA to give consideration in the future to amending Minn. Rules pt. 7001.0712 (research, development and demonstration permit) to include the provisions of 40 CFR 270.65 subpart 3b. This provision allows the 'administrator' flexibility in modifying or waving permit requirements. OWM recognizes that this issue is not directly related to the changes considered in MPCA's current rulemaking process. However, any consideration the MPCA can give to this issue is appreciated.

My staff and I look forward to working with you to ensure that industrial waste reduction grants meet the requirements of Minnesota rules. Please call Julie MacKenzie, Industrial Waste Reduction Grant Program Coordinator, at 649-5494 if you have any questions.

Sincerely,

Brett Smith

Brett Smith, Supervisor
Hazardous and Problem Waste Unit

cc: Mike Robertson, OWM Director
Julie MacKenzie

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nathan

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

5HR-JCK-13

NOV 07 1989

Ms. Sharon Meyer
Supervisor
Program Development Section
Hazardous Waste Division
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155

Dear Ms. Meyer:

Enclosed are our comments on Minnesota's proposed treatability studies sample exemption rule. Mr. Nathan Cooley, of your staff, submitted the rules to us on September 29, 1989.

We appreciate the opportunity to comment.

Please contact Ms. Christine Klemme, of my staff, at (312) 886-3715, if you have any questions.

Sincerely yours,

Wm. E. Muno

David A. Ullrich
Associate Division Director
Office of RCRA

Enclosure

Comments on 7-19-88 Federal Register Rule

1. Page 4, Line 15-"and such other information that the Director considers necessary" is missing. We could not find a State equivalent to 40 CFR Part 261.4(e)(3)(v). The State must either adopt an equivalent rule or demonstrate equivalent existing authority.

2. Page 8, Line 10-the word "limits" is missing from the phrase "treatment rate limits". By not including the word, you are making the phrase less stringent. Facilities must show compliance with the limits placed on the treatment rate.

3. In my copy of the rules, Page 11-line 13, references 7045.0628, subpart 9, item C and subpart 12. Yet the Minnesota rules refer to 7045.0628, subpart 3. No change is noted. Please explain which reference is correct.

4. Page 13, Line 21, and Page 16, Line 5, changes the wording from compliance with the 50 feet rule to "in accordance with applicable fire and building codes." The following wording must be used: "must comply with, or obtain a variance from, the 50 feet rule. All applicable fire and building codes must be addressed".

5. The wording on Page 14, Line 23 and following, which provides the telephone number and related information for the National Response Center, should not be deleted.

Pollution Control Agency

Solid and Hazardous Waste Division

Adopted Permanent Rules Relating to Hazardous Waste

Rules as Adopted

7001.0520 PERMIT REQUIREMENTS.

Subpart 1. **Permit required.** Except as provided in subpart 2, no person may do any of the following without obtaining a hazardous waste facility permit from the agency:

A. treat, store, or dispose of hazardous waste;

B. establish, construct, operate, close, or provide post-closure care at a hazardous waste facility;

C. make an expansion, a production increase, or a process modification that results in new or increased capabilities of a permitted hazardous waste facility; or

D. operate a permitted hazardous waste facility or part of a facility that has been changed, added to, or extended, or that has new or increased capabilities.

Owners or operators of surface impoundments, landfills, land treatment units, and waste piles that received wastes after July 26, 1982, or that certified closure according to part 7045.0596, subpart 4, after January 26, 1983, must have a hazardous waste facility permit from the agency, unless they demonstrate closure by removal as provided in subparts 5 and 6. If a permit is required, the permit must address the applicable groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements in chapter 7045.

[For text of subps 2 to 6, see M.R. 1989]

7045.0020 DEFINITIONS.

[For text of subps 1 to 96, see M.R. 1989]

Subp. 96a. **Treatability study.** "Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:

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A. whether the waste is amenable to the treatment process;

B. what pretreatment might be required;

C. the optimal process conditions needed to achieve the desired treatment;

D. the efficiency of a treatment process for a specific waste or wastes; or

E. the characteristics and volumes of residuals from a particular treatment process.

Also included in this definition, for the purpose of the exemptions of part 7045.0121, are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous waste.

[For text of subps 97 to 109, see M.R. 1989]

7045.0075 PETITIONS.

[For text of subpart 1, see M.R. 1989]

Subp. 2. **Petitions to exclude a waste produced at a particular facility.** Petitions to exclude a waste produced at a particular facility are as follows:

[For text of items A to G, see M.R. 1989]

H. After receiving a petition for an exclusion, the agency or the commissioner may request any additional information which may reasonably be required to evaluate the petition. An exclusion will only apply to the waste generated at the individual facility and covered by the demonstration and will not apply to waste from any other facility. The agency may limit the exclusion to portions of the waste for which sufficient affirmative demonstration is provided when it has reason to believe that the hazardous characteristics may not be consistent throughout the waste or that the demonstration may not be representative of the entire petitioned waste.

[For text of subps 3 to 10, see M.R. 1989]

Subp. 11. **Petition for additional treatability study**

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quantities. The commissioner may grant requests for quantity limits in excess of those specified in part 7045.0121, subpart 2, item A, for up to an additional 500 kilograms of nonacute hazardous waste, one kilogram of acute hazardous waste, and 250 kilograms of soils, water, or debris contaminated with acute hazardous waste, to conduct further treatability study evaluation. Item A of this subpart prescribes the conditions which the petitioner must meet in order for the commissioner to grant a petition to increase the quantity limits for waste, destined for use in treatability studies, to a maximum of the limits described in this subpart. Item B of this subpart prescribes what the petition must contain.

A. Conditions for granting a petition to increase quantity limits of waste for use in a treatability study are:

(1) there has been an equipment or mechanical failure during the conduct of a treatability study;

(2) there is a need to verify the results of a previously conducted treatability study;

(3) there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or

(4) there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

B. The generator or sample collector must apply to the commissioner and provide in writing the following information:

(1) the reason why the generator or sample collector requires additional quantity of sample for the treatability study evaluation and the additional quantity needed;

(2) documentation accounting for all samples of hazardous waste from the waste stream that have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which

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it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(3) a description of the technical modifications or change in specifications that will be evaluated and the expected results; and

(4) if a further study is required due to equipment or mechanical failure, the applicant shall include information regarding the reason for the failure or breakdown and include what procedures or equipment improvements have been made to protect against further breakdowns; and

(5) any additional information requested by the commissioner which may reasonably be required to evaluate the petition.

C. Upon receiving approval of the petition, the generator must manage the additional samples as specified in part 7045.0121.

7045.0120 EXEMPT WASTES.

The following wastes may be stored, labeled, transported, treated, processed, and disposed of without complying with the requirements of this chapter:

[For text of items A to I, see M.R. 1989]

J. wastes resulting from spills if the exemption is determined by the commissioner to be necessary to expedite the proper management of the spilled material and to prevent, abate, or control pollution as an immediate response to an emergency provided the waste is ultimately taken to a hazardous waste facility as specified in part 7045.0219, subpart 5, item B, subitem (8);

[For text of items K to Q, see M.R. 1989]

7045.0121 TREATABILITY STUDY EXEMPTIONS.

Subpart 1. **Applicability.** Except as provided in subpart 2, persons who generate or collect samples for the purpose of conducting treatability studies, as defined in part 7045.0020, are not subject to any requirement of parts 7045.0100 to

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7045.0397, or to the notification requirements of the Resource Conservation and Recovery Act, United States Code, title 42, section 6930, nor are such samples included in the quantity determinations of part 7045.0219 when:

A. the sample is being collected and prepared for transportation by the generator or sample collector;

B. the sample is being accumulated or stored by the generator or sample collector before transportation to a laboratory or testing facility; or

C. the sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

Subp. 2. **Conditions of exemption.** The exemption in subpart 1 is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

A. no more than 1,000 kilograms of nonacute hazardous waste, one kilogram of acute hazardous waste, or 250 kilograms of soils, water, or debris contaminated with acute hazardous waste is used for each process being evaluated for each generated waste stream;

B. each sample shipment does not exceed 1,000 kilograms of nonacute hazardous waste, one kilogram of acute hazardous waste, or 250 kilograms of soils, water, or debris contaminated with acute hazardous waste;

C. the sample is packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of either of the following subitems are met:

(1) the transportation of each sample shipment complies with United States Department of Transportation, United States Postal Service, and any other applicable shipping requirements; or

(2) if the United States Department of Transportation, United States Postal Service, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample: the name,

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mailing address, and telephone number of the originator of the sample; the name, address, and telephone number of the facility that will perform the treatability study; the quantity of the sample; the date of shipment; and a description of the sample, including its Environmental Protection Agency hazardous waste number;

D. the sample is shipped to a laboratory or testing facility that is exempt under this part, or has an appropriate permit under the Resource Conservation and Recovery Act, United States Code, title 42, section 6901 et seq., or interim status;

E. the generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:

(1) copies of shipping documents;

(2) a copy of the contract with the facility conducting the treatability study; and

(3) documentation showing the amount of waste shipped under this exemption; the name, address, and Environmental Protection Agency identification number of the laboratory or testing facility that received the waste; the date the shipment was made; and whether or not unused samples and residues were returned to the generator.

F. the generator reports the information required under item E, subitem (3), in its report to the commissioner as specified in part 7045.0296.

Subp. 3. **Facilities and sample handling.** A mobile treatment unit may qualify as a laboratory or testing facility subject to requirements of this subpart. Where a group of mobile treatment units are located at the same site, the limitations specified in this subpart apply to the entire group of mobile treatment units involved in treatability studies collectively as if the group were one mobile treatment unit. Samples undergoing treatability studies and the laboratory or testing facility conducting the treatability studies, to the extent the facilities are engaged directly in treatability studies and are not otherwise subject to the Resource

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Conservation and Recovery Act, United States Code, title 42, section 6901 et seq. requirements, are not subject to any requirements of Code of Federal Regulations, title 40, part 124; parts 7045.0100 to 7045.0685 except this part and applicable references; parts 7045.1300 to 7045.1380; chapter 7001; or to the notification requirements of the Resource Conservation and Recovery Act, United States Code, title 42, section 6930, providing that the conditions in items A to K are met.

A. No less than 45 days before conducting treatability studies, the facility operator notifies the commissioner in writing that it intends to conduct treatability studies under this item.

B. The laboratory or testing facility conducting the treatability study has an Environmental Protection Agency identification number.

C. No more than a total of 250 kilograms of hazardous waste sample of which no more than one kilogram may be acute hazardous waste, as received, is subjected to initiation of treatment in all treatability studies in any single day. The term "as received" refers to the hazardous waste sample in the form received in the shipment from the generator or sample collector for the purpose of evaluation in treatability studies.

D. The quantity of as received hazardous waste sample stored at the facility for the purpose of evaluation in treatability studies does not exceed 1,000 kilograms, the total of which can include 500 kilograms of soils, water, or debris contaminated with acute hazardous waste or one kilogram of acute hazardous waste. This quantity limitation does not include:

(1) treatability study residues; and

(2) treatment materials, including nonhazardous solid waste, added to as received hazardous waste sample.

E. Any unused sample or residues generated from the treatability study must be returned to the generator or sample collector, or must be sent to a designated facility with a current Environmental Protection Agency identification number within 90 days after completion of the treatability study or

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within one year of the date the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date occurs first.

F. The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

G. The facility maintains records for three years following completion of each treatability study conducted and these records track compliance with the limits on treatment rate, storage time, and quantity ~~limits~~ and also include the following information:

(1) the name, address, and Environmental Protection Agency identification number of the generator or sample collector of each hazardous waste sample;

(2) the date the waste sample shipment was received;

(3) the quantity of waste sample accepted;

(4) the quantity of as received waste sample in storage each day;

(5) the date the treatment study was initiated, and the amount of as received waste sample introduced to treatment each day;

(6) the date the treatability study was concluded; and

(7) the date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and its Environmental Protection Agency identification number.

H. The facility must keep, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

I. The facility prepares and submits a report to the commissioner by March 15 of each year that estimates the number

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of studies and the amount of waste expected to be used in treatability studies during the current year and includes the following information for the previous calendar year:

(1) the name, address, and Environmental Protection Agency identification number of the facility conducting the treatability studies;

(2) the types, by process, of treatability studies conducted;

(3) the names and addresses of persons for whom studies have been conducted, including their Environmental Protection Agency identification numbers;

(4) the total quantity of waste in storage each day;

(5) the quantity and types of waste subjected to treatability studies;

(6) when each treatability study was conducted; and

(7) the final disposition of residues and unused sample from each treatability study.

J. The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under parts 7045.0100 to 7045.0143, and, if so, are subject to chapters 7001 and 7045, unless the residues and unused samples are returned to the sample originator, in which case the sample originator is responsible to make this determination.

K. The facility notifies the commissioner by letter when the facility is no longer planning to conduct any treatability studies at the site.

7045.0255 ONE-TIME DISPOSAL REQUIREMENTS.

Except for persons who are generators under part 7045.0205, subparts 2 and 3, a person having hazardous waste subject to regulation under these parts who is only a hazardous waste generator for the one-time disposal of hazardous waste which is not currently being produced, must comply with this chapter

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except parts 7045.0205, subpart 3; 7045.0211; 7045.0212; 7045.0292; and 7045.0296. This kind of hazardous waste generator is exempt from parts 7045.0220 to 7045.0249 except that the generator must obtain an identification number and a management plan must be submitted to the commissioner for approval on the forms provided.

7045.0290 HAZARDOUS WASTE MANAGEMENT.

Subpart 1. **Proper hazardous waste management.** The generator shall ensure treatment, storage, or disposal of its hazardous waste in an on-site facility or delivery to an off-site treatment, storage, or disposal facility in accordance with all applicable requirements. The generator shall ensure that any off-site facility to which the waste is being shipped for treatment, storage, or disposal is capable of managing the waste and is authorized to receive the waste. If located in the United States, the facility used must be:

A. permitted to accept hazardous waste under the agency's permitting procedures;

B. in interim status under parts 7045.0552 to 7045.0642;

C. authorized to manage hazardous waste by the United States Environmental Protection Agency or by a state with a hazardous waste management program authorized by the Environmental Protection Agency; or

D. a facility that under part 7045.0125 beneficially uses, reuses, legitimately recycles, or reclaims the waste or treats the waste before beneficial use, reuse, legitimate recycling, or reclamation.

Subp. 2. **Improper hazardous waste management.** No generator shall relinquish control of a hazardous waste when the generator has reason to believe that the hazardous waste is not being properly managed.

Subp. 3. **Effect on liability.** Nothing in subpart 1 or 2 is intended to restrict or enlarge or affect in any way, any liability the generator may have to correct the mismanagement of

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the hazardous waste or pay for damages or alleviate any pollution caused by the mismanagement of the hazardous waste.

7045.0292 ACCUMULATION OF HAZARDOUS WASTE.

Subpart 1. **When allowed without a permit.** A generator may accumulate hazardous waste on-site without a permit or without having interim status if:

[For text of item A, see M.R. 1989]

B. the waste is placed in containers which meet the standards of part 7045.0270, subpart 4 and are managed in accordance with part 7045.0626; or in tanks provided the generator complies with the requirements of part 7045.0628 except part 7045.0628, subpart 9, item C, and subpart 12;

C. tanks and containers are clearly labeled with the waste accumulation start date; alternatively, containers are so labeled while a clearly designated and legible log of tank transactions which includes accumulation start dates is maintained; all of these dates must be available for inspection;

[For text of items D and E, see M.R. 1989]

F. containers in outdoor storage areas which hold free liquids are placed on a curbed containment surface which is impermeable to the wastes stored;

G. containers holding hazardous wastes which exhibit the characteristics of ignitability or reactivity or which exhibit the potential for creating vapor pressures capable of causing containers to leak, deform, or otherwise fail if not shaded are shaded from direct sunlight; however, nothing in this item shall relieve the generator from the obligation to comply with any local, state, or federal law governing storage of these wastes;

H. the requirements of parts 7045.0558 and 7045.0566 to 7045.0576 are fulfilled regarding personnel training, preparedness, prevention, and contingency planning; and

I. all waste containers and tanks are labeled with the words "Hazardous Waste" and a description that clearly identifies their contents to employees and emergency personnel.

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[For text of subp 2, see M.R. 1989]

Subp. 3. **Accumulation requiring a permit.** A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of parts 7045.0450 to 7045.0642 and the agency's permitting procedures in chapter 7001 unless the generator has been granted an extension to the 90-day period. An extension may be granted by the commissioner if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the commissioner on a case-by-case basis.

Subp. 4. **Accumulation of waste by generator.** The following apply to generators of hazardous waste:

[For text of item A, see M.R. 1989]

B. The generator must:

(1) comply with part 7045.0626;

(2) clearly label each container with the words "Hazardous Waste" and a description which clearly identifies its contents to employees and emergency personnel; and

(3) clearly label each container with the earliest of either the date on which the container became full or the date on which the volume limits prescribed in item A are reached.

C. A generator who accumulates either hazardous waste or acutely hazardous waste listed in part 7045.0135, subpart 4, item E in excess of the amounts listed in item A of this subpart at or near any point of generation must, with respect to the amount of excess waste, comply within three days with subpart 1 or, if applicable, part 7045.0219 or other applicable provisions of this chapter. During the three-day period for compliance the generator must continue to comply with item B.

7045.0454 PERSONNEL TRAINING.

[For text of subps 1 to 5, see M.R. 1989]

Subp. 6. **Personnel records.** The following documents and

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records must be maintained at the facility:

[For text of items A to C, see M.R. 1989]

D. records that document that the training or job experience required under subparts 1 to 5 has been given to, and completed by, facility personnel.

[For text of subp 7, see M.R. 1989]

7045.0526 USE AND MANAGEMENT OF CONTAINERS.

[For text of subps 1 to 6, see M.R. 1989]

Subp. 7. **Special requirements for ignitable or reactive waste.** Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line. Nothing in this subpart shall relieve the facility owner or operator from the obligation to comply with any local, state, or federal law governing storage of these wastes.

[For text of subps 8 and 9, see M.R. 1989]

7045.0558 PERSONNEL TRAINING.

[For text of subps 1 to 5, see M.R. 1989]

Subp. 6. **Personnel records.** The following documents and records must be maintained at the facility:

[For text of items A to C, see M.R. 1989]

D. Records that document that the training or job experience required under subparts 1 to 5 has been given to, and completed by, facility personnel.

[For text of subp 7, see M.R. 1989]

7045.0574 EMERGENCY PROCEDURES.

[For text of subps 1 to 4, see M.R. 1989]

Subp. 5. **Report on released material.** If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health or the environment outside the facility, the findings must be reported as provided in items A and B:

A. If the assessment indicates that evacuation of local areas may be advisable, the appropriate local authorities

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must be immediately notified, and the emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated.

B. The agency's emergency response unit must be immediately notified at the 24-hour telephone number, (612) 296-8100, and notification must also be given to either the governmental official designated as the on-scene coordinator for that geographical area in the applicable regional contingency plan under Code of Federal Regulations, title 40, part 1510 (1983) or to the National Response Center using their 24-hour toll free telephone number, (800) 424-8802. The report must include:

(1) name and telephone number of reporter;

(2) name and address of facility;

(3) time and type of incident;

(4) name and quantity of material involved, to the extent known;

(5) the extent of injuries, if any; and

(6) the possible hazards to human health or the environment outside the facility.

Subp. 6. **Duty to notify.** The emergency coordinator shall immediately notify the agency if the released hazardous waste may cause pollution of the air, land resources, or waters of the state. The emergency coordinator shall use the agency's 24-hour telephone number (612) 296-8100.

[For text of subps 7 and 8, see M.R. 1989]

7045.0626 USE AND MANAGEMENT OF CONTAINERS.

[For text of subps 1 to 4, see M.R. 1989]

Subp. 5. **Inspections.** The owner or operator shall inspect hazardous waste containers and areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors and shall keep a written record of the dates and findings of these inspections.

[For text of subp 6, see M.R. 1989]

Subp. 7. **Special requirements for ignitable or reactive**

Approved by Revisor _____

waste. Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line. Nothing in this subpart shall relieve the facility owner or operator from the obligation to comply with any local, state, or federal law governing storage of these wastes.

[For text of subp 8, see M.R. 1989]

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 twenty-third day of January, 1990, 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 hereby approves and adopts the attached amendments to the Minnesota Pollution Control Agency's hazardous waste rules governing the management, storage, treatment, and disposal of hazardous waste, Minn. Rules pts. 7001.0520, 7045.0020, 7045.0075, 7045.0120, 7045.0121, 7045.0255, 7045.0290, 7045.0292, 7045.0454, 7045.0526, 7045.0558, 7045.0574, and 7045.0626, pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. § 116.12, subd. 1 (1988).

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 to the rules 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 the Minnesota Pollution Control Agency adopts the Findings of Fact, Conclusions, and Order Adopting Rule Amendments and that the Commissioner is hereby granted the authority to sign the above-mentioned document on behalf of the Minnesota Pollution Control Agency 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 31st day of January, 1990.

Gerald L. Willet

Gerald L. Willet
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rule Amendments Governing the Management, Treatment, Storage, and Disposal of Hazardous Waste, Minn. Rules Pts. 7001.0520, 7045.0020, 7045.0075, 7045.0120, 7045.0121, 7045.0255, 7045.0290, 7045.0292, 7045.0454, 7045.0526, 7045.0558, 7045.0574, and 7045.0626

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-third day of January, 1990. 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 November 20, 1989, (14 SR 1203), 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 November 17, 1989.

(2) 2. The Statement of Need and Reasonableness was prepared prior to the 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 the proposed rulemaking. The 30 day comment period, as set out in the notice, expired on December 20, 1989.

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

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

(7) 6. The MPCA received one comment letter during the 30-day comment period. This letter from the Minnesota Office of Waste Management supports the MPCA's incorporation of the federal treatability study rule. It also explains that Waste Management administers a grant program which similarly encourages studies of new hazardous waste management technologies. Finally, it requests consideration of its program in future rulemakings.

A comment letter was also received from the U.S. Environmental Protection Agency (EPA) on November 7, 1989, just prior to opening of the 30-day comment period. This letter was based on an earlier draft of rule language. Two comments remained pertinent to the rule as noticed. The MPCA finds that two modifications to the proposed rule amendments are justified, based on EPA's comments, as follows:

A. Minn. Rules pt. 7045.0075 (Petitions), subp. 11, item B, subitem (5).

The federal language which constitutes subitem (5) had been removed from the proposed rule text based on an earlier recommendation from the Minnesota Office of the Revisor of Statutes. That office's opinion was that, under Minnesota rules, the subitem was too broad, that it enabled an unacceptable level of authority and that it was unnecessary. This federally promulgated language reads "and such other information that the [Commissioner] considers necessary."

The EPA commented that the state must either adopt equivalent language or demonstrate equivalent existing authority. In order to address both the Revisor's and the EPA's concerns, closely related language was borrowed from existing subp. 2, item H of this same part. The proposed rule is modified to read "<u>any additional information requested by the commissioner which may reasonably be required to evaluate the petition</u>."

The MPCA believes that this language is needed and reasonable in order to provide consistency with the federal rule, and to clarify the intent that additional information may be requested in order to evaluate a petition request. It clarifies the rule's intent and makes no subtantial changes to the rule.

B. Minn. Rules pt. 7045.0121 (Treatability Study Exemptions), subp. 3 (Facilities and sample handling), item G.

The original federal language read "...records track compliance with the treatment rate limits and the storage time [limits] and [the] quantity limits..." (the bracketed words show the MPCA's interpretation of the rule's intent). The proposed rule language reads "...records track compliance with the treatment rate, storage time, and quantity limits..." wherein the term "limits" has implied applicability to all three parameters.

The EPA commented that the term "limits" was missing from the phrase "treatment rate limits" in the proposed language. Staff expressed to EPA their belief that the term "limits" was missing from the original federal language respecting the "storage time" parameter, and that the intent of the proposed language was to imply limits to each of the three parameters. The EPA concurred with the MPCA's interpretation of intent.

To clarify the language, the proposed rule was modified to read "...records track compliance with the <u>limits on</u> treatment rate, storage time, and quantity ~~limits~~..." This was determined to provide the clearest, mutually satisfactory expression of the EPA's intent.

This language is needed and reasonable in order to provide consistency with, and clarify the intent of, the federal rule. It clarifies the rule's intent and makes no subtantial changes to the rule.

7. The MPCA adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed 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 prior to close of the comment period, are needed and reasonable. (8)

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 the rule amendments 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.

ORDER (8)

NOW, THEREFORE, IT IS ORDERED, that the attached amendments to Minn. Rules pts. 7001.0520, 7045.0020, 7045.0075, 7045.0120, 7045.0121, 7045.0255, 7045.0290, 7045.0292, 7045.0454, 7045.0526, 7045.0558, 7045.0574, and 7045.0626, governing the management of hazardous waste, are adopted pursuant to the authority vested in the MPCA by Minn. Stat. § 116.07, subd. 4 (1988).

Dated: January 31st, 1990 (9)

Gerald L. Willet

Gerald L. Willet
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rule Amendments Governing the Management, Treatment, Storage, and Disposal of Hazardous Waste, Minn. Rules Pts. 7001.0520, 7045.0020, 7045.0075, 7045.0120, 7045.0121, 7045.0255, 7045.0290, 7045.0292, 7045.0454, 7045.0526, 7045.0558, 7045.0574, and 7045.0626

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-third day of January, 1990. 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. Notice of the MPCA's intent to adopt the above-entitled rule amendments without a public hearing was published in the State Register on November 20, 1989, (14 SR 1203), 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 November 17, 1989.

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

3. All persons were given the opportunity to submit comments on the proposed rule amendments for 30 days after notice of the proposed rulemaking. The 30 day comment period, as set out in the notice, expired on December 20, 1989.

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

5. No requests for notice of submission of the adopted rule amendments to the Attorney General were received by the MPCA.

6. The MPCA received one comment letter during the 30-day comment period. This letter from the Minnesota Office of Waste Management supports the MPCA's incorporation of the federal treatability study rule. It also explains that Waste Management administers a grant program which similarly encourages studies of new hazardous waste management technologies. Finally, it requests consideration of its program in future rulemakings.

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A. Minn. Rules pt. 7045.0075 (Petitions), subp. 11, item B, subitem (5).

The federal language which constitutes subitem (5) had been removed from the proposed rule text based on an earlier recommendation from the Minnesota Office of the Revisor of Statutes. That office's opinion was that, under Minnesota rules, the subitem was too broad, that it enabled an unacceptable level of authority and that it was unnecessary. This federally promulgated language reads "and such other information that the [Commissioner] considers necessary."

The EPA commented that the state must either adopt equivalent language or demonstrate equivalent existing authority. In order to address both the Revisor's and the EPA's concerns, closely related language was borrowed from existing subp. 2, item H of this same part. The proposed rule is modified to read "any additional information requested by the commissioner which may reasonably be required to evaluate the petition."

The MPCA believes that this language is needed and reasonable in order to provide consistency with the federal rule, and to clarify the intent that additional information may be requested in order to evaluate a petition request. It clarifies the rule's intent and makes no subtantial changes to the rule.

B. Minn. Rules pt. 7045.0121 (Treatability Study Exemptions), subp. 3 (Facilities and sample handling), item G.

The original federal language read "...records track compliance with the treatment rate limits and the storage time [limits] and [the] quantity limits..." (the bracketed words show the MPCA's interpretation of the rule's intent). The proposed rule language reads "...records track compliance with the treatment rate, storage time, and quantity limits..." wherein the term "limits" has implied applicability to all three parameters.

The EPA commented that the term "limits" was missing from the phrase "treatment rate limits" in the proposed language. Staff expressed to EPA their belief that the term "limits" was missing from the original federal language respecting the "storage time" parameter, and that the intent of the proposed language was to imply limits to each of the three parameters. The EPA concurred with the MPCA's interpretation of intent.

To clarify the language, the proposed rule was modified to read "...records track compliance with the limits on treatment rate, storage time, and quantity ~~limits~~..." This was determined to provide the clearest, mutually satisfactory expression of the EPA's intent.

This language is needed and reasonable in order to provide consistency with, and clarify the intent of, the federal rule. It clarifies the rule's intent and makes no subtantial changes to the rule.

7. The MPCA adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed 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 prior to close of 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 the rule amendments 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.

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached amendments to Minn. Rules pts. 7001.0520, 7045.0020, 7045.0075, 7045.0120, 7045.0121, 7045.0255, 7045.0290, 7045.0292, 7045.0454, 7045.0526, 7045.0558, 7045.0574, and 7045.0626, governing the management of hazardous waste, are adopted pursuant to the authority vested in the MPCA by Minn. Stat. § 116.07, subd. 4 (1988).

Dated: January 31st, 1990

Gerald L. Willet

Gerald L. Willet
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rule Amendments Governing the Management, Storage, Treatment, and Disposal of Hazardous Waste, Minn. Rules Pts. 7001.0520, 7045.0020, 7045.0075, 7045.0120, 7045.0121, 7045.0255, 7045.0290, 7045.0292, 7045.0454, 7045.0526, 7045.0558, 7045.0574, and 7045.0626

AFFIDAVIT OF RECEIVING NO REQUESTS FOR NOTIFICATION OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Nathan Cooley, being duly sworn says:

1. That he is the person named in the Notice of Intent to Adopt Rules Without a Public Hearing (14 SR 1203, November 20, 1989) as the person to receive requests for notification of submission of rules adopted without a public hearing to the Attorney General concerning the above-entitled matter.

2. That there were no requests received by the Minnesota Pollution Control Agency for notification of submission of rules adopted without a public hearing to the Attorney General concerning the above-entitled matter.

Nathan B. Cooley

Subscribed and sworn to before me
this _____ day of February, 1990.

_____
Notary Public

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rule
Amendments Governing the Management,
Storage, Treatment, and Disposal of
Hazardous Waste, Minn. Rules Pts.
7001.0520, 7045.0020, 7045.0075, 7045.0120,
7045.0120, 7045.0255, 7045.0290, 7045.0292,
7045.0454, 7045.0526, 7045.0558, 7045.0574,
and 7045.0626

DECLARATION OF COUNSEL

I, Alan R. Mitchell, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rules and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules ch. 2010 have been followed.

Alan R. Mitchell
Special Assistant
Attorney General

Dated: February 7, 1990