

**Minnesota Department of Revenue**

**PROPOSED ORDER ADOPTING AMENDMENT OF RULES**

**Adoption of Permanent Exempt Rules Governing the Metropolitan Solid Waste Landfill Fee: Amending Minnesota Rules, parts 8121.0300, 8121.0400, and 8121.0500; Revisor's ID Number R-04539.**

**WHEREAS:**

1. The rulemaking provisions of Minnesota Statutes, Chapter 14, are unnecessary and impracticable when, as in this case, amendments are made to a rule that: a) incorporate specific changes set forth in applicable statutes when no interpretation of law is required; or b) make changes that do not alter the sense, meaning or effect of a rule. Minnesota Statutes, section 14.388.
2. The attached Findings & Statement of Supporting Reasons justifies the good cause exemption from rulemaking provided by Minnesota Statutes, section 14.388, and is hereby incorporated by reference.
3. This rulemaking complies with all applicable law, including: a) the procedural requirements in Minnesota Statutes, section 14.388, and Minnesota Rules, part 1400.2400; and b) the notice requirements in Minnesota Statutes, sections 14.22, subdivision 1 and 14.388, subdivision 2. The Department provided notice in various ways, including: providing notice on the Department website and in the State Register; sending notice to persons who registered their name with the Department under Minnesota Statutes, section 14.14, subdivision 1a; and sending notice to all nine metro-area landfills that are subject to the rules at issue.
4. The attached certified copy of the rule demonstrates that the Office of the Revisor has approved its form, as required by Minnesota Statutes, section 14.386, paragraph (a)(1), and Minnesota Rules, part 1400.2400.

IT IS ORDERED that the above-captioned rule, in the form certified as approved by the Office of the Revisor, is adopted pursuant to authority vested in me by Minnesota Statutes, SECTION 270C.06, WHICH PROVIDES THAT THE Commissioner of Revenue shall “make, publish, and distribute rules for the administration and enforcement of...state tax laws.” Under this statute, the Commissioner of Revenue has the necessary statutory authority to amend this rule.

---

Date:

---

Cynthia Bauerly, Commissioner  
Department of Revenue

## **FINDINGS & STATEMENT OF SUPPORTING REASONS**

### **Adoption of Permanent Exempt Rules Governing the Metropolitan Solid Waste Landfill Fee; Amending Minnesota Rules, parts 8121.0300, 8121.0400, and 8121.0500; Revisor's ID Number R-D4539.**

#### **I. Background**

Operators of mixed municipal solid waste disposal facilities in the metropolitan area are required to collect fees from waste haulers and remit those fees to the state. The statute imposing this requirement was enacted in 1984 and is found at Minnesota Statutes, section 473.843. The Department of Revenue first promulgated rules to clarify this statute in 1985. The clarifying rules are found in Minnesota Rules, Chapter 8121.

Minnesota Statutes, section 473.843, has been amended multiple times since 1984. The proposed amendments to Minnesota Rules, Chapter 8121 will bring the Chapter 8121 rules into conformity with these statutory changes. The amendments also update the rule's recordkeeping requirements.

#### **II. Amendments Exempt Because They Reflect Statutory Change**

Minnesota Statutes, section 14.388, subdivision 1 (3), provides a good cause exemption to the regular rulemaking process for changes that conform a rule to changed statutory requirements. Or, as the statute describes it, the exemption is provided for amendments that "incorporate specific changes set forth in applicable statutes when no interpretation of law is required." Minnesota Statutes, section 14.388, subdivision 1 (3).

The following proposed amendments qualify for the good cause exemption because they bring Chapter 8121 into conformity with statutory change:

- Minnesota Rules, part 8121.0300, subpart 1, is being amended to reflect statutory change consistent with the current version of Minnesota Statutes, section 473.843, subdivision 1. Under 1984 Minnesota Statutes, section 473.843, the fee was fifty cents per ton or fifty cents per cubic yard of waste. The fee based on volume was increased in 1989 to \$2.00 per cubic yard. (1989 Minn. Laws ch. 325, s. 60). The fee based on weight was increased in 1994 to \$6.66. (1993 Minn. Laws ch. 585, s. 45). The proposed amendments replace the outdated re-statement of statutory fees with a cross reference to Minnesota Statutes, section 473.843, subdivision 1, which continues to define current fees. This better ensures future consistency.
- Minnesota Rules, part 8121.0400, subpart 1, is being amended to update the rule's penalty and enforcement provisions so that they reflect statutory change consistent with the current version of Minnesota Statutes, section 473.843, subdivision 5. Specifically, the current rule adopts the failure-to-file and failure-to-pay penalty provisions of Minnesota Statutes, sections 290.46, 290.47, and 290.53. These statutes were repealed in 1990. (1990 Minn. Laws, ch. 480, art. 1, s. 45). We propose eliminating these outdated statutory cross references. No replacement language is proposed because the current statutory language regarding penalties and enforcement in Minnesota Statutes, section 473.843, subdivision 5, is accurate and does not require clarification.
- Minnesota Rules, part 8121.0500, subpart 1, is being amended to reflect statutory change consistent with the current version of Minnesota Statutes, section 473.843. First, the rule's current reference to a "50 percent reduction" in the fee is deleted because a 1991 amendment to

Minnesota Statutes, section 473.843, subdivision 3, increased the fee reduction to 100%. (1991 Minn. Laws, ch. 291, s. 12). Second, Minnesota Statutes, section 473.843, subdivision 1, was amended in 1989 to allow recycling facilities to apply for the fee exemption that had previously been offered only to energy and resource recovery facilities. (1989 Minn. Laws, ch. 325, s. 60). Given this expansion in facility eligibility for the fee exemption, we propose: 1) adding a reference to recycling facilities after the first reference to energy and resource recovery facilities in both the subpart 1 header and text; 2) deleting “energy and resource recovery” from all other references to “facilities” in subpart 1 to clarify that facilities, when not modified, includes both energy resource recovery facilities and recycling facilities.

### **III. Amendments Exempt Because They Do Not Alter Sense, Meaning or Effect of the Rule**

Minnesota Statutes, section 14.388, subdivision 1 (4), provides a good cause exemption to “changes that do not alter the sense, meaning or effect of a rule.” The following proposed amendments qualify under this provision:

- Minnesota Rules, part 8121.0400, subpart 1, is being amended to eliminate references to recordkeeping technology that are unnecessary or that have lost relevance due to technological advances. The changes to the recordkeeping language, which has not been updated since the rule was first promulgated in 1985, do two things. First, they eliminate all of the fourth paragraph of Minnesota Rules, Part 8121.0400, subpart 1, which contains clarifications that are either largely outdated (*e.g.*, references to microfilm) or less relevant because of technological change (*e.g.*, a provision requiring “adequate record retention facilities” for documents supporting “electronic data processing accounting systems”). Second, in light of the elimination of the fourth paragraph of subpart 1, the proposed amendments also clarify that: 1) the foundational recordkeeping requirements announced in the second paragraph of Minnesota Rules, Part 8121.0400, subpart 1, apply to both “original and electronic” records; and 2) the records must be sufficient to both document “and verify” tax return information. These changes preserve the essential recordkeeping requirements found in the current rule and better ensure that the rule will not continue to lose relevance as technology advances.
- Minnesota Rules, part 8151.0500, subpart 1, is being amended to: 1) add a statutory citation to Minnesota Statutes, section 473.843, subdivision 1 (c), to more clearly specify the referenced exemption; and 2) change “shall” to “must” in conformity with formatting guidance provided by the Office of the Revisor.