STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Adoption of Rules Governing the
Management of Waste Tires and the
Permitting of Waste Tire Facilities,
Minn. Rules Pts. 7001.0020,
7001.0040, 7001.0050, 7001.0190,
7001.4000-7001.4150, and
7035.8200-7035.8710

STATEMENT OF NEED
AND REASONABLENESS

Minnesota Pollution Control Agency
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I. INTRODUCTION

Improper waste tire storage and disposal threatens natural resources and the quality of the environment, and endangers the public health, safety and welfare. Waste tires provide an ideal breeding habitat for mosquitoes which carry and transmit the LaCrosse Encephalitis virus, which endangers young people. Tires also become a major fire hazard when improperly stockpiled. Tires do not start on fire easily, but once a tire pile begins to burn, it is almost impossible to extinguish. In addition to the routine hazards created by a fire, combustion reactions within a tire pile generate a run-off containing pyrolytic oil (synthetic crude oil), gas, and carbon black. The generation of pyrolytic oil is a hazard to human health and the environment when allowed to contaminate surface and ground water. Because of the problems associated with improper management of waste tires, the Legislature has directed the Minnesota Pollution Control Agency (hereinafter "Agency") to issue permits to tire collectors and tire processors. Minn. Stat. § 115A.902 (1986).

The Agency is proposing rules for waste tire permits. These proposed rules apply to waste tire management activities conducted within the State of Minnesota. The rules are proposed for adoption pursuant to the Agency's authority under Minn. Stat. §§ 116.07, subd. 4 and 115A.914, subd. 1 (1986).

The statement is divided into nine parts. After this introduction, part II provides an overview of the proposed rules. Part III discusses the legal and historical background of the waste tire permit rules. Part IV contains the Agency's explanation of the need for the proposed rules. Part V contains the Agency's explanation, part by part, of the reasonableness of the proposed rules. Part VI documents how the Agency has considered the methods for reducing the impact of the proposed rules on small businesses, pursuant to the requirements

of Minn. Stat. § 14.115 (1986), Small Business Considerations in Rulemaking. Pursuant to Minn. Stat. § 116.07, subd. 6 (1986), part VII documents the economic impacts of the proposed rules. Part VIII contains the Agency's conclusion. Part IX contains a list of exhibits relied on by the Agency to support the proposed rules. The exhibits are available for review at the Agency's offices at 520 Lafayette Road North, St. Paul, Minnesota 55155.

II. OVERVIEW OF PROPOSED RULES

Minn. Stat. § 115A.902, subd. 1 (1986) provides that "A tire collector or tire processor with more than 500 waste tires shall obtain a permit from the agency unless exempted in subdivision 2. The agency may by rule require tire collectors or tire processors with less than 500 waste tires to obtain permits unless exempted by subdivision 2."

Minn. Stat. § 115A.902, subd. 2 (1986) goes on to state that:

A permit is not required for:

(1) a retail tire seller for the retail selling site if no more than 500 waste tires are kept on the business premises;

(2) an owner or operator of a tire retreading business for the business site if no more than 3,000 waste tires are kept on the business premises;

(3) an owner or operator of a business who, in the ordinary course of business, removes tires from motor vehicles if no more than 500 waste tires are kept on the business premises;

(4) a permitted landfill operator with less than 10,000 waste tires stored above ground at the permitted site; or

(5) a person using waste tires for agricultural purposes if the waste tires are kept on the site of use.

The proposed rules include permitting requirements, technical standards, and financial assurance requirements. The proposed rules contain amendments to

the Agency's current permit rules contained in Minn. Rules pts. 7001.0010 to 7001.0210. The proposed rules also contain the information and administrative requirements for a waste tire collector or processor to obtain a waste tire permit.

The proposed permit rules have been divided into 17 parts and are as follows. Minn. Rules pt. 7001.4000 (Scope) specifies the Minnesota rules that govern the application procedures for issuance of and the conditions relating to waste tire facility permits.

Minn. Rules pt. 7001.4010 (Definitions) specifies by reference which definitions are incorporated into these rules.

Minn. Rules pt. 7001.4020 (Permits) requires that persons conducting specific activities are required to obtain a waste tire facility permit. This part also exempts certain persons from the requirement to obtain a waste tire facility permit.

Minn. Rules pt. 7001.4030 (Permit by Rule) describes the requirements governing permit by rule status.

Minn. Rules pt. 7001.4035 (Notification by Existing Facilities) requires the owner or operator of an existing waste tire facility to notify the director regarding facility activities. This part also requires the facility owner or operator to comply with basic storage standards and the financial assurance requirements, and to properly close the facility.

Minn. Rules pt. 7001.4040 (Provisional Status) allows the owner or operator of an existing waste tire facility to obtain provisional status if compliance with specific standards is maintained. An owner or operator of a facility with

provisional status shall be considered to have fulfilled the requirement to obtain a permit so long as provisional status is maintained. Provisional status shall terminate once final disposition of the owner or operator's permit application is made or closure is completed in accordance with the applicable provisions.

Minn. Rules pt. 7001.4050 (Designation of Permittee) specifies that owners and operators of a waste tire facility will be designated as co-permittees when issuing a waste tire facility permit.

Minn. Rules pt. 7001.4060 (Waste Tire Facility Permit Application Procedures) describes the waste tire facility permit application requirements for new and existing waste tire facilities. This part also contains requirements regarding when a permit application must be submitted and certification of permit applications and permit reports.

Minn. Rules pts. 7001.4070, 7001.4080, 7001.4090, and 7001.4100 specify the permit application information requirements for new and existing waste tire facilities. Minn. Rules pt. 7001.4070 (General Information Requirements for a Permit Application) contains the general application requirements for all waste tire facilities. Minn. Rules pts. 7001.4080 (Additional Application Information Required for Waste Tire Transfer Facilities), 7001.4090 (Additional Information Required for Waste Tire Processing Facilities), and 7001.4100 (Additional Application Information Required for Waste Tire Storage Facilities) contain the additional application information requirements specific to the type of facility that is the subject of the application.

Minn. Rules pts. 7001.4110 (Public Notice of Preliminary Determination and

Draft Permits; Public Comments), 7001.4120, (Terms and Conditions of Waste Tire Facility Permits), and 7001.4130 (Modification of Permits; Revocation and Reissuance of Permits) broaden the requirements of the Agency's current permit rules contained in Minn. Rules pts. 7001.0010 to 7001.0210. These parts contain additional administrative requirements for waste tire collector and processor permits.

Minn. Rules pt. 7001.4140 (Interaction of Permit and Abatement Rules) establishes the requirements that must be met for tire collectors who wish to have their sites which are the subject of an abatement action become permitted waste tire facilities.

Minn Rules pt. 7001.4150 (Transporter Application Requirements) specifies the application information that a transporter must submit to obtain an Agency waste tire transporter identification number.

The proposed rules also contain the technical requirements for waste tire facilities. The proposed technical rules have been divided into 34 parts, Minn. Rules pts. 7035.8200 to 7035.8710. Minn. Rules pt. 7035.8200 (Scope) specifies the parts that apply to waste tire facilities, and to persons who generate or transport waste tires.

Minn. Rules pt. 7305.8205 (Definitions) contains definitions of specific terms used in the proposed waste tire permit rules.

Minn. Rules pt. 7035.8210 (Land Disposal Prohibited) prohibits the disposal of waste tires and tire-derived products in landfills.

Minn. Rules pt. 7035.8220 (Permit Required) specifies that a permit is required to establish, construct, modify, own or operate a waste tire facility.

Minn. Rules pt. 7035.8230 (Rule Conflicts) establishes that even though a person has met the obligations imposed by the Agency rules, that person must still comply with all other federal, State, or local rules that regulate how the facility will operate. Also, in the event the Agency rules conflict with other rules, the more stringent provisions shall apply.

Minn. Rules pt. 7035.8240 (General Standards for Permitted Facilities) requires the owner or operator of a permitted waste tire facility to comply with the standards set forth in this part. These standards specify where the facility can be located, how the facility must be operated, how transfer of the ownership or operation of the facility must occur, and annual reporting requirements.

Minn. Rules pts. 7035.8250 (Closure) and 7035.8260 (Closure Procedures) establish the standards applicable to the closure of all waste tire facilities and the procedures that must be followed to close a waste tire facility.

Minn. Rules pt. 7035.8270 (Qualifications for Regulation as a Permitted Waste Tire Transfer or Waste Tire Processing Facility) sets out the qualifications for regulation as a waste tire transfer or waste tire processing facility. Waste tire facilities which do not meet these qualifications are regulated as waste tire storage facilities.

Minn. Rules pts. 7035.8280 (Waste Tire Processing Facility Standards) and 7035.8290 (Waste Tire Storage Facility Standards) set out the standards with which a permitted waste tire processing facility or waste tire storage facility must comply.

Minn. Rules pt. 7035.8300 (Petition Procedures) establishes procedures for

petitioning the Agency for an exemption from the 75 percent annual processing requirement to reduce certain management requirements for waste tires that have accumulated at a waste tire processing facility.

Minn. Rules pts. 7035.8400 to 7035.8590 set out the financial assurance requirements that apply to all waste tire facilities. These parts establish the amount of financial assurance required, the time requirements for submittal of the financial assurance mechanism, the mechanisms that must be used in order to comply with the requirements of these parts, and the required language for the financial assurance mechanisms.

Minn. Rules pt. 7035.8700 (Waste Tire Generation) contains requirements for persons who generate waste tires. All persons who generate waste tires must only transact business with a person who has obtained an Agency waste tire transporter identification number or who is exempt from this requirement. This part also contains record keeping requirements.

Minn. Rules pt. 7035.8710 (Waste Tire Transportation) sets forth the standards applicable to persons who are in the business of transporting waste tires.

III. LEGAL AND HISTORICAL BACKGROUND OF THE PROPOSED RULES

In 1969, the Minnesota Legislature directed the Agency to regulate solid waste disposal methods and practices and to adopt standards, regulations, and variances regarding solid waste. Minn. Laws 1969, ch. 1046, codified as Minn. Stat. § 116.01 et seq. (1986).

The statutory authority of the Agency to adopt rules relative to the

collection, transportation, storage, and processing of solid waste is found in Minn. Stat. § 116.07, subd. 4 (1986), which provides in relevant part:

> Subd. 4. Rules and standards. . . . Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1969, chapter 1046, for the collection, transportation, storage, processing, and disposal of solid waste and the prevention, abatement, or control of water, air, and land pollution which may be related thereto, and the deposit in or on land of any other material that may tend to cause pollution. . . . Without limitation, rules or standards may relate to collection, transportation, processing, disposal, equipment, location, procedures, methods, systems or techniques or to any other matter relevant to the prevention, abatement or control of water, air, and land pollution which may be advised through the control of collection, transportation, processing, and disposal of solid waste . . . and the deposit in or on land of any other material that may tend to cause pollution. . . .

In Minn. Laws 1973, ch. 412, codified as Minn. Stat ch. 116D, the Minnesota Legislature directed:

> In order to carry out the policy set forth in Laws 1973, chapter 412, it is the continuing responsibility of the state government to use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate state plans, functions, programs and resources to the end that the state may:
>
> (a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
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> . . .
>
> (e) Encourage, through education, a better understanding of natural resources management principles that will develop attitudes and styles and living that minimize environmental degradation;
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> . . .
>
> (k) Reduce wasteful practices which generate solid wastes;
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> . . .
>
> (m) To conserve natural resources and minimize environmental impact by encouraging extension of product lifetime, by reducing the number of unnecessary and wasteful materials practices, and by recycling materials to conserve both materials and energy;
>
> . . . .

Minn. Stat. § 116D.02, subd. 2. (1986).

In the Waste Management Act of 1980, the Minnesota Legislature declared that the conservation and recovery of materials and energy from waste are desirable alternatives to the continued reliance on land disposal. The goal of the Waste Management Act was to improve waste management in the State to serve the following purposes:

(a) Reduction in waste generated;

(b) Separation and recovery of materials and energy from waste;

(c) Reduction in indiscriminate dependence on disposal of waste;

(d) Coordination of solid waste management among political subdivisions; and

(e) Orderly and deliberate development and financial security of waste facilities including disposal facilities.

Minn. Stat. § 115A.02 (1986).

In 1984, the Agency was directed to adopt rules for the administration of waste tire collector and processor permits. Minn. Laws 1984, ch. 654, art. 2, § 98 codified as Minn. Stat. § 115A.914, subd. 1. Minn. Stat. § 115A.914, subd. 1 provides:

> Subdivision 1. Agency rules. The Agency shall adopt rules for administration of waste tire collector and processor permits, waste tire nuisance abatement, and waste tire collection. Until December 31, 1985 the Agency may adopt emergency rules for these purposes.

Preparation of the proposed rules began in September 1984. At that time, Agency staff reviewed existing waste tire management programs throughout the United States to determine an appropriate direction for development of the

Agency's waste tire permitting program. During this review, Agency staff prepared a questionnaire on waste tire management issues, including questions specifically dealing with waste tire collector and processor permits. See Exhibit 1. The staff surveyed 49 state environmental protection agencies and the United States Environmental Protection Agency. Local government officials with experience in waste tire permitting were also contacted. A summary report was prepared to provide an overview of input. See Exhibit 2.

On October 1, 1984 the Agency published a Notice of Intent to Solicit Outside Opinion in the State Register. 9 SR 698. See Exhibit 3. The notice was mailed to 87 county solid waste officers, 167 sanitary and demolition landfill owners and operators, members of the Governor's Special Commission on Waste Tires, and 22 persons who requested to be placed on the Agency's mailing list for waste tire issues. The Agency staff sent a letter to this same group on September 28, 1984. This letter solicited information about the waste tire collectors and processors who would be required to obtain a permit, permit application requirements and procedures, standards or guidelines for operation of collection and processing facilities, permit fees, public participation, and permit issuance or denial procedures. See Exhibit 4.

Considering both the general waste tire permit requirements established by Minn. Stat. § 115A.902, subds. 1 and 2 and the information submitted to the Agency as a result of the Notice to Solicit Outside Opinion and the September 28, 1984 solicitation letter, the Agency staff prepared waste tire permit issue statements. See Exhibit 5. Based on the waste tire permit issue statements, Agency staff began drafting the waste tire permit rules in February

1985.

Throughout 1985, the Agency conducted an extensive internal review of the issues affecting waste tire management to determine an appropriate direction for the waste tire permit program. This included a review of the Agency's solid waste and hazardous waste programs and the issues and actions that are associated with management of these two programs. It also included discussions on the level of regulation that is necessary in order for a waste tire facility to be operated in a manner to protect human health and the environment. During these discussions, it became apparent that both permitting and technical rules needed to be developed, with financial assurance requirements included as part of the technical rules.

Agency staff also wrote two articles for the Operations/Training Unit newsletter, a publication that reaches an extensive audience, including every landfill operator and county solid waste officer in the State. The articles published in the January 1985 and August 1985 issues contained information on the draft waste tire permit rules and other areas of the Agency's waste tire management program.

On January 17, 1986, the Agency notified the interested parties on the waste tire program mailing list that the Agency Board Solid and Hazardous Waste Committee would meet on January 27, 1986, to discuss issues associated with drafting waste tire permit rules. At the January 27, 1986, committee meeting, staff presented the history of the development of the rules, a proposal on permitting procedures, and other issues related to the waste tire permit rules. Due to time constraints, not all issues presented in the January 23, 1986,

committee memorandum were discussed at the committee meeting. Therefore, another meeting of the Agency Board Solid and Hazardous Waste Committee was held on February 11, 1986 to continue the discussion regarding the waste tire permitting program.

On February 3, 1986, the Agency notified the interested parties on the waste tire program mailing list that the Agency Board Solid and Hazardous Waste Committee would meet on February 11, 1986 to continue the discussion regarding the waste tire permitting program. Copies of the committee memorandums for both the January 27, 1986, and February 11, 1986, meeting were enclosed with the notice of the meeting to provide a summary of the issues of concern. See Exhibit 6. At the February 11, 1986, committee meeting, staff presented the issues relating to financial assurance and the relationship between the waste tire permit program and the waste tire dump abatement program. Based on the staff's presentation and comments received from the public, the committee provided input and guidance on the development of the rules.

On April 15, 1986, the Agency sent to the interested parties on the waste tire program mailing list the draft waste tire permit rules, along with a summary of the financial assurance requirements that Agency staff recommended be included in the waste tire permit rules. A cover letter described the content of the draft rules. The staff also notified these interested parties that an informational meeting would be held on May 6, 1986, to present the draft waste tire permit rules to the public and solicit input and recommendations as to the content of the draft rules. Interested parties were also invited to send written comments and suggestions on the draft rules. See Exhibit 7.

On May 14, 1986, the Agency notified the interested parties on the waste tire program mailing list that the Agency Board Solid and Hazardous Waste Committee would meet on May 19, 1986. At the committee meeting, staff informed the committee of the issues discussed and the comments received at the May 6, 1986, informational meeting. See Exhibit 8. Based on the staff's presentation and comments received from the public, the committee directed staff to draft rules governing waste tire generators and transporters and to develop a new financial assurance summary.

On July 14, 1986, Agency staff conducted a public meeting to present the draft rules governing waste tire generators and transporters, along with the new summary of the financial assurance requirements. Staff notified approximately 325 persons regarding this meeting. Staff encouraged all interested parties to attend this meeting and to provide comments on the draft rules and the financial assurance summary. Interested parties were also encouraged to send written comments and suggestions on the draft rules. See Exhibit 9.

Prior to release of the draft rules regarding waste tire generators and transporters to the public on July 2, 1986, Agency staff presented these draft rules to representatives of the National Tire Dealers and Retreaders Association and the Minnesota State Service Station Association. Recommendations and comments from representatives of these two associations were incorporated into the draft rules. Copies of the draft rules for waste tire generators and transporters were also sent to the Minnesota Department of Transportation, and to the Minnesota Trucking Association for their review.

In addition to soliciting comments on the draft rules for waste tire

generators and transporters, staff encouraged interested parties to comment on the draft waste tire permit rules that were sent out on April 15, 1986.

At a meeting held August 25, 1986, the Agency staff informed the Solid and Hazardous Waste Committee of the Agency Board of the concerns and comments that were raised at the July 14, 1986 public meeting. See Exhibit 10. Staff also presented the draft financial assurance rules. Based on the staff's presentation and comments received from the public, the committee directed staff to re-draft the rules governing waste tire generators and transporters and to investigate options that would prevent duplication of State and county financial assurance requirements.

At a meeting of the Solid and Hazardous Waste Committee of the Agency Board held October 27, 1986, Agency staff presented four possible ways of preventing duplication of State and county financial assurance. See Exhibit 11. Staff recommended that the Agency should accept a county-held financial assurance mechanism that meets or exceeds the financial assurance provisions of the State rules as satisfying the State financial assurance requirements so long as the State could ultimately gain access to the funds. The committee agreed with this recommendation and directed staff to provide for such county-held financial assurance in the draft rule. At the October 27, 1986 committee meeting, staff also addressed the comments made at the August 25, 1986, Agency Board Solid and Hazardous Waste Committee meeting.

On February 23, 1987, Agency staff presented the Board Solid and Hazardous Waste Committee with the final draft waste tire permit and technical rules, including the financial assurance language addressing the duplication of State

and county financial assurance requirements. See Exhibit 12.

Following discussion, the committee recommended that the draft rules be presented to the Agency Board at its March 1987, meeting for authorization to enter into the rulemaking process.

IV. NEED FOR THE PROPOSED RULES

Minn. Stat. § 14.23 (1986) requires an agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules proposed. In general terms, this means that an agency must prove that in enacting rules the agency is not being arbitrary or capricious. To the extent that need and reasonableness are separate, need has come to mean that a problem exists that requires administrative attention and reasonableness means that the solution proposed by the Agency is a proper one.

The proposed rules are needed to assist the Agency in regulating the collection, transportation, storage, and processing of solid waste. The proposed rules are needed to make specific the permit requirements established by Minn. Stat § 115A.902 as required by Minn. Stat. § 115A.914, subd. 1 (1986). The rules are further needed to aid counties in developing solid waste management plans and ordinances for the management of waste tires as required by Minn. Stat. § 115A.914, subd. 2 (1986). The rules also respond to the legislative policy set out in Minn. Stat. § 116D.02, subd. 2(m) (1986): to conserve natural resources by recycling.

A. Minn. Stat. § 116.07.

The Minnesota Legislature has directed the Agency to adopt standards for

". . . the control of the collection, transportation, storage, processing, and disposal of solid waste . . . for the prevention and abatement of water, air, and land pollution. . . ." Minn. Stat. § 116.07, subd. 2 (1986). The Legislature has supplemented that basic provision and made it more specific with the following:

> Subd. 4. Rules and standards. . . . Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt . . . rules and standards having the force of law relating to any purpose within the provisions of Laws 1969, chapter 1046, for the collection, transportation, storage, processing and disposal of solid waste and the prevention, abatement, or control of water, air, and land pollution which may be related thereto, and the deposit in or on land of any other material that may tend to cause pollution. . . . Without limitation, rules or standards may relate to collection, transportation, processing, disposal, equipment, location, procedures, methods, systems or techniques or to any other matter relevant to the prevention, abatement or control of water, air, and land pollution which may be advised through the control of collection, transportation, processing, and disposal of solid waste . . . and the deposit in or on land of any other material that may tend to cause pollution. . . .

Minn. Stat. § 116.07, subd. 4 (1986).

Waste tires are a solid waste. Moreover, when improperly managed, waste tires tend to cause pollution and are a threat to human health and the environment. The rules are needed to ensure that waste tires are managed in a comprehensive and efficient manner while promoting the protection of human health and the environment and the conservation of valuable material and resources.

In December of 1983, the Governor appointed a citizen's advisory committee called the Special Commission on Waste Tires (hereinafter "Commission"). The Commission's task was to recommend to the Governor ways to dispose of or recycle

waste tires. The Commission also addressed the development of legislation to enable the development of a statewide program to recycle waste tires or use them as an alternate energy source and legislation regarding the creation of collection and processing sites throughout the State, and funding of such a program.

During its investigation of the waste tire disposal problem, the Commission found that less than 20 percent of the waste tires generated annually in Minnesota end up at authorized landfills. When attempting to landfill tires, it was found that whole tires compacted in a sanitary landfill spring back to their former shape and tend to work up to the surface and disturb the cover material while the fill is settling. This disturbance in the cover material allows precipitation to infiltrate into the fill, generating leachate which may contaminate ground water. To reduce this infiltration, additional cover material needs to be placed on the fill whenever tires break through the cover. As a result, several landfill operators preferred tire stockpiling to burying. Tires are also resistant to natural decomposition, making them a permanent landfill problem.

The Commission found that tires that were not being landfilled were either indiscriminately discarded along roadways, streams and lakes, or deposited at unauthorized tire collection sites. Many owners of tire collection sites believed that someday their waste tires would become valuable. Because no existing rules prohibited or regulated the stockpiling of tires, these tire collection sites were growing and owners had no end-use for the waste tires, nor funds available to clean up the sites.

The Commission also found that persons who recap tires believed the present collection system allowed for the loss of a substantial number of casings that could be retreaded. Landfill owners and tire stockpilers had no incentive to inspect incoming tires to ascertain whether they were usable. A substantial number of recappable steel belted radial tires were being disposed rather than reused.

In addition to the findings of the Commission, Agency staff investigated other problems relating to the stockpiling of waste tires. One of these problems involves infestation by mosquitoes. According to the Metropolitan Mosquito Control District and State health officials, a mosquito which carries and transmits the LaCrosse Encephalitis virus, which endangers young people, is present in Minnesota. This mosquito is generally found in wooded areas, and typically breeds in water filled stumps and holes in trees. However, stagnant water in waste tires also provides an ideal breeding habitat and is preferred to tree holes when available. See Exhibits 13 and 14. Stockpiled tires also offer a refuge to vermin. These stockpiles can be made relatively safe from vermin and mosquitoes through proper vermin and mosquito control operations.

Tires become a major fire hazard when improperly stockpiled. Tires do not start on fire easily, but once a tire pile begins to burn, it is almost impossible to extinguish. In addition to the routine hazards created by a fire, combustion reactions within a tire pile generate a run-off containing pyrolytic oil (synthetic crude oil), gas, and carbon black. The generation of pyrolytic oil is a hazard to human health and the environment when allowed to contaminate surface and ground water.

In 1983, in the state of Virginia, a tire stockpile containing between seven to nine million waste tires caught on fire. The tire pile was 80 to 100 feet high in some places and covered land area in excess of four acres. The height of the tire pile caused it to burn with a chimney effect. The fire burned for over eight months. It cost the federal government 1.8 million dollars to fight the fire and clean up the area. Over 840,000 gallons of liquid containing pyrolytic oil were collected at the site.

The proposed rules for waste tire permits will provide for the permitting of waste tire collection and processing facilities. The proposed rules contain technical standards to ensure that facility operation is environmentally sound. Compliance with these standards should decrease the risk of fire and mosquito infestation at waste tire facilities. The rules also contain financial assurance requirements to ensure funds will be available when needed to properly close the facility. The proposed rules also contain requirements regarding waste tire generation and transportation. Persons who generate waste tires will be required to send the waste tires to a permitted waste tire facility, a waste tire facility with provisional status, or a waste tire facility that is exempt from the requirement to obtain a permit. Persons who are in the business of transporting waste tires will be required to notify the Agency of their activities, and to obtain an Agency waste tire transporter identification number. The proposed rules also contain record keeping requirements to enable easier enforcement of rules governing waste tire generation and transportation. Thus, the proposed rules will regulate the collection, transportation, storage, and processing of waste tires, which are a solid waste.

B. Minn. Stat. § 115A.914.

The Minnesota Legislature has directed the Agency to, ". . . adopt rules for administration of waste tire collector and processor permits, waste tire nuisance abatement, and waste tire collection. . . ." Minn. Stat. § 115A.914, subd. 1 (1986).

The proposed rules are needed to administer a permitting program for waste tire collectors and processors, who are by statute required to obtain a permit. Minn. Stat. § 115A.902, subd. 1 (1986). The rules for waste tire permits will establish a process through which the Agency will issue permits to waste tire collectors and processors.

C. Minn. Stat. § 115A.902 (Statutory Permit Process).

Minn. Stat. § 115A.902, subd. 1 (1986) establishes that:

> A tire collector or tire processor with more than 500 waste tires shall obtain a permit from the agency unless exempted in subdivision 2. The agency may by rule require tire collectors or tire processors with less than 500 waste tires to obtain permits unless exempted by subdivision 2.

Minn. Stat. § 115A.902, subd. 2 (1986) goes on to state that:

> A permit is not required for:
>
> (1) a retail tire seller for the retail selling site if no more than 500 waste tires are kept on the business premises;
>
> (2) an owner or operator of a tire retreading business for the business site if no more than 3,000 waste tires are kept on the business premises;
>
> (3) an owner or operator of a business who, in the ordinary course of business, removes tires from motor vehicles if no more than 500 waste tires are kept on the business premises;
>
> (4) a permitted landfill operator with less than 10,000 waste tires stored above ground at the permitted site; or
>
> (5) a person using waste tires for agricultural purposes if the waste tires are kept on the site of use.

The proposed rules make specific the permitting requirements established by Minn. Stat. § 115A.902, subds. 1 and 2 (1986). The proposed rules set out who is required to obtain a permit, the procedures that must be followed to obtain a permit, and the information that is to be contained in the permit application. In addition, technical rules containing facility standards, including financial assurance requirements, set out what is required of a tire collector or processor once a permit is issued for the facility. The proposed rules are needed to provide a waste tire permitting process which is specific, and consistently used.

In addition to the permitting requirements, technical requirements are needed to ensure that a facility operates in a manner that is not a threat to human health, natural resources and the environment. The proposed rules set out locational and facility operating standards, and general operating requirements that all facilities must comply with as well as specific requirements that apply to each type of facility: transfer, processing, and storage. The financial assurance requirements included in the technical rule are needed to ensure that tire collectors and processors will have sufficient money available at closure to provide for the removal of waste tires located at the facility either by having them processed or by delivering them to another waste tire facility that has been approved by the Agency director. Requiring financial assurance from tire collectors and processors will ensure that tire collectors will not lack money necessary to clean up the site at the end of its operating life.

D. Minn. Stat. § 115A.914 (Guidance to Counties).

Minn. Stat. § 115A.914, subd. 2 (1986) provides that:

> Counties shall include collection and processing of waste tires in the solid waste management plan prepared under sections 115A.42 to 115A.46 and adopt ordinances under sections 400.16 and 473.811 for management of waste tires that embody, but may be more restrictive than, agency rules.

Because the counties need to know how the Agency will act to permit waste tire collectors and processors in developing their waste tire management plans and county ordinances, the proposed rules are needed to aid the counties in developing these plans and ordinances.

E. Minn. Stat. ch. 116D.

Minn. Stat. ch. 116D sets forth the environmental policy of the State of Minnesota. In that chapter the Minnesota Legislature directs that, to the fullest extent practicable, the policies, regulations, and public laws of the State shall be interpreted and administered in accordance with the policies set forth in Minn. Stat. §§ 116D.01 to 116D.06. Minn. Stat. § 116D.03, subd. 1 (1986).

Under Minn. Stat. § 116D.02 (1986) the Minnesota Legislature directs State government to use all practicable means to improve and coordinate State plans, functions, programs and resources to the end that the State may conserve natural resources and minimize environmental impact by recycling materials to conserve both materials and energy. Minn. Stat. § 116D.02, subd. 2(m) (1986).

Technological advances have provided a use for waste tires. Energy and valuable materials can be conserved by the reuse and recycling of waste tires. The proposed rules promote the conservation of valuable materials and energy resources as directed by the Legislature.

F. Minn. Stat. § 115A.904.

Minn. Stat. § 115A.904 (1986) prohibits the disposal of waste tires in the land after July 1, 1985. The proposed rules prohibit the disposal of waste tires in landfills as is required by statute.

G. Summary.

The Agency believes the statutory authority set forth above establishes the need for rules governing the permitting of waste tire facilities. The proposed rules respond to that need.

V. REASONABLENESS OF THE PROPOSED RULES

A. Introduction.

The Agency is required to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Minn. Stat. § 14.23 (1986). Reasonableness is the opposite of arbitrariness and caprice and means that there is a rational basis for the Agency's proposed action. The purpose of this section is to demonstrate that each provision is a reasonable approach to its defined function.

Permitting Requirements.

In working to develop the waste tire permit rules, the Agency considered various alternatives based on the general permit process set down by Minn. Stat. § 115A.902, subds. 1 and 2 (1986). Minn. Stat. § 115A.902, subds. 1 and 2 (1986) state that:

> Subdivision 1. Permit required. A tire collector or tire processor with more than 500 waste tires shall obtain a permit from the agency unless exempted in subdivision 2. The agency may by rule require tire collectors or tire processors with less than 500 waste tires to obtain permits unless exempted by subdivision 2.

Subd. 2. Exemptions. A permit is not required for:

(1) a retail tire seller for the retail selling site if no more than 500 waste tires are kept on the business premises;

(2) an owner or operator of a tire retreading business for the business site if no more than 3,000 waste tires are kept on the business premises;

(3) an owner or operator of a business who, in the ordinary course of business, removes tires from motor vehicles if no more than 500 waste tires are kept on the business premises;

(4) a permitted landfill operator with less than 10,000 waste tires stored above ground at the permitted site; or

(5) a person using waste tires for agricultural purposes if the waste tires are kept on the site of use.

Under Minn. Stat. § 115A.902, subd. 1 (1986), the agency may by rule require tire collectors or tire processors with less than 500 waste tires to obtain a permit unless exempt by subdivision 2. Initially, the Agency had proposed that waste tire collectors with less than 500 waste tires stockpiled should not be required to obtain a waste tire permit or be subject to any other requirements. The Agency believed this to be a reasonable approach since the stockpiling of small numbers of waste tires is often incidental to other business activities and generally the waste tires are stored for short periods of time. However, at the January 27, 1986 Agency Board Solid and Hazardous Waste Committee meeting, interested parties commented that a permit exemption for the storage of less than 500 waste tires would encourage persons to establish numerous stockpiles of 500 waste tires without any intent to have the waste tires removed for processing. Based on these concerns and the statutory exemptions which address most situations where waste tires are stockpiled

incidental to other business activities, the Agency is proposing to regulate such storage.

However, due to the small size of such stockpiles the Agency is proposing to regulate them through a permit by rule. Under this provision, facilities with less than 500 waste tires which meet the requirements in the proposed rules, would be considered to be permitted without applying for a permit or following the permitting procedures. By limiting the type and duration of activities at the facility and requiring that the location standards be met, the proposed rules will provide a level of regulation appropriate to the facility's small size while prohibiting the establishment of numerous tire dumps of less than 500 waste tires. Also, by requiring that a written notification of these activities be submitted, the Agency will be able to inspect such facilities to ensure that compliance with the requirements is achieved. The Agency believes such an approach is reasonable since it recognizes the limited threat to human health, natural resources and the environment posed by such stockpiles, while addressing the main concern that the rules not encourage the establishment of numerous small tire dumps.

For all tire collectors and tire processors who are required to obtain a permit, a permit application must be submitted to the Agency within the time limits established in these proposed rules. For existing waste tire facilities, a phased-in approach to permit issuance has been developed. Under this approach, a tire collector or tire processor with an existing facility would provide written notification of activities to the Agency director within 90 days of the effective date of the rules. From the time the notification has been

received by the director, until a permit is either issued or denied, the tire collector or processor will be considered to be in compliance with the requirement to obtain a permit. During this time period the facility will be considered to have provisional status and will be an acceptable facility to receive waste tires. During provisional status, compliance with minimum operating standards must be maintained at the facility. The Agency believes this is a reasonable approach since it will provide an adequate level of regulation for all waste tire facilities while recognizing that it will take some time to actually issue or deny a permit for every waste tire facility.

Based on notifications received under provisional status, the Agency director will request the waste tire facility owner and operator to submit a permit application. Agency staff will then review the application and follow the permitting process specified in the waste tire permit rules.

The permit rules also include provisions for regulating waste tire transporters. Under Minn. Stat. § 116.07, subd. 4(a) (1986), the Agency is given broad authority to issue permits. This section gives the Agency the authority to ". . . issue . . . permits . . . for the storage, collection, transportation, processing, or disposal of waste. . . ."

The Agency has proposed to regulate persons in the business of transporting waste tires under the permit by rule approach. Under this approach, persons in the business of transporting waste tires will be required to notify the Agency of their activities at which time they will be issued an Agency waste tire transporter identification number. Exemptions are provided for persons hauling household quantities of waste tires and for persons hauling waste tires

incidental to another activity.

Persons who generate waste tires are not required to obtain a waste tire permit. However, they are regulated and must comply with certain technical standards including the requirement that the waste tires be sent to a permitted waste tire facility. The Agency believes it is reasonable to regulate the generation and transportation of waste tires to ensure that the waste tires are properly managed and delivered to acceptable waste tire facilities rather than indiscriminately dumped.

Technical Requirements.

In addition to the permitting rules, technical rules containing facility standards have been developed. Compliance with the technical standards is required as part of the permit conditions. Also, permit application information requirements are based on the requirements of the technical rules.

Waste tire facilities are classified into three categories: transfer facilities, processing facilities, and storage facilities. There are general technical requirements that all facilities must comply with as well as requirements that are specific to each facility type. The permit application requirements are also separated into two parts. One part requests general information from all facilities, while the second part requests information that is specific to the type of facility that is the subject of the application.

The most stringent technical requirements are imposed on storage facilities because the Agency believes they pose the greatest threat to human health, natural resources, and the environment. The technical requirements for processing facilities are not as comprehensive as the requirements for storage

facilities, but they do involve planning for emergency response situations and complying with storage standards. Also, if the quantity of tires stored at a processing facility exceeds a specified quantity identified in the technical rules, the facility will be classified as a storage facility. As such, the facility must be operated according to the technical requirements for waste tire storage facilities, and the permit will have to be modified. Transfer facilities have the least stringent requirements imposed upon them because of the small quantity of tires that are allowed to be stored there and the time interval allowed for storage. A facility does not have to be in compliance with the technical requirements until after the permitting process has been completed and a permit is issued.

Initially, the Agency had proposed that during provisional status, compliance with minimum operating standards would be required. These standards were different than the standards that a permitted facility had to meet. The Agency recognized that an existing facility would need time to achieve compliance with the technical rules and begin operating under conditions that protect human health and the environment. The Agency discovered that the two sets of general technical standards were confusing to interested parties. Therefore, the Agency has deleted the provisional status technical requirements. Now, during provisional status, there are specific provisions of the technical requirements that must be met and maintained. The Agency believes such an approach is reasonable, since it provides an adequate level of regulation prior to issuance or denial of individual waste tire facility permits in a manner consistent with the standards required for permitted waste tire facilities.

Also, under the technical requirements, persons in the business of transporting waste tires are required to report on their activities periodically. Persons who generate waste tires must only transact business with a transporter who has an Agency waste tire transporter identification number and must keep a record of this transaction.

B. Amendments to General Permit Rules, Minn. Rules Pts. 7001.0020, 7001.0040, 7001.0050 and 7001.0190.

The following discussion addresses the reasonableness of the proposed amendments to the Agency's general permitting rules on a part by part basis.

1. Minn. Rules Pt. 7001.0020 Scope.

This part sets out the applicability of Minn. Rules pts. 7001.0010 to 7001.0210 which contain the Agency's general permitting requirements. Items A to K of this part are existing rules and are unchanged, thus they are not in need of justification. Item L, however, is a proposed amendment to the Agency's existing permit rules. Item L is needed so that the Agency's current permit rules, Minn. Rules pts. 7001.0010 to 7001.0210, apply the Agency's standard procedures for permit issuance, modification, revocation and reissuance, and reissuance to waste tire facility permits. It is reasonable to amend the Agency's existing permit rules to include item L so that waste tire facility permits will be subject to the same procedures as other Agency permits. This amendment will ensure consistency between the waste tire facility permitting program and other Agency permitting programs. Also, the basic premises of the permitting procedures have always been followed by the Agency in issuing permits for major facilities of all types. Therefore, the adoption of this amendment

will not create any confusion for persons who are familiar with the Agency's current permitting procedures.

2. Minn. Rules Pt. 7001.0040 Application Deadlines.

This part sets out the application deadlines for submission of a permit application. Subp. 1 specifically sets out the application deadlines for a new permit. Subp. 1 provides that, except as otherwise required by Minn. Rules pts. 7001.0530 and 7001.1050, a permit application for a new facility or activity may be submitted at any time. However, it is recommended that applications for new permits be submitted at least 180 days before the planned date of the commencement of facility construction or of the activity. Minn. Rules pt. 7001.4060 provides that applications for new waste tire facility permits shall be submitted at least 180 days before the planned date of the commencement of facility construction or the planned activity, whichever is earlier. It is reasonable that the permit application for a new facility be submitted 180 days before the planned date of the commencement of facility construction or the planned activity to assure that the Agency will have adequate time to review permit applications and follow the permitting procedures. It is also to the applicant's advantage to submit the application allowing as much time as possible before the expected date of commencement of construction or the planned activity, whichever is earlier to avoid delays in beginning construction or operation of the facility due to the lack of a permit.

3. Minn. Rules Pt. 7001.0050 Written Application.

This part sets forth the information required to be submitted by the applicant in the permit application. It is reasonable to require the applicant

to submit sufficient information so that the Agency can determine whether or not the proposed facility will comply with all applicable statutes and rules. Therefore, it is also reasonable to amend item I to include the submission of information specific to waste tire facilities be submitted with the permit application.

4. Minn. Rules Pt. 7001.0190 Procedure for Modification; Revocation and Reissuance; and Revocation Without Reissuance of Permits.

This part establishes the procedures for modification, revocation and reissuance of permits, and revocation without reissuance of permits. Subp. 2 of this part provides that, upon obtaining the consent of the permittee, the Agency may modify a permit as to the ownership or control of a permitted facility or activity without following the procedures in Minn. Rules pts. 7001.0100 to 7001.0130 if the Agency finds that no other change in the permit is necessary and if the Agency has received a binding written agreement between the permittee and the proposed transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities between the permittee and the proposed transferee.

The addition of Minn. Rules pt. 7001.0020, item L to this part will allow the Agency to make this type of modification for permittees of waste tire facilities. This is reasonable because if the proposed permit modification involves no change in the permitted facility or activity, there should be no change in the impact of the permitted facility or activity on the environment and thus no need to follow public notice procedures.

Subp. 3 specifies four types of corrections or allowances which can be made

to a permit without the requirement to follow the procedures of Minn. Rules pts. 7001.0100 to 7001.0130. These are considered minor modifications due to the low potential such changes have for adversely affecting human health or the environment.

Item E is an amendment which allows the Agency to make minor modifications of waste tire facility permits. This amendment is reasonable since the corrections and allowances in pt. 7001.4130, subp. 2 are minor modifications due to the low potential such changes have for adversely affecting human health or the environment. Therefore, it is not necessary for the Agency to follow public notice procedures.

C. Waste Tire Facility Permits, Minn. Rules Pts. 7001.4000 to 7001.4150.

The following discussion addresses the reasonableness of the proposed rules governing the issuance of waste tire facility permits on a part by part basis.

1. Minn. Rules Pt. 7001.4000 Scope.

This part references existing Agency rules governing permit application and issuance procedures, and makes those procedures applicable to waste tire facility permits. It is reasonable to make existing Agency rules applicable to the waste tire facility permitting process to promote consistency among the Agency's permitting programs.

2. Minn. Rules Pt. 7001.4010 Definitions.

This rule incorporates by reference definitions contained in Minn. Rules pts. 7001.0010 and 7035.8205. It also references the definitions in Minn. Stat. § 115A.90. Cross-referencing existing definitions is reasonable because it promotes consistent interpretation of terms.

3. Minn. Rules Pt. 7001.4020 Permits.

This part establishes the activities for which a waste tire facility permit is required.

Subp. 1. Permit required. Subp. 1 establishes the general requirement that a permit be obtained for the operation of a waste tire facility, and for the establishment of a waste tire facility. The rule requires that a permit be obtained to store, process or dispose of waste tires or tire-derived products, or to establish, construct, modify, own, or operate a waste tire facility.

The requirement that a permit be obtained is broad, to enable the Agency to regulate all forms of activity that might be associated with the collection or processing of waste tires, for which a permit is required to be obtained under Minn. Stat. § 115A.902. The broad requirement reflects a decision to include under the requirement to obtain a permit, as is specifically authorized by Minn. Stat. § 115A.902, tire processors and tire collectors with less than 500 waste tires. Including those with less than 500 waste tires in the general requirement is reasonable because, according to information available to the Agency, even a small facility can be, for example, a mosquito hazard. The Agency proposes to reduce the burdensomeness of the broad permit requirement by including a permit by rule provision applicable to the small facilities.

The Agency has also required those who store, process or dispose of tire-derived products to obtain a waste tire facility permit. This reflects the fact that tire-derived products, such as tire chips, should be regulated in the same manner as waste tires. Tire chips, for example, are flammable and could be a fire hazard if stored in large amounts in an uncontrolled manner. Tire chips

are also capable of being recycled or used, and thus should be regulated to encourage development of an ultimate end-use.

Subp. 2. Exclusions. Subp. 2 lists those activities and facilities for which a permit is not required. Four of these exemptions are identical to the statutory exemptions provided by Minn. Stat. § 115A.902, subd. 2 (1986). The fifth exemption regarding agricultural use of waste tires is based on a statutory exemption provided by Minn. Stat. § 115A.902, subd. 2 (1986), but has been modified to clarify that agricultural purposes do not include the burning of waste tires. The Agency believes that the use of waste tires on agricultural equipment or as ballast to retain objects are legitimate agricultural uses. However, the burning of waste tires is a disposal method not an agricultural use. The Agency believes it is reasonable to not exempt the burning of waste tires due to the environmental damage caused by burning waste tires. Burning tires produce gases, such as sulfur dioxide, and pyrolytic oil which can cause pollution of the air, soil and ground water. If burning is used to clear areas for agricultural use, materials other than waste tires should be used to fuel the fire to prevent environmental damage. Therefore, it is reasonable to limit the agricultural use exemption to non-burning uses.

The sixth exemption, listed in item F, is not a statutorily created exemption. Under item F, a person conducting abatement activities under an abatement order or stipulation agreement entered into under Minn. Rules pt. 7035.8020, is exempt from the requirement to obtain a permit for those activities. Under the waste tire dump abatement rules, Minn. Rules pts. 7035.8000 to 7035.8080, a person who is the owner or operator of a waste tire

dump that is the subject of an abatement action must enter into a stipulation agreement with the Agency or be issued an order by the Agency. In either case the abatement activities at the waste tire dump are regulated through the stipulation agreement or order. Therefore, it is reasonable to not require a person conducting such activities to obtain a permit. However, for other activities being conducted at the site a permit is required. This is reasonable since the abatement program only governs abatement activities.

Subp. 3. Old waste tires. Subp. 3 of this part establishes that a waste tire facility permit will not be issued for old waste tires, and that those tires will remain subject to the standards and procedures set out in the waste tire dump abatement rules, Minn. Rules pts. 7035.8000 to 7035.8080. The waste tire dump abatement rules provide for a mechanism to ensure that waste tires that are a nuisance will be removed and processed. It is anticipated that, following the procedures established in the abatement rules, the majority of old waste tires presently stored in the State will be removed and processed. Thus, it should not be necessary to permit these tires. Also, the issuance of a permit for a tire dump would disqualify the owner or operator from the ability to be reimbursed for abatement action costs. Therefore, it is reasonable to not issue permits for old waste tires.

4. Minn. Rules Pt. 7001.4030. Permit by Rule.

This part allows certain waste tire facilities to operate without having to go through the process of obtaining a permit. To allow the operation of certain facilities without a formal permit is reasonable because the activities at these facilities should not threaten human health, welfare or the environment,

provided certain minimal standards established in the permit by rule section are met. To allow the operation of certain facilities without a permit will reduce the burdensomeness of compliance with the rules where full regulation is not needed.

Subp. 1. Facilities eligible. Subp. 1 lists the types of facilities that are eligible for permit by rule status.

Under item A, a facility used for the storage of no more than 500 waste tires can qualify for a permit by rule, provided that the owner or operator removes all the waste tires at least once a year, and the facility is located in an area where it will not be subject to immersion in water. The Agency does not believe that a facility that meets these standards poses an environmental threat. Moreover, because so many persons stockpile small numbers of waste tires incidental to other business activities, it would be a waste of Agency resources to attempt to permit all these small stockpiles. The cutoff number, 500, is by statute the smallest number of tires that can be stored without a permit. The time limit for storage, one year, is reasonable to make sure that there is turnover in the tires, thus decreasing the chance that the pile could become infested with rodents or mosquitoes.

Under item B, the permit by rule approach is used to regulate a small processing facility. As with a small stockpile, the operation of a small, low-volume processing facility should pose little environmental danger. As above, the facility is required to be located where it will not be subject to immersion in water.

Under item C, the permit by rule approach is used to regulate mobile

processing equipment. As with a small stockpile, the operation of mobile processing equipment poses little environmental hazard, provided that the products produced from the operation of the equipment are removed. Because it is anticipated that the mobile shredding or baling equipment will be used to process stockpiles that are currently located in areas that violate the locational requirements, compliance with the locational requirement cannot be required. However, because the equipment is located at the site for a short period of time, 30 days, the risk of an environmental problem, such as flooding, is greatly reduced. It is reasonable to limit processing operations to 30 days because the intent of the permit by rule provision is to allow short-term mobile processing operations to be conducted without having to formally obtain a permit. The Agency believes that in most cases mobile processing operations will occur at tire dumps, permitted solid waste facilities or waste tire transfer facilities. Operations at tire dumps conducted under an abatement stipulation agreement or order are exempt under Minn. Rules pt. 7001.4020, subp. 2. Storage of waste tires at permitted solid waste facilities and waste tire transfer facilities is limited to 10,000 waste tires. Mobile baling equipment can process waste tires at approximately 250 tires per hour (40,000 waste tires per 20 working day month) and mobile shredding equipment has a processing rate of approximately 600 waste tires per hour, (96,000 waste tires per 20 working day month). See Exhibits 15 and 16. Allowing for set-up time and processing time, 30 days provides sufficient time to process and remove more than 10,000 waste tires, and is therefore a reasonable time limit.

Subp. 2. Written notification. Subp. 2 establishes that the owner and

operator of a facility that qualifies for permit by rule status must submit certain information to the Agency to obtain permit by rule status. The information is needed so that the Agency has a record of where the facilities are located, the types of operation at the facilities, that the owners and operators have made some arrangements to acquire fire protection services for the facilities, and that the owners and operators have made some arrangement to use or dispose of the waste tires, tire-derived products, or residuals from processing located at the facilities. To require such minimal information to be submitted is reasonable because it allows the Agency to ascertain that the small facilities are being managed correctly, and because it alerts the regulated community to the fact that their activities are subject to regulation, despite the fact that no permit is required.

Subp. 3. Termination of eligibility for permit by rule. Subp. 3 allows the Agency to terminate the permit by rule status of an owner or operator of an eligible facility if the Agency finds that the facility does not qualify for permit by rule status, or if the Agency finds that an individual permit is necessary for the facility to protect human health and the environment. Because the decision to terminate permit by rule status is based on factual findings, the owner or operator will be given notice and an opportunity to request a public informational meeting or a contested case hearing.

It is reasonable to terminate the permit by rule status of a facility which does not meet, or has violated, the requirements of subps. 1 and 2 of this part because compliance with these conditions and requirements serves as the basis for eligibility to be permitted by rule. It is also reasonable to

terminate the eligibility of a facility to be permitted by rule if it appears that further controls on the operation of the facility are necessary to protect human health or the environment.

5. Minn. Rules Pt. 7001.4035 Notification by Existing Facilities.

This part contains the notification requirements that must be met by owners and operators of existing waste tire facilities.

Subp. 1. Notification. Subp. 1 requires the owner or operator of an existing waste tire facility to submit to the director a written notification regarding the facility within 90 days of the effective date of this rule. The facility owner or operator has 90 days to submit the required information, which includes basic information about the facility and an indication from the facility owner or operator regarding their future plans for the facility, i.e., whether they intend to seek a permit or to close. Requiring the owner or operator to submit this information is reasonable because it is needed to enable the Agency to determine priorities for permitting. The information will also enable the Agency to ascertain that the facility owner or operator is aware that the facility is regulated. Because the information to be submitted is not lengthy or complicated, it is reasonable to require that this information be submitted within 90 days.

Subp. 2. Certification of written notification. Subp. 2 specifies who must sign the written notification. This subpart also requires the owner or operator of the waste tire facility to certify the truth and accuracy of the information in the written notification, based on the inquiry of the person or persons who manage the system, or those persons directly responsible for

gathering the information. It is reasonable to include this requirement so that owners or operators of waste tire facilities will be encouraged to inquire into the truth and accuracy of the information submitted.

Subp. 3. Closure. Subp. 3 requires the owner or operator of an existing waste tire facility who either intends to close rather than obtain a permit or does not qualify for provisional status to close the facility in accordance with the closure standards of Minn. Rules pts. 7035.8250 and 7035.8260. It is reasonable to require an owner or operator who intends to close the facility to do so in accordance with the rules in order to ensure the facility is properly closed and does not pose a threat to human health, natural resources or the environment. An owner or operator of an existing facility who does not qualify for provisional status is operating without a permit and is in violation of the rules. Since the owner or operator is provided the opportunity to obtain provisional status and has not done so, it is reasonable to require the owner or operator to close the facility in order to protect human health, natural resources and the environment.

Subp. 4. Submittal of closure plan. Subp. 4 requires the owner or operator of a waste tire facility required to close under subp. 3, to submit to the director a closure plan when requested by the director. Since Minn. Rules pt. 7035.8250 requires the submittal of a closure plan to ensure that the owner or operator has made adequate plans to provide for proper closure of the facility, it is reasonable to clarify that this requirement applies to an owner or operator who chooses to close rather than obtain a permit. The requirement that the closure plan be submitted when requested by the director is reasonable

since it allows the Agency to control the number of closure plans being reviewed, and should prevent unnecessary delay of closure plan review caused by lack of staff. The 60 day submittal period is reasonable because the information to be submitted is not lengthy and complicated. Since an owner or operator has 90 days to submit a full permit application including a closure plan, it should require less time to prepare only a closure plan. Therefore, 60 days should be sufficient.

Subp. 5. Compliance with standards. Subp. 5 specifies the technical standards for facility operation that apply to the operation of an existing waste tire facility.

Item A requires that processes at the facility must be limited to those specified in the written notification. It is reasonable to restrict activities to those specified because the intent of this rule is to allow owners and operators to continue operating existing facilities not to reconstruct or modify them. The addition of new or different processes at the facility is subject to the requirement that a permit be obtained prior to modification of the facility.

Item B requires that waste tires accepted at the facility after the effective date of the rules be stored in a storage area that meets the locational requirements of pt. 7035.8240, subp. 2, and the storage requirements of pt. 7035.8240, subp. 3, items D, F, and G. These standards are applied to ensure that basic environmental hazards are reduced at the facility until the facility is either permitted or required to close. Although waste tires at the facility received prior to the effective date of these rules may not be stored in compliance with the rules, it is reasonable to require that waste tires

accepted after the effective date are properly stored because the owner or operator will know what is required when the waste tires are accepted at the facility.

Item C requires compliance with the financial assurance requirements of pts. 7035.8400 to 7035.8590. The financial assurance requirements are applied in phases, and thus it is reasonable to require all facilities to comply, whether permitted or not, at the time the financial assurance requirement must be met. It is anticipated that existing facilities that cannot meet the financial assurance requirements will close and not be permitted.

6. Minn. Rules Pt. 7001.4040. Provisional Status.

This part contains the requirements that must be met in order for a facility to obtain provisional status.

Subp. 1. Scope. Subp. 1 establishes that the owner or operator of a waste tire facility that qualifies for provisional status will be considered to have fulfilled the requirement to obtain a permit as long as provisional status is maintained.

The rules provide for a provisional status period because it will take the Agency some time to process permit applications for all the waste tire facilities applying for a permit. While it is reasonable to allow existing facilities to operate until a final determination is made on their permit application, Minn. Stat. § 115A.902, subd. 1, requires tire collectors and processors to obtain a permit. Provisional status gives owners and operators what is, in effect, a permit by rule and allows owners and operators to be treated as having been issued a permit until final administrative disposition is

made of their permit application. Thus, provisional status both satisfies the mandate of Minn. Stat. § 115A.902, subd. 1, and relieves the owner or operator of a waste tire facility of the possibility of being prosecuted for operating without a permit. However, in allowing continued operation it is also reasonable to require facilities to comply with basic facility standards to ensure protection of human health, natural resources and the environment during the period of provisional status. Further, it is unlikely that waste tire facility owners and operators will be able to comply with all of the requirements of Minn. Rules pts. 7035.8200 to 7035.8590 when the rules become effective. Thus, providing for a period of provisional status is reasonable and needed to avoid administrative difficulties, and to provide for a smooth transition to full regulation.

When requested by the director, the owner or operator of a facility with provisional status shall submit a permit application within the time period specified in Minn. Rules pt. 7001.4060. This is reasonable because it allows the Agency to control the number of applications being reviewed, and should prevent unnecessary delay of application review caused by lack of staff.

Subp. 2. Qualifying for provisional status. Subp. 2 requires facility owners or operators to submit a signed, written notification within 90 days of the effective date of this rule in order to qualify for provisional status. This notification is to contain the information required under Minn. Rules pt. 7001.4035 and some additional information regarding compliance with the locational standards and efforts taken to provide fire protection. Requiring the owner or operator to submit this information is reasonable because

it enables the Agency to determine whether the facility is in compliance with the locational standards and fire prevention standards. Such compliance is needed to ensure that waste tires accepted at the facility after the effective date of these rules are properly stored to prevent adverse effects on human health, natural resources and the environment due to fire.

Subp. 3. Termination of provisional status by permitting or closure. Subp. 3 provides that provisional status terminates when a permit is issued for the facility or when closure is completed. Since provisional status means that the owner or operator is deemed to be in compliance with the requirement to obtain a permit, it is reasonable to terminate provisional status when final action is taken on the permit. It is also reasonable to terminate provisional status when closure of the facility is completed and certified, as the facility no longer exists.

Subp. 4. Termination of provisional status for cause. Subp. 4 sets forth the reasons for the director to commence proceedings to terminate provisional status.

Item A provides for termination of provisional status if the director discovers that the owner or operator of the facility has failed to fully disclose all the information required under subp. 2 or has submitted false or misleading information to the Agency or the director. Because eligibility for provisional status is based on the information submitted in the notification, it is reasonable to terminate provisional status if the required information was not submitted, or incorrect information was submitted.

Item B provides for termination of provisional status if the facility is

not in compliance with the locational standards. Because compliance with the locational standards is critical to finding that the facility can operate without threat to human health, it is reasonable to terminate provisional status if the facility is not in compliance with these standards.

Item C provides that the director can commence proceedings to terminate provisional status if the facility is in violation of the standards for existing facilities. This is reasonable because a facility that is not in compliance with the standards is potentially a threat to the environment, and should be permitted with a compliance schedule or closed.

Item D provides that the director can commence proceedings to terminate provisional status if the owner and operator fail to submit a permit application within the required time limits. Provisional status is not intended to substitute for permitted status. Rather, it exists as a means of implementing a permitting program while minimizing administrative disruption. Thus, it is reasonable to end provisional status when a permit application has been requested and has not been received.

Item E provides that the director can commence proceedings to terminate provisional status if the director discovers that the facility is a threat to human health and the environment due to the activities conducted at the facility. This provision allows the director to terminate the operation of a facility that is a threat to human health and the environment without requesting a permit application be submitted. The owner or operator of a facility with provisional status terminated under this section would be required to close the facility in accordance with the closure standards.

7. Minn. Rules Pt. 7001.4050 Designation of Permittee.

This part specifies that all owners and operators of the waste tire facility will be designated as co-permittees when a waste tire facility permit is issued by the agency. It is reasonable to require that all owners and operators be permittees to ensure that all who have control over the facility are directly responsible for compliance with the permit and rules. Permitting only facility operators would not be reasonable, because it would allow absentee owners to escape responsibility for use of their land. Similarly, permitting only facility owners would not place responsibility on those with day to day control responsibilities. Further, statutory provisions, such as those contained in Minn. Stat. § 116.07 subds. 4g and 4h apply to both facility owners and operators. Insofar as this rule interprets those statutory provisions, it is reasonable that all owners and operators fall within its scope.

8. Minn. Rules Pt. 7001.4060 Waste Tire Facility Permit Application Procedures.

Subp. 1. Form. Subp. 1 describes the application requirements for new and existing waste tire facilities. This part provides for the submission of a general permit application, and additional application information specific to the facility that is the subject of the application. A reference is given to additional application information requirements specific to facility types so that the applicant will be alerted that additional information may be required.

Subp. 2. Copies required. Subp. 2 requires four copies of the complete permit application to be submitted to the director. Four copies are required because two copies of the permit application will remain at the Agency's central

office, one copy of the application will be returned to the permittee, and one copy will be sent to the applicable Agency regional office.

Subp. 3. Time of submittal. Subp. 3 establishes when permit applications must be filed.

Item A applies to new facilities. A person who proposes to construct a new waste tire facility must submit a permit application at least 180 days before the planned date for beginning construction or the planned activity, whichever is earlier. The requirement is reasonable because the Agency needs time to review the application, to confer with the applicant regarding conditions and time schedules to be included in the permit, and to put the proposed permit on public notice and consider comments, and hearing and public informational meeting requests received. As indicated by the words "at least" the 180-day period is considered to be the minimum time needed to process a permit application. It is to the applicant's advantage to submit the application as soon as possible before the expected date of commencement of construction or the planned activity, to allow for unexpected delays in permit issuance, such as a hearing request.

Item B applies to existing facilities. It provides that the permit application can be submitted at any time after the effective date of the rules, except that upon the written request of the director, the permit application must be submitted no later than 90 days from the date of the request. Because the information required for the permit application is not complex, 90 days is a reasonable time period for requiring the preparation and submittal of an application.

Item C governs applications for reissuance of an existing permit. The time of application submittal for reissuance of existing permits is governed by pt. 7001.0040, subp. 3 except that the director may allow an application to be submitted less than 180 days before the expiration of the existing permit if the applicant receives written approval from the director. In allowing a reissuance application to be submitted less than 180 days before the expiration of the permit, the Agency recognizes that review and approval of an application from an existing permitted facility should be faster, and that thus allowing a variance from the 180 day rule is reasonable.

Subp. 4. Certification of permit applications and permit reports. Subp. 4 requires the applicant to certify the truth and accuracy of the information in the permit application as required by pt. 7001.0070. This subpart also provides that if required by Minn. Stat. § 326.03 a professional engineer registered in Minnesota must certify all technical documents required to be submitted as part of a permit application or by permit conditions. Requiring such certification is reasonable because that certification is presently required of all permit applicants under the Agency's existing rules, and is intended to ensure the accuracy of the information submitted.

9. Minn. Rules Pt. 7001.4070 General Information Requirements for a Permit Application.

This part specifies the information that must be submitted with all waste tire facility permit applications.

Subp. 1. Scope. Subp. 1 specifies the information that must be submitted for both new and existing waste tire facilities. Through cross-references, it

alerts the applicant that the applicable information of pts. 7001.4080, 7001.4090, 7001.4100 must also be submitted. The applicant is required to address both existing and proposed operations, structures, and conditions when completing the permit application.

The information required by the Agency in this part and pts. 7001.4080, 7001.4090, and 7001.4100 is needed to provide the Agency with information adequate to allow the Agency to determine whether to issue or deny a waste tire facility permit. Information on the facility's location, design, construction, and operation will serve both to allow the Agency to evaluate the facility's environmental impact and to provide a basis for the conditions in the permit. It is reasonable to require the submission of this information, because the information that must be submitted is needed to evaluate whether the technical standards of Minn. Rules pts. 7035.8200 to 7035.8710 can be met.

Subp. 2. General facility information. Subp. 2 requires the permit application to contain the information required under pt. 7001.0050, except item G. Item G is excluded because an environmental impact statement is currently not required to be prepared for waste tire facilities. The other information required under pt. 7001.0050 is standard background information needed to identify the applicants and the facility application that is sought. In addition to this general background information, this subpart also requires the applicant to indicate whether the facility to be permitted is new or existing, and whether the application is an initial or amended application. This information is reasonable because it is needed to enable the Agency to gather information on the regulatory history of the facility.

Subp. 3. Description of facility operation. Subp. 3 requires the applicant to describe the location and operation of the facility.

Item A is needed for the Agency to understand the basic operation of the facility. This information is reasonable because it will enable the Agency to judge the risk posed by the facility to human health and the environment, and how the facility should be regulated.

Item B is needed for the director to establish limits in the permit on the number of waste tires that will be maintained at the facility. Item C will enable the director to determine, based on the number of tires indicated in item B, that the storage requirements can be met. Since compliance with pt. 7035.8240, subp. 3, items D, F, and G is one of the conditions for issuance of a permit, it is reasonable to require the submission of information sufficient to allow the Agency to determine whether the facility will operate in compliance with these standards.

Item D requires the submission of a description of the present use of the land at the site of the facility and within a one-quarter mile radius of the facility. This information is needed to determine compliance with locational standards, and to evaluate the risk posed by the facility to neighboring land users. This information will allow the Agency to ensure that the facility does not become a nuisance. Requiring the applicant to provide the names of the adjacent landowners, along with their addresses, is reasonable because in an emergency at the facility such as a fire these individuals would need to be notified.

Item E requires submission of a description of the access roads to the

facility, including weight or other use restrictions. Requiring information on road conditions and capacities is reasonable because this information is necessary to determine whether the roads are adequate for the types of vehicles expected to use the facility. If the roads are not adequate, improvements may need to be made or limits may be placed in the permit on the types of vehicles that can use the facility.

Item F requires the submission of a description of surface water drainage, the slope of the land and the soil composition. Requiring this information is reasonable because a fire at the facility could produce run-off contaminated with substances generated from burning tires. The migration of these substances would be determined by the slope of the land, its soil composition and drainage. This information will allow the Agency to create permit conditions to minimize this hazard.

Item G requires a description of the location of the facility and a demonstration of compliance with the locational standards of pt. 7035.8240, subp. 2. It is reasonable to require locational information to determine whether the facility is in compliance with these standards.

Item H requires a description of the type, size, condition, and availability of the equipment needed for operation and emergency response at the facility, and the function of each piece of equipment described. Information on the equipment intended for use at the facility will allow the Agency to evaluate whether the facility has sufficient equipment for proper operation and emergency response.

Item I requires a description of the security procedures and the location

of fences, gates, and other access control measures. This information is required to help the Agency determine facility compliance with the access control requirements of pt. 7035.8240, subp. 3, item B. Based on this information, special conditions needed to ensure facility security could be included in the permit.

Item J requires a description of the facility's relationship to the applicable county solid waste management plan, and of the area to be served by the facility. It is reasonable to require this information be included in the application because the operation of the facility will be affected by county waste tire management plans. The information is also needed to determine if estimated tire volumes will be accurate.

Item K requires a submission of the description of the expected operating life of the facility and how this number was calculated. It is reasonable to require that this information be submitted for two reasons. First, it will enable the Agency to ascertain the size of the future waste tire management problem in the State. Second, this information is needed so that the Agency can use it to judge the accuracy of the closure plan submitted in compliance with pts. 7035.8250 and 7035.8260.

Subp. 4. Topographic map. Subp. 4 requires the submission of certain information on the topographic map submitted under subp. 2. A scale of 1 inch equals 200 feet is required. This scale is needed to ensure that the map is sufficiently detailed to show details accurately. Similarly, items A and B of this subpart are needed to enable accurate interpretation.

Item C requires the identification of all wetlands, floodplains,

shorelands, and surface waters, including permanent and intermittent streams and wetlands. It is reasonable for the map to show these areas because they are environmentally sensitive areas, that could be adversely impacted by the operation of a waste tire facility. They are also areas in which the facility may not be located.

Item D requires the map to display information on legal boundaries, land ownership, township, range, and section numbers, easements, and right-of-ways. This information is required so that the exact location of the facility can be determined. Based on this information, the Agency may determine the units of government that would have jurisdiction over the facility. These local governmental units would be recipients of public notices, as required in pt. 7001.4110.

Item E requires an identification of both operating and abandoned wells. This information is needed because these wells are potentially available for sampling, should a fire result in contamination from the facility.

Item F requires an identification of all occupied dwellings. This information is needed so that, in the event of an emergency, emergency response personnel and the Agency would know where people are likely to be present.

Item G requires the map to show contours. Contours are needed for determining surface water flow in and adjacent to the facility. This information will enable the Agency to determine where run-off from the facility will go.

Subp. 5. Development map. Subp. 5 requires the submission of a development map. It is reasonable to require a development map be submitted

since this drawing will provide the Agency with a detailed description of the facility that will enable the Agency to ensure that the facility can operate as proposed.

Items A, B, C, and D require the map to show various elements of facility design: the location of all waste tire storage areas and fire lanes, all structures and buildings at the facility, loading and unloading areas, and access and internal roads. During the permitting process, these features will be evaluated to ensure that the facility will be able to operate in compliance with the technical standards, and as designed.

Item E requires an identification of the run-off control measures, and ditches and dikes that are used at the facility. These structures will ensure that contaminated run-off will be controlled in the event of a fire. Thus, the requirement that the development map show these structures is reasonable to ensure proper design.

Item F requires the map to show the area used for collection, storage, or processing of waste tires, tire-derived products and residuals from processing. The total land area in square feet that will be used for storage of waste tires, tire-derived products, and residuals from processing must be shown. This information will allow the Agency to evaluate the operation of the facility specifically with regard to the material (waste tires, tire-derived products, and residuals from processing) that will be passing through the facility. This information will allow the Agency to ensure that adequate area has been allocated to the various functions.

Item G requires an identification of the location of water supplies. This

information is needed to ensure that the location of available water is known in case of a fire at the facility.

Subp. 6. Floodplains. Subp. 6 establishes special facility conditions for existing facilities located in 100-year floodplains. For facilities located in the floodplain, the applicant must describe the procedures that will be taken to remove waste tires and tire-derived products to safety before the facility is flooded. This information is necessary for determining compliance with pt. 7035.8240, subp. 2.

The Agency recognizes that some existing facilities are located in 100-year floodplains. Rather than require these facilities to close or relocate, the Agency developed the option of allowing the applicants to demonstrate that the facility could be operated in the floodplain such that the tires would not be subject to immersion. It is reasonable to allow applicants this option in recognition that, in the case of a small facility in the 100-year floodplain area, the danger of immersion is minimal.

Item A requires an identification of when the removal will occur relative to the flood levels. This is reasonable since the waste tires and tire-derived products must be removed before the facility is flooded.

Item B requires an identification of the location of the facility or facilities where the waste tires and tire-derived products will be taken. These facilities must be able to receive the waste tires and tire-derived products in accordance with pts. 7001.4000 to 7001.4150, and pts. 7035.8200 to 7035.8710. It is reasonable to require this information in the permit application to allow verification.

Item C requires an identification of the procedures, equipment, and personnel that will be used and how these resources will be made available when needed. It is reasonable to require this information in the permit application so that the Agency can verify that the removal plan is feasible.

Subp. 7. Closure. Subp. 7 requires the submission of the closure plan required by pt. 7035.8250. Requiring the submission of the closure plan with the permit is reasonable as compliance with the closure plan will be required under the permit. It is also reasonable to require the submission because the closure plan provides the basis for the cost estimate required under pt. 7035.8430, and will be needed by the Agency to verify that cost estimate.

10. Minn. Rules Pt. 7001.4080 Additional Application Information Required for Waste Tire Transfer Facilities.

This part sets out the information that is to be included in the permit application submitted for waste tire transfer facilities, in addition to the general permit application information.

Item A requires that the types of vehicles intended to use the facility be identified. This requirement is reasonable because this information is necessary to determine if the facility design and road conditions are adequate. If the facility design or roads are not adequate, improvements or changes may need to be required or limits on use placed in the permit.

Item B requires the applicant to demonstrate compliance with Minn. Rules pt. 7035.8270, subp. 2. This part requires waste tire transfer facilities to limit the quantity of waste tires stored at the facility to 10,000 passenger tires or the equivalent weight of other waste tires. Only a waste tire transfer facility

that can demonstrate that it can meet the standards established in pt. 7035.8270, subp. 2 will be permitted as a waste tire transfer facility.

Item C requires the applicant to identify the type of storage that will be present at the facility, and item D requires the applicant to provide information on the total storage capacity of the facility. This information is needed to assess whether the storage capacity is adequate.

11. Minn. Rules Pt. 7001.4090 Additional Application Information Required for Waste Tire Processing Facilities.

This part establishes the information that is to be included in the permit application for waste tire processing facilities.

Item A requires information on the quantity and type of tire-derived products and residuals from processing stored at the facility, and how they are being stored. Information on the types and quantities of tire-derived products and residuals from processing must be known in order for the Agency to assess the facility's potential to affect human health and the environment. In addition, this information is needed to determine if the facility can be operated in compliance with pt. 7035.8270, subp. 3, which requires that 75 percent of waste tires and tire-derived products stored at the facility be processed and removed each year.

Items B and C require submission of information on the waste tire processing processes and procedures used at the facility, and the processing capacity of the facility. Information on the processes and procedures utilized must be known for the Agency to assess the facility's potential to affect human health and the environment. In addition, processing capacity directly affects

the facility's ability to comply with the 75 percent annual processing requirement. Thus, this information is needed so that the Agency can assess whether that standard can be met.

Item D requires the applicant to explain how compliance with pt. 7035.8270, subp. 3, item B, the 75 percent annual processing requirement, will be achieved. This requirement is reasonable as it will enable the Agency to consider the applicant's opinion when ascertaining whether the facility can qualify for permitting as a waste tire processing facility.

Item E requires the submittal of information on how residuals from processing will be disposed. It is reasonable to require information on how residuals from processing will be managed to ensure that the facility will use proper disposal methods, that minimize adverse affects to human health and the environment.

Item F requires that information on markets for the tire-derived products produced at the facility be included in the application. This information is needed for the Agency to evaluate whether the facility will be able to comply with pt. 7035.8270, subp. 3, item B.

Item G requires the submission of the emergency preparedness manual required by pt. 7035.8280, subp. 3. This manual establishes procedures that will be followed at the facility in an emergency. Because this manual will be incorporated into the permit, it is reasonable to require the manual be submitted for Agency review. If the manual is inadequate or contains improper response procedures, Agency staff will be able to work with the applicant to amend the manual.

12. Minn. Rules Pt. 7001.4100 Additional Application Information Required for Waste Tire Storage Facilities.

Subp. 1. General information. Subp. 1 establishes the additional information that is to be included in the permit application for waste tire storage facilities.

Item A requires a description of the procedures that will be used to minimize or prevent mosquito breeding and rodent infestation of the waste tire stockpiles. This information is needed in order for the Agency to determine whether the facility will be operated in compliance with pt. 7035.8240, subp. 3, items H and I.

Item B requires the submission of the emergency preparedness manual required by pt. 7035.8290, subp. 2. This manual establishes procedures for responding to an emergency at the facility. Because compliance with the procedures established in this manual will be made a condition of the permit, it is reasonable to require that the manual be submitted for Agency review with the application. If the manual is inadequate or contains improper response procedures, Agency staff will be able to work with the applicant to amend the manual.

Item C requires that the contingency plan required by pt. 7035.8290, subp. 5 be included in the application. This plan establishes procedures for responding to an emergency in which a release of substances or pollutants is possible. Because compliance with this plan will be made a condition of the permit, it is reasonable to require the plan be submitted for Agency review with the application. If the plan is inadequate or contains improper management or

response procedures, Agency staff will be able to work with the applicant to amend the plan.

Item D requires the applicant to demonstrate that the facility will be operated in compliance with pt. 7035.8290, subp. 3, which limits the quantity of waste tires stored at the facilty to 500,000 passenger tires or the equivalent weight of other waste tires or tire-derived products. To be permitted, a waste tire storage facility must meet this standard. Thus, it is reasonable to require this information to be submitted with the application.

Subp. 2. Tire pile limitation exemption. The Agency recognizes that compliance with the technical requirements for tire pile dimensions may not always be feasible, and that some tire piles that violate the standard might not pose a greatly increased risk to human health and the environment. Subp. 2 enables waste tire storage facilities that cannot comply with the waste tire pile size or fire lane requirements of pt. 7035.8240, subp. 3, items F and G to avoid application of those requirements, if the owner or operator can demonstrate that compliance with the standards is not technically feasible and that alternative methods can be successfully employed to reduce the danger of fires at the facility. If the director finds that the required demonstration has been made, the director must establish alternative tire pile limitations in the permit that reduce to the maximum the risk of fire. This is reasonable because an exemption to a technical requirement can only be granted if the exemption does not pose a significant risk to human health or the environment.

Item A requires a description of the reason why the waste tire pile size or fire lane requirement(s) cannot be complied with at the facility. It would not

be reasonable for the Agency to allow a facility not to comply with the requirements unless compliance is infeasible.

Item B requires a description of the proposed alternative methods that will be used for controlling the spread of fire at the facility. It would not be reasonable for the Agency to allow a facility not to comply with the requirements unless the Agency is sure that all measures to protect human health and the environment have been taken.

Item C requires a statement from the fire authority having jurisdiction over the facility that the alternative methods that will be used for controlling the spread of fire at the facility have been approved by the authority. It is reasonable that the applicant discuss the proposed methods with the fire authority having jurisdiction over the facility and obtain approval of the proposed methods prior to submitting the information to the Agency, because it is the fire protection authority that will have to respond to a fire at the facility.

13. Minn. Rules Pt. 7001.4110. Public Notice of Preliminary Determination and Draft Permit; Public Comments.

This part broadens the public notice provisions of pt. 7001.0100, subp. 5 to require that the public notice be mailed to the governing body of each county and city or township that has jurisdiction over the waste tire facility. This expansion is reasonable because these local governmental units should be made aware that a facility will be operating in their jurisdictions, to allow for the exercise of local authority.

14. Minn. Rules Pt. 7001.4120 Terms and Conditions of Waste Tire Facility Permits.

This part establishes that a waste tire facility permit will contain all of the general conditions established in the Agency's general permit rule, Minn. Rules pt. 7001.0150. This is reasonable because those conditions establish important legal limitations on the duties and rights conveyed with the issuing of the permit. This part also builds upon pt. 7001.0150, subp. 2 by requiring that a waste tire facility permit require compliance with the technical standards. This is reasonable to ensure that the permittee will be on notice of the duty to comply with all rules and regulations, and not merely those established specifically in the permit. The rule is reasonable in that it recognizes the exemption that has been provided in pt. 7001.4100, subp. 2.

15. Minn. Rules Pt. 7001.4130 Modification of Permits; Revocation and Reissuance of Permits.

Subp. 1. Scope. Subp. 1 is reasonable in that it indicates that this part supplements existing requirements.

Subp. 2. Minor modifications. Subp. 2 establishes that the director may, upon consent of the permittee, modify a permit to change an interim compliance date if the final compliance date is not affected. Allowing the director to have this power is reasonable because, so long as the change in the compliance date has no affect on the date of ultimate compliance, it should have no impact on the environment. Requiring formal modification procedures to be followed for such changes would be administratively burdensome.

Subp. 2 also establishes that, upon consent, the director may amend a

closure plan, emergency preparedness manual or contingency plan. Allowing the modification of plans contained in permits in this manner is reasonable because it ensures that the plans can be kept up to date with changes in the operation of the facility that do not require permit modification. The technical rules require periodic update of manuals and plans; the provision allowing consensual modification assures that this updating will not be burdensome and that permits will be up-to-date.

16. Minn. Rules Pt. 7001.4140 Interaction of Permit and Abatement Rules.

This part is needed to clarify that, in an abatement action in which the tire collector has elected to operate a permitted facility after the completion of the abatement activity, that tire collector must follow the procedures established in this rule. This is reasonable because it will be necessary for the tire collector to submit the information required by this rule in order for the Agency to have the information needed to determine whether a permit can be issued for the facility, and what conditions that permit should contain.

The requirement that the owner or operator notify the director of the intent to obtain a permit is reasonable since it informs the director of the intent and enables the director to review the abatement plan with the understanding that a permit may be issued to the facility. The time limit for submittal of 90 days after the effective date of the rules or with the abatement plan, whichever is later, is reasonable since it allows the owner or operator to make the decision regarding permitting when decisions regarding abatement activities are being made. However, owners or operators who have already submitted their abatement plans are given 90 days to provide such notification.

Because the information to be submitted is minimal but does require some planning and decision making, the 90-day time limit is reasonable. Also, this time period is consistent with that allowed for notification by existing facilities under Minn. Rules pt. 7001.4035. Stipulation agreements and orders for abatement actions do not address other activities at the facility. Therefore, it is reasonable to require the owner or operator to obtain a permit for activities other than the abatement action. Such a requirement will ensure that the activities are regulated.

17. Minn. Rules Pt. 7001.4150 Transporter Application Requirements.

This part establishes the information that the Agency will require before issuing a waste tire transporter identification number.

Subp. 1. Scope. Subp. 1 references the requirement, found in pt. 7035.8710, subp. 3, that certain individuals obtain a waste tire transporter identification number.

Subp. 2. Application. Subp. 2 establishes that transporters, who are required to obtain the Agency identification number, must submit a written application to the director within 30 days of the effective date of the rule for existing transporters or 15 days before beginning to transport waste tires for new transporters. These times are reasonable because the information to be submitted is not complex. The information that must be submitted is listed in items A through E of this subpart, and consists of information that the Agency will need to know for issuing and regulating the use of the identification number.

Item A, name, address, and telephone number, is reasonable because the

Agency needs to know who will be using the identification number to prevent fraudulent use of that number.

Item B, geographical area to be served, is reasonable because knowing the area in which the number will be used will enable the Agency to prevent improper use of that number.

Item C, vehicle identification information, is reasonable because it will facilitate regulation of the use of the identification number.

Item D, where tires are to be collected and delivered, will enable the Agency to ascertain that the waste tires collected by the transporter were disposed of properly.

Item E, estimate of the quantity and type of tires to be collected, is reasonable because it will enable the Agency to ascertain approximately the number of tons of waste tires that should be disposed by the transporter.

D. Waste Tire Facility Standards, Minn. Rules Pts. 7035.8200 to 7035.8300.

The following discussion addresses the reasonableness of the proposed rules regarding waste tire facility standards on a part by part basis.

1. Minn. Rules Pt. 7035.8200 Scope.

This part, which specifies to whom the requirements of the proposed rules apply, is reasonable because it informs affected persons, the public, and other governmental units of the applicability of the proposed rules. It is reasonable to provide this information so that persons managing waste tires will know with which parts of the proposed rules they are required to comply.

2. Minn. Rules Pt. 7035.8205 Definitions.

This part contains the definitions of key words and phrases used in the

waste tire permit rules. The definitions are needed so that the rule may be subject to consistent interpretation. The definitions of person, processing, tire, tire collector, tire dump, tire processor, and waste tire reference the statutory provision where the definitions of these terms can be found. It is reasonable to include these definitions so that persons covered by these rules know where to look to find the definition of the terms used in these rules. The definitions of Agency, director, flood plain, ravine, residuals from processing, shoreland, sinkhole, tire-derived products and wetland are identical to the definitions of these terms as they are used in the Agency rules governing the abatement of waste tire dumps. It is reasonable to use the same definitions in both sets of rules since they both relate to the regulation of waste tires. To use different definitions would cause confusion for persons subject to both sets of rules. The reasonableness of the remaining definitions is set out below.

Subp. 2. Closure. A definition of closure is given to clarify what the Agency means when it requires a facility owner or operator to provide financial assurance for closure of the waste tire facility. This definition is reasonable because the Agency wants the facility owner or operator to provide for the removal of waste tires and other materials when the facility closes. The Agency is concerned that owners or operators of waste tire facilities might cease operation and leave stockpiles of waste tires and other materials at the site. The Agency wants the facility to be cleaned up when operations cease at the facility.

Subp. 4. Existing waste tire facility. The definition of existing waste tire facility is given to clarify which facilities are covered by these rules.

This definition is reasonable because it provides waste tire collectors and processors with an easily applied method of determining if their site is an existing facility. The condition that waste tires be received after November 21, 1985 is based on the distinction between the tire dump abatement program and the waste tire permitting program, which is discussed under subps. 6 and 7. The condition that the facility be in existence on the effective date of these rules is to ensure that the rules address actual facilities. By specifying a set date, the owner or operator is informed that as of that date the facility is subject to regulation. This allows the owner or operator the opportunity to avoid regulation by closing the facility and removing all waste tire materials prior to the effective date of the rules.

Subps. 6 and 7. New waste tires and old waste tires. Because these terms are unique to the waste tire permit rules, it is necessary to define them. The rules establish different levels of regulation depending on when waste tires were accepted at a site. The date of November 21, 1985 is used because that was the effective date of the waste tire dump abatement rules (emergency). Since the waste tire permitting program is designed to address ongoing generation of waste tires, it is reasonable to make a distinction between waste tires covered by the abatement program and those waste tires received after the effective date of that program which are subject to the waste tire permitting program.

Subp. 8. Operator. The definition of operator is given to clarify who is the operator of a waste tire facility. Under the waste tire permit rules, operators are co-permittees of a facility. The reference to the statutory definitions of tire collector and tire processor is provided to alert operators

to their responsibility under the statute.

Subp. 9. Owner. The definition of owner is included to alert tire collectors and tire processors as to who the Agency will consider an "owner" and thus responsible for obtaining a permit from the Agency as required by statute.

Subp. 21. Transporter. A definition of transporter is provided because this term is unique to the waste tire permit rules. The definition clarifies who is subject to certain provisions of the proposed rules, thus it is reasonable.

Subp. 23. Waste tire facility. The definition is needed to clarify a term unique to the waste tire permit rules. The definition should provide tire collectors and tire processors with an easily applied method of determining if their site is a waste tire facility, and thus subject to regulation. The definition encompasses all types of waste tire facilities. Because the definition can be easily applied, it is reasonable.

Subp. 24. Waste tire processing facility. The definition is needed to clarify a term unique to the waste tire permit rules and is also needed to distinguish the type of activity being conducted at the facility. Because the definition can easily be applied, it is reasonable.

Subp. 25. Waste tire storage facility. The definition is needed to clarify a term unique to the waste tire permit rules. The definition is also needed to distinguish the type of activity being conducted at the facility. Because the definition can easily be applied, it is reasonable.

Subp. 26. Waste tire transfer facility. The definition is needed to clarify a term unique to the waste tire permit rules. The definition is also

needed to distinguish the type of activity being conducted at the facility. Because the definition can easily be applied, it is reasonable.

3. Minn. Rules Pt. 7035.8210 Land Disposal Prohibited.

Minn. Stat. § 115A.904 prohibits the disposal of waste tires in the land. This rule extends the prohibition on land disposal to include tire-derived products, i.e., tires that are halved, quartered, or chipped. The general Agency and State policy is to minimize the dependence on land disposal of wastes. As stated under Minn. Stat. § 116D.02, subd. 2:

> In order to carry out the policy set forth in Laws, 1973, Chapter 412, it is the continuing responsibility of the state government to use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate state plans, functions, programs and resources to the end that the state may: . . . conserve natural resources and minimize environmental impact by encouraging extension of product lifetime, by reducing the number of unnecessary and wasteful materials practices, and by recycling materials to conserve both materials and energy. . . .

Tires, whether whole or in pieces, are recyclable. Since public opposition to landfill sites is increasing, it is reasonable to prohibit the landfilling of waste tires in any form to encourage recycling and to maximize reduction of the amount of waste entering a landfill.

4. Minn. Rules Pt. 7035.8220 Permit Required.

This part explains that an Agency permit is required to establish, construct, modify, own, or operate a waste tire facility. Minn. Rules pts. 7001.4000 to 7001.4150 should be used as a reference to inform affected persons, the public, and other governmental units of who is responsible for obtaining a permit and the procedures that must be followed to obtain an Agency permit. Minn. Rules pts. 7001.4000 to 7001.4150 will also explain who is excluded from

coverage or subject to only limited provisions of these rules. It is reasonable to provide this information in this part so that facility owners or operators covered by this rule will know if they are required to meet the standards contained in these rules before proceeding to the remaining text of the rules.

5. Minn. Rules Pt. 7035.8230 Rule Conflicts.

This part states that even though a person has met the obligation imposed by the Agency rules, that person must still comply with all other federal, State, or local rules that regulate how the facility will operate. This is reasonable since the Agency does not control the regulatory operations of other forms of government.

This part also states that in the event the Agency rules conflict with other rules, the more stringent provisions shall apply. This is reasonable because it clarifies which provisions apply and eliminates the need to amend the rule if conflicts should occur.

6. Minn. Rules Pt. 7035.8240 General Standards for Permitted Facilities.

This part contains the general standards that apply to all waste tire transfer, processing, and storage facilities. This part contains basic performance standards and relevant technical factors that relate to those performance standards. This part also references the criteria that the Agency will use in determining if a facility qualifies for regulation as a waste tire transfer, processing, or storage facility. The reasonableness of these standards is set out below.

Subp. 1. Scope. This subpart specifies that permitted waste tire facilities are regulated under this part. The Agency believes it is reasonable

to clearly specify to whom the requirements apply so that facility owners and operators will know what is required of them.

Subp. 2. Location of facility. The requirements set forth in this subpart ensure that the waste tire facility will not be located in an area unsuitable for the storage of waste tires or where the storage of waste tires could cause damage to the environment. The main concern is that the waste tire facility not be subject to flooding and that the waste tires will not be subject to immersion in water. If immersed in water, waste tires may become mosquito breeding grounds. Also, if a waste tire facility becomes immersed in water, it will become difficult to perform the operations necessary for the facility to function. Sinkholes, shorelands, ravines, and wetlands are environmentally sensitive areas. Therefore, it is reasonable for the Agency to require that waste tire facilities not be located in these areas.

Under the proposed rule an existing facility may continue to be located in a floodplain if during the permitting process the owner or operator demonstrates that technologies used at the facility will prevent the immersion of waste tires and tire-derived products in water. Since the proposed rule requires that the owner or operator manage the facility in a manner protective of the environment and address the Agency's concerns regarding immersion of waste tires in water, it is reasonable to provide an exemption for existing facilities.

Subp. 3. Operation. Subp. 3 of this part is divided into items A to J which set out the minimal operational standards that must be met at a permitted waste tire facility. The standards set forth in this subpart are designed to ensure that a waste tire facility is operated in an environmentally sound

manner.

Item A (burning prohibited) is needed to reduce the danger of fire at a waste tire facility. By restricting the use of open flames within 50 feet of a tire pile, the danger of accidental fire should be reduced. Due to the environmental damage which could result from a fire at the facility it is reasonable to restrict activities which could cause a fire.

Item B (access control) requires that the approach and access road to the facility be maintained to ensure that emergency vehicles have access to the site. Access to the facility must be controlled to ensure that illegal dumpers or other persons cannot reach the site when it is not in operation. Since the owner or operator is required to operate the facility in a manner protective of human health, natural resources and the environment and in compliance with the proposed rules, it is reasonable to require access control to ensure that unauthorized persons are not allowed to enter the facility and cause noncompliance with the rules. Also, considering the environmental damage which could result from a fire at the facility, it is reasonable to ensure that emergency vehicles can get to the facility in case of fire and to control access in order to reduce the risk of a fire at the facility.

Item C (attendant on duty) is needed to ensure that there is a person available to conduct the operations necessary for the facility to operate.

Item D (storage area) requires a specific area to be designated at the facility for storage of waste tires and tire-derived products. This area must be maintained free of vegetation. First, it is reasonable that a specific area be designated for storage because a waste tire facility may be part of a solid

waste facility or a recycling center. Since waste tires need to be handled differently than other solid waste, it is reasonable that the waste tires be segregated. Also, the purpose of this item is to make it easier to combat an emergency occurring at the waste tire facility by limiting the waste materials that emergency personnel will have to manage in the event of an emergency. Dry vegetation would allow a small fire to spread rapidly through the waste tire stockpile area thus increasing the possibility of a large waste tire fire occurring. Therefore, it is reasonable to require the storage area be maintained free of vegetation in order to reduce the risk of fire at the facility.

Item E (indoor storage) is needed to minimize the hazards posed by the storage of waste tires indoors. The standard referenced in this subpart is used in all areas of the United States and is generally accepted by fire protection agencies. Therefore, to promote consistency, it is reasonable to utilize nationally acceptable standards governing the indoor storage of waste tires. See Exhibit 17.

Items F and G (tire pile limitation and fire lane) set forth standards that will ensure that the danger posed by a fire at a waste tire facility is minimized. These items establish that the permittee shall construct waste tire stockpiles and fire lanes that meet the following requirements. Tire piles must have an area not greater than 10,000 square feet and a vertical height not greater than 20 feet. A minimum 50-foot fire lane between the stockpiles must be created and maintained free of rubbish, and vegetation at all times. Access to the fire lane for emergency vehicles must also be unobstructed at all times.

Tire pile size limitations and the requirement that fire lanes be maintained are fire protection agency accepted methods of limiting the spread of fires. The tire pile size limitations and the fire lane requirements are identical to those used in the Agency rules governing the abatement of waste tire dumps. These requirements are reasonable because they are accepted in other jurisdictions and are needed to enable fire fighters to work efficiently.

Connecticut and New Hampshire have guidelines that tire stockpiles cannot exceed a 100 x 100 foot area. In addition, Connecticut requires a 50-foot fire lane between the piles, and restricts tire pile height to 20 feet.

Two other states which have guidelines for tire stockpiles are New York and Washington. New York requires that tires cannot be stacked higher than ten feet. Washington has proposed that individual stockpiles cannot be greater than one-half acre in size with fire lanes proportionate to the height.

The Minneapolis Fire Prevention Bureau investigates fire hazards as they become aware of them. The only requirement of the Minneapolis Fire Prevention Bureau is to have at least a 20-foot fire lane between tire piles. A 20-foot fire lane would allow enough space for emergency equipment to enter the area. However, the lane would not be wide enough to prevent the fire from spreading to adjacent piles due to the heat generated from the burning tires. Further, a 20-foot fire lane only allows for one direction of travel. The Minnesota Fire Marshal's Office suggested that the use of both portable and stationary equipment to develop a "water curtain" between the piles is needed to absorb heat. A 50-foot fire lane is needed for this equipment. This action may help to contain a fire to a single pile.

Since a solid stream of water can be sprayed 100 feet, the tire pile size limitation is needed so that water needed to dissipate heat can reach all parts of the tire pile. Even though a solid stream of water does not dissipate much heat, the tire pile size proposed is reasonable because there is also equipment available that can reach 65 to 110 feet both vertically and horizontally.

The height of the tire stockpile is definitely a factor when fighting a fire. If the stockpile is high, the fire will burn like a chimney and spread upward and outward, faster and hotter. The Minneapolis Fire Prevention Code, Article 173, section 27.203 restricts tire pile height to 20 feet. Tire fires are hard to fight because tires are basically waterproof. A high stockpile further complicates matters because water cannot reach the tires to cool them down adequately. Therefore, it is reasonable to restrict tire pile height to 20 feet.

Items H and I (mosquito control and rodent control) are needed to ensure that waste tire stockpiles are maintained free of mosquitoes and rodents. Due to health concerns regarding mosquitoes and rodents, it is reasonable to require controls.

Item J (surface water drainage) is necessary to ensure that surface water run-on is diverted from the waste tire storage area to reduce the collection of rainwater in the waste tires. Since waste tires immersed in water may become mosquito breeding grounds, it is reasonable to require surface water run-on to be diverted from the waste tire storage area.

Subp. 4. Transfer of ownership or operation. Subp. 4 requires the permittee of a waste tire facility to notify the Agency prior to transferring

ownership or operation of a facility. This requirement is reasonable since no ownership or operation transfer may occur without a permit modification as required in Minn. Rules pt. 7001.0190, subp. 2. It is also reasonable for the facility to be in compliance with all Agency rules prior to transfer. Since the waste tire facility owner or operator is required to be in compliance with the rules or on a schedule of compliance when the permit is issued, it is reasonable to require compliance with the rules at the time of permit transfer. This will ensure that the new owner or operator is in compliance with the rules when the permit transfer occurs.

This subpart also requires a permittee to notify the new owner or operator of the applicability of the waste tire permit rules before transferring ownership or operation. This requirement is included to minimize the possibility that an unsuspecting buyer may purchase a facility not knowing that this purchase entails his having to comply with these rules.

Subp. 5. Annual report. Subp. 5 requires the permittee of a waste tire facility to submit an annual report to the director. This subpart is needed to allow the permittee and the director to evaluate the facility's compliance with the other requirements of this rule.

Items A and B are needed so that the director can distinguish which permittee and facility are covered by the annual report.

Items C, D, and E are needed so that the director and permittee can ensure that the stockpile size restrictions for the facility are being met. The documentation of the quantity of tires received, shipped, and stored at a facility is essential especially if the facility is a processor and subject to

the 75 percent annual processing requirement of pt. 7035.8270, subp. 3.

It is also necessary to document the types of tires received because of the special handling requirements that truck, heavy equipment, and off-the-road tires require. Also, truck and heavy equipment tires will need more storage space, and the design of the facility may have to be adjusted accordingly. Also, shredders are not usually equipped to process tires other than passenger tires. Thus, the tire collector will have to demonstrate that there is an end-use for the tires.

It is necessary to document the quantity and type of tires shipped from the facility so that the director can ensure that the facility is meeting the storage pile limitations set out in pt. 7035.8270, subps. 2 or 3.

Items F, G, and H regarding receipt, shipment, and removal of waste tires at the facility are needed to verify compliance with the storage and processing requirements of pts. 7035.8240, subp. 3, and 7035.8270, subps. 2 and 3. Also, the information regarding transporter identification numbers is needed to verify compliance with pts. 7035.8700 and 7035.8710 regarding the transportation of waste tires and the shipment of waste tires to acceptable waste tire facilities. It is reasonable to require such information in order for the Agency to determine facility compliance with applicable rules.

Item I regarding the most recent closure cost estimate is needed to ensure that the closure cost estimate has been updated as required by pt. 7035.8480. Also, the Agency needs to know the most recent closure cost estimate to verify that sufficient financial assurance is provided for the facility. It is reasonable to require such information in order to verify compliance with the applicable rules.

7. Minn. Rules Pt. 7035.8250 Closure.

This part sets out the standards applicable to the closure of all waste tire facilities. The objective of this part is to require facilities to close in the manner necessary to protect human health and the environment.

Subp. 1. Closure conditions. Subp. 1 sets forth the standards that outline when closure of a facility occurs. It is reasonable to include this provision so that the Agency, and persons covered by this rule know the conditions under which closure of a facility will occur.

Subp. 1 of this part also requires the owner or operator of the facility to cease accepting waste tires and to immediately close the facility if any of the conditions established in this subpart exist. Additionally, this subpart requires that the facility be closed in compliance with any special closure conditions established in the permit, this part, and pt. 7035.8260 which specifies the actions that must be taken and the procedures that must be followed if closure occurs. The closure procedures are necessary to ensure the facility is closed so that human health and the environment are protected. It is also reasonable to have general closure procedures and standards that apply to all facilities because there are activities which need to be conducted at the time of closure at all facilities, and owners or operators should be made aware of them in the rules. Specific closure standards that are established in the permit and apply to each facility's type of operation are reasonable in order to address specific conditions that exist at a particular facility.

Item A acknowledges that the owner or operator may elect to close a facility at any time. This is reasonable since there is no obligation on the

owner or operator to continue business once a decision is made to close the facility.

Item B is necessary since the financial assurance requirements of pts. 7035.8400 to 7035.8590 require owners or operators to maintain financial assurance for closure of the facility. The financial assurance mechanisms are set up to require closure or funds for closure if certain events occur. One of these events is failure to provide alternate financial assurance when required to do so. This closure provision is reasonable since it is consistent with the requirements of pts. 7035.8400 to 7035.8590 and clearly informs the owner or operator of the duty to close.

Items C and D are based on the status of the facility's permit from the Agency. Item C applies if the permit expires and the permittee does not apply for renewal of the permit, or the permit is applied for and denied. Item D applies if the permit is revoked without reissuance. Since a facility owner or operator is required to obtain a permit in order to operate the facility, it is reasonable to require closure of the facility once the facility no longer has the necessary permit.

Items E and F apply when direct enforcement actions are taken by the Agency. These provisions are reasonable since a facility that endangers human health and the environment will not be allowed to operate. It is reasonable to include these provisions under the closure conditions in order to inform owners and operators that if such action is taken by the Agency, the facility is to be closed in accordance with the procedures and standards specified in the rules and the permit.

Item G requires a facility that has not received or shipped tires in a continuous six-month period to close. The Agency believes this is reasonable in order to address the concern that a facility could cease operation without any assurance that the facility would resume in the future, thus avoiding the requirement that the facility be properly closed. It is reasonable to require that if operations cease the facility should then close. The Agency does recognize that there may be times when operation of the facility will cease for a short period of time due to equipment failure, lack of tires, or other situations. The Agency believes that a six month period is sufficient to address such situations.

Subp. 2. Submittal of closure plan. Subp. 2 is needed to ensure that all waste tire facilities close in the manner necessary to protect human health and the environment. The Agency believes that to accomplish this objective, it is necessary that facilities plan in advance of closure the manner in which they will remove waste tires, tire-derived products and residuals from processing from the facility. Therefore, facility owners and operators are required to prepare and submit a closure plan to the director for review and approval.

It is reasonable to require a closure plan from facilities that manage waste tires because preplanning is essential in estimating the type and quantity of waste tires, tire-derived products and residuals from processing that must be properly utilized or disposed of at the appropriate facility at the time of closure. Without adequate planning, waste tires may be left at facilities for long periods of time thereby increasing the chances for damage to human health and the environment. The closure plan provides the Agency with an opportunity

to prevent any damage to human health and the environment which might occur from facilities that did not plan ahead for the inventories of waste tires and tire-derived products which would be present at closure and how proper removal of these waste tires and tire-derived products should take place.

Subp. 3. Contents of closure plan. Subp. 3 requires a copy of the closure plan to be retained at the facility until closure is completed and certified by the facility owner or operator. Since the owner or operator will have to follow the closure plan in order to properly perform closure, it is reasonable that a copy of the closure plan be maintained at the facility.

In order for the Agency to approve a closure plan, the plan must identify steps needed to close the facility at any point during its intended operating life, and to completely close the facility at the end of its operating life. To make this evaluation, the Agency needs to know how and when the facility will be closed, the ultimate disposition of the waste tires, and tire-derived products, and an estimate of the maximum inventory of waste tires, and tire-derived products in storage at any time during the life of the facility. The Agency also needs to know the cost estimate for closure of the facility, and the schedule for the closure procedures of pt. 7035.8260 to ensure that adequate funds for closure will be available and that closure will be done in compliance with the requirements of pt. 7035.8260. It is reasonable to require such information so that the Agency will be able to review and approve the plan to ensure that closure activities will take place in a timely manner and will close the facility in a manner protective of human health, natural resources, and the environment.

Subp. 4. Amendment of plan. Subp. 4 is needed to ensure that the closure plan can be amended if the owner or operator determines it is necessary. It also requires that the plan be amended if changes in the operating plan or facility design affect the closure procedures, or if the expected year of closure changes. These requirements are reasonable because the circumstances affecting the facility may change during the life of the facility, and a provision is needed in the rule to allow for this change to be made. The amended plan must be submitted to the director for review and approval. Since the Agency is responsible for reviewing and approving the initial plan, it is reasonable that amendments to the plan also be subject to review and approval to ensure that such amendments provide for proper and timely closure of the facility.

8. Minn. Rules Pt. 7035.8260 Closure Procedures.

This part sets out the procedures necessary to close a waste tire facility in a manner protective of human health, natural resources and the environment.

Subp. 1. Time allowance to complete closure activities. Subp. 1 establishes the time limit for completion of closure activities at a facility and the procedures for extension of this time limit. This subpart requires that all facility closure activities required by this part must be completed within 90 days after closure of the facility must begin under pt. 7035.8250. Additional procedures must be completed as specified in the approved closure plan. It is reasonable to place time constraints on the completion of closure activities since the longer a facility is left unattended, the greater the possibility of damage to human health and the environment. Also, due to the

financial assurance requirements of pts. 7035.8400 to 7035.8590, it is reasonable to have time constraints so that there is a defined time period during which the owner or operator must complete closure so that if the owner or operator fails to comply the director may gain access to the funds.

This subpart also provides for additional closure procedures to be established during the permitting process. This is reasonable since each facility's operation will be different, and it is essential that a provision be included in this part to allow for closure requirements specific to each facility to be included in the approved closure plan.

Subp. 1 also includes provisions for extending the closure time if the facility owner or operator can demonstrate why the closure activities will take longer than the allotted 90 days to complete. The owner or operator must also demonstrate that all steps have been and will continue to be taken to minimize threats to human health, natural resources and the environment. This is reasonable since it provides measures to prevent damage to human health, natural resources and the environment from unnecessary delays in closure, yet it allows for circumstances that may cause closure activities to take longer than the prescribed time.

Subp. 2. Closure procedures. Subp. 2 sets forth the procedures necessary to close the facility to protect human health, natural resources, and the environment.

Item A, which requires that public access to the facility be closed, is reasonable because during closure waste tires are not being accepted at the facility so provisions should be taken to prevent unauthorized dumping of waste

tires.

Item B requires that a gate notice be posted indicating that the facility is closed and the location of the nearest facility where waste tires can be deposited. It is reasonable to require such a notice in order to inform the public that the facility is closed and will not be accepting waste tires, and also where the tires can be taken for disposal at another facility. Such information will enable persons bringing waste tires to the facility to properly dispose of them.

Item C requires that notice of the facility's closing be given to various governmental agencies. Such notification is reasonable so that each agency which either is responsible for regulation of the facility or is concerned about the facility for fire or health reasons is informed that the facility is closing. Such notification will allow the agencies to oversee closure activities in order to ensure the facility is properly closed.

Items D, E, and F require the removal and proper disposal of solid waste, waste tires and tire-derived products from the facility. Such removal is necessary to ensure that the facility is completely cleaned up and that the materials are properly managed. Since the facility will no longer be operating, there is no need for these materials to remain at the facility site after closure. Also, one of the main purposes of the waste tire permit program is to prevent the establishment of additional tire dumps. Therefore, it is reasonable to require that all waste tire materials be removed when the facility closes.

Item G requires the owner or operator to notify the director when closure activities are completed. It is reasonable to require such notification, so

that the director will be able to inspect the facility as required by subp. 3 of this part, to ensure that closure has been completed in accordance with all applicable requirements.

Subp. 3. Certification of closure. Subp. 3 is needed to ensure that closure of the facility has been completed properly. It is reasonable that Agency staff have an opportunity to inspect the facility so that closure may be verified and to ensure that all duties of the owner or operator required by these rules and by the facility permit have been discharged. Also, due to the financial assurance requirements of pts. 7035.8400 to 7035.8590 it is reasonable to have a certification of closure so that the director will be able to release the owner or operator from the financial assurance requirements once closure has been completed.

9. Minn. Rules Pt. 7035.8270 Qualifications for Regulation as a Permitted Waste Tire Transfer or Waste Tire Processing Facility.

This part sets out the qualifications for regulation as a permitted waste tire transfer or waste tire processing facility. If a waste tire facility does not meet the requirements established in this part, the waste tire facility will be regulated as a waste tire storage facility.

Subp. 1. Scope. Subp. 1 which specifies what this part contains is reasonable because it informs persons that facilities will be regulated based on their ability to meet certain qualifications.

Subp. 2. Waste tire transfer facility qualification. Subp. 2 sets forth the standards that must be met in order to qualify for regulation as a permitted waste tire transfer facility. Under this subpart, a storage limitation is

imposed on the quantity of tires stored at the transfer facility. There are also removal requirements that must be met in order to qualify as a waste tire transfer facility.

First, the waste tire storage limitation imposed on the facility is 10,000 passenger tires or the equivalent weight of other tires. The number 10,000 was chosen by the Agency because the maximum number of tires that can be stored at a landfill pursuant to Minn. Stat. § 115A.902, subd. 2 without the owner or operator having to obtain a waste tire facility permit is 10,000 tires. Since the storage of waste tires at a transfer facility is comparable to the storage of waste tires at a permitted solid waste facility, the Agency believes it is reasonable to have the same limit of 10,000 waste tires. The Agency believes that in some cases waste tire transfer facilities will be located at permitted solid waste facilities due to the existing solid waste collection system. The Agency believes that it is reasonable to allow waste tire transfer facilities not located at a permitted solid waste facility to store the same amount of waste tires. Therefore, it is reasonable that the number 10,000 be used as the storage limitation for waste tires at waste tire transfer facilities. Considering the substantial differences in sizes between various types of tires, a standard size should be used in the rules to better address storage site limitations. Since passenger tires constitute the vast majority of waste tires, it is reasonable that passenger tires should be used as the standard, with other size tires having limitations based on an equivalent weight of passenger tires.

Second, this subpart provides that all waste tires received at the transfer facility must be shipped to a processing facility at least twice annually or in

accordance with the plan approved during the permitting process. The concept of a transfer facility is to accumulate enough tires to make it economically feasible to move the tires to an end-use facility. Therefore, waste tire transfer facilities should be allowed to accumulate a sufficient amount of waste tires to make transportation to a processing facility economical. However, in order to ensure waste tires are being accumulated for shipping purposes rather than storage, it is reasonable to require that the waste tires be shipped.

The Agency believes that it is reasonable to require shipment twice annually to address concerns regarding mosquito and rodent infestation. By shipping twice a year, waste tires will not sit at the facility for long periods of time, thus discouraging such infestation to occur. The Agency believes that requiring shipments twice a year should address infestation concerns and allow for seasonal considerations without being overly burdensome. However, the Agency does realize that there may be facility-specific situations which would require different shipment requirements. Therefore, a provision is included which allows different shipping requirements to be included in the permit as necessary to protect human health, natural resources or the environment. The Agency believes it is reasonable to address such conditions through the permitting process because at that time conditions specific to the facility can be better addressed.

Subp. 3. Waste tire processing facility qualifications. Subp. 3 sets forth the standards that must be met in order to qualify for regulation as a permitted waste tire processing facility. Under this subpart, a storage limitation is imposed on the quantity of tires stored at the processing

facility. The limit of one waste tire pile meeting the limits stated in pt. 7035.8240, subp. 3, item F of the general facility standards was chosen by the Agency due to concerns regarding fire at the facility. By limiting storage to one stockpile, the problem of a tire fire spreading throughout the facility is prevented. Since one stockpile would contain approximately 70,000 passenger tires, the Agency believes one stockpile would provide sufficient storage capacity.

In conversations held with people who are involved in waste tire processing, it was determined that surge piles at processing facilities range from none to 30,000 waste tires. Surge piles are stockpiles of waste tires which serve to offset variations in the receipt of waste tires at the facility by providing a constant supply of waste tires to the processing operation. Waste Recovery, Inc. located in Portland, Oregon has little to no accumulation of waste tires at their Portland, Oregon facility. However, at their Houston, Texas facility, they have a waste tire stockpile of 30,000 tires. Rubber Research Elastomerics of Babbitt, Minnesota has maintained that they will have little to no waste tire storage at the facility once they begin processing operations.

The Agency recognizes that a waste tire processing facility will at times accumulate waste tires. This can occur at planned times when the facility is down for maintenance or if there is a sudden influx of waste tires at the facility due to peak tire generation periods. Therefore, it is reasonable that provisions be made at the facility to stockpile tires. It is also reasonable that a limitation be placed on the quantity of tires that can be stockpiled at

the facility. Since the tire pile limits stated in pt. 7035.8240, subp. 3, item F are easily applied, and address concerns regarding the spread of fire, the Agency believes it is reasonable to limit storage to one stockpile. Also, if additional storage capacity is needed at the facility, the owner or operator may apply for a storage facility permit and comply with the storage facility standards which better address storage of more than one stockpile.

The other qualification that waste tire processing facilities must meet is that at least 75 percent of the waste tires and tire-derived products are processed and removed from the facility during the calendar year. The 75 percent annual processing requirement applies to all waste tires and tire-derived products received or produced by the facility during a calendar year. Compliance with the 75 percent annual processing requirement is determined based on the amount of waste tires and tire-derived products that remain at the facility at the beginning of the calendar year, that are received or produced at the facility during the calendar year, and that remain at the facility at the end of the calendar year. This requirement is calculated based on weight and does not apply to facilities that received an exemption under pt. 7035.8300 or who have a waste tire storage facility permit.

The 75 percent annual processing requirement is reasonable in order to prevent the facility owner or operator from accumulating waste tires and tire-derived products with the intent of storing the waste tires and tire-derived products for unknown periods of time without a storage permit at the risk of human health and the environment. Since the facility standards for processing facilities are designed to address concerns regarding processing and

incidental short-term storage, it is reasonable that if the facility owner or operator is not processing and removing sufficient amounts of waste tires and tire-derived products, then the owner or operator is operating a storage facility and should be subject to the storage facility standards and be required to obtain a storage facility permit, or an exemption under pt. 7035.8300. The required processing level of 75 percent is reasonable because it allows for facility down time due to equipment maintenance or repair or other causes, while still requiring a sufficient amount of processing to occur. The Agency believes that a 75 percent annual processing requirement is reasonable to address concerns while not being overly burdensome. Also, the rule provides that an exemption can be granted under pt. 7035.8300 if certain conditions are met. The Agency believes that it is reasonable to provide such an exemption on a case-by-case basis since the Agency will be better able to address facility specific concerns and situations through the petition process. Also, since a facility which cannot meet this processing requirement has the option of obtaining a storage facility permit and operating in compliance with the facility storage standards, it is reasonable to have such a processing requirement.

10. Minn. Rules Pt. 7035.8280 Waste Tire Processing Facility Standards.

This part sets out the standards that shall be applied to the operation of a permitted waste tire processing facility. Compliance with the specific standards of this part as well as the general standards for all waste tire facilities set out in pt. 7035.8240 is required. This part also requires that the qualifications of pt. 7035.8270 must be met in order for a facility to

qualify for regulation as a waste tire processing facility.

Subp. 1. Scope. This subpart which specifies the applicability of the standards contained in this part is reasonable because it informs persons that processing facilities must be operated in compliance with these standards.

Subp. 2. Emergency preparedness. Subp. 2 is needed to ensure that should an emergency occur at a facility, services are available to minimize adverse effects to human health and the environment. Specifically, equipment to control fires must be maintained at the facility. This is reasonable since if a fire does begin at the facility, immediate efforts to bring it under control can be taken. Such efforts may be able to prevent the fire from spreading or burning out of control. Communications equipment must be provided and maintained at the facility because should a tire fire or other emergency occur, local fire protection authorities or other emergency personnel can be quickly contacted and will respond as needed. The permittee is also required to make arrangements with the local police and fire protection authorities to acquire their services in case an emergency should occur. It is reasonable that local authorities who may have to respond to an emergency at the facility have prior knowledge of the conditions and type of operation at the facility. Then, they can estimate the potential services that will be needed at the facility, and if an emergency should occur, they will be able to respond quickly to minimize adverse effects to human health and the environment.

Subp. 3. Emergency preparedness manual. Subp. 3 requires that an emergency preparedness manual be prepared. This manual is submitted to the director along with the permit application. Once the director approves the

manual, it becomes a condition of the facility permit and must be maintained at the facility. This is reasonable since this manual is needed to ensure that the operating personnel know what to do and who to contact in the event that there is a fire or other emergency at the facility. Also, it is reasonable that the Agency review the manual to determine the adequacy of the procedures that are proposed to be followed by the owner or operator in the event of an emergency at the facility.

The emergency preparedness manual shall be updated if a change in the operations at the waste tire processing facility occurs. The director can also require an update. This is reasonable because the circumstances affecting the facility may change during the life of the permit, and the director is in the best position to respond to new information affecting the facility.

This manual should ensure that the permittee, emergency personnel, and the Agency understand the actions to be taken at the facility in the event of an emergency at the facility so that a cooperative effort may be made to successfully minimize adverse effects to human health and the environment.

Under subp. 3 of this part, items A to F set out the emergency information and procedures to be contained in the manual. It is required that the manual include a list of names and telephone numbers of persons to be contacted in the event of an emergency at the facility; the equipment available on or off-site to respond to the emergency, and a brief description as to how the equipment will be used; an assessment of the possible hazards to human health and the environment should an emergency occur; the procedures to be followed by facility personnel during an emergency; the locations of known water supplies or other

materials that may be used for fire fighting purposes; and any additional relevant information. Items A to F of this subpart are reasonable because they will enable the permittee to respond to an emergency situation in an expeditious and responsible manner. It is also reasonable that the local police and fire protection authorities be contacted by the owner or operator prior to the development of the emergency preparedness manual. Since these are the people who will be responding to an emergency at the facility, prior knowledge of the conditions and type of operation at the facility will enable them to estimate potential services needed at the facility if an emergency should occur. This should minimize adverse effects to human health and the environment should an emergency occur.

Subp. 4. Emergency procedures. Subp. 4 requires the permittee to implement the emergency procedures in the event of an emergency. Since the intent of developing emergency procedures is to inform facility personnel of what to do during an emergency, it is reasonable to require that the procedures be implemented during an emergency.

Subp. 5. Emergency notification and reports. Subp. 5 requires that the permittee notify the director in the event of a fire or other emergency. This is reasonable because Agency personnel could assist the permittee in responding to the emergency. This part also requires the permittee to submit a report regarding the emergency to the Agency director. This report is needed to enable the director to evaluate whether the emergency preparedness properly addressed the emergency and whether a change in the emergency preparedness manual is warranted.

Subp. 6. Market information. Subp. 6 requires the permittee to record a list of markets for the tire-derived products, and the form and quantity of the products shipped to market. It also requires the permittee to record the quantity of residuals produced during the processing operation, and how and where those residuals were disposed. This information is required to be included in the annual report of pt. 7035.8240, subp. 5. It is reasonable to require this information to enable the director to determine whether the permittee is properly processing and disposing of waste tires, tire-derived products and residuals from processing, and is in compliance with the 75 percent annual processing requirement of pt. 7035.8270.

11. Minn. Rules Pt. 7035.8290 Waste Tire Storage Facility Standards.

This part sets out the standards that shall be applied to the operation of a permitted waste tire storage facility. Compliance with the specific standards of this part as well as the general standards for all waste tire facilities set out in pt. 7035.8240 is required. This part also regulates all waste tire facilities that do not qualify for regulation as a waste tire transfer or waste tire processing facility.

Subp. 1. Scope. This subpart, which specifies the applicability of the standards contained in this part, is reasonable because it informs persons that storage facilities must be operated in compliance with these standards.

Subp. 2. Emergency preparedness standards. Subp. 2 requires the permittee of a waste tire storage facility to comply with the emergency preparedness standards for waste tire processing facilities set out in pt. 7035.8280, subps. 2 to 5. The reasonableness of pt. 7035.8280, subps. 2 to 5 is discussed under

section 10 and will not be repeated here.

Subp. 3. Storage limitation. Subp. 3 requires that no more than 500,000 passenger tires or the equivalent weight of other tires or tire-derived products are stored at the facility at any one time. The largest known tire dump located in the State of Minnesota during the development of these rules had a little over 500,000 waste tires stored on site. Legislation directs the Agency to develop a waste tire program which addresses the abatement of tire dumps and the permitting of waste tire collectors and processors. The Agency's abatement rules require the cleanup of tire dumps. The permitting rules address the management of waste tires not covered by the abatement rules. The Agency believes that the intent of the permitting program is to prevent the establishment of additional tire dumps, and to encourage the processing and utilization of waste tires. To that end, the Agency believes it is reasonable to place limits on the amount of waste tires stored at a facility. The Agency believes that a limit of 500,000 waste tires addresses the need to discourage the establishment of large stockpiles while not placing a burden on the regulated community. In most cases, the 500,000 waste tire limit will simply prevent new and existing facilities from accumulating large amounts of waste tires. For the few tire dumps which might have more than 500,000 waste tires, the abatement program will be addressing such storage and will require the old waste tires be cleaned up independent of the permitting program.

Also, considering the substantial differences in size between various types of tires, a standard size should be used in the rules to better address storage site requirements. Since passenger tires constitute the vast majority of waste

tires, it is reasonable that passenger tires should be used as the standard, with other size tires being converted to equivalent weights of passenger tires when determining storage limitations.

Subp. 4. Additional information. Subp. 4 requires the permittee to submit the following information in the annual report in addition to the information required by pt. 7035.8240, subp. 5. The permittee must submit information on the procedures used at the facility to minimize or prevent mosquito and rodent infestation in the waste tire stockpiles including the dates when mosquito and rodent control operations were conducted. Part 7035.8240, subp. 3 requires that mosquito and rodent control operations be conducted at the facility. It is reasonable to require such information be included in the annual report to ensure that the facility is in compliance with pt. 7035.8240, subp. 3.

This subpart also requires the permittee to include in the annual report all incidents that required implementing the contingency plan for the waste tire storage facility. It is reasonable to require such information to enable the director to review the contingency plan and determine whether changes in the contingency plan are warranted as provided in subp. 6 of this part.

Subp. 5. Contingency plan. Subp. 5 requires that a contingency plan be prepared if the facility has more than one waste tire stockpile. The contingency plan is needed to minimize the potential hazards from fires, explosions, and other conditions leading to the release of substances or pollutants. This plan provides the operating personnel with information on what to do and who to contact in the event that there is a fire or other emergency at the facility.

The contingency plan must identify the events or incidents which could cause a release, and describe the procedures to be followed in the event of a release. It is reasonable to require such information to ensure that adequate planning has been done so that if an emergency occurs which could cause a release, immediate efforts are taken to minimize contamination of soil and ground water. By increasing facility personnel's awareness of the types of emergencies which might occur and the proper response procedures, the occurrence of such emergencies can be prevented or minimized, and the emergency response time can be minimized.

The plan must also describe how and where run-off contaminated with substances discharged from the burning tires will be confined and collected, and how and where the contaminated run-off will be stored before it is treated, utilized or disposed. Since combustion reactions created during a tire fire generate a substantial amount of runoff containing pyrolytic oil (synthetic crude oil) which may contaminate ground water, it is reasonable that facilities are required to have procedures to address containment and storage of contaminated run-off.

The contingency plan must describe the emergency equipment available on-site and off-site, the response time for obtaining off-site equipment, and the function and capacity of the equipment. Such information is reasonable to ensure proper equipment is available to respond to an emergency and that facility personnel are aware of what equipment is to be used in response to an emergency.

Subp. 6. Contingency plan submittal. This subpart requires that the

contingency plan be submitted with the permit application for review and approval through the permitting process. Since the contingency plan is designed to prevent and minimize releases caused by emergencies, it is essential that procedures adequately address such emergencies. In order to ensure that the proper procedures have been developed, it is reasonable to require that the plan be reviewed and approved. Also, since the specific conditions at the facility are best addressed through the permitting process, it is reasonable to require the plan be part of the permit application. In order to protect human health, natural resources and the environment, it is reasonable to require the plan be updated to address changes at the facility or deficiencies in the plan.

Subp. 7. Contingency plan implementation. Subp. 7 requires that the contingency plan be implemented when needed to prevent, mitigate or clean up a release of substances or pollutants which threaten human health, natural resources or the environment. Since the intent of developing a contingency plan is to provide for a proper response to emergencies, it is reasonable to require that the procedures be implemented when needed.

Subp. 8. Notification of implementation of contingency plan. Subp. 8 requires that the permittee notify the director in the event the contingency plan is implemented. This is reasonable because Agency personnel could assist the permittee in responding to the emergency.

Subp. 9. Removal of contaminated soil. Subp. 9 provides that, if required by the director, any soil contaminated by substances released by an event requiring the implementation of the contingency plan must be removed. Such action shall be taken in accordance with any applicable rules governing the

removal, transportation, and disposal of such material. Requiring removal is reasonable since contaminated soil can result in ground water contamination. The director is in the best position to determine if the soil can be disposed of on-site or must be removed in order to protect human health, natural resources or the environment. Therefore, it is reasonable to have the decision made by the director.

12. Minn. Rules Pt. 7035.8300 Petition Procedures.

This part establishes the procedures for submitting a petition for an exemption from the 75 percent annual processing requirement. It also sets forth the standards and criteria to be applied in determining whether an exemption should be granted.

Subp. 1. Scope. This subpart specifies the applicability of the petition procedures. This is reasonable to inform persons of the opportunity to petition for an exemption to the 75 percent annual processing requirement.

Subp. 2. Submission of the petition. Subp. 2 allows a permittee to petition the director for an exemption from the 75 percent annual processing requirement. A permittee who fails to process and remove 75 percent of the waste tires and tire-derived products received or produced at the facility during a calendar year may petition for an exemption under this part. Minn. Rules pt. 7035.8270, subp. 3 requires a waste tire processor who does not process and remove 75 percent of the waste tires and tire-derived products received or produced over the period of a year to be regulated as a storage facility under pt. 7035.8290 and to obtain a storage facility permit. However, in certain situations, there may be valid reasons why compliance with this

requirement was not achieved. These reasons could include equipment failure, market failure, or a large influx of tires due to waste tire dump abatement activities. Under such circumstances, it may be appropriate to exempt the facility from regulation as a storage facility. Therefore, it is reasonable to have a provision which allows a permittee to petition for an exemption from the processing requirement. It is also required that the petition be submitted as soon as the permittee becomes aware that compliance with the 75 percent annual processing requirement cannot be achieved. Since noncompliance with the rules is grounds for enforcement action, it is reasonable to require the permittee to seek an exemption prior to noncompliance occurring, if at all possible. The Agency believes that in some cases the permittee will know that compliance will not be achieved prior to the end of the year due to such situations as equipment failure or marketing problems. However, in many cases the permittee will not know such noncompliance has occurred until the annual report is prepared. If this is the case, the petition may be submitted with the annual report.

Subp. 3. Information required. Subp. 3 sets forth the information that shall be included in the petition. The rule needs to specify under what conditions a petition will be granted. This is accomplished by specifying the findings the director must make in order to grant the petition. The petition must contain information sufficient to allow the director to make the findings necessary to either grant or deny the petition. Therefore, it is reasonable to require that the petition contain sufficient information to make the necessary findings.

Item A specifies that the 75 percent annual processing requirement must be

met for the year following the year for which the exemption is obtained. This is reasonable because the intent of the exemption is to address the situation where a permittee did not meet the processing requirement due to an unusual or unexpected occurrence not an ongoing problem at the facility. Since petitions are granted for a one-year period and cannot be granted for two consecutive years, the permittee of a facility which cannot meet the processing requirement the next year should be applying for a storage permit to address the situation rather than an exemption.

Item B requires that the exemption not cause the facility to be out of compliance with any other standard applicable to the facility. The exemption applies only to the 75 percent annual processing requirement. The facility is still required to comply with all other applicable standards even if the exemption is granted. Therefore, it is reasonable to require that the granting of the petition will not cause noncompliance with any other applicable requirements.

Item C requires that the exemption not cause the facility to become a hazard to human health, natural resources or the environment. Since the intent of the permitting program is to protect human health, natural resources and the environment, it is reasonable that compliance with that intent be maintained even if an exemption is granted.

The Agency believes that the type of information required to make the needed findings would include the following: the quantity of waste tires and tire-derived products present at the facility and expected to be received or produced at the facility during the calendar year; the quantity of waste tires

and tire-derived products to be processed and removed during the calendar year; the reason compliance with the 75 percent annual processing requirement was not met; and the methods to be used to ensure compliance with all applicable facility standards. Specific information requirements will vary based on the situation at the facility and the need to make the necessary findings.

Subp. 4. Determination by the director. Subp. 4 is needed to inform the permittee of the action the director will take in deciding whether to grant the petition. Once sufficient information has been submitted, the director will either grant or deny the petition within 60 days. Since the petition process will include a site inspection and possible contact with other regulatory agencies, the Agency believes a 60-day review period is needed to process a petition in order to adequately evaluate the information and make determinations regarding the findings. If a petition is processed in less than 60 days, the director can grant or deny the petition sooner than the end of the 60-day time period.

This part also provides that if a petition is granted, the exemption is valid only for one year and that exemptions cannot be granted for two consecutive years. It is reasonable to limit the time period for the exemption because the exemption is intended to address short-term situations at the facility not an on-going problem regarding processing capabilities. For an on-going problem regarding processing capabilities, the permittee should apply for a storage facility permit rather than an exemption.

E. Waste Tire Facility Financial Assurance Requirements, Minn. Rules Pts. 7035.8400 to 7035.8590.

Pts. 7035.8400 to 7035.8590 include financial assurance requirements for waste tire facilities. The objective in requiring financial assurance is to ensure that funds will be available to remove all stockpiles of waste tires and tire-derived products at closure. The Agency has attempted to assure that proper closure occurs without placing an undue economic burden on the owner or operator.

The current management system for waste tires does not guarantee or encourage removal and proper management of the waste tires. Under the current system, tire collectors have created tire dumps. This resulted in the legislation that directed the Agency to develop and administer a tire dump abatement program to clean up existing tire dumps. The Agency believes it is reasonable for the proposed rules to contain financial assurance requirements to prevent creating additional tire dumps which would need State funds for their cleanup. Facility closure cost is a normal business cost. It is reasonable to require facility owners and operators to establish funds to meet this cost and to ensure closure is completed in accordance with the applicable closure standards.

The proposed rules contain a schedule to phase in the financial assurance requirements. Waste tire facility owners and operators must meet the Phase I requirement by July 1, 1988. In Phase I, owners or operators of facilities will be required to obtain financial assurance for waste tires received during the period from the effective date of the rules until July 1, 1990. The Phase II

requirement must be met by July 1, 1990. In Phase II, financial assurance is required for all waste tires received at the facility since November 21, 1985 and that will be received at the facility at any time in the future. It is reasonable to phase in the financial assurance requirements to allow owners and operators time to comply. This is necessary since most tire collectors and processors have not accumulated sufficient funds to pay for closure. In addition, there has been a lack of sufficient waste tire processing capacity in Minnesota. This has contributed to the accumulation of large stockpiles and may make it difficult for facility owners or operators to reduce their waste tire stockpiles in the immediate future. The Agency believes owners and operators should be encouraged to process rather than stockpile waste tires. By phasing the financial assurance provisions, there is time for owners or operators to process waste tires and not have to provide financial assurance. The Agency believes that prior to July 1990, sufficient processing capacity will be available in the State to allow waste tire stockpiles to be processed before compliance with the financial assurance requirements is required.

Financial assurance is not required for waste tires accepted at a facility prior to November 21, 1985 (old waste tires). Old waste tires accepted at a facility prior to November 21, 1985 are regulated under the Agency's tire dump abatement program. The Agency considered recommending that the amount of financial assurance required for facilities be the difference between closure cost and the reimbursement amount available under the waste tire abatement program. This approach had to be rejected because the Agency received a legal opinion that reimbursement is only available at tire dumps. Minn. Stat.

§ 115A.90, subd. 9 defines tire dump to mean "an establishment, site, or place of business without a required tire collector or tire processor permit. . . ." Since reimbursement is only available at tire dumps, once a permit is issued, a site looses its tire dump status. To avoid having a tire collector loose the reimbursement option, the Agency is no longer considering the requirement that financial assurance be required for old waste tires. The Agency believes it is reasonable that these waste tires remain in the tire dump abatement program and that only waste tires accepted after the effective date of the abatement rules be subject to the waste tire permitting program.

The Agency also investigated the possibility of requiring financial assurance for waste tire transporters in response to comments received on the April 15, 1986 draft waste tire permit rules. The commenters believed that if a transporter is required to demonstrate financial assurance, the chance of tires being indiscriminately dumped is small. The commenters also indicated that if tire collectors and processors are required to provide financial assurance, it seems justified that persons hauling tires should be responsible for their role in waste tire management.

The Agency believes that financial assurance is to ensure site cleanup, not enforce litter laws. To draw on a financial mechanism, the transporter would have to be caught dumping tires. This would be very difficult to do. Moreover, if a transporter is caught dumping tires, the transporter would be subject to an Agency enforcement action. Another problem is the difficulty in determining the dollar amount of the mechanism. Since the amount to clean up each tire dump is different, and the transporter may bring tires to several dumps, it would be

impossible to determine the amount of the financial assurance mechanism. Therefore, the dollar amount of financial assurance required would be arbitrarily set and would only serve to exclude certain transporters from the system.

For these reasons, the Agency has chosen not to require financial assurance of waste tire transporters. The Agency believes that it is reasonable at this time to not require financial assurance for waste tire transporters.

The financial assurance mechanisms allowed by these rules are the same as those allowed by the Agency's hazardous waste rules which are currently in effect. The provisions of these rules parallel the provisions of the hazardous waste rules and the U.S. Environmental Protection Agency's hazardous waste regulations. While the hazardous waste financial assurance rules provide for proper management at hazardous waste facilities, the proposed financial assurance rules provide for proper management at waste tire facilities. The Agency's experience with the hazardous waste rules shows that these mechanisms and provisions work as a means of providing financial assurance for closure. Also, the Agency is developing solid waste rules which contain the same type of financial assurance requirements. The Agency believes it is reasonable to require financial assurance for closure by allowing the use of specific mechanisms which are required under other Agency programs. Such an approach provides for consistency between programs while allowing for differences in the amount of financial assurance required.

The following discussion addresses the reasonableness of the proposed financial assurance rules on a part by part basis.

1. Minn. Rules Pt. 7035.8400 Scope.

This part informs affected persons, the public, and other governmental units of the application of the financial assurance requirements, Minn. Rules pts. 7035.8400 to 7035.8590. It is reasonable to inform affected parties of the scope of the rules.

This part also provides that the financial assurance requirements do not apply to waste tire facility owners and operators who are exempt from the requirement to obtain a permit or who are permitted by rule. Minn. Stat. § 115A.902, subd. 1 states that, ". . . a tire collector or tire processor with more than 500 waste tires shall obtain a permit from the Agency unless exempted in subdivision 2." Subd. 2 lists five exemptions. Since statutory language does not provide the Agency with the authority to require permits for exempted facilities, it is reasonable to not require financial assurance because the financial assurance requirements are part of the permit process. Since facilities which are eligible for permit by rule status are limited in the amount and duration of storage of waste tires and tire-derived products, it is reasonable to exempt the facility owner or operator from the financial assurance requirements.

2. Minn. Rules Pt. 7035.8410 Definitions.

This part defines two phrases that are used in the waste tire facility financial assurance rules. The definitions are needed so that those subject to the rules will understand the meaning of the terms used.

Subp. 1. Closure plan. This definition refers the reader to other parts of the rules, Minn. Rules pts. 7035.8250 and 7035.8260. This definition is

reasonable because it makes it clear to the reader where the relevant information exists in the rules.

Subp. 2. Current closure cost estimate. This definition provides the reader a reference, Minn. Rules pt. 7035.8430, which identifies a specific estimate developed in compliance with facility closure requirements. The definition also makes it clear that, if the owner or operator has made more than one estimate, this phrase refers to the latest of these estimates. This definition is reasonable because it makes it clear to the reader where the relevant information exists in the rules.

3. Minn. Rules Pt. 7035.8420 Financial Assurance Required.

This part requires waste tire facility owners or operators to obtain financial assurance for closure of their facilities as part of the permitting process. The reasonableness for requiring financial assurance of waste tire facility owners or operators was discussed previously.

This part also refers the reader to pt. 7035.8450 which sets out the time periods for establishing financial assurance; pts. 7035.8460, 7035.8470, 7035.8480, 7035.8490, and 7035.8500 which describe in detail the financial assurance mechanisms allowed to be used to comply with the rules; and pt. 7035.8430 which establishes the amount of financial assurance required. The reasonableness of the time schedule, the financial assurance mechanisms, and the amount of financial assurance required are discussed in detail under their respective parts. These references are provided in this part to make it clear to owners and operators that the steps and conditions they must follow and operate under are limited and fully contained within the rules. The rules thus

give owners and operators a reasonable guide which will help them understand how to operate under the new law.

4. Minn. Rules Pt. 7035.8430 Cost Estimate for Closure.

As was previously discussed, the financial assurance requirements are divided into two phases. The reasonableness of using this approach in the rules was also discussed. This part requires owners or operators of waste tire facilities to make a written estimate of the cost of closing their facility under Phase I and Phase II (subp. 2 and 3, respectively). This part also describes the criteria for calculating the cost estimate for closure for each phase.

The rules require waste tire facility owners or operators to demonstrate that they can provide for facility closure. That is, they must prove they have the financial resources and the means to meet the closure needs when they occur. The owner or operator needs a method to measure the adequacy of the proof. Cost estimates for facility closure will provide the needed measure. These cost estimates will be compared with the owner's or operator's demonstrated resources to determine whether the owner or operator has complied with the rules.

The methods used to estimate costs must be the same for all sites. If different methods are used at different sites, then cost estimates will vary between sites. This introduces variations in total costs and in waste tire facility disposal rates. The final result would be to afford less protection to some facility users and to induce unnecessary changes in waste tire flows.

The problem with using different cost estimating methodologies makes it reasonable to require all waste tire facility owners or operators to use the

same methods when they make their cost estimates. This part of the rules provides owners and operators with the guidance they need to estimate costs in a consistent manner and to demonstrate to the Agency that they have complied with the rules under both Phase I and Phase II of the financial assurance requirements.

This part also requires that basic cost estimates be stated in current dollar terms. This means that estimators should not adjust their estimates for inflation. Pt. 7035.8440 provides estimators with guidelines for making inflation adjustments.

Requiring that cost estimates be stated in current dollar terms does not allow cost estimates to be stated in present value terms. Present value estimates consider the time value of money. The value of money is sensitive to time because the value of a future dollar is less than the value of a present dollar. This proposition holds because the future is uncertain. Risk erodes the value of the future dollar. No one can be certain that a given financial event will occur. This uncertainty is risk, although measurement criteria allow for distinction between the two terms. Interest compensates investors for assuming risk. The investor foregoes the use of current resources for the promise of repayment, plus some extra return from interest earnings. This means that the investor promised a ten percent return on an invested dollar must receive $1.10, if the term of the investment is one year. Therefore, the present value of $1.10 invested for one year at ten percent interest is $1.00. Likewise, the present value of a dollar received under the same conditions is $.0.91. Present value analysis is a commonly used tool of financial planners.

Planners need to be able to set rates and charges so that investments earn maximum returns, consistent with other policy goals.

Although present value analysis proves useful in financial planning, it is unnecessary in these rules. The rules are set up so that all financial values are in the current period. Adjustments for inflation and interest earnings are made only after they are realized. This means that adjusted cost estimates will lag behind actual values by about a year. Contingency factors built into the cost estimating guidelines can make up for this lag.

The individual waste tire facility owner or operator may want to develop a present value analysis to assist with financial planning. The rules will not require this analysis. Since there is no need to adjust initial cost estimates for inflation and interest earnings, it is reasonable to define the initial estimates in current dollars terms.

This part also requires that waste tire facility owners or operators submit Phase I and Phase II closure cost estimates, as prepared under this part, to the Agency director with the permit application or upon the director's request. Requiring closure cost estimates to be submitted with the permit application is reasonable because the closure plan is also submitted at this time (Minn. Rules pt. 7035.8250). Therefore, the submittal of closure cost estimates will enable the Agency to determine the adequacy of the closure plan.

The rules require waste tire facility owners or operators to provide Phase I and Phase II financial assurance according to the time schedules established under pt. 7035.8450. The rules provide that all facility owners or operators must provide Phase I and Phase II financial assurance according to the

time schedules regardless of permit status. The reasonableness of this approach is discussed earlier.

In summary, this approach provides an equally competitive environment for all facility owners and operators. Under this approach, Phase I and Phase II financial assurance requirements may be implemented before owners or operators are required to submit their permit applications. This circumstance may develop because staff limitations warrant that the Agency consider permit applications on a call-in basis where facility owners or operators are not required to submit their permit applications until requested to do so by the Agency director. Once the rules become effective, owners or operators of existing waste tire facilities are required to submit to the director a written notification. Facility owners or operators submitting this notification may be given provisional status until a final determination is made on the permit application or the facility is closed in accordance with applicable requirements. It is, therefore, reasonable to require owners or operators of those facilities that have not submitted a permit application to submit closure cost estimates upon request by the director. This allows the director to evaluate the adequacy of the amount of financial assurance at the time that Phase I and Phase II requirements are implemented.

5. Minn. Rules Pt. 7035.8440 Adjustments to Financial Assurance Level.

This part provides for adjustments to the amount of financial assurance required of a facility owner or operator due to inflation and other changes in closure costs.

Subp. 1. Yearly adjustment. This subpart requires that after July 1,

1990, facility owners or operators must annually adjust the cost estimates to consider changes induced by inflation. The financial assurance mechanism used by facility owners or operators must then be adjusted for changes to cost estimates caused by inflation. This is reasonable because inflation will erode the value of the fund established to cover closure costs. If no adjustment for change is made, the financial assurance mechanism for closure costs will be inadequate.

By July 1, 1990, waste tire facility owners or operators must establish financial assurance for the maximum number of waste tires that will accumulate during the operating life of the facility. The amount of financial assurance established by July 1, 1990 is based on current dollar estimates. However, these current dollar estimates will erode over time due to inflation. July 1, 1990 is therefore the point in time where consideration for inflation begins. It is therefore reasonable to require annual inflation adjustments following the July 1, 1990 deadline because it is the most logical point from which to measure inflation.

This subpart also requires the estimator to base the annual inflation adjustment on current data available through the United States Department of Commerce. The department's publication, "Survey of Current Business," provides a statistic called the "implicit price deflator for gross national product." This is a measure of the inflation that has occurred throughout the national economy over the reported period. This implicit price deflator is an index number.

Index numbers are relative value measures. They compare, usually over

time, measured values in a base case with measured values in other observable cases. The base year for the statistic used is 1982. For example, a report index value of 111.7 in 1985 indicates that prices rose by 11.7 percent during the period 1982-1985. The index numbers can be used to determine inflation for any reported periods. The reported values for 1980 and 1984 are 86.1 and 108.5. The inflation that occurred during that period is [(108.5/86.1) - 1] x 100 = 26.0 percent. The methods used to calculate annual inflation must be the same for all facilities. If different methods are used at different facilities, then annual inflation will vary between facilities. This introduces variations in total costs and in waste tire facility disposal rates. The final result would be to afford less protection to some facility users and to induce unnecessary changes in waste tire flows.

The problem with using different inflation methodologies makes it reasonable to require all waste tire facility owners or operators to use the same methods when they make their inflation adjustments. Therefore, requiring all facility owners or operators to use the Department of Commerce inflation index for calculating annual inflation is reasonable because it provides for inflation adjustments to be calculated on a consistent basis for all facilities. This provides for an equitable business environment for all facilities. The Department of Commerce constructs this index from surveys of goods and services purchased throughout the economy. It is reasonable to require the use of the Department of Commerce inflation index because it is based on current available information needed to calculate the inflation factor, and this index is widely used and accepted by the business sector.

The proposed rules require an adjustment of the closure costs on an annual basis for inflationary changes reported up to the year in which the facility closes. The estimator thus sets the expected inflation rate equal to the rate current in the year of closure. This procedure does not assume that future rates will actually equal current rates as inflation rates constantly change. The procedure instead assumes that the earnings rate for invested funds will exceed future inflation. This assumption is well-accepted in economic theory. The amount by which earnings exceed inflation is referred to as the real rate of return. Analytical tests of the real rate hypothesis have confirmed that a real rate exists. The tests tend to find the real rate in the two to three percent range. See Exhibit 18. Statistical tests of documented historical evidence support the assumption that earnings will exceed inflation. Therefore, it is reasonable to incorporate this assumption into the cost estimating procedures required under the proposed rules.

This subpart also requires the Agency director, upon request, to provide waste tire facility owners and operators the inflation factor needed to adjust their closure cost estimates. This is reasonable as it saves facility owners and operators time and money.

Subp. 2. Other revisions. This subpart requires facility owners or operators to make changes in their closure cost estimates and, subsequently, their financial assurance mechanism, if changing facility conditions lead to closure cost changes. This provision considers the possibility that, at some time during a facility's operating life, circumstances could change significantly. For example, local government policies could introduce

substantial changes through planning efforts that either decrease or increase the importance of a facility in the county's solid waste management system. This may occur because of the possibilities that accompany the development of a dynamic system. Since change is very likely to occur, it is reasonable to require that facility closure cost estimates and financial assurance mechanisms consider change.

This subpart also requires facility owners or operators, who are making revisions to their financial assurance mechanism, to follow the procedures in pts. 7035.8470, 7035.8480, 7035.8490, or 7035.8500. These four parts describe in detail the means, the financial arrangements and contracts for establishing an adequate financial assurance mechanism. This makes it clear to facility owners and operators that the steps they must follow in establishing financial assurance are limited and contained within the rules. The rules thus give facility owners and operators a reasonable guide for making revisions to their financial assurance mechanism when closure costs change at facilities.

Subp. 3. Record keeping. This subpart requires facility owners or operators to maintain cost estimate records. Owners or operators must maintain records of the latest adjusted closure cost estimate. This requirement forces a waste tire facility owner or operator to be responsible for the cost estimates. The cost estimates will be valuable planning tools for facility owners and operators. The estimates will also be useful to the director when examining on-site conditions during the facility's operating life. Conversely, if the estimates are not available, facility operations, planning and regulatory inspections will be more difficult.

6. Minn. Rules Pt. 7035.8450 Schedule for Establishing Financial Assurance.

This part describes the time schedule for a facility owner or operator to establish financial assurance for the facility. It is reasonable to provide a time schedule in the rules so that facility owners and operators know when they must comply with the rules and, therefore, plan appropriately.

Subp. 1. Scope. This subpart requires facility owners or operators to establish the required financial assurance according to the time schedules in subps. 2 and 3 of this part. The reasonableness of requiring financial assurance is discussed earlier. The reasonableness of the time schedules is discussed below in the subps. 2 and 3 discussion. This subpart is reasonable because it provides facility owners and operators with a better understanding of how to comply with the rules.

Subp. 2. Phase I. This subpart requires the facility owner or operator to establish financial assurance by July 1, 1988 for waste tires that have accumulated at the facility since the effective date of these rules, and for the waste tires that the owner or operator estimates will be accumulated at the facility between July 1, 1988 and July 1, 1990. The reasonableness of requiring financial assurance in a two-phase approach was discussed earlier. In summary, the two-phased approach protects the interests of facility users, facility neighbors, and the Agency by providing financial assurance to ensure that the facility is properly cleaned up as required. At the same time, this approach recognizes that waste tire collectors and processors were previously working in an unregulated environment which did not provide standards for properly

conducting their activities.

It is reasonable to establish July 1, 1988 as the date for submitting Phase I financial assurance because it allows facility owners and operators a reasonable amount of time in which to plan and carry out this requirement. Limiting the amount of financial assurance under Phase I to those wastes tires accumulated at the facility since the effective date of the rules to two years following July 1, 1988 is reasonable for the following reasons. This limitation does not include waste tires accumulated at the facility before the effective date of the rules. Financial assurance for these waste tires will be required under Phase II on July 1, 1990. This exemption under Phase I financial assurance provides the facility owner or operator with an additional two years in which to provide financial assurance for these waste tires. Since facility owners and operators were operating in an unregulated environment and were not afforded any guidelines for proper waste tire management prior to the effective date of the rules, this exemption is reasonable because it allows facility owners and operators an extra two years to adjust to the new rules and guidelines. It is reasonable to exclude waste tires accumulated at the facility after July 1, 1990 from Phase I financial assurance because these waste tires will be covered under Phase II financial assurance which is to be established by July 1, 1990. This subpart also requires the facility owner or operator to submit to the director evidence that Phase I financial assurance has been obtained. This is reasonable because it enables the director to determine if the requirements of the rules have been met.

Subp. 3. Phase II. This subpart requires the facility owner or operator

to establish financial assurance by July 1, 1990 for the maximum number of new waste tires that will accumulate at the facility at any one time during the facility's operating life. This subpart is reasonable because the amount of financial assurance required will provide for proper closure of the facility, when required. The interests of facility users, facility neighbors, and the Agency are therefore protected. Also, the requirement provides facility owners or operators with flexibility in determining the amount of financial assurance required by allowing them to decide how many tires they will accumulate at the facility at any one time. This subpart also requires the facility owner or operator to submit to the director evidence that Phase II financial assurance has been obtained. This is reasonable because it enables the director to determine if the requirements of the rules have been met.

7. Minn. Rules Pt. 7035.8460 County-Held Financial Assurance Mechanism.

Subp. 1. Scope. This subpart establishes that a facility owner or operator may use a county-held financial assurance mechanism to be in compliance with the rules. This subpart also establishes the criteria for a county-held financial assurance mechanism to be acceptable.

Counties have the authority to require financial assurance of facility owners or operators. If the Agency did not allow county-held financial assurance mechanisms to be used to comply with the rules, facility owners or operators would need to establish two financial assurance mechanisms, one for the county and one for the Agency. This would be very burdensome and costly to facility owners and operators. Therefore, this subpart reasonably protects the interests of facility users and the Agency by establishing the criteria

(compliance with the rules) for accepting a county-held financial assurance mechanism, while limiting the facility owner or operator's burden and cost of providing financial assurance.

Subp. 2. Action by the county. This subpart establishes the circumstances (items A, B and C) when a county holding a financial assurance mechanism must gain access to the mechanism's funds. Providing this criteria in the rules is reasonable because it allows a county holding a financial assurance mechanism to understand the specific circumstances by which they are required to gain access to the closure funds. This provides for a clear understanding and consistent action under the rules.

Item A. This item requires that a county must gain access to a county-held financial assurance mechanism's funds if the facility owner or operator fails to begin or complete closure as required. By not beginning or completing closure as required, the facility owner or operator is in violation of the rules and the Agency and facility users do not have assurance that the facility will be cleaned up appropriately. Therefore, this item is reasonable to provide for closure of the facility through obtaining access to closure funds where the facility owner or operator has already failed to close in compliance with the applicable rules.

Item B. Under the circumstance provided by this item, the county must gain access to a county-held financial assurance mechanism when the facility owner or operator is in violation of the rules by not establishing approved alternate financial assurance within the time schedules established. The Agency has no assurance that the facility owner or operator will establish acceptable

alternate financial assurance before the existing financial assurance mechanism ceases to cover closure costs. Therefore, this item is reasonable to ensure that access to the financial assurance mechanism is obtained prior to expiration of the existing financial assurance mechanism so that closure may be completed.

Item C. This item provides that a county must gain access to a county-held financial assurance mechanism's funds if the owner or operator fails to fund the standby trust fund. Pt. 7035.8480 requires the facility owner or operator to fund the standby trust fund according to the time schedules established in these rules. Failure to do so would constitute a violation of the rules. Therefore, this item is reasonable to protect the interests of the Agency, the county, and facility users by providing access to the funds for closure of the facility where the facility owner or operator has already failed to comply with the rules.

Subp. 3. Action by the director. This subpart establishes that the Agency director will gain access to a county-held financial assurance mechanism when the county either fails to obtain access within 30 days of the facility owner or operator's failure to perform as specified in subp. 2 or fails to use the funds for proper closure of the facility. Allowing the county 30 days to obtain access to the funds is a reasonable amount of time for the county to act considering the circumstances involved. The Agency will then provide for closure of the facility, when the facility owner or operator and the county have failed to comply with the rules.

The funds in a financial assurance mechanism are there to provide proper

closure of the facility, if required. If the county obtains access to a county-held financial assurance mechanism and uses the fund for some purpose other than the facility closure or for improper closure, then there is no assurance that the proper amount of financial assurance remains to be used to close the facility which is the goal of these rules. Therefore, it is reasonable to allow the director access to the funds once the county has misused them to provide for proper closure.

Subp. 4. Notice. This subpart requires the Agency director to inform the county, the facility owner or operator, and all affected financial institutions of action taken under subp. 3 of this part. This provision is reasonable because everyone concerned will be informed of the current situation at a facility.

8. Minn. Rules Pt. 7035.8470 Closure Trust Fund.

Facility owners or operators may comply with the rules by using a trust fund. A trust agreement is the contract which initiates the trust fund and governs administration of the fund. The trust agreement involves three or more persons. The person who finances the trust is the grantor. The fund's administrator is the trustee. The trustee holds legal title to the property in the trust. The trustee also holds and administers the trust for the benefit of one or more persons, referred to as the beneficiary or beneficiaries. The trustee charges a fee for services.

A general description of how this relationship will work for waste tire facilities may prove helpful, before detailed consideration of the trust agreement. If a facility owner or operator chooses to comply with the rules by

using a trust fund, the owner or operator must choose a trustee who is empowered by State law to administer trusts. The owner or operator will make regular payments to the trust. The amount of payment is determined by the cost estimates developed under pts. 7035.8430 and 7035.8440. These payments will be set at levels that make the trust, at the time of facility closure, equal to the closure costs. Disbursements from the fund require approval from the Agency director. The director will give approval after reviewing evidence that qualifying expenses have been paid. Qualifying expenses are those associated with elements of the closure plans developed for the facility. The rules provide for the owner or operator to be released from financial assurance responsibilities once the goals of the plan have been met. Any balance remaining in the trust fund after the facility owner or operator has been released from financial assurance responsibilities will be returned to the grantor.

Subp. 1. Scope. This subpart references parts of the rules that relate to trust funds, subps. 2 through 13 of this part. This informs waste tire facility owners and operators of the steps they must follow to establish a trust fund for financial assurance. The steps are limited and are contained in the rules. The rule gives facility owners and operators a guide for establishing a trust fund for financial assurance. This subpart also establishes that provisions in this part which refer to the director also apply to the county for trust funds held by a county. Since the rules allow for a county-held financial assurance mechanism (pt. 7035.8460), this provision is reasonable so that the county may be in compliance with the rules when holding a trust fund financial

assurance mechanism for a facility.

Subp. 2. Establishment of the trust fund. This subpart references the parts of the rules that relate to trust funds, subps. 2 through 13 of this part. The facility owner or operator is required to send the Agency director an originally-signed duplicate of the trust agreement. This requirement is reasonable because the Agency must know when and under what conditions the owner or operator has complied with the rule. Also, it is reasonable to require an originally-signed duplicate of the trust agreement be submitted to ensure that the Agency is able to gain access to the funds if required.

This subpart also limits the facility owner or operator's choice of trustees. Not all financial institutions in the State have the authority to administer trust agreements. Financial institutions that want to do trust business must comply with reserve and reporting requirements. This limitation helps facility owners and operators exercise care when choosing a trustee. The limitation is reasonable to keep facility owners and operators from wasting time setting up trust agreements with financial companies that legally cannot administer trusts.

This subpart also requires that a copy of the trust agreement accompany the facility permit application or be submitted to the Agency director in accordance with the time schedule for establishing financial assurance (pt. 7035.8450). This means that a facility owner or operator who wants to obtain a waste tire facility permit must provide evidence of compliance with the applicable financial assurance requirements. This requirement provides the owner and operator of a waste tire facility with reasonable notice that compliance must be

achieved before the permit can be issued.

Subp. 3. Wording of the trust agreement. This subpart refers the facility owner and operator to two other parts of the rules. These parts contain models of a trust agreement and a certification document. The rules require that the facility owner or operator's financial instruments duplicate the models provided in pts. 7035.8550 and 7035.8560. This requirement is reasonable to limit the type of trust arrangements that facility owners and operators can establish. If all owners or operators use the same form, then waste tire facility planning and financial management will have the same basis at these facilities. This is another provision that helps avoid potential disruptions. It also helps to ensure equitable treatment of all facilities.

A certification of acknowledgement is required to ensure that the specifics of the execution of the agreement have been documented. This is a reasonable requirement for several reasons. First, it enables the Agency to determine if the time schedules and related requirements in the rules have been complied with. Second, there will be fewer disputes over the adequacy of the financial instrument. Third, it is reasonable for the Agency to request a copy of the certificate be submitted with the financial agreement so that it may be kept on file for reference.

This subpart also requires the trust agreement to be updated within 60 days after a change in the current closure cost estimate established in the trust agreement. This provision is reasonable because an updated trust fund is needed to reflect changes in closure costs. This will provide for the proper amount of financial assurance for a facility.

Subp. 4. Pay-in period. This subpart requires facility owners or operators to make uniform annual payments into the trust fund. Periodic or annual payments will make fund development orderly and systematic. Payment schedules that vary could cause disruptions in the waste tire management system. It is reasonable to require steady and consistent fund development.

This subpart also establishes that, for a trust fund, the pay-in period after July 1, 1990 shall be five years or the remaining operating life of the facility, whichever is shorter. As discussed earlier, the goal of the financial assurance rules is to ensure that waste tire facility owners or operators have adequate funds available to clean up the waste tires located at their facility when the facility ceases operation. This is important whether operations ceased because the permit has expired and is not renewed or because the facility owner or operator decides to close the facility. Therefore, since an Agency waste tire facility permit is issued for a period of five years, this provision is reasonable to meet the objective of providing adequate financial assurance should the facility cease operations. Also, July 1, 1990 is when financial assurance for the maximum number of waste tires to be accumulated at the facility is required. Therefore, it is reasonable to establish the described pay-in period after July 1, 1990 in order for facility owners or operators to meet the objective of providing adequate financial assurance.

Subp. 5. Payments. This subpart sets forth the payment schedule for new and existing waste tire facility owners or operators. For new facilities, the owner or operator must make the first payment into the trust fund before beginning to receive waste tires at the facility. The rules require new

facility owners or operators to "prepay" part of the financial assurance responsibility. This is similar to other customary business arrangements. Insurance and rent, for example, are ordinarily prepaid. The requirement is reasonable because it puts financial assurance expenses on the same basis as other normal business costs.

The rules require the facility owner or operator to send the Agency director a trustee's receipt for the first payment made into the trust fund. This gives the director a means to determine whether and when the facility owner or operator has complied with the rules. It is a reasonable requirement because the director must have a means to administer the rules and the owner or operator has that information.

For existing facilities, the owner or operator must make the first payment into the trust fund within 30 days after submitting the originally-signed duplicate of the trust agreement to the Agency director. This provision provides a reasonable amount of time for facility owners or operators to submit their first payment. Requiring the submittal of an originally-signed duplicate of the trust agreement to the Agency director is reasonable because it gives the Agency director a means to determine whether and when the facility owner or operator complies with the rules.

This subpart also informs the facility owner or operator how to calculate the amount of the trust fund payment. The first payment must equal the sum of the cost estimate divided by the number of periods available for payment. There is no need to consider inflation and earnings for the first payment because they are handled in the calculation methods for subsequent payments. Again, the

requirement is reasonable because it puts all facility owners or operators on the same accounting basis, thus avoiding disruptive differences in rates and billing systems among facilities.

The rules require that subsequent payments be made no later than 30 days after each anniversary date following the first payment. That is, if the first payment is made on March 1, all following payments must be made by March 31 of each subsequent year. This requirement is designed to make sure that the process of developing trust funds proceeds in an orderly manner.

The rules provide a formula to assist facility owners and operators in calculating the size of trust fund payments after the first payment. The basic estimating formula is:

$$\text{Next Payment} = \frac{CE - CV}{Y}$$

in which: CE = the sum of the current closure cost estimate,

CV = the current value of the trust fund, and

Y = the number of years remaining in the pay-in period

This formula is straightforward. It calculates uniform payments that, over a fixed period, will yield a target sum. The adjustments to cost estimates (pt. 7035.8440) will build inflationary and cost changes into the CE variable. Annual reports from the trustee (pt. 7035.8550, section 10) will build fund earnings into the CV variable. This formula is reasonable because it is straightforward and will enable facility owners and operators to calculate their payments into the trust funds on an equitable basis. This formula is also

provided in the Agency's hazardous waste rules for hazardous waste facilities to calculate payments into their trust funds (Minn. Rules pt. 7045.0504, subd. 2).

Subp. 6. Establishment of trust fund as an alternate financial assurance mechanism. This subpart relates to cases where facility owners or operators begin to comply with the rules by using an alternative financial instrument and switch to using a trust fund. This subpart requires facility owners or operators, who switch to a trust fund, to make their first deposit equal to the amount that would have been in trust if they had chosen a trust fund from the beginning.

For example, assume a facility owner or operator first submits a surety bond in compliance with the rules and maintains the bond for three years. If the owner or operator then establishes a trust fund, the calculation of the first payment made into the trust fund will vary from the provisions written in subp. 5. The owner or operator will follow the directions provided in subp. 5, but the pay-in period assumptions change. The owner or operator must make the pay-in period from the initial point of compliance, i.e., the date the surety bond was first submitted. Given a pay-in amount determined from the initial compliance date, the owner or operator then must multiply that amount by the number of periods in which trust fund payments were not made. This makes the payment equal to the amount that would have been in the fund had the owner or operator initially chosen to develop the trust fund.

This provision further allows facility owners and operators flexibility in financial planning, while protecting the interests of facility users. This subpart allows facility owners and operators to use the set aside funds in a

"productive" manner, with the understanding that they must be prudent as the funds will eventually be used to finance closure costs.

For example, a facility owner or operator can execute a surety agreement for the entire period of the facility's operating life. They can, at the same time, set aside closure funds that remain under their control. Once closure occurs, the facility owners and operators can then execute a trust agreement and place in trust all the funds reserved for closure.

This provision reasonably protects the interests of all parties. The facility owners and operators retain use of set aside funds. Facility users get the protection offered by the surety, during the operating life of the facility. When the facility has closed, a trustee provides the needed security. The same advantage exists if facility owners or operators choose to purchase a letter of credit. The arrangement is formalized in pt. 7035.8480. This provision is needed to provide facility owners and operators with as much flexibility as possible.

Subp. 7. Additional payments. This subpart covers situations where cost estimates change. Provisions in this subpart give waste tire facility users and the Agency a reasonable assurance that change will be taken into account when developing trust funds.

If a change occurs that increases costs, the facility owner or operator has 60 days to make appropriate adjustments. The owner or operator can either adjust the trust fund amount or rely on other financial instruments to cover the difference. This requirement gives facility users and the Agency a reasonable assurance that the trust fund will be developed to reflect current conditions.

Subp. 8. Request for release of excess funds. This subpart gives facility owners and operators the same assurances provided to facility users and the Agency under subp. 7. This provision makes it possible for a facility owner or operator to get a refund if conditions change and the value of the trust fund exceeds cost estimates.

The facility owner or operator must send the Agency director a written request for release of the excess funds. The owner or operator must submit evidence of the difference between the cost estimates and the fund balance. This provision is reasonable because facility owners and operators should not have to set aside more resources than are needed.

Subp. 9. Substitution of alternate financial assurance mechanisms. This subpart allows the facility owner or operator to substitute another financial instrument for the trust fund. For this to occur, the owner or operator must establish the alternate mechanism and then send the Agency director a written request to release funds held in trust. This provision is reasonable because once the facility owner or operator has executed an acceptable alternate instrument, there is no further need for the trust fund.

Subp. 10. Release of funds. This subpart sets limits on the time the Agency director has to respond to requests submitted under subps. 8 and 9. This is reasonable because facility owners and operators should not have to wait indefinitely for excess funds to be returned. This subpart requires the Agency director to instruct the trustee to release the requested funds within 60 days after the Agency director receives the request. The release is limited to the amount in excess of current closure cost estimates.

Subp. 11. Notification. This subpart relates to missing or late trust fund payments. If a facility owner or operator misses a scheduled trust fund payment, the trustee has to notify both the facility owner or operator and the Agency director within ten days. This requirement is customary and reasonable. Representatives of trust companies have indicated that they can easily manage this reporting requirement.

The facility owner or operator has 60 days after the director receives notice of nonpayment to make up the payment. This can be done by making the required payment (item A) or by providing an alternate financial assurance mechanism (item B). This allows the facility owner or operator a reasonable time to correct the error.

This subpart also provides that the facility owner or operator may not accept additional waste tires and must begin facility closure if the required payment or alternate financial assurance mechanism is not provided within the 60 days of its due date (item C). This requirement is an incentive for the facility owner or operator to make up the missing payment. This provision is reasonable because orderly development of the trust fund is important to assure that the money to finance closure is available. The requirement presents the facility owner and operator with a disincentive. The disincentive is that the owner and operator cannot continue to do business. The alternative to this requirement is allowing the facility to stay open. This would simply worsen the problem caused by missing trust fund payments. If the facility remains open it would continue to accumulate waste tires thus adding to closure costs at a time when the facility owner or operator is not setting aside funds to cover those

costs. It is reasonable to close a facility when a facility owner or operator refuses to continue to develop the trust fund.

Subp. 12. Reimbursement. This subpart describes trust fund use. This subpart specifies that trust money can only be used to reimburse incurred expenses. This means that the money cannot be released in advance of expenses.

This provision is reasonable for two reasons. First, contractors are not ordinarily paid in advance. Instead, they receive regular payments for orderly progress on a specified work schedule or they are paid as they complete specified major features of the project. Second, the contractors do not have to be paid directly from the trust fund. The preferred arrangement is to have the facility owner or operator pay the contractor. The trust would then reimburse the facility owner or operator. Facility owners or operators could incur financing expenses under this arrangement, but they should plan for this cost.

This may increase cost estimates by an amount that represents the short-term (60-day) opportunity cost incurred while the contractor or the owner or operator waits for reimbursement. This amount will not likely grow to any large fraction of total project costs. The savings in reduced risk justify the nominal cost increases. Risk decreases because the potential to withhold funds is a powerful incentive for facility owners and operators and contractors to do a good job. This disincentive should also encourage contractors to avoid "front-end loading." This happens when the contractor schedules the largest costs during the early part of the project period. This lets the contractor recoup the greatest portion of cost during the early phase of a project. This dilutes performance incentives during later phases.

Advance payment would also add substantial risk of fund shortfalls if the work is done so poorly that it incurs added cost or has to be done over. This causes the portion of the trust fund advanced to be lost. The trust would then be underfunded. Reserving trust fund resources for reimbursement is a prudent and reasonable measure.

This subpart also allows the Agency director up to 60 days to approve the release of funds. This time is allowed so that the Agency director can review the requests for reimbursement and inspect the site to make sure that work is properly done. Sixty days is needed to make sure reviews and inspections can be accomplished with due care. Although review and inspection at an individual facility may not take long, the Agency has responsibility for facilities throughout the State. The demand on Agency staff time could well be too great at any given point to perform needed review and inspection in less than 60 days. The 60-day review period is reasonable because any shorter period could easily do a disservice to facility users and neighbors.

Once the Agency director is satisfied that the reimbursement request is proper, the trustee releases the funds to the facility owner, operator or an authorized contractor. However, if the Agency director has reason to believe that closure costs will exceed the value of the trust fund, reimbursement may be withheld. This provision is designed to protect the integrity of the trust fund. If closure operations have begun and it becomes obvious that the work has been inadequate, the resources of the trust fund should not be used to pay for inadequate work. Inadequacies should be the responsibility of the facility owner, operator or contractor who made the error. Using the fund resources to

assume normal contracting risks dilutes needed incentives. Instead, the fund's resources should be used to accomplish closure goals. The Agency must take a conservative approach when approving disbursements. Requests for reimbursement for completed work must be carefully reviewed to make sure that expenses are appropriate and that, once an expense is incurred, it will not occur again.

The goal of the trust fund is to pay for expenses incurred for work that will make the facility more secure. It is not reasonable to use the trust fund to assume contractors', owners' and operators' risks.

If the fund were to be used for making advance payments or if there were no provision for withholding funds, then the facility owner, operator or contractor doing the work would operate under a riskless condition. There would be much less incentive to do a proper job. This provision of the rules is a reasonable measure designed to conserve fund assets so that they are available when needed.

Subp. 13. Termination of the trust fund. This subpart describes the conditions under which the Agency director must allow the trust agreement to end. The first condition occurs if the facility owner or operator substitutes another allowable instrument for the trust fund. The second condition occurs if the Agency releases the facility owner and operator from responsibility to comply with the financial assurance rules under pt. 7035.8530. Both conditions describe circumstances under which the trust fund serves no purpose. It is reasonable to end the trust agreement when it is not needed.

9. Minn. Rules Pt. 7035.8480 Surety Bond Guaranteeing Payment Into a Standby Trust Fund.

Facility owners or operators may comply with the rules by using a surety bond to guarantee that, before the facility is closed, the facility owner or operator will establish a trust fund. Facility owners or operators who choose this option can control their funds. Facility owners or operators can use the funds to their benefit until facility closure. At closure, the owner or operator must place the full amount of the current closure cost into a trust fund. This option is reasonable as it allows the owner or operator to maintain control of the resources while providing users and the Agency the assurance needed to assure proper facility closure.

A discussion of how surety bonds will function will be helpful. The contract used to execute the surety agreement refers to the owner or operator as the "principal." The agreement specifies actions that the principal will perform. In this case, it is development of a standby trust fund. If the principal fails to perform, the Agency director can "call in" the bond and the surety must place the specified amount, the "penal sum," in a standby trust fund. This fund is established when the surety agreement is executed. The Agency can direct the work to be financed from the trust fund. This leaves the surety with a loss that will be recouped from the principal. Sureties charge for assuming risk. The cost of a surety bond ranges from one to three percent of the bond's penal sum. Sureties may also require other conditions, such as collateral, before they will execute the surety agreement.

Subp. 1. Scope. This subpart references parts of the rules that relate to

surety bonds, subps. 2 through 10 of this part. This clarifies the steps that must be followed to establish a surety bond for financial assurance. The rules give owners and operators a reasonable guide to establish a surety bond. This subpart also establishes that provisions which refer to the director also apply to the county if the surety bond is held by a county. Since the rules allow for a county to hold the financial assurance mechanism (pt. 7035.8460), this provision is reasonable so counties can comply by holding a surety bond as the financial assurance mechanism.

Subp. 2. Surety Bond Requirements. This subpart limits the owner's and operator's choice of sureties and establishes a compliance schedule. The limit on choice refers the owner or operator to a federal document, Circular 570, from the Department of the Treasury. This document lists the sureties acceptable to bond writers for federal projects. See Exhibit 19. This list includes almost 300 companies. Over 30 companies are located in Minnesota. This circular will help facility owners and operators to choose a responsible firm. It also relieves the Agency of the need to develop a certification program for these firms. This requirement is reasonable because it takes advantage of certification work done by the federal government.

The compliance schedule in this subpart is identical to the compliance schedule of pt. 7035.8470, subp. 2. That is, owners or operators must send their bonds to the Agency director with their permit application or be submitted to the Agency director in accordance with the time schedule for establishing financial assurance (Minn. Rules pt. 7035.8450). The rationale for this provision duplicates that provided for the schedule in pt. 7035.8470, subp. 2.

Subp. 3. Wording of the Surety Bond. This subpart requires that the surety bond duplicates a model provided in pt. 7035.8570. This requirement is reasonable as it limits the owner's and operator's choice to ensure uniformity and equity.

Subp. 4. Establishment of a Standby Trust Fund. This subpart requires that the facility owners and operators who choose surety agreements must also establish standby trust funds which meet the requirements of pt. 7035.8470. This requirement is included as a practical matter. State agencies cannot take and manage money as though it were their own. All receipts must become a part of general revenues. Minn. Stat. § 16A.72 (1986). This means that if the standby trust fund were not required, payments made by sureties to the Agency must be transferred to the State's general fund. There would be no guarantee that the payments by a surety would be appropriated to the Agency and needed work would be done. The standby trust fund offers the surety a way to honor its commitment without having the Agency receive money. If the Agency director has to call in a bond, the trustee of the standby trust fund receives the payment. The fund is then administered under pt. 7035.8470. This provision is reasonable because statutes prohibit the Agency from managing funds that are not appropriated to the Agency.

Subp. 5. Performance Guarantee. This subpart specifies the actions that the surety will guarantee. The surety is required to guarantee that:

- the facility owner or operator will assure that the standby trust has a value at least equal to the penal sum of the bond before the owner or operator begins to close the facility;

- the facility owner or operator will put into the standby trust an amount equal to the penal sum within 15 days after the director, the Agency or a court issue an order to close the facility; or

- the facility owner or operator will provide alternate financial assurance to comply with the rule within 90 days after the surety sends the owner or operator a notice of cancellation.

The first requirement is reasonable to ensure that there is the proper amount of funds available to close the facility before the owner or operator begins closure. Without proper funding being established up-front, there is no assurance that enough money will be provided for completion of closure in the proper manner.

Under the second requirement, once the director, the Agency or a court issues an order to close the facility, proper funding must be established in order to provide for closure of the facility. This provision ensures this will happen. It is reasonable because it ensures funds will be available for closure once it is deemed that the facility must close. Providing 15 days for establishing the proper funding for closure after being issued an order is reasonable considering the enforcement circumstances.

The third provision is reasonable because it establishes continuity in the coverage of obligation. The reasonableness of allowing the facility owner or operator 90 days is discussed under the reasonableness for subp. 9 of this part.

These conditions specify the circumstances that the facility owner and operator, the Agency and the surety want to occur. If these conditions are met, there is no need to call in the bond. The surety promises that a trust fund

will be developed or the surety will pay for closure. These conditions are reasonable because they provide for continuity in the coverage of obligations. It is reasonable to provide the surety with a description of the circumstances that lead to the surety becoming liable.

Subp. 6. Failure to Perform. This subpart notifies the surety of its liabilities. If any of the conditions described in subp. 5 are not met, the surety is liable for the penal sum. The surety's liability is limited to the amount of the penal sum. The surety must pay, into the standby trust fund, an amount that equals the value of the latest cost estimates if:

- the facility owner or operator does not adequately fund the standby trust before the facility closes; or

- the facility owner or operator does not adequately fund the standby trust within 15 days after receiving a closure order; or

- the facility owner or operator does not provide alternate financial assurance in compliance with the rules within 90 days after receiving a cancellation notice.

This subpart amounts to a restatement, in the negative, of subp. 5. It is reasonable because it clarifies the conditions where the surety incurs cost. This is reasonable as it helps all parties understand their responsibility. Ambiguities lead to unreasonable delays and unnecessary cost. The reasonableness of these conditions was discussed under the reasonableness of subp. 5 of this part.

Subp. 7. Penal Sum. This subpart specifies the amount of the bond's penal sum. The penal sum must equal the current closure cost estimate. All parties

interests are protected when the surety, the facility owner and operator and the Agency know the extent of the surety's liabilities. This provision is a reasonable limit on the surety's liability.

Subp. 8. Changes to the Penal Sum. This subpart covers situations where the current closure cost estimate changes. If the current closure cost estimate increases, the facility owner or operator has 60 days to increase the bond penal sum or find an alternative means to cover the difference. This allows the owner or operator a reasonable time to make up the gap in coverage. If the current closure cost estimate decreases, the facility owner or operator can reduce the bond's penal sum with written approval from the Agency director. This provision is reasonable as it allows the owner or operator to reduce the level of coverage that is not needed. The interests of facility users are protected by making the reduction contingent on the Agency director's approval.

Subp. 9. Notification. This subpart specifies the conditions when the surety may cancel the bond. The surety must notify the Agency director and the facility owner or operator if the bond is to be cancelled. The notices must be sent by certified mail. The cancellation cannot be effective until 120 days after the Agency director receives the notice. Return receipts will provide evidence of when the Agency director receives the notice.

This provision ensures that there will be no gaps in coverage caused by the surety's decision to cancel. The period between notification and final effect allows the facility owner or operator time to find another surety or means to comply with the rule. This period is 30 days longer than the time period set in subp. 5, item C. The extra 30 days gives the Agency director time to call in

the bond. During this 30-day period, the surety is liable under the bond's conditions.

An example will help to understand the process. A facility owner or operator receives notice that the surety bond will be cancelled. If the facility owner or operator finds an acceptable alternative financial mechanism within 90 days, then the bond can be cancelled 30 days later with no effect. There will be no gap in coverage. However, if the owner or operator does not find an acceptable alternative mechanism, this means that the costs of closure will not be covered by any instrument. The Agency can then call in the bond, since one condition is that the facility owner or operator provide an acceptable alternate financial assurance mechanism within 90 days.

This provision is reasonable to ensure that coverage will not lapse. Either the surety will guarantee that the owner or operator will fund the trust, or the trustee will manage the trust after the surety pays into the fund.

This subpart also requires a surety bond held by a county to provide a 150-day cancellation period. This provision ensures that there will be no gaps in coverage caused by the surety's decision to cancel. This period is 30 days longer than the time period allowed if the Agency held the surety bond. The extra 30 days is needed because pt. 7035.8460, subp. 3 does not allow the Agency director access to the surety bond until the county has failed to gain access to the funds provided by the surety bond within 30 days following the 90-day period allowed a facility owner or operator to provide an acceptable alternate financial assurance mechanism.

An example will help to understand this reasoning. Assume that a facility

owner or operator receives notice that the surety bond will be cancelled. If the facility owner or operator finds an acceptable alternative financial mechanism within 90 days, then the bond can be cancelled 60 days later with no effect. There will be no gap in coverage. However, if the owner or operator does not find an acceptable alternative mechanism within 90 days, the cost of closure will not be covered by any instrument. Therefore, under these circumstances, pt. 7035.8460, subp. 3 allows the county 30 days to gain access to the surety bond for facility closure. However, there is no assurance that the county will gain access to the funds for closure. Therefore, the rules provide the Agency the final 30 days of the 150-day period in which to call in the bond before coverage ends.

This provision is reasonable to ensure that, once begun, coverage will not lapse at facilities where the county chooses to hold the financial assurance mechanism.

Subp. 10. Cancellation of the Surety Bond. This subpart describes the conditions under which the facility owner or operator can cancel the bond. The bond can be cancelled by the owner or operator providing evidence that an alternative mechanism is in effect or if closure of the facility is complete in accordance with the closure plan. Once the facility owner or operator sends such evidence to the Agency director, the director's written approval will allow the facility owner or operator to cancel the bond. This is another provision which reasonably enables the Agency to ensure that there are no gaps in coverage.

10. Minn. Rules Pt. 7035.8490 Letter of Credit.

Waste tire facility owners and operators may choose to comply with the rules by using an irrevocable letter of credit. A letter of credit extends the credit of one individual or organization (normally a bank) which is superior to that of a second individual or organization (the facility owner or operator), to a third individual or organization (the Agency).

A discussion of how a letter of credit will function will be helpful. The letter of credit will operate like the surety bond. A bank issues the facility owner or operator credit equal to the sum of the current closure cost estimate. The letter of credit will remain in effect until the facility owner or operator is released from responsibility to comply with the rules. While the letter is in effect, the bank will honor any draft properly presented by the Agency director. The director can only present a draft if the facility owner or operator has failed to perform the specified closure actions. If the director presents a draft to the bank, the bank deposits the sum into a standby trust fund. A bank will recover the extended credits from the facility owner or operator. Banks charge for letters of credit at rates comparable to rates charged for surety bonds. Banks also charge interest on the outstanding balance of extended credit.

Except as noted below, the requirements of subps. 1-10 of this part are substantively the same as the requirements of subps. 1-10 of pt. 7035.8480. The discussion of the reasonableness of the requirements of subps. 1-10 of pt. 7035.8480 also supports the reasonableness of subps. 1-10 of this part and is hereby incorporated by reference.

Subp. 5. Submittal. This subpart requires that the facility owner or operator carefully identify the institution issuing the letter of credit. This requirement is reasonable because the agreement needed to issue a letter of credit is not nearly as detailed as are the instruments used to execute trusts or surety bonds. The facility owner or operator must send the Agency director a letter containing:

- the identification number of the letter of credit,
- the name of the issuing institution,
- the date on which the letter is issued,
- the name and address of the facility, and
- the amount of the current closure cost estimate.

This information is reasonable to provide the Agency director with the data needed to administer the rules.

Subp. 6. Notification. This subpart specifies the conditions under which the bank may cancel the letter of credit. The letter of credit must be irrevocable for at least one year. This requirement is reasonable to give the facility owner or operator and the Agency director certainty about coverage. The letter of credit must also be extended automatically for one year following the expiration date. This extension is not absolute. It would not be reasonable to make the bank extend credit indefinitely. Banks can cancel the letter of credit through proper notification.

The bank must notify the Agency director and the facility owner or operator if the letter of credit is to be cancelled. The notices must be sent by certified mail. The cancellation cannot become effective until 120 days

after the Agency director receives the notice and 150 days for a letter of credit held by a county. As discussed in connection with pt. 7035.8480, subp. 9, this provision ensures that there will be no gaps in coverage caused by the bank's decision to cancel.

Subp. 9. Failure to Perform. This subpart specifies the conditions where the Agency director shall draw on the letter of credit. If the facility owner or operator does not perform closure according to the closure plan or permit conditions, the Agency director shall draw on the letter of credit. This provision is reasonable because it clarifies the conditions under which the bank will incur cost. This specification is reasonable to help all parties understand their responsibility. Ambiguities in this area would lead to unreasonable delays and unnecessary cost.

Subp. 10. Failure to Establish Alternate Financial Assurance. This subpart describes another condition where the director shall draw on the letter of credit. This subpart gives the facility owner or operator 90 days after receiving a cancellation notice to find another means to comply with the rules. If the owner or operator does not find an alternate mechanism, the Agency director must draw on the letter of credit. The director may delay this drawing if the bank further extends the letter of credit. However, the director must draw on the letter of credit during the last 30 days of any extension if the facility owner or operator has not established another financial mechanism. These provisions are reasonable to ensure that coverage of closure costs will not lapse. The requirements are reasonable to specify the conditions where a letter of credit will be used and give facility users the assurance needed that

closure costs will be financed.

Subp. 11. Termination of the Letter of Credit. This subpart places a further limit on the bank's liability. The facility owner or operator will, at some point, be released from responsibility to comply with the rules. The conditions for such release are in pt. 7035.8530, and will be discussed below. If the owner or operator is released from financial assurance responsibilities, the Agency director must return the letter of credit to the bank. This subpart is reasonable to release the bank from responsibility after the Agency director relieved the facility owner or operator of compliance. There is no reason to carry the letter of credit after the Agency has said there is no need to continue the financial assurance requirement.

11. Minn. Rules Pt. 7035.8500 Surety Bond Guaranteeing Performance of Closure for Permitted Facilities.

Facility owners or operators may choose to comply with the rules by using a surety bond that is somewhat different than the bond described in pt. 7035.8480. The surety is required, under this part, to guarantee that the facility owner or operator will perform facility closure as specified in the closure plan. The bond allowed under pt. 7035.8480 uses balances held in trusts at specified times as the measure of the surety's liability. The bond described in this part requires performance of specified acts. Setting aside this difference, the two bonds operate in the same manner. The requirements of subps. 1-10 of this part are substantially the same as subps. 1-10 of pt. 7035.8480. The discussion of the reasonableness of the requirements of subps. 1-10 of pt. 7035.8480 also supports the reasonableness of subps. 1-10 of this part and is hereby

incorporated by reference.

Subp. 11. Limitation on Liability. This subpart places a further limit on the surety's liability. Eventually, the facility owner or operator will be released from responsibility to comply with the rules. The conditions for release are found in pt. 7035.8530. This subpart releases the surety from responsibility for the facility owner's or operator's actions after the director has waived their compliance responsibility. It is reasonable to cancel the surety bond agreement after the Agency has determined there is no need to continue the financial assurance requirement.

12. Minn. Rules Pt. 7035.8510 Use of Multiple Financial Assurance Mechanisms.

This part allows the facility owner or operator to comply with the rules by using more than one financial mechanism. Facility owners or operators can use any combination of trust funds, letters of credit or surety bonds that guarantee payment into trust funds. The instruments must conform to applicable parts of the rules.

This provision is included to help facility owners and operators manage changing circumstances. For example, an owner or operator may have a bond or a letter of credit and a short-term condition arises which changes the closure cost estimate. The surety or bank may not want to extend the terms of its agreement on short notice. The facility owner or operator may then find another instrument or alter an existing instrument so that the total once again complies with the rules. This provision is reasonable since it gives flexibility to the facility owners or operators without compromising the goals of the rules.

The list of available instruments excludes the surety bond that guarantees performance. If there is default, combining a performance bond with funds from other instruments would become extremely complex. This exclusion is reasonable because other instruments are available to allow facility owners and operators the range of choice they will need.

If the facility owner or operator chooses to use more than one financial instrument, the combined value of these instruments must equal the current closure cost estimate. This provision is reasonable because the Agency must make sure that the instruments afford complete coverage of the costs.

If a trust fund is used in combination with other instruments, it can serve as the standby trust for the bond or letter of credit. A single standby trust can be used for two or more instruments. This is reasonable because it helps the facility owners or operators reduce the costs of compliance.

The director is not restricted in the use of financial instruments to accomplish closure. Other arrangements would require setting an order of priority among the various instruments. Given a priority ranking, disputes could cause delays while conditions at the facility get worse. This provision is reasonable to allow the Agency director to act quickly to correct emergency conditions. The director should have a wide range of choices for action.

13. Minn. Rules Pt. 7035.8520 Use of Financial Assurance Mechanism for Multiple Waste Tire Facilities.

This part allows facility owners or operators who have more than one facility to use a single financial instrument to cover all sites. The face value of that instrument must equal the total value that would result if all

facilities had been covered by individual instruments. For example, a facility owner or operator may have three facilities and the current closure cost estimate is $500,000 at each facility. A single letter of credit for $1.5 million can be used to cover all three facilities.

Facility owners or operators who choose this option must identify the facilities covered and the extent of coverage for each facility. This is needed for the Agency director to know the limits to which the instrument can be used for each facility. The director must know these limits because the rules constrain the use of the instrument to only those amounts specified for coverage at each facility. Referring to the previous example, the rules would allow the director to draw $500,000 for each facility. This is a reasonable precaution that will help avoid situations where the users of one facility are billed for costs incurred at another facility.

14. Minn. Rules Pt. 7035.8530 Release of Owner or Operator From Financial Assurance Requirements.

As noted earlier, there will be a time when there is no need for financial assurance at the facility. The owner or operator should be released from financial assurance responsibility at this time. This part establishes the satisfactory closure of the facility as the condition for such a release. It is reasonable to release facility owners and operators from responsibility for financial assurance for closure once closure is completed and financial assurance is no longer needed.

15. Minn. Rules Pt. 7035.8450 Incapacity of Owners or Operators, Guarantors, or Financial Institutions.

This part describes the facility owner's or operator's obligations if bankruptcy occurs. The Agency, as regulator of and beneficiary of financial instruments, will have interests to maintain if either the facility owner or operator or one of its financial intermediaries fails.

Bankruptcies occur because business firms cannot pay their debts. Bankruptcy proceedings are usually referred to according to the chapter of the federal Bankruptcy Code under which they appear. Chapter 7 proceedings involve complete liquidation of a firm's assets. Creditors in these cases are reimbursed from the distribution of the bankrupty's property. Chapter 11 proceedings involve debt reorganization. Reorganization provides creditors with a plan that will allow debt repayment from future earnings.

The ability of State environmental agencies to gain compliance in bankruptcy proceedings is not successful. See Exhibits 20 and 21. The Bankruptcy Code is designed to give debtors a fresh start, while at the same time protecting the interests of creditors. This goal can conflict strongly with environmental protection goals. If a facility owner or operator begins bankruptcy proceedings, it is reasonable that the Agency be notified so that the Agency can actively participate in the proceedings. The Agency's interests will be substantial, since the outcome may determine if proper closure will be done.

Subp. 1. Notification of Bankruptcy. The facility owner or operator must notify the Agency director within ten days after bankruptcy proceedings have begun. The notice has to be sent by certified mail.

Subp. 2. Incapacity of Financial Institutions. If the financial intermediary becomes bankrupt or loses authority to conduct business, the facility owner or operator is without financial assurance. In this case, the facility owner or operator has 60 days to find another intermediary and execute an acceptable financial instrument. This provision is reasonable to ensure that coverage will not lapse.

16. Minn. Rules Pt. 7035.8550 Language Required for Trust Agreement.

This part gives facility owners and operators the language required if they choose to develop trust funds or if they need to establish a standby trust in connection with other instruments. The rule instructs facility owners and operators to include appropriate language for descriptive terms (names, titles, etc.) that are written between brackets and double brackets in the model. This provision is reasonable to tell facility owners and operators how to adapt the instrument to their individual needs.

It is reasonable to dictate the format of a trust or standby trust fund agreement for several reasons. First, requiring the same format ensures that all facility owners and operators provide financial assurance on an equitable basis. This provides for an equal regulatory environment in which all facilities may operate. Second, requiring the same format allows facility owners, operators, financial institutions, and the Agency to interpret the adequacy of the financial assurance mechanism on a consistent basis. Third, providing a format specifically sets out for facility owners, operators, and financial institutions what is required of them in order to be in compliance with the rules. This saves them the time and, therefore, the money to draft

such documents. Fourth, a set format saves the Agency the time and money that would be spent analyzing the adequacy of a wide range of financial agreements that would otherwise be submitted. The set format provides for a timely and consistent Agency review.

The introductory section of the trust agreement provides basic information that is needed to make the contract enforceable. The instrument is dated and all parties to the contract are named and described.

The introductory section also describes the conditions that have caused the grantor and the trustee to enter into the contract. These conditions are:

- the Agency's promulgation of rules requiring the facility owner or operator to demonstrate the ability to meet specified costs;

- the facility owner's or operator's choice of a trust fund as the means to comply with the referenced rules;

- the facility owner's or operator's choice of trustee; and

- the trustee's willingness to enter into the contract.

After the introduction, the named sections describe the specific conditions of the contract.

Section 1. Definitions. This section describes the parties to the contract in the words they are referred to in the body of the agreement. The facility owner or operator is defined as "grantor," the trustee is defined as "trustee" and the Agency or the county, for county-held financial assurance, is defined as "beneficiary."

These parties must be identified if a trust is to be enforceable. The last definition is one that has caused some concern among local government officials.

The Association of Minnesota Counties provided a statement of this concern in its 1987 legislative platform.

> Counties strongly oppose provisions of the draft rule that name the PCA as legal beneficiary of local solid waste financial assurance trust funds. This is an infringement upon local control of locally collected revenues. Counties must retain the right to negotiate the types and costs of remedial actions needed to achieve the desired environmental standard.

Minnesota Counties, V30, No. 10, December 19, 1986.

The rules take this concern into account by naming the county as the first beneficiary for facilities where the county holds the trust fund.

Section 2. Identification of Facilities and Cost Estimates. This section further defines the scope of the trust agreement. Detailed specifications serve all interests because they clarify the rights and duties of all parties. An attachment (Schedule A), required by this section, will describe in detail the facility or facilities covered by the agreement and the amount of costs covered under the agreement.

Section 3. Establishment of Fund. This section describes how the trust fund is to be set up and developed. It includes a notice that restricts third party access to the fund unless specified in the contract. This provides protection for the fund in the event that either the facility owner, operator or the trustee fail. This statement of intent secures the fund's assets against creditors' claims under bankruptcy proceedings. The Government Accounting Office (GAO) has researched the question of bankruptcy and environmental regulation. See Exhibit 20. The GAO found that bankruptcy has given responsible parties an escape route by which to avoid compliance with

environmental regulations. State authorities seeking to compel action have had little success in securing the assets of a bankrupt business to pay for cleanup. These cases demonstrate both the need for and reasonableness of provisions designed to protect funds reserved for closure.

The wording of the grantor's and trustee's intent also provides facility owners and operators the protection that they indicate are needed. This contract phrase is a binding limitation on the Agency's use of reserved funds. Later parts of the contract specify the Agency's role in the agreement. The intent language prohibits the Agency from using reserved funds unless described in the contract.

The attachment required by this section (Schedule B) describes in detail the financing and scheduled development of the trust fund. The fund consists of initial deposits, future deposits, earnings and interest on earnings minus payments or distributions made by the trustee. This provision establishes how the fund's balance is determined.

A final provision relieves the trustee of duties exercised by the Agency. This includes tracking compliance with the rules by ensuring that fund balances are adequate to meet future needs and that payment rates are correct. It is reasonable to require the Agency to do this and exempt the trustee from the requirements.

Section 4. Payment for Closure. This section describes the conditions under which the trustee can release funds. The trustee releases funds in response to a written order from the Agency director. The fund is limited to payment for closure. This provides facility owners, operators, and the Agency

with assurance that the funds will not be spent for purposes other than those specified in the closure plans.

The Agency director specifies who is to receive reimbursement. This may be the grantor or contractor who has conducted facility closure work. Contractors may become involved if a facility owner or operator refuses to do the required work. This provision gives the trustee the ability to perform if the owner or operator does not.

The agreement also allows the trustee to make refunds to the grantor. This could occur if the fund balance becomes greater than the projected need. A change in conditions could cause the cost of closure to decrease. If the fund is larger than needed, there is no reason to retain excess funds. Any surplus funds should be returned to the grantor.

Section 5. Payments Comprising the Fund. This section restricts payments into the fund to those forms the trustee is willing to accept. Cash is acceptable. Trustees may not want to accept securities. The trustee's fiduciary responsibilities constrain investment strategies toward conservation. Many securities are too risky to be considered as qualifying payment into the trust. They could lose value once they become part of the fund, and cause a disruption in the orderly development of the fund. Trustees are in a position to assess the risk of investments. The contract is reasonable to allow trustees the option to refuse securities they consider risky.

Section 6. Trustee Management. The introduction to this section describes legal constraints referred to as "the prudent man rule." This provision limits the investment strategies that trustees may use. The limitations favor

conservative investments. Such constraints are proper and reasonable because growth and income are not appropriate goals for these trust funds. Instead, the trustee's goal should be the facility owner's or operator's need to set aside funds for closure activities. The trustee should not invest funds held in trust on risky ventures. Conservative investments and management are more likely to maintain the integrity of reserved funds.

Specific prohibitions and authorizations are added to encourage fund conservation.

a. The trustee is not allowed to accept securities or notes from the grantor as payments into the fund. This would amount to accepting a liability rather than an asset. The fund would then have a obligation from the grantor to pay the value of the note or security. It is reasonable to prohibit trustees from accepting these instruments.

b. Trustees are allowed to place funds in checking accounts (demand deposits) and savings accounts (time deposits). Trustees may need to do this so that they can make business transactions. However, these deposits are limited to the amount insured by the Federal Deposit Insurance Corporation (FDIC). The FDIC ensures deposits from a single depositer in a single bank up to $100,000. This limit is consistent with other conservative restrictions placed on the trustee's management of funds.

c. Trustees are allowed to hold cash from the fund for short periods of time, if needed to make investments or disbursements. Trustees are not liable for interest earnings in these circumstances. This provision is written to give trustees the reasonable and needed discretion to carry out routine transactions.

Section 7. Commingling and Investment. This section allows trustees to add assets developed by the grantor with assets from other trusts to form larger, "collective" trusts. Section 6 constrains the extent of activities, within the limits of the prudent man rule. This section enables trustees to take advantage of scale economies in investment. Brokerage fees on investment transactions vary with the size of the transaction.

A large purchase incurs a similar unit-base fee. These savings reduce administrative charges, which will allow more earnings to be retained in the trust funds. There are enough trustees to increase the possibility that no single trustee will incur windfall profits. Trustees can get other advantages from increasing their scale of operations. Larger funds enable trust managers to diversify investments to minimize risk and maximize returns. The result of optimization improves as the amount of the fund invested increases.

It is reasonable to give trustees the ability to better manage trust funds. The flexibility helps to lower administrative costs, decrease risk and increase returns.

Section 8. Express Powers of Trustee. This section provides further specification of the actions and judgments conferred on the trustee. This section does not limit any of the other provisions of the agreement. Instead, it provides all parties with a more detailed description of the trustee's management activities and responsibilities. The provisions of this section empower the trustee to make normal market transactions with the properties held in trust. This section also releases the grantor from any obligation to oversee the daily operations of the trust. This provision is reasonable as it defines

the responsibilities of the trustee and the grantor with respect to routine financial management.

Section 9. Taxes and Expenses. This section allows for payment of the ordinary expenses incurred through the formation and operation of the trust. Assessed taxes are paid from the fund. The issue of taxation has come up several times during discussion of the proposed solid waste rules. The Agency staff has sought an opinion from both the Internal Revenue Service and the Minnesota Department of Revenue. See Exhibits 22 and 23. Neither agency has yet given an opinion on the question of whether trust fund earnings should be taxed. If the tax agencies decide that trust fund earnings are taxable, the fund will pay these taxes.

This provision clarifies that the trustee should recover all reasonable administrative costs from the fund if not paid directly by the grantor. The Agency expects that trustees will be paid directly from the fund. The expenses described are assessed against the fund, since it is the fund that incurs the expense. It is reasonable to provide a mechanism to recover the cost of fund management.

Section 10. Annual Valuation. This section requires the trustee to make annual reports on the financial condition of the trust fund. The trustee will send these reports to the facility owner or operator and the Agency director. Reporting is needed to evaluate and adjust payments to equal estimated costs. The trustee is required to use current market data in evaluating securities. This provision ensures that decisions made by the Agency and the permittee will be based on current data.

The grantor is given 90 days to contest the trustee's valuations. If the grantor does not send a written objection to the trustee within 90 days, the grantor agrees with the evaluation. This provision makes the process of fund evaluation manageable for both the grantor and the trustee. Both parties know what they must do and when they must do it. It is reasonable to evaluate the fund and make timely adjustments.

Section 11. Advice of Counsel. This section clarifies that the trustee has an option to seek independent legal advice. This provision is included for the information of the grantor more than to protect the right of the trustee. The grantor is aware that the trustee may seek outside advice on interpretations of the duties and responsibilities defined in the agreement.

If the trustee acts on independent legal advice, the trustee is protected to the fullest extent allowed under the law. This provision is reasonable as it specifies the trustee's legal rights under the agreement.

Section 12. Trustee Compensation. This section informs facility owners and operators that the trustee is entitled to payment for service. It also places reasonable limits on compensation. This is another provision that makes explicit ordinary rights and duties. This is reasonable as it helps ensure that all parties know their commitment when entering into the agreement.

Section 13. Successor Trustee. This section describes how one trustee resigns in favor of another trustee. The process set up is deliberate and orderly. No transfer may occur until a successor trustee accepts the appointment. It is reasonable to require transfers to include all currently held funds and assets.

There may be an occasion where a facility owner or operator takes no action after a trustee presents a resignation notice. If this happens, the agreement specifies these provisions. The trustee is allowed to request that a court assign a successor trustee or provide the current trustee with other instructions. This provision is reasonable as it gives all parties the assurance that this situation can be resolved and funds will continue to be available for closure even if the current trustee wants to be released from the contract.

The Agency director, the facility owner or operator and the current trustee must receive certified notice of the date when the successor trustee will assume responsibility for the trust. The successor trustee sends notice at least ten days before the effective date. This provision is reasonable as it ensures that there will be no gap in the coverage.

A final provision specifies that the fund will pay for transaction costs incurred in transfers from one trustee to another. This provision is included to make sure that all parties understand that transfer costs are considered as ordinary costs reimbursable in the same way as taxes and other expenses.

Section 14. Instructions to the Trustee. This section limits the trustee's duties and responsibilities to those written in the trust agreement or transmitted by the appropriate authority. This provision is reasonable as it gives the trustee a reasonable protection from expectations that the trustee respond to informal or unspecified instructions. The trustee's main responsibility is financial management and disbursement. These responsibilities are important enough that there should be no room for error in the interpretation

of instructions. It is reasonable that the trustee not accept verbal instructions when managing the trust, as errors are more likely to occur.

Section 15. Notice of Nonpayment. This section requires the trustee to notify the Agency director if a facility owner or operator misses a scheduled payment. The director will need this notice to determine whether facility owners and operators are complying with the rules. If a facility owner or operator misses a payment, enforcement measures in pt. 7035.8470 begin. Discussions with trust company officials indicate that they believe this is a reasonable requirement and will not impose a burden on trustees.

Section 16. Amendment of Agreement. This section makes provision for needed changes to be made in the agreement. All affected parties must agree before changes can be made. This requirement is reasonable as it protects the interests of all parties.

Section 17. Irrevocability and Termination. This section requires that all affected parties must agree before the trust can terminate. Surplus funds are distributed to the facility owners or operators or their successors or heirs. This requirement is reasonable as it protects the interests of all parties.

Section 18. Immunity and Indemnification. This section protects the trustee from liability from non-negligent acts. This is further notice that the trustee's responsibilities do not extend beyond financial management and reporting. It is a reasonable protection afforded the trustee, whose role is limited to holding and protecting financial assets. This provision does not exempt the trustee from liability for negligent acts.

Section 19. Choice of Law. This section requires that the trust

agreement be interpreted according to Minnesota law. The requirement is reasonable to provide all parties with the legal reference needed to understand and manage the trust.

Section 20. Interpretation. This section places limits on the understanding of the language of the agreement. Singular and plural words included in the agreement are said to "include each other." This means, for example, that if there are two grantors to the trust, the provisions of the trust apply equally to both even though the agreement refers consistently to "the grantor." This provision also makes it clear that section headings are not to be understood as substantive elements of the agreement. This section is reasonable to clarify linguistic matters that could lead to confusion in the interpretation of the agreement.

Summary language and provisions for appropriate signatures follow section 20 of the agreement.

17. Minn. Rules Pt. 7035.8560 Language Required for Certificate of Acknowledgment.

This part provides the language required in the certification of acknowledgment that accompanies the copy of the trust agreement sent to the Agency director. The need for this certification was discussed in the reasonableness discussion under Minn. Rules pt. 7035.8470 and will not be repeated here.

18. Minn. Rules Pt. 7035.0570 Language Required for Surety Bond Guaranteeing Payment Into a Standby Trust Fund.

This part provides the language required in a surety bond that guarantees

development of an approvable trust fund at the time of facility closure. It is reasonable to dictate the format of a surety bond agreement guaranteeing payment into a standby trust fund for several reasons. First, requiring the same format ensures that all facility owners and operators provide financial assurance on an equitable basis. This provides for a just business environment for all facilities to operate in. Second, requiring the same format allows facility owners, operators, financial institutions, and the Agency to interpret the adequacy of the financial assurance mechanism on a consistent basis. Third, providing a format specifically sets out for facility owners, operators, and financial institutions what is required of them in order to be in compliance with the rules. This saves them the time and, therefore, the money to draft such documents. Fourth, a set format saves the Agency the time and money that would be spent analyzing the adequacy of a wide range of financial agreements that would otherwise be submitted. The set format provides for a timely and consistent Agency review.

The first section of the bond is devoted to basic data.

1. The date the bond is executed by the principal and the surety.

2. The date on which the terms of the bond become effective.

3. The name of the principal. This is normally the facility owner or operator.

4. A descriptive name for the facility owner's or operator's organization (e.g., individual, corporation, etc.).

5. The state in which the corporation is incorporated.

6. The name and business address of the surety.

7. Names and identification numbers for all facilities covered and each individual facility's estimated costs for closure.

8. The total amount to be covered by the bond.

The data provided set the parameters of the agreement. They are needed and reasonable to enforce the contract.

The first paragraph defines the extent of the surety's commitment to the Agency. This paragraph establishes the surety's liability. If there are joint surety's, the liability is joint and several but limited to actions arising from the described activities. This requirement is reasonable to provide the surety and the facility owner or operator with notice of the extent of the surety's liability.

The next two paragraphs describe the conditions which have caused the facility owner or operator and the surety to enter into the agreement.

The next paragraph describes the facility owner's or operator's intention to establish a standby trust fund. This is a requirement under pt. 7035.8480. The need for and reasonableness of this requirement is provided in the discussion for that part and will not be repeated here.

The next five paragraphs describe the conditions that the surety will guarantee. If these conditions do not occur, the surety will be required to deposit the penal sum of the bond in the standby trust fund. The conditions guaranteed are:

- that the facility owner or operator will develop a trust fund equal to the estimated cost of closure;

- that the fund will be fully developed either before the facility closes

or within 15 days after the owner or operator receives a proper order to begin one of the specified activities; or

- that the facility owner or operator will provide an approvable alternate financial assurance instrument if the bond is cancelled.

The next paragraph is a positive statement of the conditions under which the surety becomes liable on the bond obligation. There is also a positive statement of the surety's responsibility to make deposits into the standby trust following proper notice from the Agency director.

The next paragraph further specifies the limits of the surety's liability. This liability does not end until the sum of payments into a standby trust equals the penal sum. A further statement explicitly limits the surety's liability to the amount of the penal sum.

The next paragraph provides for the surety to cancel the bond. The surety must notify the facility owner or operator and the Agency director of the intent to cancel. Cancellation is not effective until 120 days after the Agency director receives notice or 150 days for facilities which the county holds the surety bond. The reasonableness of these arrangements is provided under the discussion for Minn. Rules pt. 7035.8480, subp. 9 and will not be repeated here.

The next paragraph provides for the facility owner or operator to cancel the bond. Cancellation may occur only if the Agency director sends the surety a written authorization to end the bond.

The next paragraph is optional and may be included at the desire of the surety and the facility owner or operator. This paragraph provides for an annual adjustment in the penal sum of the bond. The provision limits the extent

of the increase to 20 percent. There is also a requirement that the penal sum may not be decreased without the Agency director's written permission.

The final two paragraphs certify the date of signing and the signatures of the surety and the principal.

19. Minn. Rules Pt. 7035.8580 Language Required for Letter of Credit.

This part provides the facility owner and operator with the language needed in the financial instrument if the facility owner or operator complies with the rules by using a letter of credit. The letter is like a normal business letter. Many of the identification requirements of other instruments are omitted from the letter of credit. These identification requirements must be met by the facility owner or operator pursuant to pt. 7035.8490, subp. 5.

It is reasonable to dictate the format of a letter of credit agreement for several reasons. First, requiring the same format ensures that all facility owners and operators provide financial assurance on an equitable basis. This provides for a just business environment for all facilities to operate in. Second, requiring the same format allows facility owners, operators, financial institutions, and the Agency to interpret the adequacy of the financial assurance mechanism on a consistent basis. Third, providing a format specifically sets out for the facility owners, operators, and financial institutions what is required of them in order to be in compliance with the rules. This saves them the time and, therefore, the money to draft such documents. Fourth, a set format saves the Agency the time and money that would be spent analyzing the adequacy of a wide range of financial agreements that would otherwise be submitted. The set format provides for a timely and

consistent Agency review.

The first paragraph of the letter identifies the instrument and states that credit is extended in favor of the Agency on behalf of the facility owner or operator. This paragraph also identifies the amount of credit extended. This amount equals the sum of the current closure cost estimate. The credit becomes available when the Agency director presents a draft to the bank which: a) references the letter's identification number, and b) certifies that conditions defined in the rules have occurred which call for the Agency director to draw on the credit extended. It is reasonable to require this information in a letter of credit to ensure that the financial instrument meets the requirements specified in the rules.

The next paragraph provides the effective date of the letter and requires that its term be at least one year. The letter is extended automatically each year. The letter can be cancelled if a) the bank sends the facility owner or operator and the Agency director notice of its intent to cancel, and b) this notice is sent 120 days before the current expiration date. It is reasonable to require this information in the financial instrument so that all affected parties know when the agreement has been executed. It is reasonable to state the criteria for cancelling the agreement in order for the agreement to be in compliance with the rules.

The next paragraph states the bank's intention to honor any properly presented drafts. To honor the draft, the bank deposits the amount required into the standby trust fund. It is reasonable to provide this information in the financial agreement in order to ensure that the requirements of the rules

are carried out.

There is a final certification that the language of the letter is the same as the language required by the rule. This is followed by signature blocks and a reference to the section of the Uniform Commercial Code to which the letter is subject. It is reasonable to include signatures and the reference to applicable codes.

20. Minn. Rules Pt. 7035.8590 Language Required for Surety Bond Guaranteeing Performance of Closure.

This part provides the language required in a surety bond that guarantees that the facility owner or operator will perform specified activities. The provisions of this bond are the same as the provisions in the financial guarantee bond except that different conditions apply in determining the surety's liability.

It is reasonable to dictate the format of a surety bond agreement guaranteeing performance of closure for several reasons. First, requiring the same format ensures that all facility owners and operators provide financial assurance on an equitable basis. This provides for a just business environment in which all facilities may operate. Second, requiring the same format allows facility owners, operators, financial institutions, and the Agency to interpret the adequacy of the financial assurance mechanism on a consistent basis. Third, providing a format specifically sets out for the facility owners, operators, and financial institutions what is required of them in order to be in compliance with the rules. This saves them the time and, therefore, the money to draft such documents. Fourth, a set format saves the Agency the time and money that

would be spent analyzing the adequacy of a wide range of financial agreements that would otherwise be submitted. The set format provides for a timely and consistent Agency reivew.

If the facility owner or operator chooses to comply with the rules by using a performance bond, then the surety must guarantee that the facility owner or operator will perform closure according to the closure plan and Agency directives. If the facility owner or operator does not perform the needed activities, then the surety becomes liable on the bond obligation. It is reasonable to include this language to inform parties of their responsibilities.

F. Requirements for Waste Tire Generation and Transportation, Minn. Rules Pts. 7035.8700 to 7035.8710.

1. Minn. Rules Pt. 7035.8700 Waste Tire Generation.

This part sets out the requirements that apply to all persons who generate waste tires.

Subp. 1. Scope. Subp. 1, which specifies who is subject to the requirements of this part, is reasonable because it informs persons who is subject to this rule.

Subp. 2. Waste tire generation. Subp. 2 requires that any person who generates waste tires and contracts for their disposal must contract with a person who has been issued an Agency waste tire transporter identification number or a person exempt under Minn. Rules pt. 7035.8710, subp. 2. This requirement ensures that the person transporting the waste tires has notified the Agency of such activities and is therefore being regulated by the waste tire management program. This requirement is reasonable to ensure that generators

use transporters who properly manage waste tires in compliance with the applicable rules and in a manner which is not a threat to human health and the environment.

Subp. 3. Generator record keeping. Subp. 3 requires persons who generate more than 50 waste tires per year to document all transactions involving disposal of the waste tires. The Agency chose 50 waste tires per year as a cut-off level for regulation under subp. 3 because the statute uses the amount of 50 in defining tire collector. The Agency believes it is reasonable to use the same amount to ensure consistency in regulation. For amounts less than 50, the person still must properly manage the waste tires but record keeping is not required. The goal of the waste tire management program is to protect the environment and the public from the mismanagement of waste tires. In order to do this, the Agency must track all waste tires from their source to their final disposition. This tracking system involves the keeping of records by generators, transporters and facility owners and operators. Therefore, it is reasonable to require the generator to record all transactions with a transporter or facility owner or operator to minimize the possibility for illegal or improper disposal of waste tires. It is also reasonable that the generator retain the transaction record and make this record available to Agency staff for inspection, since the Agency must be able to ensure that generators and transporters are managing waste tires in compliance with the applicable rules and in a manner that is protective of human health, natural resources, and the environment.

2. Minn. Rules Pt. 7035.8710 Waste Tire Transportation.

This part sets out the requirements that apply to persons in the business of transporting waste tires.

Subp. 1. Scope. Subp. 1 is needed so that persons governed by this rule are aware that it applies to them.

Subp. 2. Exempt persons. Subp. 2 is needed to inform affected persons that they are exempt from the requirements of this part. Items A to F set forth the persons who are not subject to this rule.

Under item A, a person who transports household quantities of waste tires incidental to municipal waste collection, and who delivers those tires to a permitted solid waste facility or waste tire facility is exempt from the requirements of this part. This is reasonable since the transportation of waste tires is not the primary objective of these individuals. Also, the Agency does not want to discourage the continued collection of household quantities of waste tires through the existing solid waste collection system. Use of this existing system is very effective and efficient for small amounts of waste tires generated by households, and is encouraged. Therefore, it is reasonable to exempt such transporters from the requirements of this part.

Item B addresses persons or organizations that receive waste tires incidental to the process of collecting recyclable materials. It is reasonable to exempt these persons and organizations from the requirements of this part as long as the tires are delivered to a permitted solid waste facility or a waste tire facility, and as long as the transportation of tires is incidental to collecting recyclable materials since these persons are not in the business of

transporting waste tires. The Agency realizes that such incidental transportation of waste tires will occur and does not want to discourage the collection of recyclable materials. Therefore, to encourage such activities, it is reasonable to exempt such persons from regulation under this part provided the waste tires are properly managed.

Under item C, persons transporting no more than ten waste tires at any one time are exempt from the requirements of this part. The Agency chose the number ten because many households have two cars, which would account for ten waste tires if all the tires were replaced at the same time. Therefore, it is reasonable that a person transporting no more than ten waste tires be exempt from the requirements of this part provided the waste tires are properly managed.

Item D exempts persons who are transporting waste tires to be used for agricultural purposes from the requirements of this part. Since the legislation exempts a person using waste tires for agricultural purposes from the requirement to obtain a permit, the Agency believes it is reasonable to allow the person transporting the waste tires to the site of use to also be exempt from regulation.

Item E exempts persons transporting tire-derived products to a market from the requirements of this part. Since persons transporting tire-derived products to a market are not in the business of transporting waste tires, but rather are in the business of transporting products, it is reasonable to exempt them from regulation under this part. Also, the Agency does not want to discourage persons in the transportation business from handling tire-derived products due

to regulation beyond applicable Minnesota Department of Transportation regulation.

Item F of this subpart exempts a waste tire generator from the requirements of this part if the generator removes the waste tires from the generator's site and delivers those tires to a waste tire facility. Since the generator is only transporting the generator's waste tires and is not in the business of transporting waste tires generated by other persons, it is reasonable to not require this person to obtain an Agency waste tire transporter identification number. Since this person is subject to regulation under Minn. Rules pt. 7035.8710, additional record keeping requirements are not necessary.

Subp. 3. Agency identification number required. Subp. 3 requires persons not exempt under subp. 2 who transport waste tires to obtain an Agency waste tire transporter identification number. As the waste tire permit rules were developed, concerns were raised regarding the development of a regulatory program which addressed waste tire management activities for waste tire generators, transporters and facilities. In order to have a comprehensive program, all persons involved in waste tire management need to be subject to some regulation. However, such regulation must take into consideration the type of activity and the level of regulation needed to address specific concerns.

The system the Agency developed involves requiring that all waste tires be delivered to acceptable facilities, and that generators, transporters and facilities keep records in order to document shipments of waste tires. For this system to function, a generator needs to be assured that the transporter is aware of the requirement that the waste tires must be properly managed. This

could be done either by permitting transporters or by establishing another regulatory system. The Agency believes that a permitting program is not appropriate for transporters due to their mobility and the variability of their activities. The Agency has chosen to develop a simple manner of regulation involving the use of Agency waste tire transporter identification numbers. By requiring a transporter to obtain an identification number and to properly manage the waste tires, and generators to only use transporters with identification numbers, a system is established which ensures proper management of waste tires.

The Agency believes this approach is reasonable because it addresses the concern of requiring proper waste tire management in a manner which does not place a burden on either the generator or the transporter. Therefore, in order for the system to function, it is reasonable to require persons who transport waste tires to obtain an Agency waste tire transporter identification number.

Subp. 4. Waste tire transportation. Subp. 4 requires persons who transport waste tires to deliver the waste tires to a waste tire facility with a permit or provisional status, or one which is exempt from the permit requirement. As discussed under subp. 3 above, it is reasonable to require such delivery in order for the system to function. Also, since the intent of the waste tire permitting program is to ensure proper waste tire management, it is reasonable to require that the waste tires be delivered to an acceptable facility rather than indiscriminately dumped.

Subp. 5. Record keeping. Subp. 5 requires transporters to maintain records regarding waste tire shipments. As discussed under subp. 3 in order for

the waste tire regulatory system to operate, records of waste tire shipments must be maintained. Based on these records, the Agency will be able to determine compliance with the applicable rules. The information required under items A to C is necessary and reasonable so that the flow of waste tires can be tracked from generator to transporter to facility.

Subp. 6. Submittal of operating record. Subp. 6 requires transporters to submit an operating record containing the information required under subp. 5 above. This record is to be submitted quarterly. It is reasonable to require the submittal of records so that the Agency can determine compliance with applicable rules. The Agency believes that such records must be submitted more frequently than annually due to concerns that the Agency be well informed of the waste tire management system and to respond quickly to situations of possible noncompliance. However, a monthly submittal period was considered to be too frequent to allow staff to review and act on the records. Therefore, a quarterly time period was chosen. The Agency believes this is reasonable because it will allow sufficient staff time to review and act on the records while still providing a fairly current representation of what is occurring in the waste tire management system. Considering that the waste tire program is new and that it will take some time to fully implement the program, it is reasonable to require quarterly reports so that the Agency can take appropriate and timely actions necessary to ensure compliance with the rules.

VI. SMALL BUSINESS CONSIDERATIONS

Minn. Stat. § 14.115, subd. 2 (1986) requires State agencies proposing new

rules which affect small businesses to consider the following methods for reducing the impact of the rules on small businesses:

> (a) the establishment of less stringent compliance or reporting requirements for small businesses;
>
> (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
>
> (c) the consolidation or simplification of compliance or reporting requirements for small businesses;
>
> (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
>
> (e) the exemption of small businesses from any or all requirements of the rule.

Minn. Stat. § 14.115, subd. 2 (1986).

The statute requires agencies to incorporate into proposed rules any of the methods listed in subd. 2 that it finds to be feasible, unless doing so would be contrary to the statutory objectives that are the basis of the proposed rulemaking. Minn. Stat. § 14.115, subd. 3 (1986).

Minn. Stat. § 115A.902, subd. 2 (1986) provides that:

> A permit is not required for:
>
> (1) a retail tire seller for the retail selling site if no more than 500 waste tires are kept on the business premises;
>
> (2) an owner or operator of a tire retreading business for the business site if no more than 3,000 waste tire are kept on the business premises;
>
> (3) an owner or operator of a business who, in the ordinary course of business, removes tires from motor vehicles if no more than 500 waste tires are kept on the business premises;
>
> (4) a permitted landfill operator with less than 10,000 waste tires stored above ground at the permitted site; or
>
> (5) a person using waste tires for agricultural purposes if the waste tires are kept on the site of use.

The Agency may not require a waste tire facility owner or operator to obtain a permit for a waste tire facility which is exempted from the statutory requirement to obtain a permit from the Agency. All of the exemptions listed above pertain to small businesses and reduce the impact of the rules on these businesses.

In drafting the proposed waste tire permit rules, the Agency gave consideration to small businesses consistent with items (b), (d) and (e) above. For example, Minn. Stat. § 115A.902, subd. 1 (1986) provides that:

> A tire collector or tire processor with more than 500 waste tires shall obtain a permit from the agency unless exempted in subdivision 2. The agency may by rule require tire collectors or tire processors with less than 500 waste tires to obtain permits unless exempted by subd. 2.

The provision allows the Agency by rule to require tire collectors or tire processors with less than 500 waste tires to obtain permits unless exempted by subdivision 2. The Agency chose not to issue permits to tire collectors or tire processors with less than 500 waste tires because the risk of environmental damage due to such a small number of waste tires is minimal and concerns regarding these small stockpiles could be addressed through specific requirements in the rules. Instead, an owner or operator of a facility with less than 500 waste tires may be granted a permit without making application for it and going through the permitting process provided the facility complies with specific requirements. This is known as a permit by rule. The Agency is convinced that, without sacrificing environmental protection, this permit by rule approach will save the regulated community the costs and efforts involved in applying for an individual permit. Many waste tire facilities with less than

500 tires are small businesses. Therefore, the permit by rule approach will reduce the impact of the rules on these businesses.

In addition to the permitting rules, technical rules containing facility standards have been developed. Compliance with the technical standards is required as part of the permit conditions. These rules classify waste tire facilities into three categories: transfer facilities, processing facilities, and storage facilities. There are general technical requirements that all facilities must comply with as well as requirements that are specific to each facility type. The general technical requirements allow tire collectors and tire processors to propose the means for achieving compliance with these requirements. The Agency believes that by establishing general requirements, the proposed rules address the concerns of small businesses to the maximum extent possible without undermining the goals of Minn. Stat. § 115A.902 (1986) or posing a threat to human health, the environment, or natural resources.

Minn. Stat. § 14.115 assumes that if small businesses are affected by new rules, the impact will be negative. The law requires an agency to mitigate the negative impact if possible. While these proposed rules may have a negative impact, they also provide a substantial positive impact on small businesses. As the waste tire permit rules begin to be implemented, the system will offer increased opportunities for entrepreneurship such as in the construction of new facilities; collection of waste tires; transfer, processing, and storage systems for waste tires and tire-derived products; and utilization of transportation services and equipment. Also, the proposed rules may offer opportunities to consultants and other technical professional services to assist in implementing

the proposed rules, resulting in increased activity and opportunities for that portion of the small business sector.

The waste tire facilities to which waste tires will be transported will also benefit financially from the added influx of waste tires. The increased number and supply of waste tires flowing to these facilities will contribute greatly to the overall economic viability and success of these facilities.

The Agency actively sought and encouraged input from the regulated community, including affected businesses, during the drafting of the proposed rules. This activity was discussed in part III of this document. Many comments were received during this process from small businesses, and the rules were drafted to take many of these comments into account. However, the objective of Minn. Stat ch. 116 and §§ 115A.90 - 115A.95 is to protect the public health and welfare and the environment from the adverse effects which will result when solid waste is mismanaged. Therefore, except for the provisions discussed above, applying less stringent requirements to the management of waste tires by small businesses, irrespective of quantity, would be contrary to the Agency's mandate since small businesses' wastes can cause the same environmental harm as that of larger businesses.

To reiterate, the Agency believes the proposed rules address the concerns of the small business to the maximum extent possible without undermining the goals of Minn. Stat. §§ 115A.90 - 115A.95 and ch. 116 (1986).

VII. ECONOMIC CONSIDERATIONS

Minn. Stat. § 116.07, subd. 6 (1986) requires the Agency to consider

economic factors in exercising its rulemaking process. Minn. Stat. § 116.07, subd. 6 states as follows:

> 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 which may result therefrom, and shall take or provide for such actions as may be reasonable, feasible, and practical under the circumstances.

This statute, by its terms, applies to all actions of the Agency. In rulemaking, this statute has been interpreted by the Agency to mean that, in determining whether to adopt proposed rules, the Agency must consider, among other evidence, the impact which economic factors may have on the feasibility and practicability of the proposed rules and amendments.

The economic factors associated with the adoption of the proposed waste tire permit rules involve: (1) those additional economic costs which the regulated community may incur to meet the standards imposed by the proposed rules and (2) the economic benefits which will be realized as a result of the better management of waste tires. Both these costs and benefits are difficult to quantify. For example, it is difficult to determine the health cost implications of Encephalitis due to improper waste tire storage in dollar terms or the economic consequences of waste tire mismanagement on air, land, and water resources. Too many assumptions must be made to allow for firm cost estimates on these subjects. Similarly, it is difficult to firmly estimate the cost of a pollution control program on a given industry or within a particular facility. Those costs also depend on a number of choices which the industry or regulated

community may make as to the most cost-effective operation of business.

Although these economic impacts are difficult to quantify, they should still be considered in determining whether to adopt the proposed waste tire permit rules. Where specific reliable dollar values are not available, the Agency must consider qualitative judgements as to the economic factors affecting the feasibility and practicability of the proposed rules. The discussion below describes, in both quantitative and qualitative terms, the economic impact of the proposed rules.

In evaluating the economic impact of the proposed waste tire permit rules, it is essential to recognize that a system already exists involving the generation, transportation, storage, and processing of waste tires. The proposed rules will implement a regulatory system for the different aspects of waste tire management thereby protecting human health and the environment. The proposed rules set up uniform requirements based upon an individual's or company's activities regarding waste tire management. Therefore, the economic impacts and economic advantages should be similar for individuals or companies performing similar activities.

The cost impact on waste tire facilities of complying with the standards imposed by the waste tire permit rules can be divided into two areas: the establishment of a financial assurance mechanism to provide for closure of the facility, and the cost of complying with the facility standards.

A. Cost of Compliance with Financial Assurance Requirements.

The proposed rules require owners or operators of waste tire facilities to prepare a cost estimate for closure of the facility and to provide financial

assurance for closure of the facility. The financial assurance requirements are divided into two phases. Phase I applies to owners or operators of facilities on July 1, 1988. The amount of the financial assurance mechanism under Phase I is the closure cost for the maximum amount of waste tires accumulated at a facility since the effective date of the permit rules and for waste tires expected to be accumulated at the facility between July 1, 1988 and July 1, 1990. Phase II applies to owners and operators of facilities by July 1, 1990. The amount of the financial assurance mechanism under Phase II is the closure cost for the maximum number of waste tires expected to be accumulated at a facility during the operating life of the facility, including all waste tires received since November 21, 1985. No financial assurance is required for waste tires accepted at a site prior to November 21, 1985. The November 21, 1985 date is the day on which the waste tire dump abatement emergency rules became effective. Since a tire collector who conducts cleanup activities for waste tires accepted at a site prior to November 21, 1985 may be eligible for a partial reimbursement for such cleanup costs, the Agency believes that financial assurance is not needed for these waste tires. Financial assurance is not required for persons who either generate or transport waste tires, or who own or operate a facility which is permitted by rule. Also, the financial assurance requirements apply whether or not a waste tire facility permit has been issued for the facility. Therefore, the financial assurance requirements do not cause an economic advantage or disadvantage for any facility owner or operator who is required to obtain a waste tire facility permit.

When determining the amount of the financial assurance mechanism, the owner

or operator of the facility must include the cost of transportation to the appropriate facility for waste tires, tire-derived products, and residuals from processing, tipping fees, and labor associated with closure of the facility. Table 1 presents an estimate of closure costs for facilities located at various sites in the State based on the two existing processing operations located in the State and assuming a primary haul. A primary haul involves the use of a transportation vehicle dedicated to only hauling waste tires to a waste tire facility. A secondary haul involves the use of a transportation vehicle to haul waste tires to a waste tire facility one way and to back haul some other materials on the return trip. Table 2 presents an estimate of closure costs assuming a secondary haul. Both tables assume five factors: (1) the tires will be transported in a vehicle capable of holding 1,000 tires; (2) it costs $1.25 per mile to operate the vehicle; (3) there are 100 tires per ton; (4) it costs $.10 per tire for labor to load and unload the tires; and (5) the tipping fee at Andover is $.30 per tire, while there is no tipping fee at Babbitt. The closure costs represented in Tables 1 and 2 are based on information provided in the Scrap Tires in Minnesota study. See Exhibit 15.

Table 3 presents the one-way mileage from the six locations to the processing facilities at Andover and Babbitt.

Table 1. Primary Haul (1987)

	Andover	Babbitt
Twin Cities	$ .54	$ .71
Duluth	$ .96	$ .39
Brainerd	$ .78	$ .59
Detroit Lakes	$ .95	$ .69
Marshall	$ .90	$1.02
Rochester	$ .75	$ .90

Table 2. Secondary Haul (1987)

	Andover	Babbitt
Twin Cities	$ .52	$ .40
Duluth	$ .68	$ .24
Brainerd	$ .64	$ .34
Detroit Lakes	$ .73	$ .40
Marshall	$ .70	$ .56
Rochester	$ .62	$ .50

Table 3. Mileage

	Andover	Babbitt
Twin Cities	15 miles	244 miles
Duluth	149 miles	115 miles
Brainerd	125 miles	194 miles
Detroit Lakes	197 miles	237 miles
Marshall	146 miles	366 miles
Rochester	83 miles	318 miles

Tables 1 and 2 represent the current costs of waste tire management activities in Minnesota. The six locations were used as focal points because they represent all areas of the State. The costs stated for each area represent the minimum amount per tire that must be accounted for in the financial assurance mechanism. The costs represented in Tables 1 and 2 are current costs for proper waste tire management. The transportation, loading and unloading costs should not change due to the proposed rules, since the only applicable

requirement is for transporters to obtain an identification number. The tipping fee may change due to the cost of complying with the proposed rules. However, the exact amount cannot be determined due to many variables and factors. The Agency believes the cost of compliance will be very small relative to current processing costs. Therefore, any increase in the tipping fee should be small. Also, the proposed rules encourage the processing of waste tires, and waste tire processing facilities may benefit economically from the added influx of waste tires. Such economic benefits may offset the cost of compliance. For example the Babbitt facility has a break even point of 500,000 waste tires. However, the processing capacity of the facility will be three million waste tires by 1990. The added profit due to the additional waste tires should more than offset the cost of compliance with the proposed rules.

The Agency recognizes that the proposed financial assurance rules will have a direct economic impact on owners or operators of waste tire facilities. However, it is necessary to provide financial assurance to ensure that proper management of waste tires occurs and that money is available when needed to perform and complete closure activities at the facility. Otherwise, waste tires may be improperly managed and the cost to clean up a tire dump will be increased due to the double-handling and transportation necessary to remove the waste tires to an appropriate facility. Also, the Agency believes that the intent of the proposed rules is to prevent the establishment of additional tire dumps and to encourage the processing and utilization of waste tires.

The demonstration of financial assurance is not unique to the proposed rules. For solid and hazardous waste facilities, the demonstration of financial

assurance is already factored into the operating cost of the facility and is a business expense. In order to protect human health and the environment, waste tires must be properly disposed of; therefore, financial assurance for closure is a legitimate expense. Under the proposed rules, once closure is required, the owner or operator must have funds available to perform closure activities. Therefore, the owner or operator needs to make arrangements during the facility's operating life to assure that funds will be available when closure becomes necessary. Since the cost of closure is a normal operating expense for the owner or operator of a facility, it is not a burden to require financial assurance for closure action.

The proposed rules set forth three financial assurance mechanisms for owners and operators to choose from to provide financial assurance which are: letters of credit, surety bonds, and trust funds. The difference in cost between utilizing any of the financial assurance options allowed under the proposed rules is very dependent on the facility type, the quantity of waste tires and tire-derived products managed, and the location of the facility. Therefore, no exact cost estimate can be prepared regarding compliance with these rules. However, the proposed rules provide several options for the owner or operator to demonstrate financial assurance. It is up to the facility owner or operator to select the option which best addresses the owner's or operator's needs. Utilization of a trust fund is probably the most expensive because of the record keeping and administrative duties by both the trustee and the owner or operator of a facility. Utilization of a surety bond does not consume large amounts of capital. However, the following three conditions must be met by an

owner or operator of a facility in order to obtain a bond: (1) the owner or operator of the facility must have a net worth of approximately ten times the face value of the bond; (2) the owner and operator of the facility must co-sign for the bond; and (3) a financial statement must be submitted to demonstrate financial stability. The utilization of a letter of credit to demonstrate financial assurance will probably be the least expensive option for owners or operators of waste tire facilities.

Table 4 provides an example of the approximate bond cost based on a minimum amount of $0.55 per tire that would be demonstrated in the financial assurance mechanism. The costs represented in Table 4 are based on information provided in the Scrap Tires in Minnesota study. See Exhibit 15.

Table 4. Bonding Requirements

Tire Stockpile (Tires)	Cost to Clean Up $.55 per Tire	Approximate Bond Cost	Collector or Collection Sites Net Worth Required
1,000 or less	$ 302.50	$ 25.00	$ 3,025.00
5,000	2,750.00	35.00	27,500.00
10,000	5,500.00	69.00	55,000.00
20,000	11,000.00	138.00	110,000.00
30,000	16,500.00	206.00	165,000.00
40,000	22,000.00	275.00	220,000.00
50,000	27,500.00	344.00	275,000.00
60,000	33,000.00	412.00	330,000.00
70,000	38,500.00	481.00	385,000.00
80,000	44,000.00	550.00	440,000.00
90,000	49,500.00	618.00	495,000.00
100,000	55,000.00	688.00	550,000.00

The proposed waste tire permit rules, Minn. Rules pts. 7001.4000 to 7001.4150, and Minn. Rules pts. 7035.8200 to 7035.8710 apply to all waste tire facilities. Based on information regarding the current waste tire management

system, it is estimated that the financial assurance requirements of the proposed rules will apply to: 15 to 20 waste tire transfer facilities; 3 to 5 waste tire processing facilities; and 5 to 7 waste tire storage facilities.

B. Facility Standards.

Proposed rules, Minn. Rules pts. 7035.8200 to 7035.8710 establish standards for the management of waste tire facilities. These standards will increase the cost of owning and operating a waste tire facility, and will therefore indirectly increase the cost of waste tire management. This is particularly true for existing waste tire facilities that do not meet the standards in the proposed rules. In this case, the owner or operator of the facility may incur some cost for retrofitting or modifying the facility to meet the standards. The exact cost of the modification is not possible for the Agency staff to estimate because it will depend upon the choices made by the regulated community as to the most cost-effective business operation. However, if an owner or operator can work efficiently to bring the waste tire facility into compliance with these rules, the actual costs incurred may be minimal.

Even though the standards in the proposed rules will indirectly increase the cost of waste tire management, the Agency believes that the cost to modify the facility to make it environmentally secure is more cost-effective than having to perform corrective action at the facility. The costs to perform corrective action at a waste tire facility are very expensive. For example, in 1983 a tire fire occurred in Winchester, Virginia. It cost the federal government $1.8 million to fight the tire fire and clean up the area. The money was used for "site security, fire control, runoff collection, air and water

monitoring, technical support, and construction of a new containment pond with impervious liners, a new siphon dam, and access roads to handle the influx of heavy equipment." See Exhibit 24. The money spent to clean up the site and fight the fire came from the U.S. Environmental Protection Agency (hereinafter "EPA") Superfund. Therefore, the EPA has the authority to force the individual or group it deems responsible for the fire to repay the funds.

Corrective action to clean up a tire fire was also performed in Somerset, Wisconsin in 1986. It cost over $100,000 to fight the tire fire and clean up the area. The money was used for fire control, run-off collection, air monitoring, technical support, equipment, and evacuation of nearby residents. The money spent to clean up the site and fight the fire came from the Wisconsin Department of Natural Resources, St. Croix County, and the City of Somerset. The Wisconsin Department of Natural Resources is still in the process of determining the exact amount of money spent to clean up the site and fight the fire, and deciding how they intend to seek to recover funds spent at the site.

C. Economic Benefits.

As the proposed rules begin to be implemented, the system will offer increased opportunities for entrepreneurship such as in the construction of new facilities; collection of waste tires; transfer, processing, and storage systems for waste tires and tire-derived products; and utilization of transportation services and equipment. Also, the proposed rules may offer opportunities to consultants and other technical professional services to assist in implementing the proposed rules, resulting in increased activity and opportunities for the business sector.

The waste tire facilities to which waste tires will be transported will also benefit financially from the added influx of waste tires. The increased number and supply of waste tires flowing to these facilities will contribute greatly to the overall economic viability and success of these facilities.

The Agency believes the proposed rules address economic concerns to the maximum extent possible without undermining the goal of Minn. Stat. § 115A.902, subds. 1 and 2 (1986).

VIII. CONCLUSION

The Agency staff has in this document and its exhibits made its presentation of facts establishing the need for and reasonableness of the proposed waste tire permit rules. This document constitutes the Agency's statement of need and reasonableness for the proposed waste tire permit rules.

IX. LIST OF EXHIBITS

In drafting the proposed rules, the Agency relied on technical documents prepared by a number of sources. The following documents were used by Agency staff in developing these rules and are relied on by the Agency as further support for the reasonableness of the proposed rules. These documents are available for review at the Agency's Public Information Office at 520 Lafayette Road North, St. Paul, Minnesota 55155.

Agency Ex. No.	Title
1	Division of Solid and Hazardous Waste. 1984. Questionnaire on Waste Tire Management Issues. Minnesota Pollution Control Agency. Unpublished.

2 Division of Solid and Hazardous Waste. 1984. "Report on Other State Activities Regarding Waste Tire Management." Minnesota Pollution Control Agency. Unpublished.

3 Notice of Intent to Solicit Outside Opinion. October 1, 1984. State Register. 9 SR 698.

4 Letter from Minnesota Pollution Control Agency to Interested Parties dated September 28, 1984.

Responses:
A. October 5, 1984 letter from Lake County
B. October 5, 1984 letter from Walfred Pilquist
C. October 6, 1984 letter from Iron Range Township
D. October 8, 1984 letter from Waseca County
E. October 10, 1984 letter from Ziegler Tire Service Company
F. October 12, 1984 letter from Rubber Research Elastomerics, Inc.
G. October 18, 1984 letter from the East Mesaba Sanitary Disposal Authority
H. November 1, 1984 letter from Amex Tire
I. November 5, 1984 letter from Nicollet County.

5 Solid and Hazardous Waste Division. 1985. "Issue Statements for Waste Tire Stockpile Rule Development." Minnesota Pollution Control Agency. Unpublished.

6 Memorandums from Minnesota Pollution Control Agency staff to members of Minnesota Pollution Control Agency Board Solid and Hazardous Waste Committee dated January 23,1986 and February 3, 1986.

7 Letter from Minnesota Pollution Control Agency to interested parties dated April 15, 1986 and response - May 6, 1986 letter from Waste Recovery, Inc.

8 Memorandum from Minnesota Pollution Control Agency staff to members of Minnesota Pollution Control Agency Board Solid and Hazardous Waste Committee dated May 15, 1986.

9 Letter from Minnesota Pollution Control Agency to interested parties dated July 2, 1986.

Responses:

A. July 9, 1986 letter from Waseca County
B. July 11, 1986 letter from Indianhead Truck Line, Inc.
C. July 18, 1986 letter from Semcac, Inc.
D. August 11, 1986 letter from Ramsey County.

10 Memorandum from Minnesota Pollution Control Agency staff to members of the Minnesota Pollution Control Agency Board Solid and Hazardous Waste Committee dated August 18, 1986.

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Date: 3/23/87

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