

Minnesota Attorney General: Administrative Rules Proceedings

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August 20, 2018

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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 : CHARLENE HATCHER
Special Assistant Attorney General
525 Park Street, Suite 404 (55103)

PHONE : 296-9422

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

The above-referenced Permanent rule has been approved as to its legality by the Attorney General on February 22, 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

Adopted Permanent Rules Relating to Hazardous Waste Facility Fee Amendments

Rules as Adopted

7046.0020 HAZARDOUS WASTE FACILITY FEES.

Subpart 1. **Fee schedule for five-year permits.** A person applying for issuance or reissuance of a five-year permit for a hazardous waste facility shall remit the permit application fee or permit reissuance fee given in item A or B. A person who owns or operates a hazardous waste facility shall remit the annual facility fee for that fiscal year if on July 1, the facility is treating, storing, or disposing of hazardous waste or has hazardous waste remaining after closure. A facility in which hazardous waste remains after closure continues to be subject to the annual facility fee until ~~certification of completion of post-closure care is submitted to the commissioner and the commissioner releases the owner or operator from the financial assurance requirements for post-closure care as described in part 7045.0602, subpart 4~~ the owner or operator is exempted under subpart 8.

	Permit Application Fee	Annual Facility Fee	Permit Reissuance Fee
[For text of item A, see M.R. 1989]			
B. Disposal and treatment			
Surface impoundment	21,870	21,140	10,930
Treatment (not otherwise specified including open burning)	21,870	10,690	10,930
Thermal treatment (not including open burning)	54,670	37,180	27,340
Land treatment	54,670	37,180	27,340
Land disposal			
Active facilities	54,670	37,180	27,340
Closed facilities	27,330	24,790	13,670

Approved by Revisor

(includes all facilities in which waste remains after closure)

Subp. 2. Fee schedule for permits less than five-year term. The following schedule must be used to calculate the application fee for a permit term of less than five years.

Term of Permit	Permit Application Fee
1 year	35 percent of application fee in subpart 1 or subpart 3
2 years	60 percent of application fee in subpart 1 or subpart 3
3 years	75 percent of application fee in subpart 1 or subpart 3
4 years	90 percent of application fee in subpart 1 or subpart 3

The annual facility fee is the applicable fee listed in table 1 in subpart 1.

Subp. 3. Combination facilities. An application fee for a facility consisting of several treatment, storage, or disposal functions must be calculated according to the following schedule for application fees and annual facility fees:

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

[For text of subp 4, see M.R. 1989]

Subp. 5. Payment schedule. Fees must be made payable to the state treasurer and submitted to the commissioner as follows:

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

B. The owner or operator shall submit the annual facility fee not later than June 30 of each year.

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

[For text of subps 6 to 7, see M.R. 1989]

Subp. 8. **Exemption for closed land disposal facilities from annual facility fee.** The owner or operator of a closed land disposal facility may petition the commissioner, at any time after two years have passed since the last wastes were disposed of at the facility, to release the owner or operator from the requirement to pay an annual facility fee. The petition shall include all available leachate and groundwater monitoring data for the facility, a description of the

Approved by Revisor _____

characteristics of the wastes in the facility, a description of the technology applied to secure the facility and avoid migration of the wastes, a description of anticipated future monitoring, an evaluation of the potential for future environmental problems, and any additional information the owner or operator has to support the petition. The commissioner shall grant the petition and exempt the owner or operator from the requirement to pay the annual facility fee if the commissioner determines that, based on the information contained in the petition, groundwater contamination has not occurred and is not likely to occur and the facility will not require significant agency oversight. The exemption shall continue until such time as the commissioner determines, after notice to the owner or operator, that the facility does require significant agency oversight. The exemption shall expire if the owner or operator adds or allows to be added additional wastes to the facility. The exemption from the requirement to pay the annual facility fee does not exempt the owner or operator from the requirement to pay the permit reissuance fee.

Approved
by Revisor _____

APPROVED AS TO LEGALITY

February 22, 1990

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Charlene M. Hatch
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

FEB 26 1990

Joan Anderson Growe
Secretary of State

1:10 pm

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

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

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

February 7, 1990

Ms. Christie B. Eller
Assistant Attorney General
Attorney General's Office
Public Finance Division
515 Transportation Building
John Ireland Boulevard
St. Paul, MN 55155

Re: In the Matter of the Proposed Amendment of Rules Governing Permitting, Management, Storage, Treatment, 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.

Dear Ms. Eller:

On January 23, 1990, the Minnesota Pollution Control Agency adopted the above-captioned rules governing hazardous waste management. Enclosed for your review are the following:

1. Notice of Intent to Solicit Outside Opinion (13 S.R. 2719)(May 8, 1989).

1a. Affidavit Declaring No Comments Were Received Pursuant to Notice of Intent to Solicit Outside Information.

2. Certificate of Resolution Authorizing Rules (October 30, 1989).

3. Rules as proposed with the Revisor's Certificate.

4. Notice of Intent to Adopt Rules Without a Public Hearing, as mailed.

5. Statement of Need and Reasonableness.

6. Affidavit of Mailing the Notice of Intent to Adopt Rule Without a Public Hearing and Certificate of Mailing List.

RECEIVED

FEB 09 1990

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

7. Notice of Intent to Adopt Rules Without a Public Hearing and rules as proposed as published in the State Register (14 S.R. 1203-1210)(November 20, 1989).

8. Rules as adopted (original and three copies).

9. Certificate of Resolution Adopting Rules (January 31, 1990).

10. Findings of Fact, Conclusions, and Order Adopting Rules (two copies).

11. Comments received during the comment period.

12. Affidavit stating that no requests were received for notification of submission of rules to the Attorney General.

13. Declaration of Counsel.

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

Very truly yours,

Alan Mitchell

Alan R. Mitchell
Special Assistant
Attorney General

ARM:vlk
encl.

CH

RULE REVIEW CHECKLIST

File No. 1667 Docket No. 25-0009-0697

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 2-16-90

APPROVED 2-22-90 REVISOR DISAPPROVED _____

DISAPPROVED _____ FILED W/SEC. OF STATE _____

WITHDRAWN _____ RETURNED TO AGENCY _____

---

4 Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
- Sept 11 89 Date published in State Register
- ✓ Comments

_____ Petition for Adoption of a Rule (if applicable)

✓ Board's Authorizing Resolution
- Oct 30 89 Date adopted

✓ Proposed Rule
- _____ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
- 16.12 Statutory Authority
- ✓ Small Business Statement
- NA Expenditure of public money statement
- Nov 6 89 Signature

_____ Statement of Need and Reasonableness (if applicable)
- _____ Small Business Statement
- _____ Fees - § 16A.128 Sent letter to House App. and Senate Finance

✓ 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
- 11-20-89 Date 30/25 days before adoption

✓ 180-day deadline from:
- NA Effective date of law requiring rule (14.12) (both rules) amendment not new
- ✓ end of comment period (§ 14.26) (rules without hearing) 12-20-89 2-9-90
- _____ effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting
- Jan 31 90 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
- 1-31-90 Date

_____ Written requests, submissions or comments

✓ Declaration of attorney
- Allan Mitchell Name of SAAG representing agency

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

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

ATTORNEY GENERAL

February 26, 1990

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

CHARLENE HATCHER
Special Assistant Attorney General
525 Park Street, Suite 404 (55103)

296-9422

In the Matter of the Adopted Permanent Rule
Relating to Hazardous Waste Facility Fees

The above-referenced Permanent rule has been approved as to its legality by the Attorney General on February 22, 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.

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

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

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

PUBLIC RESOURCES SECTION
SUITE 200
520 LAFAYETTE ROAD
ST. PAUL, MN 55155
TELEPHONE: (612) 297-1075
FACSIMILE: (612) 297-4139

February 9, 1990

Ms. Christie Eller
Capitol Office Building
Suite 200, 525 Park Street
St. Paul, Minnesota 55103

Re: In the Matter of the Proposed Amendments of Rules Governing Hazardous Waste Facility Fees, Minn. Rules Pt. 7046.0020

Dear Ms. Eller:

I inadvertently neglected to include the enclosed Affidavit with my submission to you of the rulemaking documents for the above-entitled rule amendments. This Affidavit is document number 13 in the list of documents in my February 7 transmittal letter. The Affidavit states that nobody requested to be notified when the Agency sent the record to the Attorney General's Office. It is not a document that is required to be submitted.

Sorry for the oversight.

Very truly yours,

Alan Mitchell

Alan R. Mitchell
Special Assistant
Attorney General

ARM:vlk
encl.

Equal Opportunity Employer

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RECEIVED
FEB 12 1990
Attorney General
Services Section
Office Bldg. - Suite 500
525 Park Street
St. Paul, MN 55103

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Rule Amendments Governing
Hazardous Waste Facility Fees,
Minn. Rules Pt. 7046.0020

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)

PATRICK F. CAREY, 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 1210, November 20, 1989) as the person to receive requests for notification of submission of rule adopted without a public hearing to the Attorney General concerning the above-entitled matter.

2. That there were no requests received by the the Minnesota Pollution Control Agency for notification of submission of rule adopted without a public hearing to the Attorney General concerning the above-entitled matter.

P. F. Carey

Subscribed and sworn to before me
this 9 day of January, 1990.

Ardith M. Vos
Notary Public

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

RECEIVED
FEB 12 1990
Office of the Attorney General
Government Rights Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

VII. LIST OF EXHIBITS

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

Agency Ex. No.	Title
1	Approval of the proposed fee amendments by the Commissioner of the Minnesota Department of Finance
2	Permit Submittal Requirements- Closed Versus Active Facilities dated September 1, 1989
3	Annual Activities- Closed Versus Active Facilities dated September 1, 1989

Date: October 13, 1989

for Barbara Lyndsey Sims
Gerald L. Willet
Commissioner

ATTACHMENT 2

RECEIVED
NOV 15 1989
ADMINISTRATIVE
HEARINGS

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the
Proposed Rule Amendments
Governing Hazardous
Waste Facility Fees, Minn.
Rules Part 7046.0020

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 payment of fees by owners and operators of hazardous waste treatment, storage, and disposal facilities.

Minn. Stat. § 116.12 (1988) requires the Agency to establish fees for hazardous waste facilities. Specifically, Minn. Stat. § 116.12, subd. 3 (1988) requires the Agency to charge an original permit fee, a permit reissuance fee, and an annual fee for any hazardous waste facility regulated by the Agency. The purpose of requiring facility owners and operators to pay fees is to recover a portion of the Agency's expenses associated with regulating these facilities.

The Agency has established rules governing the payment of fees by owners and operators of hazardous waste treatment, storage, and disposal facilities. Specifically, Minn. Rules pt. 7046.0020 sets forth the original permit application fee, the permit reissuance fee, and the annual fee for each type of hazardous waste facility regulated by the Agency.

The amendments being proposed by the Agency would only affect closed land disposal facilities. Under the existing facility fee rules, fees for closed land disposal facilities (hereinafter "closed LDF") are the same as those for active land disposal facilities (hereinafter "active LDF"). Closed LDFs are

land disposal facilities in which waste remains after closure. Active LDFs are land disposal facilities, other than a closed LDF, where hazardous waste disposal operations are being conducted. The proposed amendments provide a separate fee category for closed LDFs to reflect differences in the Agency resources necessary to regulate a closed versus an active LDF. This separate fee category sets out the original permit application fee, the permit reissuance fee, and the annual fee for closed LDFs. Based on the differences in Agency resources necessary for regulating a closed versus an active LDF, the Agency is proposing the establishment of: (1) the original permit application fee for closed LDFs at one-half that of an active LDF; (2) the permit reissuance fee for closed LDFs at one-half that of an active LDF; and (3) the annual fee for closed LDFs at two-thirds that of an active LDF. The overall effect of the proposed amendments is to lower the fees for closed LDFs.

The proposed amendments only affect the fees for closed LDFs. The proposed amendments do not affect or change the fees for other categories of hazardous waste treatment, storage, and disposal facilities. Also, the proposed amendments do not affect or change the fees assessed to generators of hazardous waste set out in Minn. Rules pts. 7046.0031 to 7046.0070.

These rule amendments are proposed pursuant to the Agency's authority under Minn. Stat. § 116.12 (1988).

Minn. Stat. § 16A.128, subd. 1a. requires this Statement of Need and Reasonableness to include the Minnesota Department of Finance commissioner's approval of the proposed fee schedule. Their approval is attached as Exhibit 1.

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 discusses the economic factors the Agency considered in drafting the amendments as required by Minn. Stat. § 116.07, subd. 6 (1988). Part VI sets forth the Agency's conclusion regarding the amendments. Part VII contains a list of exhibits relied on by the Agency to support the proposed amendments. The exhibits are available for review at the Agency's offices at 520 Lafayette Road North, St. Paul, Minnesota 55155.

II. NEED FOR THE PROPOSED AMENDMENTS

Minn. Stat. ch. 14 (1988) requires an agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules or amendments proposed. In general terms, this means that an agency must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention and reasonableness means that the solution proposed by an agency is appropriate.

Need is a broad test that does not lend itself to evaluation of each proposed revision. In the broad sense, the need to amend the Agency's hazardous waste facility fee rules arises from the fact that the Agency has determined that the fee for closed LDFs needs adjusting. Under the existing rules, fees for closed LDFs are the same as those for active LDFs. The fees for active and closed LDFs were originally established the same because, at that time, the Agency believed that the resources necessary to regulate each were the same. However, the Agency amended the hazardous waste facility permitting and technical standards set out in Minn. Rules chs. 7001 and 7045 to

require post-closure permits for owners and operators of LDFs in which waste remains after closure. Based on the experience gained through issuing and enforcing post-closure permits over the past year, the Agency has now determined that there are differences in the Agency resources necessary for regulating an active LDF versus a closed LDF. Therefore, assessing the same facility fee for both active and closed LDFs, as is currently the case, does not reflect Agency experience. In order for the rules to assess fees for closed and active LDFs in an equitable manner, the rules need to be amended to reflect the differences in the resources necessary to regulate each.

III. REASONABLENESS OF THE PROPOSED AMENDMENTS

The Agency is required by Minn. Stat. ch. 14 (1988) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules or amendments. All of the proposed amendments involve subparts 1, 2, 3, and 5 to Minn. Rules pt. 7046.0020, which is entitled "Hazardous Waste Facility Fees." A discussion of the reasonableness of each of the proposed amendments is provided below. The reasonableness of the proposed amendments to subparts 2, 3, and 5 have been combined since the amendments to these subparts are essentially the same.

A. Minn. Rules Pt. 7046.0020, Subp. 1 (Fee schedule for five-year permits).

Minn. Rules pt. 7046.0020, subp. 1 sets out the permit application fee, the annual facility fee, and the permit reissuance fee for specific categories of hazardous waste treatment, storage, and disposal facilities regulated by the Agency. Specifically, item A of subpart 1 sets out the fees for specific types of storage facilities regulated by the Agency and item B sets out the fees for specific types of disposal and treatment facilities regulated by the Agency. Also, the fee schedules set out in items A and B are

preceded by an introductory paragraph which describes the applicability and scope of the fee schedules set out in the remainder of the subpart. The Agency is proposing to amend subpart 1 in several respects as discussed below.

First, the introductory paragraph of subpart 1 is being amended to clarify that closed LDFs are subject to the annual facility fee and to delete the use of the words "in operation." The existing rule language provides that a person who owns or operates a hazardous waste facility that is in operation on July 1 in any year is subject to the annual facility fee. Some owners and operators of closed LDFs have interpreted this language to mean that they are not subject to the annual facility fee since they believe that their facilities are not "in operation" because of their "closed" status. This is not a correct interpretation. While these facilities are not "in operation" in the sense that the owners and operators have ceased to add wastes to these facilities, these facilities are still "in operation" in the sense that they continue to provide for the disposal of waste that will require post-closure care and regulation by the Agency. Having a "closed" status is merely a phase of operation. Therefore, the Agency believes this amendment is reasonable because it serves to resolve any misunderstanding associated with the language of the requirement by clarifying its original intent and deleting the words that cause confusion.

Second, the introductory paragraph in subpart 1 is also being amended to clarify when an owner or operator of a closed LDF is no longer subject to the annual facility fee. Specifically, the amendment provides that a person who owns or operates a closed LDF is obligated to pay an annual facility fee until certification of completion of post-closure care is submitted to the Agency commissioner and the commissioner releases the facility owner or operator from the financial assurance requirements for post-closure care. The

purpose of the fee rules is for the Agency to recover a portion of the cost of regulating hazardous waste facilities. Once the certification of completion of post-closure care is submitted to the Agency commissioner and the commissioner releases the facility owner or operator from the financial assurance requirements, the facility is no longer regulated by the Agency. Therefore, the amendment reasonably states the point in time when an owner or operator of a closed LDF will no longer be subject to the annual facility fee. By amending the rule in this manner, the Agency is not adding any additional requirements to the rules. Owners and operators of facilities have always been subject to the annual facility fee until the facility is no longer regulated by the Agency. However, the Agency believes it is reasonable to add this provision to the rule so that owners and operators of closed LDFs may clearly understand their obligations regarding the annual facility fees.

Third, one of the headings for the facility fee schedules set out in items A and B of subpart 1 is being amended. The facility fee schedules set out in items A and B have headings for each of the three types of fees assessed to hazardous waste facility, those being the permit application fee, the annual facility operator's fee, and the permit reissuance fee. The heading set out as the "annual facility operator's fee" is being amended to delete the word "operator's" so that the heading will read "annual facility fee." As was the case for the first amendment to subpart 1 as discussed above, some owners and operators of closed LDFs have interpreted the use of the word "operator's" to mean that they are not subject to the annual facility fee since they believe that their facilities are not "in operation" because of their "closed" status. This is not a correct interpretation as discussed previously. While the use of the word "operator's" is not incorrect, the Agency believes it is reasonable to

delete the use of the word to clear up the confusion that has been generated by its use.

Fourth, item B of subpart 1 is amended to provide a separate fee category for closed LDFs. This separate fee category sets out the permit application fee, the annual facility fee, and the permit reissuance fee for closed LDFs. The Agency is proposing to establish: (1) the permit application fee for closed LDFs at one-half the current application fee for an active LDF; (2) the annual facility fee for closed LDFs at two-thirds that of an active LDF; and (3) the permit reissuance fee for closed LDFs at one-half that of an active LDF. The effect of the amendment would be to lower the fees for closed LDFs.

Amending item B as described above is reasonable because it provides for the assessment of fees for closed and active LDFs in a more equitable manner. Under the existing rules, fees for closed LDFs are the same as those for active LDFs. The fees for active and closed LDFs were originally established the same because, at that time, the Agency believed that the resources necessary to regulate each were the same. However, since that time, the Agency has amended the hazardous waste facility permitting and technical standards set out in Minn. Rules chs. 7001 and 7045 to require post-closure permits for closed LDFs. Based on the experience gained through issuing and enforcing post-closure permits over the past year, the Agency has now determined that there are differences in the resources necessary for regulating an active LDF versus a closed LDF. Therefore, assessing the same facility fee for both active and closed LDFs, as is currently the case, is inequitable. The fee amounts that the Agency is proposing for closed LDFs provide for the assessment of fees for closed and active LDFs in an equitable manner. These proposed fee amounts are the result of the Agency's analysis of the differences

in the resources necessary to regulate a closed versus an active LDF. The Agency's analysis of the work effort associated with regulating an active versus a closed LDF is provided in the tables marked as Exhibits 2 and 3 to this document.

B. Minn. Rules Pt. 7046.0020, Subp. 2 (Fee schedule for permits less than five-years), Subp. 3 (Combination facilities), and Subp. 5 (Payment schedule).

The Agency is proposing to amend subparts 2, 3, and 5 of Minn. Rules pt. 7046.0020 in relatively the same manner. In each of these subparts, the language is being amended to provide for the use of the term "annual facility fee" instead of "annual facility operator's fee." As discussed in section A above, some owners and operators of closed LDFs have interpreted the use of the word "operator's" to mean that they are not subject to the annual facility fee since they believe that their facilities are not "in operation" because of their "closed" status. This is not a correct interpretation as discussed in section A. While the use of the word "operator's" is not incorrect, the Agency believes it is reasonable to delete the use of the word to clear up the confusion that has been generated by its use.

IV. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1988) requires the Agency, when proposing amendments to existing rules which may affect small businesses, to consider the impact of the rule amendments on small business.

The proposed amendments only affect hazardous waste land disposal facilities at which waste remains after closure. The Agency does not believe that any small businesses own closed land disposal facilities. Therefore, the Agency believes that the proposed amendments will not affect any small businesses. In any case, since the effect of the amendments is to lower the

fee burden for closed land disposal facilities, the Agency believes that any impacts the amendments may have on small business will be ones that save these businesses money.

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, practical under the circumstances.

The only effect of the amendments would be to lower the fees for any person who owns or operates a closed LDF. Therefore, since the economic impacts of the proposed amendments are only positive in nature for owners and operators of closed LDFs, the Agency believes that due consideration has been given to the economic factors affecting businesses and such in Minnesota.

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 facility fee rules. This document constitutes the Agency's Statement of Need and Reasonableness for the proposed amendments to Minnesota's hazardous waste facility fee rules.

4 Stat Authority

116.12 sub 1 (1988) - Fee Schedules

The Agency shall establish fees provided in subdivisions 2 and 3 in the manner provided in section 16A.128 to cover the amount appropriated from the special revenue fund to the agency for permitting, monitoring, inspection and enforcement of expenses.

no authority for rule making

Is this authority?

16A.128 Fee Setting

subd. 2a. Other fees not fixed by law must be fixed by rule according to chapter 14.

Fees

submitted letters sent to House Appropriations and Senate Finance

2-20-90 - called Al Mitchell told him we do not have the letter from finance of the approval of the fees. Al Mitchell said he would have someone send it made modifications

exhibits not attached

no approval attached from finance

States it in the Statement of need and reasonableness - page 2 not attached

4 think the Stat. authority should be MN Stat 116.07 sub 4 (1989) Pursuant to the provisions of chapter 14 and the provisions hereto the Pollution Control Agency may adopt, amend and rescind rules and standards for the collection, transportation, storage, processing and disposal of solid

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

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

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

February 7, 1990

Ms. Christie Eller
Assistant Attorney General
Office of the Attorney General
515 Transportation Building
John Ireland Boulevard
St. Paul, Minnesota 55155

Re: In the Matter of the Proposed Amendments of Rules Governing Hazardous Waste Facility Fees, Minn. Rules Pt. 7046.0020

Dear Ms. Eller:

On January 23, 1990, the Minnesota Pollution Control Agency adopted the above-captioned rule amendments governing hazardous waste facility fees. Enclosed for your review are the following:

1. Notice of Intent to Solicit Outside Opinion (14 S.R. 661, September 11, 1989).

2. Copies of written comments received pursuant to Notice of Intent to Solicit Outside Opinion.

3. Certificate of Authorizing Resolution.

4. Rules as proposed with the Revisor's Certificate.

5. Notice of Intent to Adopt Rule Amendments Without a Public Hearing, as mailed.

6. Statement of Need and Reasonableness.

7. Affidavit of Mailing the Notice of Intent to Adopt Rule Amendments Without a Public Hearing and Certificate of Mailing List.

8. Notice of Intent to Adopt Rule Amendments Without a Public Hearing and rule amendments as proposed (14 S.R. 1210, November 20, 1989).

RECEIVED

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Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

9. Affidavit of Sending Notice and Proposed Rules to Chairs of House Appropriations and Senate Finance Committees (as required by Minn. Stat. § 16A.128, subd. 2a (1988) for fee rules).

10. Rules as adopted (original and three copies).

11. Certificate of Resolution Adopting Rules.

12. Findings of Fact, Conclusions, and Order Adopting Rules (two copies).

13. Affidavit stating that no requests were received for notification of submission of rules to the Attorney General.

14. Declaration of Counsel.

No comments were received in response to the Notice of Hearing that was published in the State Register on November 20, 1989.

For your information, the four digit docket client code is F167.

Yours very truly,

Alan Mitchell

Alan R. Mitchell
Special Assistant
Attorney General

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when authorized by it, may examine any books, papers, records or memoranda pertaining to the operation of any system or facility specified in subdivision 1.

Subd. 3. **Access to premises.** Whenever the agency deems it necessary for the purposes of this chapter, the agency or any member, employee, or agent thereof, when authorized by it, may enter upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations.

History: *1971 c 904 s 3; 1985 c 248 s 70; 1986 c 444*

116.10 POLICY; LONG-RANGE PLAN; PURPOSE.

Consistent with the policy announced herein and the purposes of Laws 1963, chapter 874, the pollution control agency shall, before November 15 of each even-numbered year, prepare a long-range plan and program for the effectuation of said policy, and shall make a report also of progress on abatement and control of air and land pollution during each biennium to the legislature with recommendations for action in furtherance of the air and land pollution and waste programs.

History: *1969 c 1046 s 10; 1Sp1981 c 4 art 2 s 12*

116.101 HAZARDOUS WASTE CONTROL AND SPILL CONTINGENCY PLAN.

The pollution control agency shall study and investigate the problems of hazardous waste control and shall develop a statewide hazardous waste spill contingency plan detailing the location of hazardous waste facilities and storage sites throughout the state and the needs relative to the interstate transportation of hazardous waste.

The statewide hazardous waste spill contingency plan shall be incorporated into the statewide hazardous waste management plans of the waste management board established by section 115A.04. The pollution control agency shall develop an informational reporting system of hazardous waste quantities generated, processed, and disposed of in the state.

History: *1974 c 346 s 5; 1980 c 564 art 11 s 12*

116.11 EMERGENCY POWERS.

If there is imminent and substantial danger to the health and welfare of the people of the state, or of any of them, as a result of the pollution of air, land, or water, the agency may by emergency order direct the immediate discontinuance or abatement of the pollution without notice and without a hearing or at the request of the agency, the attorney general may bring an action in the name of the state in the appropriate district court for a temporary restraining order to immediately abate or prevent the pollution. The agency order or temporary restraining order shall remain effective until notice, hearing, and determination pursuant to other provisions of law, or, in the interim, as otherwise ordered. A final order of the agency in these cases shall be appealable in accordance with chapter 14.

History: *1969 c 1046 s 11; 1973 c 374 s 21; 1982 c 424 s 130; 1983 c 247 s 52*

116.12 HAZARDOUS WASTE ADMINISTRATION FEES.

Subdivision 1. **Fee schedules.** The agency shall establish the fees provided in subdivisions 2 and 3 in the manner provided in section 16A.128 to cover the amount appropriated from the special revenue fund to the agency for permitting, monitoring, inspection and enforcement expenses of the hazardous waste activities of the agency.

The legislature may appropriate additional amounts from the general fund that need not be covered by fees, in order to assure adequate funding for the regulatory and enforcement functions of the agency related to hazardous waste. All fees collected by the agency under this section shall be deposited in the special revenue fund.

Subd. 2. **Hazardous waste generator fee.** Each generator of hazardous waste shall pay a fee on the hazardous waste generated by that generator. The agency shall compute the amount of the fee due based on the hazardous waste disclosures submitted by the

generators and other information available to the agency. The agency shall annually prepare a statement of the amount of the fee due from each generator. The fee shall be paid annually commencing with the first day of the calendar quarter after the date of the statement.

The agency may exempt generators of small quantities of hazardous wastes otherwise subject to the fee if it finds that the cost of administering a fee on those generators is excessive relative to the proceeds of the fee. The fee shall consist of a minimum fee for each generator not exempted by the agency and an additional fee based on the quantity of wastes generated by the generator.

If any metropolitan counties recover the costs of administering county hazardous waste regulations by charging fees, the fees charged by the agency outside of those counties shall not exceed the fees charged by those counties. The agency shall not charge a fee in any metropolitan county which charges such a fee. The agency shall impose a fee calculated as a surcharge on the fees charged by the metropolitan counties and by the agency to reflect the agency's expenses in carrying out its statewide hazardous waste regulatory responsibilities. The surcharge imposed on the fees charged by the metropolitan counties shall be collected by the metropolitan counties in the manner in which the counties collect their generator fees. Metropolitan counties shall remit the proceeds of the surcharge to the agency by the last day of the month following the month in which they were collected.

Subd. 3. **Facility fees.** The agency shall charge an original permit fee, a reissuance fee and an annual operator's fee for any hazardous waste facility regulated by the agency. The agency may include reasonable and necessary costs of any environmental review required under chapter 116D in the original permit fee for any hazardous waste facility.

History: *1983 c 121 s 25; 1Sp1985 c 13 s 234; 1986 c 444*

116.14 HAZARDOUS WASTE FACILITIES; LIABILITY OF GUARANTOR.

If the owner or operator of a hazardous waste facility is in bankruptcy, reorganization, or arrangement under the Federal Bankruptcy Code or if jurisdiction in any state or federal court cannot with reasonable diligence be obtained over an owner or operator likely to be solvent at the time of judgment, a person having a claim arising from conduct for which evidence of financial responsibility must be provided under the rules adopted under section 116.07, subdivision 4b, may bring the claim directly against the guarantor providing the evidence of financial responsibility. For the purposes of this section, "guarantor" means any person other than the owner or operator who provides evidence of financial responsibility for that owner or operator. In an action against a guarantor under this section, the guarantor is entitled to invoke the rights and defenses that would have been available to the owner or operator if the action had been brought against the owner or operator and that would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator. In an action under this section, the total liability of a guarantor is limited to the aggregate amount that the guarantor has provided as evidence of financial responsibility to the owner or operator under the rules. Nothing in this section shall be construed to limit any other state or federal statutory, contractual, or common law liability of a guarantor to its owner or operator including the liability of the guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this section shall be construed to diminish the liability of any person under chapter 115B or the federal Superfund Act, United States Code, title 42, section 9601 et seq., or other applicable law.

History: *1987 c 391 s 1*

116.15 [Repealed, 1973 c 423 s 10]

116.16 MINNESOTA STATE WATER POLLUTION CONTROL FUND.

Subdivision 1. **Purpose.** A Minnesota state water pollution control fund is created

record the reimbursement to the general fund of the statewide indirect costs attributable to an executive agency's nongeneral fund receipts for the last fiscal year. Unless the commissioner determines that agency indirect cost receipts are a reimbursement for general fund expenditures, the receipts are appropriated to the agency to pay administrative expenses. However, the commissioner may, for reasons of sound financial management, waive the reimbursement under this subdivision for certain nongeneral fund receipts. The commissioner shall report all waivers in the next statewide indirect cost plan.

(b) There is annually appropriated from all direct appropriated nongeneral funds an amount sufficient to reimburse the general fund for statewide indirect costs.

Subd. 4. **Federal proposals.** An executive agency's application for federal money shall include necessary submissions to get both statewide and agency indirect cost money. The indirect cost submission must have the prior approval of the commissioner. An indirect cost submission is unnecessary if the executive agency convinces the commissioner that the submission is not economical.

Subd. 5. **Federal share.** The executive agency shall reimburse the general fund for federal money received for statewide indirect costs. Unless the commissioner determines that agency indirect cost receipts are a reimbursement for general fund expenditures, the receipts are appropriated to the agency to pay administrative expenses. If less than the entire executive agency proposal is federally approved, the commissioner may accept reimbursement of less than all of the federal receipts. If no federal funds are approved for indirect costs, the executive agency must document that fact to the commissioner.

Subd. 6. **Required information.** An executive agency must supply the information required by the commissioner to carry out this section.

Subd. 7. **Audit fees.** The legislative auditor may recommend waiver, and the legislative audit commission may waive all or part of a fee for an audit. A state audited executive agency whose funds are not administered by the treasurer must transfer to the general fund the amount of the cost of the audit attributable to the executive agency's nongeneral fund receipts.

Subd. 8. **Exemption.** This section does not apply to the community college system, state universities, or the state board of vocational technical education. Except for federal funds, this section does not apply to the department of natural resources for agency indirect costs.

Subd. 9. **Waiver.** The commissioner of natural resources need not bill the federal government for the indirect costs of providing emergency fire fighting services, and need not reimburse the general fund for those indirect costs, if the commissioner determines that the emergency fire fighting is in the best interest of the state. The commissioner of natural resources need not bill another state or Canadian province for the indirect costs of providing emergency fire fighting services, and need not reimburse the general fund for those indirect costs, if the other state or Canadian province agrees not to bill the state of Minnesota for the indirect costs of emergency fire fighting services provided by the other state.

History: *1976 c 231 s 6; 1983 c 301 s 89,90; 1984 c 628 art 2 s 1; art 6 s 1; 1984 c 654 art 2 s 57; 1Sp1985 c 13 s 97-100; 1987 c 264 s 1; 1987 c 275 s 4; 1987 c 404 s 76*

16A.128 FEE SETTING.

Subdivision 1. **Policy.** Agency fees and fee adjustments shall not exceed amounts established by statute. Where amounts are not established by statute, fees shall be established or adjusted as provided in this section.

The legislature, in setting or adjusting fees, or taking actions affecting the setting or adjusting of fees, should attempt to ensure that (1) agency fees and fee adjustments include only those service-related costs that provide a primary benefit to the individual fee payer and (2) service-related costs that benefit the general community are borne by the agency.

Subd. 1a. **Approval.** Fees for accounts for which appropriations are made may not be established or adjusted without the approval of the commissioner. If the fee or fee adjustment is required by law to be fixed by rule, the commissioner's approval must be in the statement of need and reasonableness. These fees must be reviewed each fiscal year. Unless the commissioner determines that the fee must be lower, fees must be set or fee adjustments must be made so the total fees nearly equal the sum of the appropriation for the accounts plus the agency's general support costs, statewide indirect costs, and attorney general costs attributable to the fee function.

Subd. 2. **No rulemaking.** The kinds of fees that need not be fixed by rule unless specifically required by law are:

(1) fees based on actual direct costs of a service;

(2) one-time fees;

(3) fees that produce insignificant revenues;

(4) fees billed within or between state agencies;

(5) fees exempt from commissioner approval; or

(6) fees for admissions to or use of facilities operated by the iron range resources and rehabilitation board, if the fees are set according to prevailing market conditions to recover operating costs.

Subd. 2a. **Procedure.** Other fees not fixed by law must be fixed by rule according to chapter 14. Before an agency submits notice to the State Register of intent to adopt rules that establish or adjust fees, the agency must send a copy of the notice and the proposed rules to the chairs of the house appropriations committee and senate finance committee.

History: *Ex1971 c 3 s 52; 1973 c 492 s 14; 1978 c 793 s 46; 1981 c 357 s 26; 2Sp1981 c 1 s 1; 3Sp1981 c 2 art 1 s 11; 1983 c 301 s 91; 1984 c 628 art 2 s 1; 1Sp1985 c 13 s 101; 1Sp1985 c 14 art 10 s 2; 1986 c 436 s 2*

16A.1281 REPORT ON LOW OR HIGH FEES.

Each biennium the commissioner shall review fees collected by agencies. The commissioner shall report on the fees to the commissioner of revenue and to the appropriation and finance committees not later than the date the governor submits the biennial budget to the legislature. The report must analyze the fees that the commissioner believes will be too low or too high in the next biennium for the service provided. The analysis must take into account the cost of collecting the fee and state the revenue generated by the fees of each agency.

History: *1975 c 204 s 88; 1984 c 628 art 2 s 1; 1Sp1985 c 13 s 102; 1986 c 436 s 3*

16A.129 MORE POWERS.

Subdivision 1. **List of salaries.** The commissioner may require a list of the employees of an agency, and that their salaries conform with the scale of compensation established by law.

Subd. 2. **Classified budget, accounts.** The commissioner may classify expenditures and revenue for budget making and accounting.

History: *(53-7) 1925 c 426 art 3 s 4; 1939 c 441 s 39; 1973 c 492 s 14; 1973 c 507 s 45; 1976 c 2 s 5; 1976 c 231 s 7; 1977 c 347 s 8; 1978 c 674 s 5; 1984 c 628 art 2 s 1*

16A.13 FEDERAL TAX WITHHOLDING.

Subdivision 1. **Custodian; bond.** The treasurer is the custodian of all money deposited with the treasurer for federal tax withheld from the pay of any officer or employee of the state of Minnesota. The treasurer's bond to the state shall cover the liability for the custodian's acts. The deposits are subject to laws on keeping and paying out state money.

Subd. 2. **Commissioner as federal agent.** The commissioner may cooperate with and act as agent for the United States of America in collecting federal tax from the pay of employees.

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The Commissioner of Natural Resources, c/o Division of Minerals, Box 45, 500 Lafayette Road, St. Paul, Minnesota 55155-4045, will receive sealed bids and applications for leases covering minerals in state lands, in accordance with *Minnesota Rules*, parts 6125.0100 through 6125.0700 (as amended May 1988), the metallic minerals rules, issued under the authority of *Minnesota Statutes* Section 93.08-93.12 and 93.25.

Each application and bid, together with a certified check, cashier's check, or bank money order, payable to the State Treasurer in the sum of $100.00, must be submitted in a bid envelope obtained from the Commissioner. All bids must be received by the Commissioner, at the offices of the Division of Minerals, Fourth Floor, DNR Building, 500 Lafayette Road, St. Paul before 4:30 p.m. of October 11, 1989.

On October 12, at the time specified, the Commissioner or his representative together with a designated member of the State Executive Council, will publicly open the bids and announce the amount of each bid separately. At a subsequent time, leases will be awarded by the Commissioner, with the approval of the State Executive Council, to the highest bidder for the respective mining units, but no bids will be accepted that do not equal or exceed the base royalty rates set forth in the rules or that do not comply with all provisions of the rules. The right is reserved to the State, through the Executive Council, to reject any or all bids.

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

In the absence of satisfactorily demonstrated past technical and financial competence to perform under similar circumstances, a bidder may be required to provide evidence of technical and financial competence to perform under the state's lease to prospect for, mine and remove metallic minerals. The information requested by the Commissioner must be submitted within 30 days of the date of the request. The State, through the Executive Council, may refuse to award a lease to any bidder not supplying satisfactory evidence of technical and financial competence to perform under the state lease.

Upon the award of a lease, the check submitted with the bid will be deposited with the State Treasurer as a fee for the lease. All bids not accepted will become void, and the checks accompanying such bids will be returned to the respective bidders.

Application and bid forms, bid envelopes, instructions on how bids are to be submitted, copies of the rules (*Minnesota Rules*, parts 6125.0100-6125.0700, as amended May 1988) and copies of the Mining Unit Book, listing the land areas designated by the Commissioner as mining units, may be obtained from William C. Brice, Director, Division of Minerals, Box 45, DNR Building, 500 Lafayette Road, St. Paul, Minnesota 55155-4045.

Application for each copy of the Mining Unit Book must be accompanied by a check or money order, payable to the State Treasurer in the sum of $25.00, as a fee for such Mining Unit Book, plus $1.50 State of Minnesota Sales Tax. Unit books will also be available for inspection at the Hibbing and St. Paul offices of the Division of Minerals.

Dated: 1 September 1989

Joseph N. Alexander, Commissioner
Department of Natural Resources

Office of the Ombudsman for Mental Health and Mental Retardation

Notice of Meeting

The Ombudsman for Mental Health and Mental Retardation Advisory Committee will hold a general meeting at 9:00 a.m. on Friday, September 22, 1989. The meeting will be held at the Ombudsman Office, Suite 202, Metro Square Building on 7th and Robert Street, St. Paul.

RECEIVED
DEC 8 1989
ADMINISTRATIVE
HEARINGS

Pollution Control Agency

Division of Air Quality

Notice of Intent to Solicit Written Comment Regarding Draft Request for Proposals for a Contractor to Conduct the Vehicle Inspection and Maintenance Program for Motor Vehicles in the Twin Cities Metropolitan Area

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) is seeking written comment from outside sources on a draft request for proposals (RFP) for a contractor to perform emission testing of motor vehicles in the Twin Cities Metropolitan area. The final RFP will solicit proposals for conducting the Vehicle Inspection and Maintenance Program (I/M Program) as mandated by *Minnesota Statutes*, Sections 116.60 to 116.65 (1988) and as specified in *Minnesota Rules*, pts. 7005.5010 to 7005.5105 (1989). The contractor conducting the I/M Program will design, construct, equip and operate a network of vehicle inspection stations in the seven county metropolitan area. The I/M Program will inspect motor vehicle emission control equipment and conduct emission testing on vehicles registered in the metropolitan area. The I/M Program must be operating no later than July 1, 1991. The entire I/M Program will be conducted by a single contractor, and the contractor selected will operate the I/M Program stations for a minimum of five years, according to *Minnesota Statutes*, Section 116.62, subd. 3 (1988).

The MPCA wishes to obtain written comments on the draft RFP. The MPCA will consider all written and timely comments on the draft RFP, but reminds commenters that this solicitation of comment is discretionary and grants no rights to any commenter. Comments may or may not be incorporated in the final RFP, at the discretion of the MPCA. The availability of the final RFP will be noticed in the *State Register*. Copies of the draft RFP can be obtained from:

Michael Vennewitz
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155
Telephone: (612) 297-5489

Comments shall be written and must be received at the above address by September 29, 1989 to be considered by the MPCA.

Gerald L. Willet
Commissioner

Minnesota Pollution Control Agency

Division of Hazardous Waste

Notice of Intent to Solicit Outside Information Regarding Proposed Amendments to *Minnesota Rules* Chapter 7046 Governing Hazardous Waste Facility Fees

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 hazardous waste facility fees. Under the existing facility fee rules, fees for closed hazardous waste land disposal facilities (LDF's) are the same as those for active LDF's. The MPCA is considering proposing amendments to provide a separate fee category for closed hazardous waste LDF's to reflect any differences in the MPCA resources necessary for oversight of a closed LDf versus an active LDF. This separate fee category would set out the permit application fee, the annual operating fee, and permit reissuance fee for closed LDF's. In any event, the facility fees will not be increased.

PLEASE NOTE: THE AMENDMENTS THE MPCA IS CONSIDERING WOULD ONLY AFFECT HAZARDOUS WASTE FACILITY FEES. THE AMENDMENTS WOULD NOT AFFECT OR CHANGE THE HAZARDOUS WASTE GENERATOR FEE PORTION OF *MINNESOTA RULES* CH. 7046.

The amendment of the rules is authorized by *Minnesota Statutes* §§ 16A.128, subd. 1a and 116.12, subd. 1 (1988).

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 should be directed to:

Patrick Carey
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
Telephone: 612/296-7767

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 October 11, 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

Minnesota Pollution Control Agency

Division of Ground Water and Solid Waste

Notice of Intent to Solicit Outside Information Regarding Proposed Rule Governing Infectious Waste Management

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) is seeking information or opinions from outside sources in preparing to propose the adoption of rules governing Infectious Waste Management. The adoption of the rule is authorized by *Minnesota Statutes* § 115.75 through 116.83 (1989), which allows the MPCA to adopt rules governing the implementation of the Infectious and Pathological Waste Control Act.

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:

Julie Marien Ketchum
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
Telephone: 612/296-7388

Oral statements will be received during regular business hours, 7:00 a.m. to 3:30 p.m., Monday through Friday.

All statements of information and opinion will be accepted until November 1, 1989. Any written materials received by the MPCA shall become part of the rulemaking record in the event that the rule is adopted.

Gerald L. Willet
Commissioner

Pollution Control Agency

Division of Hazardous Waste

Notice of Intent to Solicit Outside Information Regarding Proposed Amendments to *Minnesota Rules* Chapters 7001, 7045, and 7100 Governing the Management of Hazardous Waste and Polychlorinated Biphenyls

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 and polychlorinated biphenyls (PCB). Specifically, the MPCA is considering proposing amendments regarding the following:

1. Permit modification procedures for hazardous waste facilities. The amendments would provide for an expedited process for modifying hazardous waste permits when permit modifications are requested by the permittee.

2. Liability coverage for hazardous waste facilities. The amendments would allow owners or operators of hazardous waste facilities to use additional financial assurance mechanisms for liability coverage. Additional mechanisms being considered are: a letter of credit; a surety bond assuring payment of liability claims; a fully-funded trust fund; and a guarantee provided by a firm that is not the direct parent of the owner or operator.

3. A clarification to the existing language governing test burn information requirements for the modification of existing hazardous waste incinerator permits. The amendments would clarify that in the event a test burn is conducted for modifications at an existing incineration facility, the owner or operator must submit the trial burn results prior to permit issuance not after permit issuance.

4. Technical corrections to the existing standards for hazardous waste tank systems. These technical corrections would clarify the language of the existing standards for hazardous waste tank systems in order to provide for the original intent of the standards.

5. Minnesota's PCB program. The MPCA will be considering amendments to the state PCB certification of exemption program based on an analysis of the effectiveness of the existing program.

The MPCA is considering the amendments governing permit modification procedures, liability coverage, test burn information requirements, and hazardous waste tank systems in response to amendments to the federal hazardous waste regulations promulgated by the U.S. Environmental Protection Agency on September 28, 1988 and March 7, 1989, September 1, 1988, January 30, 1989, and September 2, 1988, respectively. Amendments governing Minnesota's PCB program are being considered based on the MPCA's analysis of the effectiveness of the current PCB program. The amendment of the rules is authorized by *Minnesota Statutes* §§ 116.07, subd. 4 and 116.37 (1988).

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 should be directed to:

Patrick Carey
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
Telephone: 612/296-7769

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 October 11, 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

State Planning Agency

Environmental Quality Board

Outside Opinion Sought on Rules Governing Environmental Review

NOTICE IS HEREBY GIVEN that the Environmental Quality Board (Board) is seeking information or opinions from sources outside the agency in preparing to propose the amendment of the rules governing environmental review. The Board is considering amending a section of the existing environmental review rules, in accordance with its responsibility to monitor the rules and to take appropriate measures to improve their effectiveness under *Minnesota Rules* pt. 4410.0400 subp. 1. The adoption to the rules is authorized by *Minnesota Statutes* section 116D.04.

The Board requests information and comments concerning only *Minnesota Rules* part 4410.7000. The board is proposing an amendment to this rule to reflect a 1989 statutory amendment in the Power Plan Siting Act. That amendment (*Minnesota Statutes*, section 116C.57, subd. 5a) provides for an exemption from the power plant siting process for large electric power generating plants with a capacity of between 50 and 80 megawatts. The proposed change in the environmental review rules is needed to permit the exemption process in the power plant siting rules to constitute alternative environmental review. The board is concurrently soliciting opinions on the associated amendments of the power plant siting rules through a separate notice in this issue of the *State Register*.

Interested or affected persons or groups may submit data or views on the subject matter of concern either orally or in writing. Written statements should be addressed to:

Bob Cupit
Minnesota Environmental Quality Board
300 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

Oral statements will be received during regular business hours over the telephone at (612) 296-2096 and in person at the above address.

All statements of information and comment will be accepted through October 11, 1989. Any written material received by the Board will become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that amendments are adopted.

The board maintains a list of all persons who have registered with the board for the purpose of receiving notice of rule hearings. Anyone interested in being placed on this list should contact Mr. Cupit.

FOLEY & LARDNER
FIRST WISCONSIN PLAZA
I SOUTH PINCKNEY STREET
POST OFFICE BOX 1497
MADISON, WISCONSIN 53701-1497
TELEPHONE (608) 257-5035
TELECOPIER (608) 258-4258
(608) 257-4474
TELEX 262051 (F L MADISON)

IN MILWAUKEE, WISCONSIN
FOLEY & LARDNER
777 EAST WISCONSIN AVENUE
MILWAUKEE, WISCONSIN 53202-5367
TELEPHONE (414) 271-2400
TELEX 26-819

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TAMPA, FLORIDA
WEST PALM BEACH, FLORIDA

WRITER'S DIRECT LINE
(608) 258-4262

September 21, 1989

RECEIVED
DEC 8 1989
ADMINISTRATIVE
HEARINGS

BY FEDERAL EXPRESS

Mr. Patrick F. Carey
Hazardous Waste Division
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155

Re: Proposed Amendment to Minn. Rules Part 7046.0020

Dear Mr. Carey:

Thank you for arranging the September 19, 1989 meeting in St. Paul attended by representatives of the Minnesota Pollution Control Agency ("MPCA"), the Minnesota Attorney General's office and parties interested in MPCA's proposal to amend its rule on fees assessed against owners and operators of certain hazardous waste facilities. We appreciate the MPCA staff's prompt response to our concerns that (1) the MPCA has assessed fees against closed landfill disposal facilities ("LDFs"), which are not subject to Minn. Rules Part 7046.0020, and (2) closed LDFs that do pay the current fees bear an inordinate share of the MPCA's costs of regulating facilities subject to Part 7046.0020. We also appreciate the staff's willingness to discuss their proposed rule amendment with us and to consider our views of how Part 7046.0020 fees could be assessed more equitably. We submit the following comments on the MCPA staff's proposed rule amendment circulated at the September 19 meeting, along with our suggested additions to the proposed amendment, on behalf of the DeZurik unit of General Signal Controls, Inc. ("DeZurik").

RECEIVED
SEPT 22 89
MPCA, Hazardous
Waste Division

DeZurik fully supports the MPCA's proposal to assess lower fees against closed LDFs.[1] However, even the proposed rule amendment would require the owners of closed LDFs to bear an unfair share of the costs incurred by the MPCA in overseeing LDFs as a class. While we acknowledge that the closure and initial permitting of a closed LDF typically requires a significant amount of effort by the MPCA as well as the owner, comparatively little administrative oversight should be required during the post-closure period absent the need for corrective action (the risk of which is reduced significantly by the MPCA's oversight of the closure and post-closure care). Thus, under both the present and proposed fee structures, the owners of closed LDFs are effectively required to subsidize the administrative oversight costs attributable to active LDFs and perhaps other facilities subject to Chapter 7046 fees.

Given the intent of the fee rule and its authorizing legislation to have the MPCA recover its administrative oversight costs through fees, such fees must bear a reasonable relationship to the actual costs incurred by the agency in overseeing individual closed LDFs. To the extent that the present and proposed fee structures fail to achieve such a relationship, they are inequitable and perhaps even unconstitutional.

DeZurik proposes that the MPCA ultimately adopt a fee structure which distributes administrative oversight costs among the facilities subject to Chapter 7046 more accurately and therefore more equitably. We recognize that under the legislature's administrative cost recovery scheme, any adjustment to one class of facility's fees may require an adjustment to others in order to achieve the statutory cost recovery goal. Therefore, the agency should conduct a review of the administrative oversight necessary for the various facilities assessed such fees, and not just for active and closed LDFs.

We also recognize, however, that any change to the current fee structure must be acted upon by the MPCA Board soon so that the change may be made effective by June 1990, when the next fee assessments are made. DeZurik supports the agency's

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[1] DeZurik's support of the MPCA staff's proposed rule amendment should not be construed as an admission concerning the legality or appropriateness of the fee assessed against DeZurik by the MPCA in April 1989, which is the subject of pending administrative review proceedings. DeZurik expressly reserves its defenses to the 1989 fee assessment set forth in its Petition for Contested Case Hearing dated June 29, 1989.

proposal to assess lower fees against closed LDFs and does not wish to prevent or delay its adoption. Given the MPCA staff's stated commitment to continue its review of the overall fee structure under Chapter 7046, DeZurik currently proposes only modest alterations to the MPCA staff's rule amendment proposal.

In specific, DeZurik proposes that the MPCA adopt a new Subpart 5 of Part 7046.0020. Proposed Subpart 5 would contain a procedure by which owners of closed LDFs could petition the agency for the reduction or elimination of the annual facility fee during all or a portion of the post-closure period. Under the companies' proposal, a closed LDF's eligibility for the reduction or elimination of its annual facility fee would be determined by the commissioner under criteria similar to those which govern the commissioner's determination to shorten a post closure care period under Part 7045.0492, Subpart 1(B).

In making this proposal, DeZurik is sensitive to the MPCA's concerns about the burdens of administering the fee system mandated by Minn. Stat. Sec. 116.12. DeZurik's proposal balances this concern with the requirement that the MPCA's fees bear a reasonable relation to actual administrative oversight costs attributable to closed LDFs. DeZurik's proposal simply codifies the principal that if a closed LDF is secure and presents little risk of corrective action, its owner should not be made to pay the costs of administering corrective action and other regulatory activities at other facilities. DeZurik's proposal should not create any administrative burdens different in kind or sum than those the MPCA already has under Part 7045.0492 (which we understand are minimal). Finally, if the owner of a closed LDF becomes eligible for reduced or eliminated fees during a particular biennium, the agency has the opportunity to adjust for the change when it amends the fee structure for the next biennium consistent with the most recently enacted statutory cost recovery goal.

DeZurik also proposes that Part 7046.0020, Subpart 1 be amended to make it clear that an owner of a closed LDF is relieved of the annual facility fee requirement when, pursuant to Part 7045.0492, Subpart 4, the owner has certified completion of post closure care for each operational unit comprising the facility. This was discussed at the September 19 meeting, and we understand that MPCA staff supports DeZurik's concept of a certain cutoff date for annual facility fees. Specifically, DeZurik proposes an addition to the staff's proposed amendment to Part 7046.0020, Subpart 1, that clarifies when a closed LDF is no longer "in operation."

DeZurik's proposals have been incorporated into the enclosed markup of the MPCA staff's proposed rule amendment proposal circulated at the September 19 meeting. As in the staff's markup of the rule, text the staff proposes to delete is crossed out, and text the staff proposes to add is underlined. Our markup indicates text DeZurik proposes to delete by brackets and text DeZurik proposes to add in all caps.

We thank the MPCA staff, the Hazardous and Special Waste Committee and the MPCA Board for considering DeZurik's proposals. Questions concerning the proposals should be directed to the undersigned. We look forward to continuing our work with the MPCA toward a more equitable LDF fee structure.

Very truly yours,

FOLEY & LARDNER

Bradley D. Jackson

Enclosure

'046.0020 HAZARDOUS WASTE FACILITY FEES.

Subpart 1. Fee schedule for five-year permits. A person applying for issuance or reissuance of a five-year permit for a hazardous waste facility shall remit the permit application fee or permit reissuance fee given in item A or B. A person who owns or operates a hazardous waste facility that is in operation on July 1 in any year shall remit the annual facility ~~operator's~~ fee given in item A or B for that fiscal year. For purposes of this part, "in operation" means a facility which is treating, storing, or disposing of hazardous waste, including all facilities in which waste remains after closure. A FACILITY THAT IS SUBJECT TO PARTS 7045.0490 TO 7045.0496 IS NOT "IN OPERATION" IF, AS TO EACH OPERATIONAL UNIT THAT IS SUBJECT TO PARTS 7045.0490 TO 7045.0496 OF THE FACILITY, THE OWNER OR OPERATOR HAS CERTIFIED THE COMPLETION OF POST CLOSURE CARE.

	Permit Application Fee	Annual Facility ~~Operator's~~ Fee	Permit Reissuance Fee
A. [Unchanged.]			
Disposal and treatment			
Surface impoundment	$ 21,870	$ 21,140	$ 10,930
Treatment (not otherwise specified including open burning)	21,870	10,690	10,930
Thermal treatment (not including open burning)	54,670	37,180	27,340
Land treatment and disposal	54,670	37,180	27,340
Land disposal ~~(includes surface impoundments in which waste remains after closure)~~			
Active facilities	54,670	37,180	27,340
Closed facilities (includes all facilities in which waste remains after closure)	27,330	24,790	13,670

Subp. 2. Fee schedule for permits less than five-year term. The following schedule must be used to calculate the application fee for a permit term of less than five years.

Term of Permit	Permit Application Fee
1 year	35 percent of application fee in subpart 1 or subpart 3
2 years	60 percent of application fee in subpart 1 or subpart 3
3 years	75 percent of application fee in subpart 1 or subpart 3
4 years	90 percent of applicafion fee in subpart 1 or subpart 3

The annual facility ~~operator's~~ fee is the applicable fee listed in table 1 in subpart 1.

Subp. 3. Combination facilities. An application fee for a facility consisting of several treatment, storage, or disposal functions must be calculated according to the following schedule for application fees and annual facility ~~operator's~~ fees:

Facility Description	Fee Calculation	Permit Reissuance Fee

A. to H. [Unchanged.]

Subp. 4. [Unchanged.]

SUBP. 5. ANNUAL FEE FOR CLOSED LAND DISPOSAL FACILITIES REQUIRING DE MINIMUS REGULATION. AT ANY TIME PRECEDING CLOSURE OF ANY OPERATIONAL UNIT SUBJECT TO PARTS 7045.0490 TO 7045.0496 OF A FACILITY, OR AT ANY TIME DURING THE POST CLOSURE PERIOD OF ANY SUCH UNIT, THE COMMISSIONER SHALL REDUCE OR ELIMINATE THE ANNUAL FACILITY FEE REQUIRED BY SUBPART 1(B) FOR THE FACILITY IF THE COMMISSIONER FINDS THAT THE FACILITY WILL REQUIRE DE MINIMUS REGULATION DURING THE POST CLOSURE PERIOD(S) OF THE UNIT(S) COMPRISING THE FACILITY. THIS DETERMINATION SHALL BE BASED ON LEACHATE OR GROUNDWATER MONITORING RESULTS, WASTE CHARACTERISTICS, APPLICATION OF ADVANCED TECHNOLOGY, OR USE OF ALTERNATIVE DISPOSAL, TREATMENT, OR REUSE TECHNIQUES INDICATING THAT CORRECTIVE ACTION AT THE FACILITY DURING THE POST CLOSURE PERIOD(S) IS UNLIKELY.

Subp. [5]6. Payment schedule. Fees must be made payable to the state treasurer and submitted to the commissioner as follows:

A. [Unchanged.]

B. The owner or operator shall submit the annual facility ~~operator's~~ fee not later than June 30 of each year.

C. [Unchanged.]

Subp. [6]7. [Unchanged.] Failure to submit fees. Failure to submit fees by the required date results in the following penalties:

A. to C. [Unchanged.]

Subp. [7]8. Refund of facility permit application fee. [Unchanged.]

CARGILL, INCORPORATED
LAW DEPARTMENT

P.O. BOX 9300
MINNEAPOLIS, MN 55440
TELEX 290625
TELECOPIER (612) 475-6349

John F. McGrory
Senior Vice President
Secretary &
General Counsel

James D. Moe
Vice President
Assistant Secretary &
Assistant General Counsel

Ronald L. Laumbach
Vice President &
Assistant General Counsel

Linda L. Cutler
Assistant General Counsel

Gretchen Q. Banks
Shirley R. Boyd
Frederick L. Budde
Steven Euller
Henry W. Gjersdal, Jr.
Patrice H. Halbach
H. Jed Hepworth
Grace Murgia Musilek
Bonnie E. Raquet
Lawrence A. Willey

Karen L. Baril
Sheila A. Brennan
Todd T. Erickson
Ronald E. Hunter
David L. Jacobson
Joseph R. Liesch
Laura W. Miller
Barbara A. Olson
LaRaye M. Osborne
Christopher B. Stang
James E. Van Valkenburg
Laura Hicks Witte

September 22, 1989

RECEIVED
SEPT 25 89
MPCA, Hazardous
Waste Division

Writer's Direct Dial Number

(612) 475-6374

Patrick F. Carey
Hazardous Waste Division
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155

Re: Hazardous Waste Fee Rule Amendments

Dear Pat:

I write on behalf of North Star Steel to thank you for your attention to the concerns we raised during our July 18, 1989 meeting about application of the hazardous waste fee rules to closed land disposal facilities. As noted in our meeting on September 19, 1989, we are very encouraged by the direction MPCA staff has taken in its proposed amendments to these rules. Your efforts make progress toward clarifying the applicability of the rules and implementing the Agency's cost recovery mandate in a manner more reasonably related to the actual costs of overseeing closed facilities.

We have participated in the preparation of comments submitted to you by Bradley Jackson on behalf of DeZurik. We concur in the discussion set forth in his letter and the revisions suggested to the proposed rule amendment. Please contact me if you have any questions or concerns to which we might respond.

We understand that further work on the proposed rule amendment could jeopardize adoption of the amendments before next year's annual fees are assessed and, therefore, jeopardize the chance for closed LDFs to obtain relief from current fee amounts. Accordingly, we will reserve other concerns we have about the existing and proposed rule for future rulemaking proceedings and, if necessary, legislative debates.

Thank you very much for your consideration. We look forward to working with you on this matter.

Very truly yours,

LaRaye M. Osborne

LMO:cp
cil/858
cc: J. Gay/NSS/St. Paul, MN
R. Evans/NSS/51
J. Moe/Law/Lake

Bruce W. Brott, P.E.
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155

Alan Mitchell, Esq.
Office of the Attorney General
Environmental Protection Division
520 Lafayette Road
St. Paul, Minnesota 55155

Joseph Maternowski, Esq.
Office of the Attorney General
Environmental Protection Division
520 Lafayette Road
St. Paul, Minnesota 55155

Bradley Jackson, Esq.
Foley & Lardner
First Wisconsin Plaza
1 South Pinckney Street
P.O. Box 1497
Madison, Wisconsin 53701-1497

FEDERAL - HOFFMAN, INC.
900 EHLEN DRIVE ANOKA, MINNESOTA 55303
612/421-7100

October 10, 1989

Mr. Patrick F. Carey
Hazardous Waste Division
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, MN 55155

Subject: Proposed Amendment to Minn Rules Part 7046.0020

Dear Mr. Carey:

Thank you for arranging the September 19 meeting to discuss with affected industry representatives the proposed rule changes relating to fees charged closed land disposal facilities.

Federal-Hoffman, Inc. supports the concept of fee differentiation between active and closed landfill facilities as proposed by the MPCA staff. Indeed, Federal-Hoffman, Inc. does not want to take any actions or make any proposals that would cause the MPCA to delay the proposed alteration of the fee structure for fees due in 1990.

However, Federal-Hoffman does believe the following points should be considered for future fee structure alterations relating to closed land disposal units:

- The MPCA staff should regularly review the funding requirements and the percentage split between generators and TSD facilities. As generator numbers increase, the total MPCA staff time required to oversee their activities will also increase so that the total funding and percent contributed by generators only should be increased proportionately.

- Language should be inserted in the regulations to specifically state that closed landfill facilities can petition to reduce or eliminate the annual closed landfill fee. If no regulatory activity other than oversight and report review is required over a couple of years, a closed landfill facility should be eligible for reduced fees. This lower level of regulatory oversight should be reflected in a lower annual fee.

Federal Hoffman again thanks you and the MPCA staff for proposing a more equitable annual fee structure for closed landfill disposal units. We would also appreciate consideration of the above proposals during future discussions that are held concerning rule

changes relating to annual fees required of closed land disposal units.

Questions concerning this proposal should be directed to me at 422-2569 or Mr. Jack Melberg of my staff at 422-2584.

Yours truly,

FEDERAL-HOFFMAN, INC.

Luke J. Davich
Environmental Services Manager

LJD:JMM:bc

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NOV 15 1989
ADMINISTRATIVE
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CERTIFICATE OF AGENCY'S AUTHORIZING RESOLUTION

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-fourth 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 give notice of the Minnesota Pollution Control Agency's intent to adopt, without a public hearing, the attached proposed rule amendments of the Minnesota Pollution Control Agency governing hazardous waste facility fees, Minn. Rules pt. 7046.0020, to all persons who have registered their names with the Minnesota Pollution Control Agency for that purpose and publish the notice and the proposed rule amendments in the State Register, and to perform any acts incidental thereto, including making any form changes in 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 Commissioner of the Minnesota Pollution Control Agency is also granted the authority to call a hearing for the purpose of adopting the attached proposed rule amendments of the Minnesota Pollution Control Agency governing hazardous waste facility fees, Minn. Rules pt. 7046.0020, to sign the Notice thereof, to act as the Minnesota Pollution Control Agency's representative at the hearing, and to perform any acts incidental thereto, including making any form changes in 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).

IN WITNESS WHEREOF, I have hereunto subscribed my name this 30 day of October, 1989.

Gerald L. Willet

Gerald L. Willet
Commissioner

Pollution Control Agency

Proposed Permanent Rules Relating to Hazardous Waste Facility Fee Amendments

Rules as Proposed

7046.0020 HAZARDOUS WASTE FACILITY FEES.

Subpart 1. **Fee schedule for five-year permits.** A person applying for issuance or reissuance of a five-year permit for a hazardous waste facility shall remit the permit application fee or permit reissuance fee given in item A or B. A person who owns or operates a hazardous waste facility ~~that is in operation on July 1 in any year~~ shall remit the annual facility ~~operator's~~ fee for that fiscal year~~.~~ if on July 1, the facility is treating, storing, or disposing of hazardous waste or has hazardous waste remaining after closure. A facility in which hazardous waste remains after closure continues to be subject to the annual facility fee until certification of completion of post-closure care is submitted to the commissioner and the commissioner releases the owner or operator from the financial assurance requirements for post-closure care as described in part 7045.0602, subpart 4.

	Permit Application Fee	Annual Facility ~~Operator's~~ Fee	Permit Reissuance Fee
[For text of item A, see M.R. 1989]			
B. Disposal and treatment			
Surface impoundment	21,870	21,140	10,930
Treatment (not otherwise specified including open burning)	21,870	10,690	10,930
Thermal treatment (not including open burning)	54,670	37,180	27,340
Land treatment	54,670	37,180	27,340
Land disposal ~~(includes surface impoundments in which waste~~			

Approved by Revisor

~~remains after closure~~			
Active facilities	54,670	37,180	27,340
Closed facilities (includes all facilities in which waste remains after closure)	27,330	24,790	13,670

Subp. 2. **Fee schedule for permits less than five-year term.** The following schedule must be used to calculate the application fee for a permit term of less than five years.

Term of Permit	Permit Application Fee
1 year	35 percent of application fee in subpart 1 or subpart 3
2 years	60 percent of application fee in subpart 1 or subpart 3
3 years	75 percent of application fee in subpart 1 or subpart 3
4 years	90 percent of application fee in subpart 1 or subpart 3

The annual facility ~~operator's~~ fee is the applicable fee listed in table 1 in subpart 1.

Subp. 3. **Combination facilities.** An application fee for a facility consisting of several treatment, storage, or disposal functions must be calculated according to the following schedule for application fees and annual ~~operator's~~ facility fees:

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

[For text of subp 4, see M.R. 1989]

Subp. 5. **Payment schedule.** Fees must be made payable to the state treasurer and submitted to the commissioner as follows:

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

B. The owner or operator shall submit the annual facility ~~operator's~~ fee not later than June 30 of each year.

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

[For text of subps 6 to 7, see M.R. 1989]

Approved by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Hazardous Waste Facility Fee Amendments

AGENCY: Pollution Control Agency

MINNESOTA RULES: Chapter 7046

The attached rules are approved for publication in the State Register

Carla M. Riehle
Assistant Revisor

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ADMINISTRATIVE
HEARINGS

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rule Amendments Governing Hazardous Waste Facility Fees, Minn. Rules Part 7046.0020

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT RULES WITH A PUBLIC HEARING IF 25 OR MORE PERSONS REQUEST A HEARING

(1) 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 Minn. Stat. §§ 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 Minn. Stat. § 116.12 (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 rule amendments or any part or subpart of the rules. Comment is encouraged. (3) Each comment should identify the portion of the proposed rule amendments 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 rule amendments within the comment period. (4) If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. (5) (6) Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule amendments addressed, the reason for the request, and any change proposed. (7) If a public hearing is required, the MPCA will proceed pursuant to Minn. Stat. §§ 14.131 to 14.20 (1988).

PLEASE NOTE THAT IF 25 OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON JANUARY 3, 1990, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULE AMENDMENTS PUBLISHED IN THE STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE MPCA. To verify whether a hearing will be held, please call Patrick Carey of the MPCA staff, between December 20, 1989, and January 3, 1990, at 612/296-7767.

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

Patrick Carey
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
612/296-7767

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

(11) The proposed rule amendments, if adopted, will only affect land disposal facilities in which waste remains after closure. The effects of the proposed amendments would be to lower the fees assessed to these facilities and to amend the existing facility fee rule language to clarify its original intent. A copy of the proposed rule amendments is enclosed. One free copy of the rule amendments is available upon request from Patrick Carey at the address and telephone number stated above.

(12) A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule amendments and identifies the data and information relied upon to support the proposed rule amendments has been prepared and is available from Patrick Carey upon request.

(14) You are hereby advised, pursuant to Minn. Stat. § 14.115 (1988), "Small business considerations in rulemakings," that the proposed rule amendments will have a positive impact on any small businesses that may be affected. The effect of the proposed amendments is to lower the fees assessed to land disposal facilities in which waste remains after closure. Therefore, any impacts the proposed amendments may have on small business will be ones that save these businesses money.

(9) If no hearing is required, upon adoption of the rule amendments, the rule amendments and required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the rule amendments as adopted, must submit a written request to Patrick Carey.

Dated: 11-6-89

for Barbara Lindsey Sims
Gerald L. Willet
Commissioner

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ADMINISTRATIVE
HEARINGS

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Rule Amendments Governing
Hazardous Waste Facility Fees,
Minn. Rules Pt. 7046.0020

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

PATRICK F. CAREY, being duly sworn, deposes and says:

That on the 17TH day of November, 1989, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer than 25 Persons Request a Hearing in Response to Notice of Intent to Adopt Rule Amendments Without a Public Hearing, and Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt Rules With a Public Hearing if 25 or More Persons Request a Hearing, by depositing in the State of Minnesota Central Mail System or in the United States mail for first class mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Pollution Control Agency for the purpose of receiving notice of the proposed adoption of rules by the Minnesota Pollution Control Agency.

P.F. CAREY

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

Jodi D. Rasmussen
Notary Public

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

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ADMINISTRATIVE
HEARINGS

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Rule Amendments Governing
Hazardous Waste Facility Fees,
Minn. Rules Pt. 7046.0020

CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 14.14 (1988) that their names be placed on file with the Minnesota Pollution Control Agency for the purpose of receiving notice of the proposed adoption of rules by the Minnesota Pollution Control Agency is accurate and complete as of 4:00 p.m. this 17TH day of November, 1989.

Kay F. Carlson

Anoka County Health Department
Courthouse 4th Floor
Anoka, MN 55303

Post Office Box 220
Carlton County Courthouse
Carlton, MN 55718

Black & Veatch Engineers
Suite 1240
600 Renaissance Center
Detroit, MI 48243

A. L. Ochs 00024
Braun Environmental Labs
6800 South County Road 18
Post Office Box 35108
Minneapolis, MN 55435-0108

Citizens For a Better Environment 00038
1515 East Lake Street
Suite 201
Minneapolis, MN 55407

P. D. Brick 00041
Manager Government Relations
Cleveland-Cliffs Incorporated
1100 Superior Avenue
Cleveland, OH 44114

M. J. Duffy 00042
Director
Community Health Services Board
Suite 604
325 Lake Avenue South
Duluth, MN 55802

G. L. Dirks 00044
Manager of Plant Services
Cornelius Company
1 Cornelius Place Highway 10 West
Anoka, MN 55303

T. Lahti 00061
Safety Adminstrator
DNR Bureau Of Field Services
500 Lafayette Road
Box 16
Saint Paul, MN 55155-4016

Robert Beltrame 00062
Donohue & Associates
7200 Hemlock Lane
Maple Grove, MN 55369

M. R. Kaster 00065
Dorsey & Whitney Law Firm
2200 1st Bank Place East
Minneapolis, MN 55402

John E. Drawz 00067
2000 1st Bank Place West
120 South 6th Street
Minneapolis, MN 55402

Hild Sandstede 00107
Greenpeace
2637 Nicollet Avenue South
Minneapolis, MN 55408

Ellsworth Harpole 00110
727 15th Avenue South East #30
Minneapolis, MN 55414

Patricia Leonard-Mayer 00112
Harstad & Rainbow
268 Cecelia Place
St. Paul, MN 55105

Dr. J. William Haun, PE 00113
6912 East Fish Lake Road
Maple Grove, MN 55369

Harold J. Soderberg 00119
Hessian Mckasy & Soderberg
4700 IDS Center
Minneapolis, MN 55402

Dr. R. Danford 00126
International Research & Eval
21098 Ire Control Center
Eagan, MN 55121

Ruth A. Johnson 00133
129 Riverview Blvd
International Falls, MN 56649

Karen Studders Lampert 00166
Minnegasco Incorporated
Post Office Box 1165
700 West Linden Avenue
Minneapolis, MN 55440-1165

Jim Ertl 00174
Minnesota Earth/PAS Office
515 Capitol Square Building
550 Cedar Street
Saint Paul, MN 55101

M. J. Ahern 00181
Moss & Barnett
4800 Norwest Center
90 South 7th Street
Minneapolis, MN 55402

Dr. Michael Lee 00183
Research Director
MPIRG
2512 Delaware Street South East
Minneapolis, MN 55414

Rebecca Flood 00187
Metropolitan Waste Control
MearssPark Centre
230 East Fifth Street
Saint Paul, MN 55101

M. D. Thompson 00188
General Counsel
Metropolitan Waste Control
MearssPark Centre
230 East Fifth Street
Saint Paul, MN 55101

Reid A. Miner 00194
NCASI
Western Michigan University
Kalamazoo, MI 49008

G. Crocker 00203
North American Water Office
Post Office Box 174
Lake Elmo, MN 55042-0174

Charles B. Hoffman 00214
Pickands Mather & Company
Suite 811
200 West Superior Street
Duluth, MN 55802

Robert S. Burk 00222
Popham-Haik Law Firm
3300 Piper Jaffray Tower
222 South 9th Street
Minneapolis, MN 55402

G. Robert Johnson 00223
Popham-Haik Law Firm
3300 Piper Jaffray Tower
222 South 9th Street
Minneapolis, MN 55402

Archie D. Chelseth 00225
Potlatch Corporation
Box 510
207 Avenue C
Cloquet, MN 55720

Gayle Peterson 00227
Project Environment Foundation
1313 5th Street South East
Suite 323
Minneapolis, MN 55414

J. Pumarlo 00234
Editor
Red Wing Republican Eagle
Red Wing, MN 55066

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

Sheldahl Incorporated
Post Office Box 170
North Highway 3
Northfield, MN 55057

Saint Paul Fire Department
100 East Eleventh Street
Saint Paul, MN 55101

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

00356
Portage Sanitary Landfill Authority
Director
Crane Lake, MN 55725

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

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

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

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

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

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

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

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

Board of Architectural Engineering
Land Survey And Landscape
402hMetrouSquare
Saint Paul, MN 55101

Attorney General's Office
Antitrust Division
2nd Floor Ford Building
117 University Avenue
Saint Paul, MN 55155

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

00393
Badger Safe Energy Alliance
Box 239
Ellsworth, WI 54011

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

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

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

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

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

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

Mark Wolski 00402
Bureau of National Affairs
2126 Hartford Avenue
Saint Paul, MN 55116

Donald Burger 00403
501 22nd Avenue North East
Minneapolis, MN 55418

Thomas Spence 00404
Burlington Northern
Law Department
Room 600
325 Cedar Street
Saint Paul, MN 55101

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

V P of Environmental Affairs
Champion International Corporation
One Champion Plaza
Stamford, CN 06921

Chemlawn Services Corporation
8275 North High Street
Columbus, OH 43085

Susan Mudd 00408
Citizens For A Better Environment
Suite 303
647 West Virginia Street
Milwaukee, WI 53204

Michael S. Keckeisen 00409
Color-Ad Packaging, Inc.
3600 Alabama Avenue
Minneapolis, MN 55416

Scott Schuler 00410
Cooperative Power Association
14615 Lone Oak Road
Eden Prairie, MN 55344

John Herman 00411
D H G & G
Attorneys at Law
Suite 930
Ten South Fifth Street
Minneapolis, MN 55401

James C. Backstrom 00412
Dakota County Attorney
1560 HigHway 55
Hastings, MN 55033

Ron Spong 00413
Dakota County
Environmental Health
Suite 345
33 East Wentworth
West Saint Paul, MN 55118

Lawrence Annen 00414
Dames & Moore
1900 Silver Lake Road
Suite 302
New Brighton, MN 55112

Steve Holland 00415
Dateline Environmental
5353 Gamble Drive Suite 311
Minneapolis, MN 55416

David Braslau Associates 00416
#322
1313 5th Street South East
Minneapolis, MN 55414

Jeanne Stebbins 00417
Legal Assistant
Dewitt Sundby Huggett Schumacher
#120an
6515 Grand Teton Plaza
Madison, WI 53719

Nancy Carlson 00418
DNR/MEEB
701 Iowa Avenue
Morris, MN 56267

Donohue & Associates, Inc. 00419
Consulting Engineers Division
Suite 200
7200 Hemlock Lane North
Maple Grove, MN 55369

Gregg Fontaine 00420
Dorsey & Whitney
2200 First Bank Place East
Minneapolis, MN 55402

Bill Keppel 00421
Dorsey & Whitney
2200 First Bank Place East
Minneapolis, MN 55402

G. C. LaValley 00422
Mgr Environmental Affaors
Duluth Missabe & Iron Range Railway
329 Second Street
Proctor, MN 55810

Pamela Meitner 00423
E. I. Du Pont de Nemours Company
Legal Department
1007 Market Street
Wilmington, DE 19898

ECRDC 00424
100 South Park Street
Mora, MN 55051

David M Benforado, PE 00425
3M
Environmental Eng & Pollution
21-2W-06
900 Bush Avenue
Saint Paul, MN 55144

EPA Region V 00426
Office of Public Affairs
230 South Dearborn Street
Chicago, IL 60604

Dave Ullrich 00427
EPA Region V
5C-TUB-3
230 South Dearborn Street
Chicago, IL 60604

Roy O. Ball 00428
ERN-North Central, Inc.
102 Wilmot
Suite 300
Deerfield, IL 60015

Ewald Consulting Group 00429
26 East Exchange Street
Fifth Floor
Saint Paul, MN 55101

Chairman 00430
Fairmont Area Chamber Of Commerce
Post Office Box 102
101 South Main
Fairmont, MN 56031

Finance & Commerce Daily 00431
Attn Editor News Room
615 South 7th Street
Minneapolis, MN 55415

FMC Corporation 00432
Naval Systems Division
Post Office Box 50943
4800 East River Road
Minneapolis, MN 55059-9943

Frundt Frundt Johnson & Roverud Ltd 00433
117 West 5th Street
Blue Earth, MN 56013

William T. Taylor 00434
General Mills, Inc.
Post Office Box 1113
Minneapolis, MN 55440

Kevin C. Jones 00435
George A. Hormel & Company
Box 800
Austin, MN 55912

Everett Milton 00436
GNB
Post Office Box 64100
Saint Paul, MN 55164-0100

Dean Howarth 00437
Graco, Inc.
Post Office Box 1441
Minneapolis, MN 55440

Wathington Industrial Road
Reidsville, NC 27320

130 West Superior Street
Duluth, MN 55802-2094

Plymouth, MN 55441

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

00441

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

00442

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

00443

00444

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

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

00445

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

00446

00447

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

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

00448

00449

Lake Superior Industrial Bureau
1408 Alworth Building
Duluth, MN 55802

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

00450

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

00451

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

00452

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

00453

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

00454

Rachel Lord
2323 Talmage Avenue South East
Minneapolis, MN 55414

00455

Thomas Mastalez
5595 Arbutus Court
Greendale, WI 53129

00456

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

00458

00459

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

00460

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

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

00461

00462

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

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

00463

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

00464

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

00466

00467

National Solid Waste Managment
Waste Recyclers Council
1730 Rhode Island Avenue NW
10th Floor
Washington, DC 20036

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

00468

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

00469

Henry Chisholm
Oglebay Norton Company
Post Office Box 6508
Cleveland, OH 44101

00470

Phillips Legislative Services
459 Rice Street
Saint Paul, MN 55103

00471

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

00472

The Pillsbury Company
MS 3726
Pillsbury Center
Minneapolis, MN 55402

Popham Haik Law Firm
3300 Piper Jaffray Tower
222 South 9th Street
Minneapolis, MN 55402

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

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

00476

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

00477

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

00478

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

00479

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

00480

Robert Snyder
3943 Pleasant Avenue South
Minneapolis, MN 55409

00481

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

00482

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

00483

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

00484

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

00485

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

00486

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

00488

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

00489

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

00490

News Editor
Winona Daily News
Box 147
Winona, MN 55987

00491

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

00492

Professor Marcia Gelpe
2125 Girard Avenue South
Minneapolis, MN 55405

00493

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

00494

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

00495

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

00496

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

00497

Ruth Erickson
80 Edison Boulevard
Silver Bay, MN 55614

00499

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

00500

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

00501

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

0084696-Tom7Balf
23 Empire Drive
Saint Paul, MN 55103

00849

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

00850

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

00852

William Bryson
Rural Route 2
Box 181
Alden, MN 56009

00853

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

00856

Box 140
North Woodbury Road
Sewell, NJ 08080

Apple Valley, MN 55124

Dick Nowlan 00872
Larkin Hoffman Daly & Lindgren Ltd
7900 Xerxes Avenue South
Suite 1500
Bloomington, MN 55431

Andrew Singer 00873
Environmental Manager
799 Broadway
Suite 541
New York City, NY 10003

Mr. Michael J. Osborn
3M Company
P.O. Box 33331
Cottage Grove, MN 55133

Mr. John Henschel
Aptus
21750 Cedar Ave.
P.O. Box 550
Lakeville, MN 55044

Mr. John Henschel
Aptus
21750 Cedar Avenue
P.O. Box 550
Lakeville, MN 55044

Ms. Arlene Hendrickson
Ashland Chemical Company
P.O. Box 2219
Columbus, Ohio 43216

Mr. Tom Patnode
Burlington Northern Railroad
176 East Fifth Street
St. Paul, MN 55101

Mr. James Carraway
Champion International Corp.
One Champion Plaza
Stamford, Connecticut 06921

Mr. Jim Determan
Determan Welding & Tank
Service, Inc.
1241 - 72nd Avenue Northeast
Fridley, MN 55432

Mr. John Rogan
DeZurik
250 Riverside Avenue North
Sartell, MN 56377-1743

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

Mr. Douglas B. Hildre
FMC Corporation -
No. Ordnance Division
4800 East River Road
Fridley, MN 55421

Mr. Douglas Hildre
FMC Corporation -
No.Ordnance Division
4800 East River Road
Minneapolis, MN 55421

Mr. Carl Challgren
General Electric Company
Minneapolis Service Center
2025 49th Avenue North
Minneapolis, MN 55430

Mr. John Tapper
Gopher Smelting and
Refining Company
3385 South Highway 169
Eagan, MN 55121

Mr. Chong-Hue Brian Lim
H.B. Fuller Co.
3530 Lexington Avenue N.
St. Paul, MN 55126

Mr. Scott Sable
Honeywell
1985 Douglas Drive North
Mail Station MN10-2471
Golden Valley, MN 55408

Mr. David Rastetter
Honeywell - MN11-1020
600 Second Street Northeast
Hopkins, MN 55343

Mr. George Pagnucco
Honeywell Avionics
1625 Zarathan Avenue South
St. Louis Park, MN 55416

Mr. Stan Korenowski
Honeywell Avionics
2600 Ridgway Parkway
Minneapolis, MN 55440

Mr. John Fitzgerald
Honeywell Proving Ground
23100 Sugar Bush Road
Elk River, MN 55330

Mr. David Rastetter
Honeywell, Inc.
600 Second Street Northeast
Hopkins, MN 55343

Mr. Louis Zitnay
International Business
Machines
3605 Highway 52 North
Rochester, MN 55901

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

Ms. Gerry D. Rector
Lake Superior Paper Industrie
100 N. Central Avenue
P.O. Box 7308
Duluth, MN 55807

Mr. Dale Sweet
Larsen Oil Company, Inc.
311 Fowler
Faribault, MN 55021

Mr. David Senjem
Mayo Clinic
200 First Street Southwest
Rochester, MN 55905

Mr. Dave Carlson
McLaughlin, Gormley
King Company
1715 Fifth Street S.E.
Minneapolis, MN 55414

Mr. Doug Hobbs
Medtronic, Inc.
7000 Central Avenue Northeast
Fridley, MN 55432

Mr. Gregor E. Norgaard
Metro Recovery Systems
2430 Rose Place
Roseville, MN 55113

Mr. Karl Schurr
Minco Products, Inc.
7300 Commerce Lane Northeast
Fridley, MN 55432

Mr. Gary Niemi
MN Air National Guard
148 FIG/DE -
Duluth Air National Guard Base
Duluth International Airport
Duluth, Minnesota 55811

Mr. Dan Croke
Minnesota Power
1424 West Superior Street
Duluth, MN 55806

Mr. Larry Frahm
North Star Steel Company
1678 Red Rock Road
St. Paul, MN 55164

Mr. Robert Clough
Northern States Power
414 Nicollet Mall
Minneapolis, MN 55403

Mr. Ed Anderson
Pennsylvania Oil Company
7000 Highway 65 Northeast
Minneapolis, MN 55432

Mr. Richard Wybierala
Poor Richards Incorporated
P.O. Box 17022
St. Paul, MN 55117

Ms. Ellen Jurczak
Safety-Kleen Corporation
777 Big Timber Road
Elgin, Illinois 60120

Ms. Ellen Jurczak
Safety-Kleen Corporation
777 Big Timber Road
Elgin, Illinois 60120

Mr. Scot Armstrong
Safety-Kleen Corporation
180 Ryan Drive
Little Cananda, MN 55117

Ms. Ellen Jurczak
Safety-Kleen Corporation
777 Big Timber Road
Elgin, Illinois 60120

Mr. David Tollefson
Solv-Oil Service & Supply, Inc.
P.O. Box 338
Hopkins, MN 55343

Mr. Theodore Schulte
Twin Cities Army
Ammunition Plant
Department of the Army
Arden Hills, MN 55112

Mr. James R. Persoon
Twin Cities Army
Ammunition Plant
Building 103, MN29-3553
New Brighton, MN 55112

Mr. Roger J. Martin
Unisys
P.O. Box 64525
St. Paul, MN 55164-0525

Mr. Glen W. Schwartz
Unisys
2276 Highcrest Drive
Roseville, MN 55113

Mr. Roger Martin, Manager
Unisys - Env. Mgmt. Dept.
P.O. Box 64525
St. Paul, MN 55164-0525

Mr. Jim Eggen
United Power Association
Highway 10
Elk River, MN 55330

Dr. Fay Thompson
University of Minnesota
W-166 Boynton Health Service
Minneapolis, MN 55455

Dr. Fay Thompson
University of Minnesota
W-166 Boynton Health Service
Minneapolis, MN 55455

Mr. Tom Collins
Van Waters and Rogers, Inc.
845 Terrace Court
St. Paul , MN 55101

Mr. Ken Day
Vision Ease Lens -
Div. of Camelot Ind.
700 - 54th Avenue North
St. Cloud, MN 56301

Mr. A.L. Warden
Warden Oil Company, Inc.
187 Humboldt Avenue North
Minneapolis, MN 55405

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

LaRaye Osborne
Cargill, Inc.
Law Department
P.O. Box 9300
Minneapolis, MN 55440

Gerry Rector
Lake Superior Paper Inc.
100 N Central Avenue
P.O. Box 7308
Duluth, MN 55807

Anoka County Health Department
County Courthouse - 4th Floor
325 East Main Street
Anoka, Minnesota 55303

Mr. Michael Shotliff
Carver County Courthouse
600 East 4th Street
Chaska, Minnesota 55318

Mr. George Kinney
Dakota County Community
Health Sevices
33 East Wentworth, Suite 101
West St. Paul, Minnesota 55118

Mr. Greg Lie
Hennepin County Department
of Environment and Energy
822 South Third Street, #300
Minneapolis, Minnesota 55415

Mr. Lee Holden
Ramsey County Division of
Environmental Health
1910 West County Road B, #209
Roseville, Minnesota 55113

Mr. Al Frechette
Scott County Environmental
Health Specialist
Scott County Courthouse
Shakopee, Minnesota 55379

Mr. Peter Schmidt
Scott County Environmental
Health Specialist
Scott County Courthouse
Shakopee, Minnesota 55379

Mr. Tom Dellenbach
Washington Co Comm Health Serv
14900 North 61st Street
P.O. Box 6
Stillwater, Minnesota 55082

MICA Environmental Committee
Metropolitan Inter-Co. Assoc.
33 Wentworth Avenue, Suite 300
West St. Paul, Minnesota 55118
Attn: Robert Orth

Minnesota Chamber of Commerce
480 Cedar Street
300 Hanover Building
St. Paul, Minnesota 55101
Attn: Winston Borden

MnTAP
University of Minnesota
Box 197 Mayo
Minneapolis, MN 55455

S. Richard Heymann
Foley & Lardner
Post Office Box 1497
1 South Pinckney Street
Madison, WI 53701-1497

RULEMAKING AFFECTED PARTY

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HEARINGS

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.

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

PLEASE NOTE THAT IF 25 OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON JANUARY 3, 1990, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULE AMENDMENTS PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE MPCA. To verify whether a hearing will be held, please call Patrick Carey of the MPCA staff, between December 20, 1989, and January 3, 1990, at 612/296-7767.

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

Patrick Carey
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
612/296-7767

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

The proposed rule amendments, if adopted, will only affect land disposal facilities in which waste remains after closure. The effects of the proposed amendments would be to lower the fees assessed to these facilities and to amend the existing facility fee rule language to clarify its original intent. The proposed rule amendments are published below. One free copy of the rule amendments is available upon request from Patrick Carey at the address and telephone number stated above.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rule amendments and identifies the data and information relied upon to support the proposed rule amendments has been prepared and is available from Patrick Carey upon request.

YOU ARE HEREBY ADVISED, pursuant to *Minnesota Statutes* § 14.115 (1988), "Small business considerations in rulemakings," that the proposed rule amendments will have a positive impact on any small businesses that may be affected. The effect of the proposed amendments is to lower the fees assessed to land disposal facilities in which waste remains after closure. Therefore, any impacts the proposed amendments may have on small business will be ones that save these businesses money.

If no hearing is required, upon adoption of the rule amendments, the rule amendments and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the rule amendments as adopted, must submit a written request to Patrick Carey.

Gerald L. Willet
Commissioner

Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer than 25 Persons Request a Hearing in Response to Notice of Intent to Adopt Rule Amendments Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) will hold a public hearing in the above-entitled matter at the MPCA Board Room, 520 Lafayette Road North, St. Paul, Minnesota, commencing at 9:00 a.m. on Wednesday, January 3, 1990, and continuing in an evening session at the same location starting at 7:00 p.m. Additional days of hearing will be scheduled if necessary. Please note that the effect of the amendments is to lower the fees assessed to hazardous waste land disposal facilities in which waste remains after closure. All interested or affected persons will have an opportunity to participate by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted without appearing at the hearing.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELED IF FEWER THAN 25 PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULE AMENDMENTS WITHOUT A

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.

PUBLIC HEARING PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE MPCA. To verify whether a hearing will be held, please call Patrick Carey of the MPCA staff, between December 20, 1989, and January 3, 1990, at 612/296-7767.

The matter will be heard before Administrative Law Judge Bruce D. Campbell, Office of Administrative Hearings, Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, 612/341-7602. The rule hearing procedure is governed by *Minnesota Statutes* §§ 14.131 to 14.20 (1988) and by the rules of the Office of Administrative Hearings, *Minnesota Rules* pts. 1400.0200 to 1400.1200. Questions concerning the rule hearing procedure should be directed to the Administrative Law Judge at the address and telephone number stated above.

The subject of the hearing will be the proposed rule amendments governing hazardous waste facility fees, *Minnesota Rules* part 7046.0020. The proposed rule amendments are authorized by *Minnesota Statutes* § 116.12 (1988). The proposed rule amendments are published below. One free copy of the proposed rule amendments is available on request by contacting:

Patrick Carey
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
612/296-7767

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the MPCA offices and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all of the evidence and argument which the MPCA anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rule amendments. Copies of the Statement of Need and Reasonableness may be reviewed at the MPCA offices or at the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Any person may present his or her views on the proposed rules in one or more of the following ways: by submitting written data to the Administrative Law Judge at any time before the close of the hearing; by submitting oral or written data at the hearing; and by submitting written data to the Administrative Law Judge during the comment period following the hearing. The comment period will not be less than five working days after the public hearing ends. The comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. The written material received during the comment period shall be available for review at the Office of Administrative Hearings. Within three business days after the expiration of the comment period, the MPCA and interested persons may respond in writing to any new information received during the comment period; however, no additional evidence may be submitted during this three-day period.

The MPCA requests that any person submitting written views or data to the Administrative Law Judge prior to the hearing or during the comment period also submit a copy of the written data to Patrick Carey at the address stated above.

The proposed rule amendments may be modified if the data and views received during the hearing process warrant modification and the modification does not result in a substantial change in the proposed rule amendments.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the MPCA may not take any final action on the rule amendments for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rule amendments were adopted and filed with the Secretary of State. The notice must be mailed on the same day that the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the MPCA at any time prior to the filing of the rule amendments with the Secretary of State.

YOU ARE HEREBY ADVISED, pursuant to *Minnesota Statutes* § 14.115 (1988), "Small business considerations in rulemaking," that the proposed rule amendments have a positive impact on any small businesses that may be affected. The proposed amendments only affect hazardous waste land disposal facilities in which waste remains after closure. The effect of the amendments is to lower the fees assessed to these facilities. Therefore, any impacts the proposed amendments may have on small business will be ones that save these businesses money.

PLEASE BE ADVISED that *Minnesota Statutes* ch. 10A (1988) requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in *Minnesota Statutes* § 10A.01, subd. 11 (1988) as any individual:

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

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

The Statute contains certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101-2520, telephone 612/296-5615.

Gerald L. Willet
Commissioner

Rules as Proposed

7046.0020 HAZARDOUS WASTE FACILITY FEES.

Subpart 1. **Fee schedule for five-year permits.** A person applying for issuance or reissuance of a five-year permit for a hazardous waste facility shall remit the permit application fee or permit reissuance fee given in item A or B. A person who owns or operates a hazardous waste facility ~~that is in operation on July 1 in any year~~ shall remit the annual facility ~~operator's~~ fee for that fiscal year if on July 1, the facility is treating, storing, or disposing of hazardous waste or has hazardous waste remaining after closure. A facility in which hazardous waste remains after closure continues to be subject to the annual facility fee until certification of completion of post-closure care is submitted to the commissioner and the commissioner releases the owner or operator from the financial assurance requirements for post-closure care as described in part 7045.0602, subpart 4.

	Permit Application Fee	Annual Facility ~~Operator's~~ Fee	Permit Reissuance Fee
[For text of item A, see M.R. 1989]			
B. Disposal and treatment			
Surface impoundment	21,870	21,140	10,930
Treatment (not otherwise specified including open burning)	21,870	10,690	10,930
Thermal treatment (not including open burning)	54,670	37,180	27,340
Land treatment	54,670	37,180	27,340
Land disposal ~~(includes surface impoundments in which waste remains after closure)~~			
Active facilities	54,670	37,180	27,340
Closed facilities (includes all facilities in which waste remains after closure)	27,330	24,790	13,670

Subp. 2. **Fee schedule for permits less than five-year term.** The following schedule must be used to calculate the application fee for a permit term of less than five years.

Term of Permit	Permit Application Fee
1 year	35 percent of application fee in subpart 1 or subpart 3

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.

Term of Permit	Permit Application Fee
2 years	60 percent of application fee in subpart 1 or subpart 3
3 years	75 percent of application fee in subpart 1 or subpart 3
4 years	90 percent of application fee in subpart 1 or subpart 3

The annual facility ~~operator's~~ fee is the applicable fee listed in table 1 in subpart 1.

Subp. 3. **Combination facilities.** An application fee for a facility consisting of several treatment, storage, or disposal functions must be calculated according to the following schedule for application fees and annual ~~operator's~~ facility fees:

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

[For text of subp 4, see M.R. 1989]

Subp. 5. **Payment schedule.** Fees must be made payable to the state treasurer and submitted to the commissioner as follows:

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

B. The owner or operator shall submit the annual facility ~~operator's~~ fee not later than June 30 of each year.

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

[For text of subps 6 to 7, see M.R. 1989]

Adopted Rules

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

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

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

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

Board of Dentistry

Adopted Permanent Rules Relating to Licensure

The rules proposed and published at *State Register*, Volume 14, Number 6, pages 272-276, August 7, 1989 (14 S.R. 272) are adopted as proposed.

Minnesota Housing Finance Agency

Adopted Permanent Rules Relating to Purchase and Rehabilitation or Refinance and Rehabilitation Mortgage Loans

The rules proposed and published at *State Register*, Volume 14, Number 7, pages 325-327, August 14, 1989 (14 S.R. 325) are adopted as proposed.

State Board of Vocational Technical Education

Adopted Permanent Rules Relating to Part-time Licenses, Financial Aid Administrator, and Certain New Venture Programs

The rules proposed and published at *State Register*, Volume 14, Number 6, pages 276-280, August 7, 1989 (14 S.R. 276) are adopted with the following modifications:

RECEIVED
DEC 20 1989
ADMINISTRATIVE
HEARINGS

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing Hazardous Waste Facility Fees, Minn. Rules Part 7046.0020

AFFIDAVIT OF SENDING NOTICE AND PROPOSED RULES TO CHAIRS OF HOUSE APPROPRIATIONS AND SENATE FINANCE COMMITTEES

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Patrick F. Carey, being duly sworn says:

That on the 6TH day of NOVEMBER, 1989, prior to submitting the Notice of Hearing to the State Register, I mailed a copy of the Notice of Hearing and the proposed rule amendments, along with the attached cover letters, to the chairs of the House Appropriations Committee and the Senate Finance Committee by depositing them in the United States Mail, properly enveloped and with first class postage prepaid.

Pat F. Carey

Subscribed and sworn to before me this 6th day of November, 1989.

Jodi D. Rasmussen
Notary Public

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

Minnesota Pollution Control Agency
520 Lafayette Road, Saint Paul, Minnesota 55155
Telephone (612) 296-6300

Celebrate MINNESOTA 1990

RECEIVED
DEC 20 1989
ADMINISTRATIVE HEARINGS

November 6, 1989

The Honorable Gene Merriam
Chair, Finance Committee
Minnesota Senate
Room 122
State Capitol Building
St. Paul, Minnesota 55155

Dear Senator Merriam:

RE: Minnesota Pollution Control Agency's Intent to Revise Minn. Rules Ch. 7046 Concerning Hazardous Waste Facility Fees

The Minnesota Pollution Control Agency (MPCA) needs to revise Minn. Rules ch. 7046 concerning hazardous waste facility fees. The effect of the amendments would be to lower the fees for one facility category, that being land disposal facilities in which waste remains after closure. Lowering the fees in this manner will better reflect the resources necessary to regulate this type of facility.

Minn. Stat. § 16A.128, subd. 2(a) requires the MPCA to send a copy of the notice and the proposed rules to the Chairs of the House Appropriations Committee and the Senate Finance Committee before the MPCA submits notice to the State Register of its intent to adopt rules that establish or adjust fees.

Enclosed are copies of the notices for publication in the State Register and the proposed rules.

Please feel free to contact Barbara Lindsey Sims, Deputy Commissioner, at 612/296-7303 if you have questions.

Sincerely,

for Barbara Lindsey Sims
Gerald L. Willet
Commissioner

GLW:km

Enclosure

Minnesota Pollution Control Agency
520 Lafayette Road, Saint Paul, Minnesota 55155
Telephone (612) 296-6300

Celebrate MINNESOTA 1990

RECEIVED
DEC 20 1989
ADMINISTRATIVE
HEARINGS

November 6, 1989

The Honorable Wayne Simoneau
Chair, Appropriations Committee
Minnesota House of Representatives
State Office Building
St. Paul, Minnesota 55155

Dear Representative Simoneau:

RE: Minnesota Pollution Control Agency's Intent to Revise Minn. Rules Ch. 7046 Concerning Hazardous Waste Facility Fees

The Minnesota Pollution Control Agency (MPCA) needs to revise Minn. Rules ch. 7046 concerning hazardous waste facility fees. The effect of the amendments would be to lower the fees for one facility category, that being land disposal facilities in which waste remains after closure. Lowering the fees in this manner will better reflect the resources necessary to regulate this type of facility.

Minn. Stat. § 16A.128, subd. 2(a) requires the MPCA to send a copy of the notice and the proposed rules to the Chairs of the House Appropriations Committee and the Senate Finance Committee before the MPCA submits notice to the State Register of its intent to adopt rules that establish or adjust fees.

Enclosed are copies of the notices for publication in the State Register and the proposed rules.

Please feel free to contact Barbara Lindsey Sims, Deputy Commissioner, at 612/296-7303 if you have questions.

Sincerely,

Barbara Lindsey Sims
for Gerald L. Willet
Commissioner

GLW:km

Enclosure

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 facility fee rules, Minn. Rules pt. 7046.0020, 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 Hazardous Waste Facility Fees, Minn. Rules Part 7046.0020

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 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 rules without a public hearing was published in the State Register on November 20, 1989 (14 SR 1210), 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 mailing and publication of the notice and was made available to the public.

3. All persons were given the opportunity to submit comments on the rule amendments for 30 days after notice of 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 to the Attorney General were received by the MPCA.

6. During the comment period, the MPCA received two written comments. The MPCA finds that one modification to the proposed rules is justified by the record in this proceeding, as follows:

The proposed amendments to Minn. Rules pt. 7046.0020, subp. 1 allows the owner and operator of a closed land disposal facility (LDF) to be exempted from the requirement to pay the annual facility fee, if the owner or operator meets certain conditions specified in the proposed language.

The MPCA still proposes to amend the rule to allow for this exemption, but, upon further review of the proposed language in response to comments received from Dezurik, (the operator of a closed LDF in Sartell, Minnesota), it appears to the MPCA that the language needs modification and expansion.

Therefore, the MPCA is deleting the proposed language regarding the exemption and an entire new subpart, subpart 8 is being adopted to address the matter of exempting an owner and operator of a closed LDF from the annual facility fee requirement.

The reason for this modification is to clarify that the closed LDF owner or operator need not establish that he/she is exempt completely from all post closure requirements, as the initial proposal might have been interpreted to mean by its reference to Minn. Rules pt. 7045.0602, but instead only has to show that MPCA involvement in the regulation of the facility is minimal. Indeed, it is likely that the operator will have some minimum monitoring requirements and operation and maintenance procedures to follow in the future, even though significant MPCA oversight will not be required because the site is secure and monitoring data are not showing any problems. These minimum requirements and procedures on the operator's part, however, do not trigger significant staff involvement. For example, annual ground water sampling and maintenance of the fence surrounding the site may require some expense and involvement by the facility operator, but do not trigger significant staff involvement. Therefore, it is appropriate to exempt the owner and operator from the annual facility fee requirement even though a small amount of effort is required by the operator. The new subpart 8, then, expands on this same concept that the owner and operator of a closed LDF may be exempt from the requirement to pay the annual facility fee if the site is secure to the extent that the ground water is protected and the MPCA does not have to spend significant time monitoring the site.

The new language first provides that a petition is the document that will trigger a request for the fee exemption. The petition can be filed any time after two years since the last wastes were placed in the facility. This two year time period is reasonable because there will be significant MPCA involvement when the facility is first closed to be sure the facility is properly closed and ground water is protected. The MPCA will inspect closed LDFs when they are initially closed to verify that all systems installed during closure are functioning properly. Two years was chosen as the minimum amount of time that the MPCA will closely monitor all newly closed LDFs.

The new language also specifies the information that must be included with the petition. This information all goes to assuring the MPCA that the ground water is protected, the potential for future environmental problems is minimal, and the MPCA will not have to devote significant staff time to regulating the facility.

Once the MPCA is satisfied that the facility is secure to the extent that the ground water is protected and minimal staff time will be necessary for oversight, the exemption will be granted. The purpose of the fee rule is to recover MPCA expenses in regulating a facility; if the MPCA does not have to inspect a facility and review data and monitor progress, it makes sense to exempt the owner and operator of the facility from the annual facility fee. Of course, if something should change, such as ground water contamination or contaminant migration, the MPCA would have to step up its involvement and once again charging the annual facility fee makes sense. That is what new subpart 8 provides.

Specifically, the exemption continues until the MPCA revokes the exemption. Notice would be given to the facility owner and operator before the exemption was revoked, so the owner and operator could be heard on the reasons for increased MPCA involvement. If the site should lose its closed status, by having more wastes added, then, of course, the MPCA would have to reinspect the site and would have other involvement, and the exemption would be lost. Indeed, the operator would likely fall out of the closed category into the active category in such event.

Subpart 8 also clarifies that the fee exemption can still be granted even though the operator may have certain tasks to perform, some of which may be permit conditions. The fact that the operator has these tasks to perform, however, does not mean that the MPCA has a large oversight role to play, and thus, performance of those tasks may not trigger an annual facility fee. The last sentence of new subpart 8 also goes on to make it clear that while the owner or operator may obtain an exemption to pay the annual facility fee, the permit reissuance fee will still have to be paid if a permit is involved.

The expansion of these exemption petition provisions does not constitute a substantial change in the proposed amendments. The new subpart 8 is intended to do exactly what the proposed language purported to do. The clarification and expansion offered by subpart 8 will be helpful to those facility owners and operators who are affected by these rules; indeed it was comments from one of the operators of a closed LDF -- Dezurik -- that necessitated a relook at the proposed language and that resulted in the modification. There are no new classes of persons who are affected by subpart 8 that were not affected by the initial proposal. It does not raise a new subject matter. It addresses an issue that was raised by the original notice and amendment. And it certainly does not result in a rule that is fundamentally different from what was proposed.

It is the MPCA's view that it is appropriate, and will be helpful, to clarify the provisions for obtaining an exemption from the annual facility fee by owners and operators of closed LDFs. The language in new subpart 8 establishes a reasonable mechanism for granting the exemption. Nothing in subpart 8 constitutes a substantial change.

Minn. Rules pt. 7046.0020 is modified to read:

7046.0020 HAZARDOUS WASTE FACILITY FEES.

Subpart 1. Fee schedule for five-year permits. A person applying for issuance or reissuance of a five-year permit for a hazardous waste facility shall remit the permit application fee or permit reissuance fee given in item A or B. A person who owns or operates a hazardous waste facility shall remit the annual facility fee for that fiscal year if on July 1, the facility is treating, storing, or disposing of hazardous waste or has hazardous waste remaining after closure. A facility in which waste remains after closure continues to be subject to the annual facility fee until ~~certification of completion of post closure care is submitted to the commissioner and the commissioner releases the owner or operator from the financial assurance requirements for post closure care as described in part 7045.0602, subpart 4~~ the owner or operator is exempted under subpart 8.

Permit Application Fee	Annual Facility Fee	Permit Reissuance Fee

[Items A and B unchanged.]

[Subparts 2 to 7 unchanged.]

Subp. 8. Exemption for closed land disposal facilities from annual facility fee. The owner or operator of a closed land disposal facility may petition the commissioner, at any time after two years have passed since the last wastes were disposed of at the facility, to release the owner or operator from the requirement to pay an annual facility fee. The petition shall include all available leachate and ground water monitoring data for the facility, a description of the characteristics of the wastes in the facility, a description of the technology applied to secure the facility and avoid migration of the wastes, a description of anticipated future monitoring, an evaluation of the potential for future environmental problems, and any additional information the owner or operator has to support the petition. The commissioner shall grant the petition and exempt the owner or operator from the requirement to pay the annual facility fee if the commissioner determines that, based on the information contained in the petition, ground water contamination has not occurred and is not likely to occur and the facility will not require significant agency oversight. The exemption shall continue until such time as the commissioner determines, after notice to the owner and operator, that the facility does require significant agency oversight. The exemption shall expire if the owner or operator adds or allows to be added additional wastes to the facility. The exemption from the requirement to pay the annual facility fee does not exempt the owner or operator from the requirement to pay the permit reissuance fee.

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 is 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 rules.

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

4. The modification to the proposed rules is supported by the record and does not result in a substantial change in the proposed rules.

ORDER

NOW, THEREFORE, IT IS ORDERED, that the rules proposed and published at State Register, Volume 14, pages 1210-1214, November 20, 1989 (14 SR 1210) are adopted pursuant to the authority vested in the MPCA by Minn. Stat. § 116.12, subd. 1 (1988) with the following modification:

7046.0020 HAZARDOUS WASTE FACILITY FEES.

Subpart 1. Fee schedule for five-year permits. A person applying for issuance or reissuance of a five-year permit for a hazardous waste facility shall remit the permit application fee or permit reissuance fee given in item A or B. A person who owns or operates a hazardous waste facility shall remit the annual facility fee for that fiscal year if on July 1, the facility is treating, storing, or disposing of hazardous waste or has hazardous waste remaining after closure. A facility in which waste remains after closure continues to be subject to the annual facility fee until ~~certification of completion of post-closure care is submitted to the commissioner and the commissioner releases the owner or operator from the financial asburance requirements for post-closure care as described in part 7045.0602, subpart 4~~ the owner or operator is exempted under subpart 8.

	Permit Application Fee	Annual Facility Fee	Permit Reissuance Fee

[Items A and B unchanged.]

[Subparts 2 to 7 unchanged.]

Subp. 8. Exemption for closed land disposal facilities from annual facility fee. The owner or operator of a closed land disposal facility may petition the commissioner, at any time after two years have passed since the last wastes were disposed of at the facility, to release the owner or operator from the requirement to pay an annual facility fee. The petition shall include all available leachate and ground water monitoring data for the facility, a description of the characteristics of the wastes in the facility, a description of the technology applied to secure the facility and avoid migration of the wastes, a description of anticipated future monitoring, an evaluation of the potential for future environmental problems, and any additional information the owner or operator has to support the petition. The commissioner shall grant the petition and exempt the owner or operator from the requirement to pay the annual facility fee if the commissioner determines that, based on the information contained in the petition, ground water contamination has not occurred and is not likely to occur and the facility will not require significant agency oversight. The exemption shall continue until such time as the commissioner determines, after notice to the owner and operator, that the facility does require significant agency oversight. The exemption shall expire if the owner or operator adds or allows to be added additional wastes to the

facility. The exemption from the requirement to pay the annual facility fee does not exempt the owner or operator from the requirement to pay the permit reissuance fee.

Dated: 1/31/90

Gerald L. Willet
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Rule Amendments Governing
Hazardous Waste Facility Fees,
Minn. Rules Pt. 7046.0020

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)

PATRICK F. CAREY, 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 1210, November 20, 1989) as the person to receive requests for notification of submission of rule adopted without a public hearing to the Attorney General concerning the above-entitled matter.

2. That there were no requests received by the the Minnesota Pollution Control Agency for notification of submission of rule adopted without a public hearing to the Attorney General concerning the above-entitled matter.

P.F. Carey

Subscribed and sworn to before me
this 9 day of January, 1990.

Ardith M. Vos
Notary Public

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

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Rule Amendments Governing
Hazardous Waste Facility Fees,
Minn. Rules Pt. 7046.0020

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

Alan R. Mitchell
Special Assistant
Attorney General

Dated: February 7, 1990

Minnesota Pollution Control Agency
520 Lafayette Road, Saint Paul, Minnesota 55155
Telephone (612) 296-6300

Celebrate MINNESOTA 1990

February 23, 1990

Ms. Patricia Nolte
Office of the Attorney General
525 Park Street
Suite 500
St Paul, Minnesota 55103

Dear Ms Nolte:

Special Assistant Attorney General Alan Mitchell recently submitted the Minnesota Pollution Control Agency's recently adopted fee rules to your office for review. He has notified me that the information submitted did not include the statement of approval from the Department of Finance. That statement is enclosed and I apologize for the inconvenience.

Sincerely,

Carol R Nankivel

Carol R. Nankivel
Program Development Unit
Hazardous Waste Division

CRN:jao

Enclosure

EXHIBIT 1

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : of Finance

DATE : November 8, 1989

TO : Gerald . Willet, Commissioner
Pollution Control Agency

FROM : Bruce J. Reddemann, Director BJR
Budget Operations and Support

PHONE : 296-5188

SUBJECT : Hazardous Waste Fee Rule Amendment

Your agency has proposed the establishment of a fee for land disposal facilities in which waste remains after closure in order to differentiate between these facilities and active land disposal facilities. The fee as proposed in amendment number 1 to Minnesota Rule 7046.0020 is approved as submitted.

cc: Doug Watnemo
Richard Svanda
Bruce Bott
Keith Ness
Patrick Carey

BOBN592t

RECEIVED

FEB 26 1990

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103