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**STATE OF MINNESOTA
POLLUTION CONTROL AGENCY**

**In the Matter of the
Proposed Rules Governing
Open Burning, Minn. Rules
pts. 7005.0705-.0815**

**STATEMENT OF NEED
AND REASONABLENESS**

I. INTRODUCTION

Open burning has been regulated in the state of Minnesota since 1969. The open burning rules were developed to establish standards for open burning and to provide permitting requirements and restrictions for the public, local authorities and towns or cities authorized by the Minnesota Pollution Control Agency (Agency) to issue open burning permits. The Agency now proposes to amend the open burning rules in response to legislation enacted by the 1989 Legislature. In addition, the Agency proposes to clarify permitting requirements and reduce the number of permits that the Agency must issue for open burning. The reduction in the number of Agency issued permits will not result in an increase in the amount of open burning or a decrease in the standards applied to open burning.

On November 6, 1989, the Agency published a Notice of Intent to Solicit Outside Information in preparing to propose amendments to the rules. On June 25, 1990, the proposed amendments were presented to the Agency's Air Quality Committee for review.

II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority to adopt the rules is set forth in Minn. Stat. § 116.07, subd. 4 (1988). It provides:

that the Pollution Control Agency may adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1969, Chapter 1046, for the prevention, abatement, or control of air pollution. Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances, or conditions in order to make due allowances for variations therein. Without limitations, rules or standards may relate to sources or emissions of air contamination or air pollution, to the quality or composition of such emissions, or to the quality of or composition of the ambient air or outdoor atmosphere or to any other matter relevant to the prevention, abatement or control of air pollution.

Open burning is a source of air pollution, emitting particulates and carbon monoxide into the atmosphere. Under Minn. Stat. § 116.07, subd. 4 (1988), the Agency has the necessary statutory authority to adopt amendments to its rule governing open burning.

III. STATEMENT OF NEED

Minn. Stat. §§ 14.14, subd. 2, and 14.23 (1988) require the Agency to make an affirmative presentation of facts establishing the need for and the reasonableness of the proposed amended rules. In general terms, this means that the Agency must set forth the reasons for proposing rules and the reasons must not be

arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the Agency is a proper one. The need for the amended rules is discussed below.

The need for these rules arises from the following:

1. The need to clarify permitting requirements and reduce the Agency role in regulating open burning. Based on comments by applicants, local authorities, and Agency staff, the Agency's current permitting process is unnecessarily complicated and time consuming, and much of the permitting could be better handled on the local level.

With the current process, an application must be filled out by the applicant and the local fire authority. Unless there is a local unit of government delegated to issue permits, the completed application is then submitted to the Agency for review and approval regardless of where the burning will take place. If the application is approved, the permit is issued and sent to the local fire authority for signature. The permit is then sent to the applicant. If the application is denied, a denial is sent to the applicant with an explanation.

Under the proposed amendments, applicants will be required to obtain an open burning permit from the Agency for burns conducted on land within a home rule charter or statutory city, in nonattainment areas, at permanent tree and brush open burning sites, and for all fire training. Other open burning will be allowed without an Agency permit, although the standards

applicable under the rule will still apply. These changes will simplify the permitting process and enable faster consideration of applications.

2. The need to comply with the requirement in Minn. Stat. § 17.135 (1989). On May 16, 1989, the Governor signed into law Minn. Stat. § 17.135, Farm Disposal of Solid Waste, which states:

a permit is not required from a state agency, except under sections 88.16, 88.17, and 88.22, for a person who owns or operates land used for farming to bury or burn and bury solid waste generated from the person's household or as part of the person's farming operation if the burying is done in a nuisance free, pollution free and aesthetic manner on land used for farming. This exception does not apply if regularly scheduled solid waste pickup is available at the person's farm.

As currently drafted, the rules do not allow the burning authorized by Minn. Stat. § 17.135. Thus, there is a need for the Agency to amend the rules to make language and definition changes to be consistent with this state statute.

IV. STATEMENT OF REASONABLENESS

The Agency 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 Agency's proposed action. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole

The amended rules establish a clear and simplified permitting program while maintaining environmental standards applicable to open burning. Agency open burning permits will be required for land within a home rule charter or statutory city, a nonattainment area, a permanent tree and brush open burning site and for all fire training in the state--areas or types of open burning where it is more critical for Agency control to be maintained. Because this will provide for the effective allocation of limited staff resources while facilitating public participation in the permitting program, the Agency's overall approach is reasonable.

The amended rules incorporate Minn. Stat. § 17.135, which allow farmers to burn and bury solid waste generated by the person's household or as part of the person's farming operation if garbage collection service is not available and provided that the burying is conducted "in a nuisance free, pollution free, and aesthetic manner on the land used for farming." Permits required under Minn. Stat. §§ 88.16, 88.17 and 88.22 must still be obtained.

It is reasonable for the Agency to amend the rules to allow the unpermitted open burning authorized by Minn. Stat. § 17.135.

B. Reasonableness of Individual Rules

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

Part 7005.0705, Definitions

Subpart 1. Scope. A scope section is provided to guide the reader with regard to the applicability of the definitions. Because this will aid in interpretation of the rule, it is reasonable.

Subpart 2. Agency. "Agency" means the Minnesota Pollution Control Agency. It is reasonable to define this term to identify the Minnesota Pollution Control Agency in a shorthand manner. The proposed rules refer to permitting and burning practices specifically associated with the Department of Natural Resources and Department of Agriculture. It is reasonable to define "Agency" to ensure that the public is not confused with other state agencies.

Subpart 3. Commissioner. "Commissioner" means the Commissioner of the Minnesota Pollution Control Agency. It is reasonable to define this term to identify the Commissioner of the Minnesota Pollution Control Agency in a shorthand manner. The proposed rules refer to permitting and burning practices specifically associated with the Department of Natural Resources and Department of Agriculture, agencies that also have commissioners. It is reasonable to define Commissioner to ensure that the public is not confused with other state agencies.

Subpart 4. Delegated authority. "Delegated authority" is defined as a town, home rule charter or statutory city, authorized by the Agency to issue open burning permits under part 7005.0767. It is reasonable to define this term to distinguish between local authority and delegated authority.

Subpart 5. Incorporated land. "Incorporated land" is defined as land within any home rule charter or statutory city. It is reasonable to define this term because it is used in the rule to distinguish where open burning permits are required and not required.

Subpart 6. Local authority. "Local authority" is defined as the local fire chief, fire marshal, fire warden, or local governmental official. Because local authorities are referred to in the rule, it is reasonable to define this term. It is also reasonable to define this term to distinguish it from "delegated authority."

Subpart 7. Nonattainment area. "Nonattainment area" is defined as a geographic region that has been designated by the Agency as violating a state ambient air quality standard, or designated by the United States Environmental Protection Agency (U.S. EPA) as violating a national ambient air quality standard. This definition is reasonable because nonattainment areas are listed in the Minnesota State Implementation Plan (SIP) and the general public or local governmental units proposing to conduct or permit an open burn will be able to ascertain the geographic areas where open burning permits are required.

Subpart 8. Open Burning. "Open burning" is defined as the burning of any matter if the resultant combustion products are emitted directly to the atmosphere without passing through a stack, duct, or chimney. It is reasonable to define this term so the general public and local governmental units will understand

the difference between open burning and other types of incineration.

Subpart 9. Owner or operator. "Owner or operator" means any person who owns, leases, operates, controls or supervises an open burning site, or who conducts open burning. This definition is reasonable because it is consistent with the definition of owner or operator found in Minn. Rules ch. 7005.

Subpart 10. Solid Waste. "Solid Waste" is defined to be consistent with Minn. Stat. ch. 116. Because this definition is consistent with other definitions found in statute, it is reasonable.

Part 7005.0715, Open Burning Restrictions

Subpart 1 of the proposed rule states where open burning is allowed without a permit, and clarifies that open burning without a permit is allowed if the burning is conducted in accordance with limits established in the rule and prior notice has been given to the local authority.

Subpart 2 states that if open burning is conducted on incorporated land, in a nonattainment area, for fire training, or at a permanent tree and brush site a permit must be obtained. Subpart 2 also notes that for open burning on forest lands as defined in Minn. Stat. § 88.01, a Department of Natural Resources (DNR) permit is required.

These parts of the amended rule are reasonable because they clarify under what conditions open burning will be allowed without a permit. It is reasonable to require that prior notice of an open burn be given to the local authority because wind and

area conditions are best known on a local level, and local officials should be involved to ensure that a dangerous condition does not result or that false alarms are not responded to. It is also reasonable to define the areas where a permit is required to ensure that the public is aware of the need to obtain permits.

It is reasonable to require a permit for open burning conducted in incorporated areas, because the population density is greater in incorporated areas and thus more people would potentially be affected. It is reasonable to require a permit for open burning in a nonattainment area because the air quality is already unacceptable, and addition of pollutants must be minimized through careful monitoring of open burning activities. It is reasonable to require a permit for fire training because fire training usually involves open burning of prohibited materials. Careful monitoring and control is required to minimize noxious pollutant emissions and to protect soil and ground water from contamination. It is reasonable to require a permit for a permanent open burning site because of the concentration of pollutants such a site might create.

Subpart 3 of the proposed rules states the purposes for which open burning is allowed. It is reasonable to state the purposes for which open burning may be conducted so the general public and local units of government have a clear understanding of the purposes for which open burning is permitted.

Item A of the proposed rule states that open burning may be conducted if it is for the purpose of eliminating a fire or health hazard that cannot be abated by any other means. On

occasion open burning is used to eliminate an unsafe building or other health hazard. This is reasonable if no other acceptable means of demolition is available.

Item B of the proposed rule states that open burning may be conducted if it is for the disposal of vegetative matter for purposes of managing forests, prairies, and wildlife habitats. This is reasonable because burns are needed for proper management of forest and prairie areas in the state to remove undesirable species and promote regeneration of native species.

Item C of the proposed rule states that open burning may be conducted for purposes of ground thawing. This is reasonable because the extreme cold temperatures experienced in the state prevent construction during a large part of the year unless ground thawing is allowed.

Item D of the proposed rule states that open burning may be conducted for the disposal of trees, brush, grass or other vegetative matter in the development and maintenance of land and right-of-ways if chipping, composting, or other alternative methods are not practical. The limitation established in this item is reasonable because the other methods of disposal, such as chipping or composting, do not result in pollution. Combining methods of disposal reduces the volume of material necessary to burn, and this is encouraged by the limit stated in this item. The item is reasonable, however, in that it recognizes that some material cannot be managed using alternative methods, and must be disposed of through burning because it is not acceptable at landfills.

Item E of the proposed rule states that open burning may be conducted if it is in accordance with Department of Agriculture activities as described in Minn. Rules parts 1505.0230 and 1505.0320, and Minn. Stat. § 19.56. The referenced rules and statute contain Department of Agriculture standards for proper disposal of diseased elm and oak trees and infected or infested apiaries. This item is reasonable because it is consistent with the requirements in Minn. Rules parts 1505.0230 and 1505.0320, and Minn. Stat. § 19.56.

Item F of the proposed rule states that open burning may be conducted if it is for the disposal of burnable building material generated by construction and alternative disposal methods are not practical. The limitation established by this item is reasonable because other methods of disposal, such as recycling or reuse, create less pollution. However, this item is reasonable because it allows burning of small amounts of scrap building material which may be costly to landfill. It is also reasonable to include the definition of burnable building material to identify materials that may be burned.

Subpart 4 of the proposed rule establishes conditions under which open burning must be conducted.

Item A states that the prevailing wind at the time of the burning must be away from nearby residences and occupied buildings. Wind speed must not exceed 15 miles per hour. The direction limitation is reasonable because the smoke could be a nuisance or cause health problems for persons in the immediate

area. It is reasonable to have a maximum wind speed to decrease the probability of wildfires.

Item B states that burning must be conducted at least 300 feet from any highway or public road and controlled so that a traffic hazard is not created. This is reasonable because the smoke may cause visibility problems on the roadways in the immediate area.

Item C states that the location of the burning must not be within 600 feet of an occupied building or residence other than those located on the property on which the burning is conducted, unless written permission is obtained from those occupants within the 600 feet radius. This is reasonable because smoke may enter the occupied building or residence causing health or odor problems. This is also reasonable because it is consistent with Uniform Fire Code.

Item D states that the burning must not be conducted within one mile of any airport or landing strip unless the affected airport or landing strip is notified prior to burning. This is reasonable because the smoke may inhibit visibility for air traffic.

Item E states that the burning must not be conducted during the duration of an Agency declared air pollution episode, alert, warning, emergency, or significant harm, as outlined in Minn. Rules parts 7005.2950 to 7005.3006, Minn. Stat. § 116.11; Code of Federal Regulations, title 40, part 51, subpart H; or Code of Federal Regulations, title 40, section 52.1220 (c)(1). This is

reasonable because open burning should be avoided during times when the air quality is already unacceptable.

Item F states that the person conducting the open burning shall give notice to the local DNR representative and the local authority prior to any open burning. This notice shall include the time and location of the fire. This is reasonable because it will help to eliminate unnecessary fire calls, and will enable faster response to a wildfire should one develop during or after the open burning.

Item G states that propane gas torches or other clean gas burning devices causing minimal pollution must be used to start the burning. This is reasonable because it will eliminate unnecessary pollution.

Item H states that the person conducting the open burning must be present at the burn site from the commencement of the burning until the fire is completely extinguished. This is reasonable because it will ensure that wildfires do not accidentally develop. The amended rule requires the person to have a copy of the permit at the burning site at all times. This is reasonable because it will enable the local enforcement authority to ascertain that the burning is being conducted as permitted.

Item I states that fires shall not be allowed to smolder. This is reasonable because a smoldering fire produces excessive amounts of smoke, causing unnecessary pollution.

Part 7005.0725, Open Burning Prohibitions

Subpart 1 of the proposed rule states the types of materials that are prohibited from being burned. It is reasonable to prohibit open burning of oils, rubber, plastics, chemically treated materials and other materials such as tires, railroad ties, chemically treated lumber, composite shingles, tar paper, insulation, composition board, sheetrock, wiring, paint, or paint filters because they produce excessive or noxious smoke and release toxic substances when burned.

Subpart 2 of the proposed rule states that hazardous wastes may not be burned. This rule is reasonable because it is consistent with the hazardous waste rule, Minn. Rules ch. 7045.

Subpart 3 of the proposed rule states that solid waste generated from an industrial or manufacturing process may not be burned. This rule is reasonable because the burning of large volumes of waste, such as are generated from industrial or manufacturing processes, should be done in an approved waste incinerator equipped with appropriate air pollution control equipment. Refuse collection and management services are available for industrial waste generators, making open burning unnecessary.

Subpart 4 of the proposed rule states that no person shall conduct, cause, or permit open burning of burnable building material generated from the demolition of commercial or institutional structures. This is reasonable because demolition of commercial or institutional structures generates large amounts of burnable building material. Allowing open burning of burnable

building material generated from commercial or institutional demolitions would create significant air pollution sources. Further, when a large scale demolition is performed, it is difficult to separate burnable building materials from prohibited materials.

Subpart 5 of the proposed rule states that salvaging operations may not be conducted, caused, or permitted by open burning. This rule is reasonable because salvage operations produce materials that are generally unsuitable for burning because they would emit toxic compounds and excessive smoke.

Subpart 6 of the proposed rule states that no person shall conduct, cause, or permit the processing of motor vehicles by open burning. This is reasonable for reasons similar to those stated above for salvage operations. Moreover, it is generally possible to manage waste from salvage and motor vehicle scrap operations without burning.

Subpart 7 of the proposed rule states that no person shall conduct, cause, or permit open burning of discarded material resulting from the handling, processing, storage, preparation, serving, or consumption of food, unless specifically allowed under Minn. Rules part 7005.0795. This rule is reasonable because the materials described commonly contain a variety of substances, some of which emit toxic air pollutants when burned. Only farmers without refuse collection are permitted to burn and bury solid waste, if the burying is done in a "pollution free" manner.

Subpart 8 of the proposed rule states that no person shall conduct, cause, or permit open burning during a burning ban put into effect by a local authority, county, or a state agency. This rule is reasonable because if conditions are dry, the probability of fires getting out of control is increased.

Part 7005.0735, Permits Required

Subpart 1 of the proposed rule states that permits are required for open burning on incorporated land, in a nonattainment area, for permanent tree and brush open burning sites, or for fire training. This requirement is reasonable because it will enable the Agency to maintain strict control over open burning in areas where there is more pollution and areas that are more heavily populated. Fire training is included because it is necessary to regulate this type of burning due to the types of materials burned.

Subpart 2 of the proposed rule states that an open burning permit may be issued if the burning is conducted in accordance with parts 7005.0715 and 7005.0725, and any additional conditions of the permit. This is reasonable because in general the open burning will be permissible if it meets the general standards, but the rule acknowledges that additional conditions established in the permit must also be complied with to ensure that the environment is not threatened.

Subpart 3 of the proposed rule states the procedure for obtaining a permit application and the steps necessary for approval of the open burning permit. This rule also explains the permitting procedures for areas where there is a delegated

authority, and references the process for obtaining permits for permanent tree and brush open burning sites and for fire training. This subpart is reasonable because it is clear and easy to apply, and will reduce confusion regarding application procedures.

Subpart 4 of the proposed rule allows the commissioner or delegated authority to request additional information from applicants. This is reasonable because the description of the open burning provided in the permit application might not be adequate to enable the commissioner or delegated authority to determine whether the open burning should be permitted.

Subpart 5 of the rule establishes who must apply for permits and who will be named as permittees. It is reasonable to require all owners and operators to be permittees to insure that all involved persons are aware of the open burning and take responsibility for the open burning.

Part 7005.0745, Permit Denial

This part states that a permit may be denied if a practical, alternative method of disposal is available, the burning cannot be conducted according to the conditions established in part 7005.0715, or a nuisance condition would result from the burning. The limitation concerning alternative disposal methods is reasonable because alternative disposal methods generally are less polluting than open burning, and should be used if available. The limitation concerning compliance with the general conditions is reasonable because the Agency must follow its own rule. The limitation regarding nuisance conditions is reasonable

because some open burning may be a nuisance despite compliance with the general conditions.

Part 7005.0755, Permit Revocation

This part states that a permit may be revoked if a practical method of disposal is found, a fire hazard exists or develops during the burning, or if Minn. Rules parts 7005.0705 to 7005.0815 or permit conditions are violated. It is reasonable to allow permit revocation if an alternative disposal method is found because the use of alternative methods will result in the generation of less pollution, and should be used whenever possible. It is reasonable to allow permit revocation if a fire hazard develops to avoid putting lives, natural resources and property at risk unnecessarily. It is reasonable to revoke a permit if permit conditions are violated to protect human health and the environment.

Part 7005.0765, Department of Natural Resources Jurisdiction

This part states that Department of Natural Resources (DNR) forest officers or fire wardens are authorized to accept permit applications for locations within their jurisdiction and may issue open burning permits on behalf of the Agency. This is reasonable because the Department of Natural Resources has a permitting process similar to the Agency's and provides fire prevention and assistance to many areas of the state. Further, DNR employees will often be more convenient to the public than the Agency. The Department of Natural Resources will issue open burning permits in accordance with the Agency's open burning rules.

Part 7005.0766, Fire Training

Subpart 1 of the proposed rule states that open burning for the purposes of fire training must follow the techniques described in Structural Burn Training Procedures for the Minnesota Technical College System. This is reasonable because this document is used for training fire fighters in an academic setting. It is also reasonable to include where the document is available so that persons affected by this rule will know where to find the information that is incorporated by reference.

Subpart 2 of the proposed rule states that flammable or combustible liquids must not be burned during fire training unless liquid fuels training is being conducted. This is reasonable because when these fuels are burned they emit pollutants into the air and pose a pollution threat to soil and groundwater.

Subpart 3 of the proposed rule states that fire training must be conducted according to the conditions in items A through C when liquid fuels are burned. This subpart is reasonable because it is necessary to allow liquid fuels training because of the need for firefighters to practice on fires which they may have to extinguish.

Item A of the proposed rule states that the fuel must be completely contained within a lined structure. This is reasonable to prevent contamination of the soil and groundwater.

Item B of proposed rule states that the amount of fuel to be burned must be the minimum amount necessary to conduct the training. This is reasonable because limiting the fuel burned

during the training will reduce the pollutants being emitted into the atmosphere.

Item C of the proposed rule states that if it is determined that soil or groundwater contamination has occurred, cleanup must be conducted according to Minn. Stat. § 115.061. This is reasonable because Minn. Stat. § 115.061 establishes the basic reporting and cleanup requirement for all spills of materials that might cause pollution.

Subpart 4 of the proposed rule states that fire training must be conducted according to part 7005.0715, subp. 4, items E through H and part 7005.0725, except as specifically authorized in the permit issued by the Commissioner. This is reasonable because these conditions will ensure that the burning does not aggravate existing air pollution episodes, result in the reporting of false alarms, or emit unnecessary pollutants. The conditions will also ensure that local enforcement personnel are aware of the fire. The exception to the prohibitions in part 7005.0725 is reasonable because fire fighter training may require the burning of prohibited substances.

Part 7005.0767, Delegated Authority

Subpart 1 of the proposed rule states that a town, home rule charter or statutory city may obtain the authority to issue open burning permits in accordance with parts 7005.0705 to 7005.0805. It is reasonable to allow a town, home rule charter or statutory city to assist the Agency in accepting applications and issuing

open burning permits because this reduces the workload of Agency staff as well as expediting the process of obtaining a permit.¹

Subpart 2 of the proposed rule states that the town, home rule charter or statutory city must adopt parts 7005.0705 to 7005.0805 as a local ordinance and submit certain information to the commissioner (Items A through C).

Item A of the proposed rule states a written statement requesting authorization to issue open burning permits must be submitted. This is reasonable to ensure that the town, home rule charter or statutory city understands what is requested and to alert Agency staff to the nature of the request.

Item B requires submittal of the name of the person or persons authorized to issue the permits on behalf of the town, home rule charter or statutory city, and a certified copy of the motion passed by the town, home rule charter or statutory city designating such person or persons. This is reasonable because it will ensure that the permits are issued in a controlled manner, and because it will provide the Agency with a contact person if a violation of a permit has occurred or is suspected.

Item C requires submittal of a copy of the local ordinance adopting Minn. Rules parts 7005.0705 to 7005.0805. This is reasonable because it ensures the Agency that the local unit of government will have the authority to enforce the rule.

Requiring delegated authorities to adopt the rule as a local

¹ Minn. Stat. § 116.05, subd. 3 (1988) authorizes delegation of Agency administrative powers.

ordinance also aids the local peace officers when citing open burning violations.

Subpart 3 of the proposed rule authorizes the commissioner to revoke the authority to issue open burning permits for various reasons (Items A through E).

Item A of the proposed rule states that delegated authority shall be revoked if permits are issued in violation of parts 7005.0705 to 7005.0805. This is reasonable because all open burning must be conducted according to the rule.

Item B of the proposed rule states that delegated authority shall be revoked if permits are issued on forms that have not been approved by the commissioner. This is reasonable because the Agency will approve forms that ensure that permittees understand what their responsibilities are, improving compliance with the rule.

Item C of the proposed rule states that delegated authority shall be revoked if permits are issued by persons who have not been authorized by the delegated authority or whose names have not been provided to the commissioner. This is reasonable because a permit cannot be legally issued by persons who are not authorized by the delegated authority and it is necessary for the Agency to know the person or persons issuing Agency permits to facilitate enforcement.

Item D of the proposed rule states that delegated authority shall be revoked if the delegated authority fails to maintain records of open burning permits issued. This is reasonable because these records are the main source of information for

managing the open burning program throughout the state. This information must be maintained so staff may conduct investigations associated with open burning violations and compile data such as number and types of permits issued in the state.

Item E of the proposed rule states that delegated authority shall be revoked if the delegated authority requests removal of the authority. This is reasonable because it will keep the administration of the program orderly and ensure that the entity issuing the permits is committed to enforcement of the program.

Part 7005.0775, Compliance With Other Laws

This part states that the burning shall be conducted according to Minn. Rules parts 7005.0705 to 7005.0815, local ordinances, State Fire Marshal codes and rules of other state agencies regardless of whether a permit is required. This part is reasonable because it reminds the public of where permits are required and because it puts the public on notice that this rule does not override any other laws, rules, regulations or local ordinances which prohibit open burning.

Part 7005.0785, Recreational Fires

This part of the proposed rule states that fires set for recreational, ceremonial, food preparation, or social purposes do not require an Agency permit, provided that the fire is no larger than three feet in diameter by three feet high, and only wood, coal, or charcoal is burned. It is reasonable to define the size of a recreational fire because a fire larger than that described in the rule would produce significant amounts of smoke. It is

reasonable to define the material that can be burned to ensure that only clean burning materials are used. It is reasonable not to require permits for recreational fires because of the large number of recreational fires that are set and because they generally cause little pollution.

Part 7005.0795, Open Burning on Farms

This part of the proposed rule states that a person who operates land used for farming may burn solid waste generated from the person's household or a part of other person's farming operation without an Agency permit, as provided by Minn. Stat. § 17.135. The rule also provides that, although an Agency permit is not required, the burning must still occur in conformity with requirements found in parts 7005.0715 and 7005.0725, rules designed to ensure that nuisance conditions do not result from the burning and that the pollution caused by the burning is minimized. This is reasonable because by relieving farmers of the requirement to get a permit from the Agency, the legislature did not intend to authorize noncompliance with elements of the open burning rule designed to control the production of air pollutants. To interpret Minn. Stat. § 17.135 in such a manner would be inconsistent with the dictates of Minn. Stat. ch. 116D, and might cause the U.S. EPA to reject these amendments to the Minnesota SIP.

Part 7005.0796, Open Burning of Leaves

This part of the proposed rule states that a town, home rule charter of statutory city located outside the metropolitan area as defined in Minn. Stat. § 473.121, subd. 2, by adoption of an

ordinance, may permit the open burning of dried leaves within the boundaries of the town or city, as provided by Minn. Stat. § 116.082. This is reasonable to make the rule consistent with the statute. The rule also provides that the open burning of leaves authorized by Minn. Stat. § 116.082 must be conducted in compliance with the requirements of parts 7005.0715, subp. 4, 7005.0725, 7005.0775 and 7005.0805. This is reasonable because by allowing cities and towns to authorize the open burning of leaves outside the metropolitan area, the legislature did not intend to authorize open burning that might cause nuisance conditions or pollution that the conditions and prohibitions found in part 7005.0715, subp. 4 and 7005.0725 are designed to prevent. Further, including these limits in the rule will give cities and towns guidance regarding what to include in their leaf burning ordinances, which are required to set forth limits and conditions on leaf burning to minimize air pollution and fire danger and any other nuisance conditions. To interpret Minn. Stat. § 116.082 to authorize uncontrolled burning of leaves would be inconsistent with the dictates of Minn. Stat. ch. 116D, and might cause the U.S. EPA to reject these amendments to the Minnesota SIP.

Part 7005.0805, Liability

This part of the proposed rule states that granting an open burning permit does not excuse a permittee from any damages or injuries which may be caused by a fire set by the permittee. Open burning, even if conducted as permitted in this rule, has the potential to cause damages or injuries. By providing notice

of liability to persons conducting open burning the Agency ensures that the public is aware of its responsibilities.

Part 7005.0815, Permanent Tree and Brush Open Burning Sites

This part of the proposed rule states that a permanent tree and brush open burning site may be permitted by the Agency if certain conditions are met. It is reasonable and necessary to establish separate conditions for a permanent site because conditions at permanent open burning sites are different and require special management.

Subpart 2 of the proposed rule states that only trees, tree trimmings or brush shall be permitted to be burned at a permanent open burning site. This is reasonable because these are the materials for which there is the most consistent need for disposal and these materials burn in a relatively clean manner.

Subpart 3 of the proposed rule states only trees, tree trimmings and brush can be burned only if no other alternative method of disposal is available. This is reasonable because it encourages alternative less-polluting disposal methods such as chipping.

Subpart 4 of the proposed rule states that a permanent open burning site must not be located within certain areas (Items A through E).

Item A of the proposed rule states that a permanent open burning site must not be located within 1,000 feet of a building unless written permission is obtained from a building owner and occupant. This is reasonable because it will ensure that sites are not located where they will become a nuisance, and that

neighbors are notified of the permit application and support that application.

Item B of the proposed rule states that the burning shall not be conducted within 1,000 feet of a public roadway. It is reasonable because the smoke produced by the burning could cause a traffic or health hazard at less than the 1,000 foot distance.

Item C of the proposed rule states that the burning shall not be conducted within one mile of an airport or landing strip unless written permission is obtained from the affected airport or landing strip. This limit is reasonable because the smoke has the potential to cause air traffic problems.

Items D and E of the proposed rule state that the burning shall not be conducted within 300 feet of a stream, river, lake, or other water body or within a wetland. The restrictions are reasonable because the ash could leach contaminants into the water.

Subpart 5 of the proposed rule states that the site must be operated in accordance with certain conditions (Items A through J).

Item A of the proposed rule states that qualified personnel must be present at the site at all times when the site is open for disposal of material to be burned and for the duration of any fire on the site. This requirement is reasonable because an attendant will be able to supervise the material being disposed of and also tend to the fire to ensure complete burning and to prevent wildfire. This is consistent with the conditions established in Minn. Rules part 7005.0735, subp. 2.

Item B of the proposed rule states that access to the site must be controlled through a gate when the attendant is not on duty. This requirement is reasonable because unsupervised dumping may occur if the site is not secured.

Item C of the proposed rule states that a permanent sign must be posted indicating the times of operation, rates, the penalty for nonconforming dumping, and other pertinent information of use to the public. This is reasonable because this sign will help ensure smooth operation of the site and minimize unsupervised dumping.

Item D of the proposed rule states that burning and ash storage areas must be designated and maintained. This is reasonable to ensure that the burned area associated with the site does not expand beyond what is necessary to accomplish the burning, and that ash is not deposited where it might become airborne or enter surface or ground water.

Item E of the proposed rule states that the surface water drainage must be diverted around and away from both the ash storage area as well as the operating areas. This is reasonable because this will ensure protection of the surface and ground water from possible contamination from the ash.

Item F of the proposed rule states that burning must be conducted according to the conditions in part 7005.0715, subpart 4, A through E, and G. This is reasonable because these items ensure that the burning will not cause wildfire or add to air pollution during an air pollution episode or alert.

Item G of the proposed rule states that 24-hour prior notice must be given to the local authority of the time and duration of each burn. This requirement is reasonable because notification to the local authority will be of assistance should complaints be called in regarding the smoke or fire or should a problem develop at the site. This requirement is also reasonable because at the time of the notification the local authority may give the site operator additional instructions regarding any fire set at the site to ensure its safety.

Item H of the proposed rule states that fugitive ash emissions must be controlled and ash residue must be collected periodically and disposed of in a permitted sanitary landfill or other method approved by statute and rules. This control of fugitive ash emissions is consistent with Minn. Rules part 7005.0550 and is therefore reasonable. It is reasonable to require disposal of the ash in a manner permitted by statute or rule to prevent problems associated with the waste produced by the open burning.

Item I of the proposed rule states that the fire must not be allowed to smolder with no flame present. This condition is reasonable because smoldering causes excessive smoke. Smoldering indicates incomplete combustion which should be avoidable.

Item J of the proposed rule states that fugitive dust emissions from access roads and the site must be controlled. It is reasonable because this is consistent with Minn. Rules part 7005.0550, which requires that reasonable measures be taken to prevent particulate matter from becoming airborne.

Subpart 6 of the proposed rule states that the site must be terminated in compliance with certain conditions (Items A through D).

Item A of the proposed rule states that all unburned material must be removed from the site and disposed of in an appropriate manner. It is reasonable to require removal of the unburned material to prepare for regeneration of ground cover and to prevent uncontrolled fires.

Item B of the proposed rule states that all ash must be removed to a permitted sanitary landfill or other method allowed by applicable statutes and rules. It is reasonable to require removal of ash from the site to protect the groundwater and to prepare for the regeneration of ground cover.

Item C of the proposed rule states that areas affected by the burning must be covered with sod and seeded to prevent erosion and to restore the site to a natural condition. This requirement is reasonable to prevent erosion. Returning the site to a natural state is also reasonable to prevent the site from being an eyesore.

Item D of the proposed rule states that a sign must be posted informing the public that the site has been closed, and listing the closest disposal site alternative. It is reasonable and necessary to inform the general public of the status of the site and an available disposal site alternative to prevent illegal dumping.

Subpart 7 of the proposed rule states that a written application must be submitted to the Agency at least 90 days

before the date of the proposed operation of the permanent open burning site. The application must contain certain information (listed in Items A through E). It is reasonable to request this information to get an accurate description of the site and the surrounding area. The time period is necessary to ensure that the Agency can review and issue or deny a permit in a timely manner.

Item A of the proposed rule states that all site owners shall provide their name, address, and telephone number on the permit application. This requirement is reasonable because this information will ensure that the Agency is aware of all affected parties, and that all affected parties support the application.

Item B of the proposed rule states that the site operator's name, address, and telephone number shall be submitted on the permit application. This requirement is reasonable because the Agency will use this information to identify and contact the responsible party at the site of the burning.

Item C of the proposed rule requires a description of the materials burned at the site including the source and estimated quality to be submitted with the permit application. It is reasonable for the Agency to request this information to determine what the impacts of the site will be on human health and the environment and whether the site should be permitted.

Item D of the proposed rule states that a topographic map of the site and the surrounding area for one mile in all directions and all the structures relating to the site shall be submitted with the permit application. It is reasonable to request this

information to determine whether there are any incompatible land uses in the vicinity of the site, such as schools, hospitals, and nursing homes.

Item E of the proposed rule requires the permittee to submit other relevant information requested by the commissioner. It is reasonable to enable the commissioner to request this information as it is not always possible to specify relevant information before a site has been proposed.

Subpart 8 of the proposed rule states that the permit application shall be signed by all owners and operators of the proposed permanent open burning site. It is reasonable to require all owners and operators to sign the permit application to ensure that all are responsible for activities at the site and that all assent to the use of the site.

Subpart 8 also states that the Agency shall designate all owners and operators as co-permittees when issuing the permit. This is reasonable to ensure that all owners and operators take responsibility for the site and to make enforcement of the permit easier.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

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

(a) the establishment of less stringent compliance or reporting 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 are not expected to have a significant impact on small businesses, including small farms. Open burning may be conducted for ground thawing for utility repair and construction, disposal of tree, brush, grass, and other vegetative matter in the development and maintenance of land, for the disposal of building material generated by construction, or for farm disposal of solid waste where regular pickup of solid waste is not available. The limits placed on open burning are not onerous. The rule encourages the use of alternative disposal methods such as chipping, composting or recycling prior to open burning because air pollutant emissions from open burning can have a negative impact on air quality. Allowing small businesses to operate under a different standard would not be easily understood by the affected public. Further, allowing a less stringent

standard to be met might be unacceptable to the U.S. EPA, as the open burning rule is part of Minnesota's SIP.

VI. CONSIDERATION OF ECONOMIC FACTORS

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

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

In proposing these amended rules governing open burning, the Agency has given due consideration to available information concerning any economic impacts the proposed rule would have. No significant adverse economic impacts are anticipated to result from the adoption of the proposed rule. No fee is charged for processing a permit application. Local units of government are given the option to participate in regulation, but are not required to do so.

VII. CONCLUSION

Based on the foregoing, the proposed Minnesota Rules, parts 7005.0705 to 7005.0815, are both needed and reasonable.

August 22, 1990

for Barbara Lindsey Sims
Gerald L. Willet
Commissioner

