

Attachment 2

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Amended Underground
Storage Tank Training and Certification
Rules, Chapter 7105

STATEMENT OF NEED
AND REASONABLENESS

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Table of Contents

<u>Title</u>	<u>Page</u>
I. Introduction.....	1
II. Statement of MPCA's Statutory Authority.....	2
III. Statement of Need.....	3
IV. Statement of Reasonableness.....	5
V. Small Business Considerations in Rulemaking.....	8
VI. Considerations of Economic Factors.....	9
VII. Conclusion.....	10

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 underground storage tank (UST) out of service. In 1988 the MPCA published a Notice to Solicit Outside Opinion on development of a tank contractor certification program for Minnesota. The MPCA staff also formed an advisory work group consisting of tank contractors, tank owners, industry representatives and others to assist in formulation of a draft rule. Six meetings were held with the work group during 1989 and this effort culminated in adoption of Minn. Rules, ch. 7105 on January 8, 1990. UST contractors had a six-month period, or until July 9, 1990, to obtain the required certification.

In January 1990, the MPCA initiated certification courses for UST supervisors who install, repair, or take an UST system out of service. Courses are offered at various locations around the state through the auspices of the Albert Lea Technical College. A total of 735 people have completed training in 19 classes. Approximately 500 tank supervisors have been certified. The rules establish a certification program for UST contractors, as well as a training and certification program for on-site UST supervisors. The rules also establish the requirements and procedures for obtaining and renewing this certification. The renewal interval established by the rules is currently two years.

II. STATEMENT OF MPCA'S STATUTORY AUTHORITY

The MPCA's statutory authority to adopt the rules is set forth in Minn. Stat. § 116.491 (1990), 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) (1990). Under the authority of Minn. Stat. §. 116.07, subd. 4 (1990), the MPCA also has the necessary statutory authority to adopt, and, as necessary to amend these rules.

III. STATEMENT OF NEED

Minn. Stat. §§ 14.14, subd. 2 and 14.23 (1990) require the MPCA to make an affirmative presentation of facts establishing the need for and the reasonableness of a proposed rule or an amendment to an existing rule. 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 a program to certify UST contractors was established in the Statement of Need and Reasonableness (SONAR) to Minn. Rules, ch. 7105 (August 1989). The length of contractor and supervisor certification was established at two years after the date of issuance (in the case of contractor certificates) and two years after the applicant successfully completes the final training course examination (in the case of supervisor certificates). The MPCA proposes to extend the length of the supervisor certification period to four years. The length of the contractor certification period would remain at two years. In addition, supervisor certificates issued pursuant to a reciprocal agreement with another state or organization other than an approved training provider would also expire four years after the end of the approved training course.

The MPCA began certifying tank installation, repair and removal contractors and supervisors in 1990, under the authority of Minn. Rules, ch. 7105. About 250 contracting companies have sent representatives to training programs offered by the state through Albert Lea Technical College and have received certification to perform UST work in Minnesota. A total of 735 people have completed training in the 19 courses which have been offered since January 1990,

including 510 supervisors. The response to the certification program has been very encouraging and was greater than the MPCA had anticipated when the program was developed. The first certificates issued in 1990 come up for renewal early in 1992, as the rule is now written.

Because of the great response to the initial certification program, much of the effort of the MPCA staff has been devoted to arranging for and helping to present the 40-hour training courses with the contracted assistance of the Albert Lea Technical College. When the program was first developed, it was believed that the technology associated with tank installation, removal and repair would change rapidly, resulting in the need for continuing education in intervals of two years. Technology has not changed as swiftly as expected and given this perspective and the knowledge gained from conducting 19 sessions and training over 700 people, the MPCA believes it is not reasonable or necessary to require recertification on an interval as frequently as every two years as was originally envisioned.

The MPCA therefore proposes to extend the recertification interval from the current two-year time frame to four years. The change would apply to certificates issued to supervisors only. Contracting companies would still be required to renew certificates every two years. The reasons for this are discussed in the Statement of Reasonableness below. The change in Minn. Rules, ch. 7105 related to the proposed extension of the supervisor recertification interval also includes extending the length of supervisor certificates issued under the reciprocity provision of the rules from two to four years and making a similar change in the diplomas provision of the rules to show an expiration date for accreditation that is four years after the date on which the student passed the examination.

IV. STATEMENT OF REASONABLENESS

The MPCA is required by Minn. Stat. ch. 14 (1990) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules or amendments. 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 amendment to Minn. Rules, ch. 7105 is addressed in the following discussion, which itemizes specific provisions of the proposed amendments:

Part 7105.0060 Supervisor Certification

Subp. 6. Length of supervisor certification. Supervisor certificates expire ~~two~~ four years after the applicant successfully completes the final training course examination.

The MPCA proposes to make the recertification interval four years and has solicited outside opinions in the State Register on this proposal. The 30-day notice period ended on August 15, 1991, and 21 written comments were received. A total of 18 commenters supported the four-year proposal, two commenters proposed to increase the interval to ten years, and one person favored a three-year renewal interval. As presently envisioned, supervisors currently holding two-year certificates would have their certificates extended to four years from the date of issue by the MPCA.

One of the 21 commenters suggested that the length of certification for contractors as provided by Minn. Rules, pt. 7105.0050, subp. 5, also be extended from two years to four years. The MPCA has elected to leave the length of contractor certification at two years after the date of issuance. Under the rules, to be certified as a contractor, companies must employ a certified supervisor and show proof of financial responsibility. The MPCA has learned from experience in operating the certification program that there is a fair amount of employee movement within the UST contracting field. The MPCA believes that contractors should be required to verify their status and personnel rolls every two years. Since certified supervisors may change jobs within the field, contracting companies should be required to keep current information with the MPCA. Leaving the recertification interval at two years for contractors will help ensure that this is done.

Part 7105.0060 Supervisor Certification

Subp. 7. Reciprocity. The Commissioner shall approve a tank installer certification course sponsored by a state or organization other than an approved training provider if the Commissioner determines that the course is comparable to the program outlined in parts 7105.0080 and 7105.0090. Persons seeking reciprocity under this subpart shall be required by the Commissioner to pass an examination to verify their familiarity with Minnesota's laws pertaining to underground storage tank systems if the Commissioner finds that their courses did not adequately address Minnesota's statutes and rules. This examination may be taken anytime after the completion of the approved training course and before applying for certification. However, the certificate expires ~~two~~ four years after the final day of the approved training course.

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 content requirements contained in parts 7105.0080 and 7105.0090. This subpart allows individuals who attend a similar tank training course in another state to apply to be certified to conduct storage tank projects in Minnesota. 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 tank projects will still be met. It is also reasonable that if the recertification interval for supervisors is increased to four years for the state-approved training providers, that it be increased for those who gain training under reciprocity agreements as well. This will provide for program consistency while still allowing program goals to be met.

Part 7105.0090 Examinations and Diplomas

Subp. 5. Diplomas. The training provider shall issue a numbered diploma to each student who completes the training course and successfully passes the examination. The following information must be included on the diploma:

- A. the name of the student;
- B. the name of the course completed;
- C. the dates of the course and the examination;
- D. a statement indicating that the student attended the course and passed the examination;
- E. an expiration date for accreditation that is ~~two~~ four years after the date on which the student passed the examination; and
- F. a diploma number.

If the person administering the examination is not the same person administering the course, both persons shall sign the diploma.

This subpart outlines the information required by the MPCA on course diplomas issued by approved training providers. 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. It is also reasonable that if the recertification interval for supervisors is to be increased from two to four years that that information be reflected on the student's diploma as well.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1990) requires the MPCA, when proposing amendments to existing rules which may affect small businesses, to consider the impact of the rule amendment on those businesses. The proposed amendments are not expected to have a significant impact on small businesses. In fact, by extending the recertification period from two to four years, small tank contractors will benefit through decreased paperwork and reduced costs as the certification fee will remain at \$50 for the four-year renewal interval. The Albert Lea Technical College currently charges a fee of \$260 for the five day certification course. Since supervisors will need training every four years instead of every two years, their training costs will be cut in half.

VI. CONSIDERATIONS OF ECONOMIC FACTORS

In exercising its powers, the MPCA is required by Minn. Stat. § 116.07, subd. 6 (1990) to give consideration to economic factors. The statute provides:

In exercising all its powers the MPCA 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 amendments to rules governing the certification of UST contractors, the MPCA has given due consideration to available information as to any economic impacts the proposed amendments would have. No significant adverse economic impacts are anticipated to result from the adoption of the proposed rule amendments. As discussed in section V. above, the fee for recertification and the costs associated with the training requirements will probably decrease.

There will likely be some beneficial economic impacts from the proposed amendments. By continuing to increase the technical expertise and environmental awareness of contractors conducting tank projects there should continue to be fewer releases to the environment in the future. When considering the economic impacts that result from the cleanup costs associated with contamination, the amendments should result in continuing cost savings to municipalities, small businesses and the general public as a whole.

VI. CONCLUSION

In this document, the MPCA has made its presentation of facts establishing the need for and reasonableness of the proposed amendments to Minn. Rules, ch. 7105, Underground Storage Tank Training and Certification Rules. This document constitutes the MPCA's Statement of Need and Reasonableness for the proposed amendments to Minn. Rules, ch. 7105.

Dated: October 4, 1991, 1991

Ann Glumac

for Charles W. Williams
Commissioner