

ATTACHMENT 2

STATE OF MINNESOTA  
POLLUTION CONTROL AGENCY

In the matter of the Proposed  
Underground Storage Tank Training  
And Certification Rules Chapter 7105.

STATEMENT OF NEED  
AND REASONABLENESS

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## I. INTRODUCTION

The Minnesota Pollution Control Agency (MPCA) was authorized and directed by the 1987 Minnesota Legislature to adopt rules containing standards of competence for persons who install, repair, or take an aboveground or underground storage tank (UST) out of service. The term "installer" refers to a person who conducts any of the activities listed above. Minn. Stat. § 116.491 directs the MPCA to require installers to obtain a certificate of competency from the MPCA, to conduct examinations to test the competency of applicants, and to require certificate renewal. The MPCA may also conduct training programs for installers and charge fees as necessary to cover the actual costs of the certification program.

On December 5, 1988, the MPCA published a Notice of Intent to Solicit Outside Opinion on the development of the tank installer certification program. A letter was also sent to all persons on the MPCA's Tanks and Spills mailing list and the Public Information Office mailing list of persons interested in new rules. The letter requested comments on the program development, as well as, names of persons that may wish to be part of an advisory work group.

From responses to the mailing above, the MPCA staff formed an advisory work group to aid in the formulation of the draft rules. The advisory work group consisted of representatives from the St. Paul Fire Department, two tank manufacturers, an environmental consulting firm, the St. Paul School District (nonprofit tank owner), a major gas station chain (for-profit tank owner), an environmental group, and six tank installers, removers and repairers. Six meetings; open to the public, were held from March through June of 1989. Tank installation, removal and repair issues were discussed at these meetings.

Many recommendations were made by the advisory work group regarding the proposed rules. Rule changes were based on these work group recommendations, comments from other MPCA personnel and from responses to the Notice to Solicit Outside Opinions. The end result of the work group meetings is the proposed rules for the certification of underground storage tank installers. Due to the differences in technical procedures and regulatory status between aboveground and underground tanks, it was decided to pursue only the certification of underground tank installers at this time.

The proposed rules establish a certification program for UST contractors, as well as, a training and certification program for on-site UST supervisors. The rules establish the requirements and procedures for obtaining and renewing this certification. In addition, the rules outline the minimum training course requirements for UST supervisors and the procedures for obtaining approval of an UST training course.

The proposed rules were presented to the MPCA Hazardous and Special Waste Committee during their July 24, 1989, meeting.

## II. STATEMENT OF MPCA'S STATUTORY AUTHORITY

The MPCA's statutory authority to adopt the rules is set forth in Minn. Stat. § 116.491 (1988), which provides:

Subd. 1. Requirement. (a) After the effective date of rules adopted under subdivision 3, a person may not install, repair, or take an aboveground or underground tank permanently out of service without first obtaining a certification of competence issued by the agency.

(b) The agency shall conduct examinations to test the competence of applicants for certification, issue documentation of certification, and require certification to be renewed at reasonable intervals. The agency may conduct training programs for installers.

Subd. 2. Fees. The agency may charge fees as are necessary to cover the actual costs of processing applications, conducting examinations, issuing and renewing certificates, and providing training programs. The fees received under this section must be credited to the petroleum release cleanup fund.

Subd. 3. Rules. The agency shall adopt rules containing standards of competence for installers and to implement this section.

The MPCA also has general authority to adopt rules to control water pollution, including rules prohibiting the storage of any liquid in a manner that could pollute the waters, under Minn. Stat. § 115.03, subd. 1(e) (1988).

Under these statutes, the MPCA has the necessary statutory authority to adopt the proposed rules.

### III. STATEMENT OF NEED

Minn. Stat. §§ 14.14, subd. 2 and 14.23 (1988) require the MPCA to make an affirmative presentation of facts establishing the need for and the reasonableness of the proposed rules. In general terms, this means that the MPCA must set forth the reasons for proposing rules and the reasons must not be arbitrary or capricious. However, to the extent that the need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the MPCA is a proper one. The need for the rules is discussed below.

The need for these rules arises from the following sources:

1. The need to protect the environment from tank releases in compliance with the UST Technical Requirements established by the U.S. Environmental Protection Agency (EPA) in 40 CFR Part 280, in turn, creates a need for a population of qualified UST installers.
2. The need to comply with the requirements of Minn. Stat. § 116.491 (1988).
  - A. Environmental protection compliance with EPA's technical requirements for USTs.

It is estimated that there are three to five million USTs in the United States. Approximately 35,000 of these tanks are registered in Minnesota. Leaks from USTs can cause serious health and environmental effects. Fires and explosions have occurred during the improper removal of tanks and when vapors from leaking tanks have entered sewers and basements. In addition, many city and private water supplies have been contaminated by leaking USTs.

On September 23, 1988, EPA published its final rule outlining technical requirements for USTs and state UST program approval, at 53 Federal Register, 37082 (to be codified at 40 CFR part 280). (The MPCA is currently in the process of adopting a modified version of these technical rules and applying for UST program approval.) The preamble to EPA's rules describes the scope of the problem created by leaking USTs. EPA concludes "that approximately 25 percent of existing UST systems are found to be non-tight when tested using current methods and that loose tank fittings or faulty piping causes 84 percent of these tightness test failures" (53 Federal Register 37086).

The major causes of releases from UST systems are due to failures of unprotected tanks, leaks in delivery lines, leaks from vent pipes and fittings on top of the tank, and spill and overfill errors. Industry studies show that a

major cause of these releases can be attributed to improper installation and repair practices.

For example, improper installation is considered the major cause of fiberglass tank failure. Releases also occur when tank fittings, such as bung hole plugs, fill tubes or vent lines, are not tightened sufficiently during installation or after a repair.

Piping releases occur twice as often as releases from the tank portion of an UST system. Again, some of the major reasons attributed to piping failures are poor installation techniques, poor workmanship and accidents. It has been estimated that piping is damaged 10 percent of the time at new installations between the installation of equipment and completion of paving.

Improper removal can also result in adverse health and environmental impacts. Explosions caused by the build-up of toxic vapors, have resulted in injury and deaths in Minnesota and across the United States. The practice of removing tanks without first pumping the contents has caused unnecessary releases to the environment. Education is also needed on the proper disposal of tanks and the associated tank "bottom sludges".

The tank installation business has seen some drastic changes with the advent of the new EPA technical requirements and the major advances made by industry in corrosion protection and leak detection in the past few years. Proper UST system installation, repair and removal now requires specialized knowledge, training and experience.

The EPA rules require that a new tank and its associated piping be equipped with corrosion protection, leak detection, and spill and overfill devices. In turn, the rules require the tank installer to certify, on the tank notification form, that the tank and all this associated equipment were installed in accordance with the performance standards outlined in the rules.

The proposed UST Training and Certification rules will help provide qualified, competent individuals to conduct this work. Therefore, there is a need to establish this program in the state of Minnesota.

B. Need to comply with the requirements of Minn. Stat. § 116.491 (1988).

After identifying the need for an UST Training and Certification program in Minnesota, the MPCA sought from the Minnesota Legislature the enactment of legislation establishing such a program in Minnesota. Minn. Stat. § 116.491 (1988), establishes the authority for the program and charges the MPCA with the necessary powers and duties to establish and administer the program.

In order for the MPCA to comply with the directive of Minn. Stat. § 116.491, there is a need for the MPCA to adopt rules to establish and administer an UST Training and Certification program in Minnesota.

#### IV. STATEMENT OF REASONABLENESS

The MPCA is required by Minn. Stat. ch. 14 to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the MPCA's proposed action. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole

The MPCA approached the need to adopt rules for an UST Training and Certification program by closely examining its rulemaking authority set forth in Minn. Stat. § 116.491 (1988). The statute requires that the rules establish:

- (a) standards of competence for installers;
- (b) examinations to test the competence of applicants;
- (c) procedures for issuing documentation of certification; and
- (d) certification renewal procedures.



In addition, the statute states the the MPCA may conduct training programs for installers and charge fees as necessary to cover specified costs associated with the certification program.

The MPCA has addressed all of these requirements in the proposed rules and has, in addition, drafted rules to be consistent with program requirements specified in Minn. Stat. §§ 116.46 to 116.50 (1988). This approach to addressing the need for an UST Training and Certification program in Minnesota is therefore reasonable.

B. Reasonableness of Individual Rules

The following discussion addresses the specific provisions of the proposed rules.

Part 7105.0010, Definitions

This part of the proposed rules sets forth 25 definitions of words or phrases used within the rules. The definitions are discussed below.

Subpart 1. Scope. This subpart states that the definitions in Minn. Stat. §§ 115.01, 115C.02, and 116.46 apply to the terms used in chapter 7105, unless the terms are defined in this part. Because all of these chapters apply to the Minnesota storage tank program, it is reasonable to use the same definitions throughout the program in order to achieve consistency within the program.

Subp. 2. Agency. "Agency" is defined in the proposed rule as the Minnesota Pollution Control Agency. It is reasonable to define this term in order to define which agency within Minnesota state government is responsible for the program implementation.

Subp. 3. Approved training provider. "Approved training provider" is defined as a person approved by the commissioner to provide the installer training course or the final examination. It is reasonable to define this term

because the proposed rules require that UST supervisors attend an approved training course.

Subp. 4. Certificate. The proposed rules define "certificate" as a document issued by the MPCA to a person who has met the certification requirements of the rules. It is reasonable to define this term in order to clarify the differences between a diploma and a certificate.

Subp. 5. Certified contractor. The term "certified contractor" is defined as a contractor who has been certified by the MPCA to engage in the business of installing, repairing, or closing underground storage tank systems. It is reasonable to define this term to clarify the difference between a certified contractor and a certified supervisor under the proposed rules.

Subp. 6. Certified supervisor or supervisor. "Certified supervisor" and "supervisor" are defined as an individual certified by the MPCA to perform one or more storage tank projects. This individual provides supervision and direction to workers engaged in a storage tank project. It is reasonable to define this term to clarify the difference between a certified supervisor and a certified contractor. The definition also points out the supervision and work direction responsibilities of a certified supervisor.

Subp. 7. Closure or removal. The terms "closure" and "removal" are both defined as permanently taking an UST out of service by either closing it in place, removing it from the ground, or converting it to store a nonregulated substance, as required by the Code of Federal Regulations, title 40, part 280 and state law. It is reasonable to define these terms because the proposed rules require that persons engaged in these practices be certified by the MPCA. The definition also references the federal regulations and state law to provide consistency among the various regulations.

Subp. 8. Commissioner. "Commissioner" is defined as the Commissioner of the agency. It is reasonable to define this term because the legislature has changed the title of the MPCA's chief executive officer from "Director" to "Commissioner." See 1987 Minn. Laws ch. 186, section 15.

Subp. 9. Contractor. A "contractor" is defined in the proposed rules as a corporation, partnership, or duly constituted individual proprietorship which holds itself as being qualified to engage in UST projects. It is reasonable to define this term because contractors will be required to be certified and have their supervisors certified.

Subp. 10. "Critical junctures:"

A. The proposed rules define the term "critical junctures" in the case of a tank installation as the steps in the installation of an UST which are important to the prevention of releases. The definition goes on to list some of these critical steps. The steps indicated are important in the prevention of leaks, require technical expertise, or have been found typically to be problem points. It is reasonable to define this term because the proposed rules require that a certified supervisor be on-site during all critical junctures of an tank installation project.

B. "Critical junctures" in the case of a tank removal is defined as the steps in a removal project which are important to the prevention of releases. A list of some of these critical steps is included in the definition. The steps indicated are important in the prevention of leaks, require technical expertise, or have been found typically to be problem points. It is reasonable to define this term because the proposed rules require that a certified supervisor be on-site during all critical junctures of an UST removal.

C. "Critical junctures" in the case of a tank repair project is defined as the steps in the tank repair project which are comparable to the critical

steps listed for tank installation in term of their importance in the prevention of releases. The definition includes a list of some of these critical steps for a repair project. The steps indicated are important in the prevention of leaks, require technical expertise, or have been found typically to be problem points. It is reasonable to define this term because the proposed rules require that a certified supervisor be on-site during all critical junctures of a tank repair project. Many of the critical steps of an installation project may be the same as the critical steps of a repair project. For this reason, the definition refers back to the definition of critical junctures for tank installations.

Subp. 11. Day. "Day" is defined in terms of a day of training equaling eight hours including breaks and lunch. It is reasonable to define this term because under the proposed rules an approved training course must be at least five days in length. By defining the term day, a training provider knows the minimum amount of hours the courses must be and can offer innovative methods of training, such as offering the course over ten evenings of four hours each.

Subp. 12. Diploma. The proposed rules define "diploma" as a document verifying the successful completion of the required training course. It is reasonable to define this term to clarify the differences between a diploma and a certificate.

Subp. 13. Disciplines of certification. There are three "disciplines of certification" defined in this subpart of the proposed rules. "Installation" has the same definition as subpart 15 of the proposed rules, but also includes the correction, restoration, modification, or upgrading of tank system piping or appurtenances. "Repair" means the correction, restoration, modification, or upgrading of the tank itself, such as repairing a hole in a tank or lining a tank. "Closure" has the same meaning given it in subpart 7 of the proposed rules. It is reasonable to define the disciplines of certification because the

same terms are used in other parts of the proposed rules, but with slightly different definitions. The variation in the definitions are found in the repairs aspect of UST projects. Under these definitions, persons supervising the more specialized repairs to a tank system, such as lining, will be required to have more specific experience. In contrast, individuals repairing a section of piping would need the same experience as an installer. The definitions also reference definitions in other subparts of the proposed rules to provide consistency within the rules.

Subp. 14. EPA. The acronym "EPA" is defined as the United States Environmental Protection Agency. It is reasonable to define this term because the EPA is the agency that developed the national technical requirements for USTs on which the state technical rules will be based. Much of the training course will be focused on these requirements.

Subp. 15. Installation. "Installation" is defined as the work involved in placing an UST in position and preparing it to be placed in service or the movement of an UST to a new position and preparing it to be placed in service. It is reasonable to define installation to clarify how the MPCA interprets the term.

Subp. 16. Installer. The term "installer" is defined as a person who installs, repairs or closes an UST. This definition is similar to the definition used in Minn. Stat. § 116.46, excluding the reference to aboveground tanks. It is reasonable to use this definition to provide consistency within the program.

Subp. 17. Operator. "Operator" is defined as a person in control of, or having responsibility for, the daily operation of a tank, and a person who is in control of, or had responsibility for, the daily operation of the tank immediately before discontinuation of its use. This term is used throughout the

Minnesota storage tank program. It is reasonable to define this term to clarify who is considered an operator of a tank and to provide consistency within the program regulations.

Subp. 18. Owner. The term "owner" is defined as a person who holds title to, controls, or possesses an interest in a tank and a person who held title to, controlled, or possessed an interest in a tank immediately before discontinuation of its use. This does not include a person who holds an interest in a tank solely for financial security, unless through foreclosure or other related actions, the holder of a security interest has taken possession of the tank. This definition is compatible with the definition of owner in Minn. Stat. ch. 115C and the EPA tank rules, Code of Federal Regulations title 40, section 280.12. It is reasonable to define this term to clarify the difference between an owner and an operator and to provide consistency within the program regulations.

Subp. 19. Person. "Person" is defined as an individual, partnership, association, public or private corporation, or legal entity, including the United States government, an interstate commission or other body, the state, or any agency, board, bureau, office, department, or political subdivision of the state, but does not include the Pollution Control Agency. This definition encompasses the definitions in Minn. Stat. chs. 115C and 116. It is reasonable to define this term to clarify its meaning and to provide consistency within the program regulations.

Subp. 20. Regulated substance. The proposed rules define "regulated substance as:

- A. a hazardous material listed in Code of Federal Regulations, title 49, section 172.101; or

B. petroleum, including:

- (1) gasoline and fuel oil as defined in Minn. Stat. § 296.01, subd. 3 and 4;
- (2) crude oil or a fraction that is liquid at a temperature of 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute;
- (3) constituents of gasoline and fuel oil under subitem (1) and constituents of crude oil under subitem (2); and
- (4) petroleum-based substances which are comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, and used oils.

The definition of hazardous material is that used in Minn. Stat. ch. 116. The definition of petroleum is a combination of the definitions found in EPA's technical rule and Minn. Stat. chs. 115C, 116 and § 296.01. A release of any of these substances from an underground storage tank would be considered detrimental to the environment. The basic techniques of an UST installation, removal or repair do not vary based on the substance that is stored. Therefore, it is reasonable to require persons conducting tank projects involving tanks holding any of these substances to be trained and certified.

Subp. 21. Repair. The proposed rules define "repair" as the correction, restoration, modification, or upgrading of a tank system, including but not limited to the addition of cathodic protection systems, the replacement of piping, valves, fill pipes or vents, the lining of a tank through the application of such materials as epoxy resins, and other similar activities that may affect the integrity of the tank system. It is reasonable to define this

term to clarify what types of repairs would require a certified installer under the proposed rules. By using the term tank system, this definition limits the need for a certified installer to those repairs that are underground, and therefore cannot be easily viewed.

Subp. 22. State. "State" is defined as the state of Minnesota. It is reasonable to define this term to provide clarification when statements such as state rules or state program are used in the proposed rules.

Subp. 23. Storage tank project. The proposed rules define "storage tank project" as the installation, repair or closure of an UST. It is reasonable to define this term to simplify the rules by providing a term that refers to all of the listed activities. This prevents the need to continuously list the different activities.

Subp. 24. Tank or tank system. "Tank" and "tank system" are given the same meaning as an UST in the proposed rules. It is reasonable to define these terms to simplify the rules by providing shorter phrases to replace UST, yet maintain the same meaning.

Subp. 25. Underground storage tank. An "underground storage tank" is defined in the proposed rules as any one or a combination of containers including tanks, vessels, enclosures, or structures and underground appurtenances connected to them, that is used to contain or dispense an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected to them, is ten percent or more beneath the surface of the ground. It is reasonable to define this term to provide consistency with the EPA definition of an UST and Minn. Stat. ch 116.

Part 7105.0020, Purpose

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 in a clear and concise manner at the beginning of the rules document.

Part 7105.0030, General Provisions

This part sets forth the general requirements of the proposed rules. The specifics of each subpart are discussed below.

Subpart 1. Certification requirements and deadlines. This subpart specifies the effective date of the certification requirements. It also specifies that after this date only certified contractors can conduct storage tank projects and certified supervisors must be present on-site during all critical junctures of a storage tank project.

The effective date of the certification requirements is six months after the effective date of the chapter to allow time for persons needing to be certified to obtain the training required by the proposed rules. It is reasonable to allow this time for persons to work the training into their schedules.

As mentioned in the Statement of Need (section III.), leaks from USTs can cause serious health and environmental problems. Many of these problems can be attributed to improper installations, removals and repairs. To obtain certification under the proposed rule, supervisors must attend an approved training course and demonstrate to the MPCA that they have applicable experience for the work they intend to do. A certified contractor must be, or have on staff, a certified supervisor for the tank projects he undertakes. Therefore, to help prevent these health and environmental problems from occurring in the future, it is reasonable to require that only certified contractors conduct storage tank projects and that their trained and experienced employees (i.e. certified supervisors) be on-site during the critical junctures of the tank project.

Subp. 2. Certificate availability. This subpart requires that a copy of the contractor's current certificate be conspicuously posted at the work location and that certified supervisors have copies of their current certificates at the work site. The MPCA Board Hazardous and Special Waste Committee suggested that a copy of the contractor's certificate be posted similar to that of a building permit. The contractor certificates will be approximately 8½ x 11 inches and include the name of the contractor, the certificate's expiration date, and MPCA's toll-free telephone number. This posting requirement is reasonable because it will allow interested individuals to easily determine if there is a certified contractor responsible for a particular tank project. The supervisor certificates issued by the MPCA will be wallet-size, similar to a driver's license. It is reasonable to require that the certificates be on-site because it is a simple requirement that will allow for immediate verification of their certification by MPCA inspectors and tank owners that contract with these individuals.

Subp. 3. Tank owner or operator requirements. This subpart requires tank owners or operators to allow only certified contractors and supervisors to perform storage tank projects on their tank systems. To help insure that only qualified persons conduct these activities, it is reasonable to require tank owners or operators to use only certified individuals.

Part 7105.0040, Exclusions

This part of the proposed rules sets forth those USTs that are excluded from the rules. The specific exclusions are discussed below.

The exclusions listed in items A through E are the same exclusions found in EPA's technical rules, title 40, section 280.10(a). The exclusions listed in items F through M are identical to the statutory exemptions provided by Minn. Stat. § 116.47 (1988). These eight exclusions are also identical to those

excluded under EPA's definition of an UST, title 40, section 280.12. The tanks excluded by items N through R are identical to those tanks deferred in EPA's technical rule, title 40, section 280.10(c).

EPA's reasons for exempting or deferring these tanks from the current regulations can be found in the preamble to their technical rules, 53 Federal Register pages 37107 through 37121. The reasons for the exclusions vary. Some tanks are already being regulated under other programs, such as the exclusion for pipeline facilities. Some of the excluded tanks, such as field constructed tanks, are technically different to such an extent that they did not conform with the program. The agency believes these exclusions to be appropriate.

It is reasonable to exclude these tanks from the proposed rules to provide compatibility with the federal technical rules and consistency within Minnesota's tank program.

Part 7105.0050, Contractor Certification

This part of the proposed rules sets forth the requirements for contractor certification, as well as the disciplines in which a contractor can seek certification, application procedures for initial and renewal certification and the length of certification. The specific requirements are discussed below.

Subpart 1. Contractor certification requirements. This subpart requires a contracting company:

- A. to be, or have in its employ a certified supervisor that will be on-site during the critical junctures of a tank project;
- B. to submit documentation of insurance, surety bonds, or liquid assets equal to at least five times the value of the contractor's largest project within the previous two years; and
- C. to complete the application procedures outlined in subparts 3 or 4.

One of the major concerns of the MPCA's advisory work group was to ensure that both the contractor, as well as the on-site supervisor, be certified. By requiring contractors to be certified, the responsibility for a proper tank project is extended to the company, as well as the supervisor and tank owner.

Minnesota's contractor certification requirements outlined in items A and B are based on the Petroleum Equipment Institute's (PEI) Model Act for certifying contractors. The PEI is an international trade association composed of companies that primarily manufacture, distribute, install and service petroleum marketing equipment. Many of their published documents have been referenced in EPA's technical rule for use in complying with the technical requirements. PEI has developed a Model Act for the Licensing of Persons who Install, Repair, and Remove Underground Liquid Storage Systems. The Model Act was written by PEI's Tank System Installer Certification Committee made up of PEI members.

Under the proposed rules, a certified supervisor must be on-site during all critical junctures of a storage tank project. As an employer of these people, it is reasonable to require the contractors to ensure that their supervisors are indeed on-site during these critical phases of a tank project.

The advisory work group felt there was a need to include the financial responsibility requirements, outlined in item B, to ensure that all storage tank projects were financially covered in some manner. According to members of the work group, this is already required by many of the larger cities in the state. They felt that it was needed and reasonable to extend this requirement to all tank projects.

The MPCA is continually being asked for a list of contractors that perform storage tank projects. There is currently no control over the names that are included on this list. The certification of contractors will make it possible for the MPCA to provide a list of certified contractors. Through the

certification process, these contractors will have provided the MPCA with information about the training and experience of their supervisors and their company's insurance or financial capabilities to cover accidents.

Subp. 2. Disciplines of contractor certification. This subpart specifies the three disciplines for which a contractor can be certified. For example, if a contractor is not himself certified to supervise tank repairs or does not employ a supervisor certified to oversee tank repairs, the contractor cannot be certified as a tank repair contractor. This subpart is necessary and reasonable because it provides clarification to contractors as to who can be certified and for what type of projects.

Subp. 3. This subpart specifies what information will be required from contractors when applying to the MPCA for certification. The information will be requested on an application form provided by the MPCA, thereby allowing the MPCA to provide additional instructions to help clarify how the MPCA wishes certain items to be documented. This subpart is reasonable because it tells those persons affected by the rules what information the MPCA will be requesting from applicants.

Subp. 4. This subpart specifies what information is required for renewal applications. It is suggested that an applicant apply for renewal at least 30 days prior to expiration to avoid a lapse in certification. For tracking purposes, it is reasonable to require the same information as required in subpart 3, as well as a copy of the contractor's previous certificate.

Subp. 5. This subpart specifies that a contractor's certificate expires two years after the date of issuance. According to a survey conducted by MPCA staff of other state tank certification programs, the length of certification ranges from one to three years, with the average being two years. Based on this information, and concerns for the changes within a company that can occur during

a two year period, it was felt that yearly renewal would be unnecessary and three years would not adequately address the company and industry changes. The PEI Model Act also suggests two years for renewal intervals. Therefore, the advisory work group considered two years to be a reasonable length for certification.

Part 7105.0060, Supervisor Certification

This part of the proposed rules sets forth the requirements for supervisor certification, as well as the disciplines in which a supervisor can seek certification, application procedures for initial and renewal certification, the length of certification, and reciprocity. The specific requirements are discussed below.

Subpart 1. Supervisor certification requirements. This subpart specifies the training and experience requirements for certified supervisors. An applicant must:

- A. successfully complete an approved five-day training course every two years,
- B. have at least two years of tank service experience and have field experience on a minimum of five tank projects. At least four of these projects must be in the discipline for which the applicant is seeking certification. (Experience obtained after supervisors and contractors are required to be certified must be under the employ and direction of a certified individual); and
- C. complete the application procedures outlined in subpart 4 or 5.

As explained in General Provisions, subpart 2, a major cause of UST health and environmental problems can be attributed to improper installation, repair and removal practices. Therefore, it is reasonable to require certification of the on-site supervisors that are overseeing these projects. It is the opinion

of the advisory work group that no one action or ability of an individual should qualify that person for certification. For this reason, certification is a multifaceted process that must include training, examination and experience.

The training requirements, indicated in item A, have been set at at least five days because existing tank training courses have shown that this amount of time is needed to cover the necessary material. Three major universities in the United States currently offer a tank installer training course. Each of these courses is four days in length. These courses focus on installation of USTs and barely touch on removal or repair techniques. Taking into account that the course must not become unreasonably long, yet ensuring that it still cover the necessary topics, it was felt that five days would be a reasonable length for a training course that will address tank installation, repair and removal.

Supervisors are required to successfully complete the training course every two years. This requirement is considered reasonable due to the many changes and advances being made by industry in this field.

Item B. outlines the experience requirements for certified supervisors. The advisory work group felt there was a need to require both a certain number of years experience and specific field experience. The need for a specific number of years experience addresses the work group's concerns about the true qualifications of an individual, and would, for example, prevent a high school student hired for the summer from obtaining enough experience in one season to qualify for certification. The requirement for field experience addresses their interest in preventing an "office" person who has never really seen a tank project because they were employed as an accountant for a tank contractor for two years from being certified. It is reasonable to require both employment experience and field experience because this combination is needed to adequately address the concerns expressed above.

At least four out of five field projects must be specific to the discipline for which the individual seeks certification. Some supervisors oversee various types of tank projects and all experience is considered beneficial. By breaking the certification process into disciplines, this will help ensure that individuals supervising installations actually have experience in tank installation, as opposed to having all their experience in tank removal. This same approach is used by New Mexico, Oklahoma and Utah in their state programs. This requirement is reasonable because it requires that at least a minimum amount of a person's experience be specific to the discipline for which person is certified.

Subp. 2. This subpart specifies that to successfully complete a training course a person must attend all training hours and pass the examination. This is reasonable because it clarifies what the MPCA considers successful completion of a training course. A person cannot take and pass the examination without attending the entire course. The MPCA feels that both the course discussions and pursuant student interactions are as important as the final examination.

Subp. 3. Disciplines of supervisor certification. This subpart specifies the three disciplines for which a supervisor can be certified. This subpart is necessary and reasonable because it provides clarification to supervisors as to who can be certified and for what type of projects.

Subp. 4. This subpart specifies what information will be required from supervisors when applying to the MPCA for certification. The information will be requested on an application form provided by the MPCA, thereby allowing the MPCA to provide additional instructions to help clarify how the MPCA wishes certain items to be documented. This is reasonable because it tells those persons affected by the rules what information the MPCA will be requesting from applicants.



Subp. 5. This subpart specifies what information is required for renewal applications. It is suggested that an applicant apply for renewal at least 30 days prior to expiration to avoid a lapse in certification. For tracking purposes, it is reasonable to require the same information as required in subpart 4, as well as a copy of the supervisor's most recent training diploma to verify that the individual has successfully completed an approved training course within the previous two years.

Subp. 6. This subpart specifies that a supervisor's certificate expires two years after the applicant successfully completes the final training course examination. The same reasoning can be applied to this subpart as that attributed to the length of contractor certification mentioned previously. In addition, it is reasonable to require recertification every two years to provide consistency within the program. Under the proposed rules, a supervisor's training diploma and certificate will expire on the same day. This will ensure that no more than two years passes between course attendance. Contractor certificates will also expire every two years.

Subp. 7. Reciprocity. Subpart 7 allows for the approval of courses other than those provided by an approved training provider if the commissioner determines that the course is comparable to the course outlined in parts 7105.0080 and 7105.0090. This part also outlines the steps that must be taken by individuals wishing to be certified as supervisors in Minnesota and seeking reciprocity under this subpart. The certificate issued by the MPCA under this subpart will expire two years after the final day of the approved training course.

Some individuals may attend a similar tank training course in another state and then apply to be certified to conduct storage tank projects in Minnesota. This provision of the proposed rule will enable persons that have attended

comparable training to substitute this training for a program already approved by the MPCA. The applicant would still need to meet the other requirements for certification before a certificate would be issued. If the course does not specifically address Minnesota's UST regulations, but is otherwise determined by the commissioner to be comparable, the applicant will be required to pass an examination pertaining to Minnesota's program.

It is reasonable to provide for reciprocity of training courses because as long as the courses are comparable, the goal of the program to have trained individuals overseeing the tank projects will still be met. Because UST programs can vary considerably from state to state, it is also reasonable to require individuals whose courses have not covered Minnesota's regulations to take an examination to demonstrate their knowledge of Minnesota's tank program.

Part 7015.0070, Standards of Performance

This part outlines standards of performance or "ethical standards" for contractors and supervisors. Subpart 1 specifies two standards that would apply to both contractors and supervisors. Subpart 2 specifies standards that would be specific to only supervisors.

The states of Maine, New Mexico and Utah all establish minimum standards of performance in their tank certification programs. The advisory work group reviewed these programs and felt that standards of performance would also be appropriate to include in Minnesota's certification rule. They chose the standards outlined in this part because they felt that it was reasonable to require both the contractors and the supervisors to only engage in projects that conform to regulation and not to take bribes. In addition, they felt that supervisors should not be certifying projects they did not actually supervise. Supervisors should perform projects so that there is no release of the contents of the tank and they must complete projects in accordance with all applicable

regulations. This part is reasonable because it sets and clarifies the minimum standards of practice expected and ties these into the certification program through sanctions in part 7105.0110.

Part 7105.0080, Training Course Requirements

This part of the proposed rules sets forth the requirements for a storage tank installer training course. It requires that the course be at least five days in length and include lectures, demonstrations, four hours of hands-on training, course review, and a final examination. Subparts A. through S. outline the specific topics that must be covered during the five days.

The reasoning behind a five-day training course was discussed previously under part 7105.0060, supervisor certification, subpart 1. Five days can be a long time, especially for individuals not accustomed to spending long periods of time sitting at a desk. For this reason, the proposed rules require that the course include lectures, demonstrations, and hands-on training. It is reasonable to require this diversity because it will not only make the course more enjoyable, but also encourage interaction among class participants and enhance the learning process.

The basic outline of topics found in subparts A. through S. was derived from the course outlines taught by the three universities currently offering tank installer training courses. Additional information was added to address repair and removal techniques, hands-on training specifics, and Minnesota's rules dealing with USTs. It is reasonable to specify what topics must be covered so if an individual wishes to become an approved training provider the individual will know MPCA's minimum requirements for an approved training course.

Subparts A, B, and O require the teaching of applicable state and federal laws and several major industry standards and codes relating to tank installation, repair and removal. Installers should be familiar with the

applicable laws since they must comply with them, and the industry codes are incorporated into those laws. Other industry codes are also incorporated into federal regulations, and will probably be incorporated in upcoming state rules, and some of these are listed in the other course subject areas. However, not all the relevant industry codes can be taught in a five-day course, nor need they all be taught since they generally represent alternatives to the codes that are being taught.

Subparts C - K, and M cover the basic technical requirements of proper tank installation, repair, and removal. Improper procedures in any of these areas could result in a violation of the federal and upcoming state technical rules or in a release from the tank system. Subparts D, L, and P regard management of the tank project and working with employees and contractors. It is reasonable to require training of these subjects in order to prevent mistakes on tank projects which could result from mismanagement or miscommunication, and to alert supervisors to areas where experts from other fields must be called in. Subpart N requires demonstrations and hands-on training to ensure that students properly interpret the written and oral information received in the class.

Subpart Q requires students to study the possible environmental consequences of improperly installing, repairing, and removing tanks. This is reasonable so that students understand the importance of the technical information they are learning, and so they know which standards are the most critical. Subpart R requires a course overview to re-emphasize the most important aspects of the course.

Subpart S allows the Commissioner to require that additional subjects be addressed to reflect advances in tank installation, repair, and removal methods or safety practices. The area of tanks technology is rapidly advancing, and since the goal of the course is to train installers in the best installation,

repair, and removal methods available, the courses should reflect these advances as they are made.

Part 7105.0090, Examinations and Diplomas

This part of the proposed rules sets forth the requirements for development and administration of examinations and the information required on diplomas issued by training providers. The specific requirements are discussed below.

Subpart 1. This subpart specifies who can administer examinations. The rules as proposed would allow anyone to become approved training providers as long as they met the requirements outlined in parts 7105.0080, 7105.0090 and 7105.0100. For example, a contracting company could apply to become an approved training provider and offer the training course to his own employees. This subpart allows final examinations to be administered only by the MPCA, or personnel of colleges or educational institutes selected by the MPCA. It is reasonable to limit the administration of examinations to the institutions mentioned, thereby eliminating a possible conflict of interest between a contractor approved as a training provider and his employee that may need to pass the examination to maintain his certification.

Subp. 2. This subpart requires that the final examination be a written, comprehensive examination consisting of 100 multiple-choice questions, covering the topics discussed in the training course. Taking into consideration the audience and the amount of topics to be covered in the course, 100 multiple-choice questions is the standard amount and type of questions asked on an examination for a course of this type. One goal of the examination is to increase attendance and attentiveness during the course. The other goal for the examination is to test the level of knowledge of participants. These goals are reasonable to establish a minimum level of competency for certified supervisors.

Subp. 3. This subpart requires that an individual score 75 percent or higher on the final examination to pass. The exam must be passed within 10 days after completing the training course. Seventy-five percent is the cut-off for passing in PEI's Model Act as well as the cut-off used by many of the other state programs requiring examinations for certification.

This subpart requires that the examination be passed within 10 days of completing the course. This is reasonable because it allows for emergencies that may come up. For example, if a person completes a course but cannot stay for the examination because of an emergency at home, the individual would still have 10 days to take the examination. This also limits the amount of time a person has to complete a retest if the person fails the first examination. This examination date is important because it not only is the course completion date, but also the certification date. It is reasonable to set a limit on how long tests and retests can be extended out.

Subp. 4. This subpart allows a person to take one retest. Since the goal of the examination is to test the person's ability to conduct storage tank projects, as opposed to their ability to take tests, it is reasonable to allow a person to take a retest if the first test is failed.

Subp. 5. This subpart outlines the information required by the MPCA on course diplomas issued by approved training providers. This information is needed to simplify the course verification process when a person applies to become a certified supervisor. It is reasonable to specify this information because it tells those persons that may wish to become approved training providers what the diploma must include.

Since there may be times when a course is given by a person other than the person that administers the examination, it is reasonable to require both individuals to sign the diploma. The course provider will sign to verify the

information on the diploma pertaining to the course, i.e., dates of the course, student name, etc. The person who administers the examination will sign to verify the information on the diploma pertaining to the test, i.e., date of the examination, score, and student name.

Part 7105.0100, Approval of Training Course

This part of the proposed rule sets forth the procedures for approval of a training course, the experience requirements for course instructors, the criteria for suspension of course approval, and the requirements for renewal of course approval. The specific requirements are discussed below.

Subpart 1. This subpart states that the commissioner may approve training courses developed by persons other than the MPCA staff. The subpart outlines the information that must be submitted to the MPCA by persons wishing to have their training course approved. This subpart is reasonable because it tells those persons that may wish to become approved training providers what information must be submitted for review. The information requested is information the staff will need to determine if the training meets the requirements of chapter 7105.

Subp. 2. This subpart specifies the minimum type and amount of experience course instructors must have. The instructors must have a total of at least 4,000 hours of field experience in tank installation, repair, and removal. This requirement may be met by just one instructor, or through a combination of experience held by a number of instructors. Additional instructors shall have directly related experience or academic credentials. This subpart is reasonable because it ensures that instructors actually have field experience in what they are teaching. It prevents persons from providing the training without having adequate knowledge of the subject. The 4,000 hours of experience is equivalent to what instructors for the vocational technical colleges must have to become

instructors. It was considered reasonable to require the same number of hours for instructors of this course.

The requirement for additional instructors to have related experience or academic credentials provides a method to approve instructors that may be "experts" in their field, such as a corrosion expert, but may lack actual field experience. An attorney that specializes in environmental law would be another example of such an instructor that may lack field experience, but would be well qualified to teach the section covering legal liabilities and defenses. This subpart is reasonable because it allows these qualified individuals to be approved as course instructors.

Subp. 3. This subpart allows the commissioner to suspend or revoke approval of a training course if the commissioner finds that that course is not meeting the requirements of chapter 7105. This subpart is reasonable because it provides a mechanism for the commissioner to suspend or revoke approval of a substandard course.

Subp. 4. This subpart states that approval of a training course remains in effect until the commissioner notifies the training provider that changes in the course are required. This subpart is reasonable because it does not require the training provider to periodically seek approval of training that has not changed, but it does provide a mechanism for the MPCA to ensure that changes are made when needed through a renewal process.

#### Part 7105.0110, Sanctions

This part of the proposed rule provides a mechanism for revocation or suspension of certificates if warranted. It also outlines the due process procedures that an individual is entitled to. The specific requirements are discussed below.



Subpart 1. The following actions may result in sanctions being imposed on an individual.

- A. submission of false or misleading information or credentials in order to obtain or renew a certificate;
- B. failure to meet the requirements to obtain or renew a certificate;
- C. failure to meet the requirements of EPA's technical regulations or Minnesota's storage tank program; and
- D. negligence in the performance of storage tank projects.

The outline above reiterates requirements set forth in these proposed rules and other regulations already in place. The items clarify the basic requirements that must be adhered to by all certified contractors and supervisors. This subpart is reasonable because the potential for imposition of sanctions is needed to provide credibility to any certification program.

Subp. 2. This subpart specifies that the commissioner may initiate an investigation for the existence of grounds for sanctions when the commissioner receives a signed written complaint or when the commissioner has reason to believe that sanctions may be warranted. This subpart is reasonable because it states when the MPCA may begin an investigation for the existence of grounds for sanctions.

Subp. 3. This subpart specifies the procedures for notifying a person against whom a sanction is going to be imposed. The person has ten days from the date of receipt of the notice to request a contested case hearing on the matter. Sanctions cannot be imposed upon a person until a hearing request has been considered by the agency or the ten days has passed without a hearing request. This subpart is reasonable because it allows persons ten days to decide if they wish to have a hearing on the matter. Taking into account the limited construction season, a lot of business can be conducted in a short period of time. Ten days is a sufficient amount of time to make this decision.

Subp. 4. This subpart specifies the procedures for a contested case hearing. This subpart is reasonable because it references existing procedures, provides due process, procedural fairness, and consistency within the agency. This subpart references the appropriate Minn. Rules and the Administrative Procedure Act, Minn. Stat. ch. 14 which establish detailed procedures for the preparation of meeting agendas, for the agency decisions to hold contested case hearings, and for the actual contested case hearings.

Subp. 5. This subpart requires previously certified individuals that have had their certificates revoked or suspended to return all their certificates to the MPCA. This is reasonable because these documents could otherwise be falsely used to imply that the individual was still certified.

Subp. 6. This subpart requires at least a one year waiting period after a certificate has been revoked, before an individual may be recertified. This is reasonable because it sets a minimum standard for a revocation period and specifies this period so potentially affected individuals know well in advance what they may be risking if they do not comply with the regulations.

Subp. 7. This subpart specifies that the commissioner will reinstate a suspended certificate if the person fulfills the terms of the suspension order and meets all applicable requirements of the proposed rules. It is reasonable to reinstate a person's certificate if the person has complied with all the regulations and requirements of the sanction.

Part 7105.0120, Fees

This part of the proposed rules sets forth the fee for certification and the circumstances when the fee will be refunded. The fee for each new, modified, or renewal application for contractor or supervisor certification is \$50. Refunds will be made to individuals who are rejected for certification. This part is reasonable because it establishes a fee for certification that is projected to

cover the the costs of processing applications, and issuing and renewing certificates. The fee is consistent with certification programs in other states and with Minn. Stat. § 116.491, subd. 2.

Part 7105.0130, Incorporation by Reference

This part of the proposed rules lists those documents that are incorporated by reference in the proposed rule. This part is reasonable because it informs those persons affected by the rules that these documents can be found in the State of Minnesota Law Library, as well as providing an address where they can be obtained. Because these documents can be subject to frequent change, this is also indicated to alert individuals of this fact and to inform them that amendments to these documents are also incorporated by reference.

This rule incorporates by reference several technical industry codes and standards (including standards by independent testing laboratories) to be taught in the training program. These rules and standards have already been incorporated by reference or otherwise made a part of the federal technical regulations at 40 CFR part 280 or the state fire code, and most will also be incorporated into the pending state technical rules. In order to ensure that the course remains up-to-date in teaching the standards required or allowed by law, this rule will automatically incorporate future amendments to the codes and standards, but only to the extent that the amendments are made a part of these other, substantive laws governing this subject area. This approach reasonably assures that the training course remains consistent with the most current legal standards.

The legislature has indicated its approval of this approach in Minn. Stat. § 645.31, subd. 2 (1988), which states that a statute (or rule) that adopts another law by reference "also adopts by reference any subsequent amendments of such other law, except where there is clear legislative intention to the

contrary." By only adopting those amendments to the industry codes and standards which are adopted by the substantive federal or state laws, the rule falls within the limits of what the legislature has explicitly approved in § 645.31. The Minnesota Supreme Court has twice in recent years acknowledged that adoption of future amendments to standards being incorporated by reference is particularly appropriate when, as in this case, the goal is to coordinate state and federal requirements. Minnesota Recipients Alliance v. Noot, 313 N.W. 2d 584, 586-87 (Minn. 1981); Minn. Energy & Economic Dev. Auth. v. Printy, 351 N.W.2d 319, 351-52 (Minn. 1984).

#### V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1988) requires the MPCA, when proposing rules which may affect small businesses, to consider the following methods for reducing the impact 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.

The proposed rules may effect small businesses as defined in Minn. Stat. § 14.115 (1988). As a result, the MPCA has considered the above-listed methods for reducing the impact of the rule on small businesses.

In drafting the proposed rules the MPCA considered the feasibility of establishing lesser requirements for contractors and supervisors of small businesses but concluded that, because tanks improperly installed, removed or repaired by small contractors have equally deleterious impacts on the environment and public health, the purposes of the rule would be defeated by such a measure.

The proposed rules are not expected to have a significant impact on small businesses because the certification fee is low (\$50 every two years for the contractor and each supervisor). The MPCA does not believe that this fee will be an economic burden to the small business.

To become a certified supervisor an individual must attend a five-day training course every two years. The MPCA is initiating a contract with the State Board of Vocational Technical Institutes to help ensure that the required training is readily available and at a reasonable cost. Under the agreement, the Technical Institutes will be required to offer the course in a number of locations in greater Minnesota, as well as the metro area. The Legislature regulates the fees that the State Technical Institutes can charge per credit. It has been estimated that this training would be equivalent to a four credit course. At \$35-\$50 per credit, the Technical Institutes have estimated that they would charge between \$140-\$200 for the five day course. This is considered to be very reasonable for a course of this type and length. The three other universities that are offering similar courses, but only four days in length, are charging \$560, \$600 and \$725. Because the course will be accessible and reasonably priced, the MPCA does not believe that this requirement will be a burden to small businesses.

## VI. CONSIDERATIONS OF ECONOMIC FACTORS

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

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

In proposing the rules governing the certification of UST tank installers, repairers and removers, the MPCA has given due consideration to available information as to any economic impacts the proposed rules would have.

No significant adverse economic impacts are anticipated to result from the adoption of the proposed rules. As discussed in section V. above, the fee for certification and costs associated with the training requirements are not expected to be a significant burden on small businesses.

There may be some beneficial economic impacts from the proposed rules. By increasing the technical expertise and environmental awareness of contractors conducting these tank projects there should be less releases to the environment in the future. When considering the economic impacts that result from the cleanup costs associated with contamination, this rule should result in cost savings to municipalities, small businesses and the general public as a whole.

VII. CONCLUSION

Based on the foregoing, the Minn. Rules pts. 7105.0010 to 7105.0130 are both needed and reasonable.

Dated: August 11, 1989

*for* Barbara Ladsey Sensi  
Gerald L. Willet  
Commissioner

