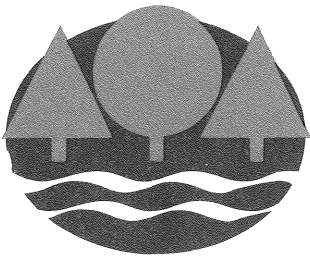


JAN 11 1995



Minnesota Pollution Control Agency

January 10, 1995

Ms. Maryann Hruby, Director
Legislative Commission to Review
Administrative Rules
55 State Office Building
St. Paul, Minnesota 55155

Dear Ms. Hruby:

As required by the Administrative Procedures Act, I am forwarding to you a copy of the Statement of Need and Reasonableness (SONAR) and proposed rule amendments for a rule amendment package that addresses the management of used oil and other miscellaneous hazardous waste issues. These proposed rule amendments and a notice of intent to adopt rules without a public hearing are to be published in the State Register on January 23, 1995. The comment period for these rules ends on February 22, 1995 at 4:30 p.m.

If you have any questions, please contact me at 297-8319.

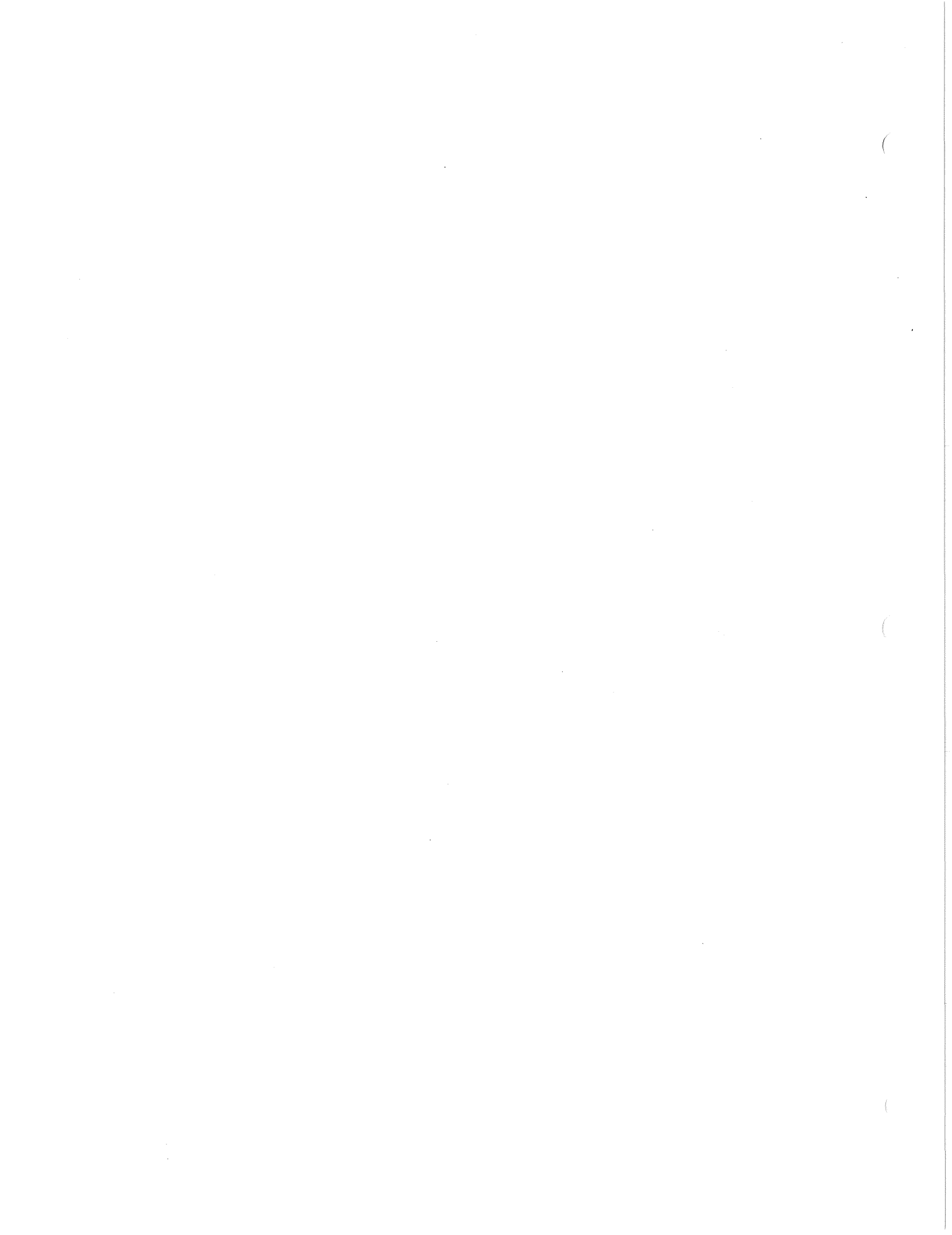
Sincerely,

A handwritten signature in cursive script, appearing to read "Glenn Skuta".

Glenn Skuta
Program Development Section
Hazardous Waste Division

GS/lw

Enclosures



STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of Proposed Amendments Governing
the Management of Used Oil and Other Miscellaneous
Proposed Amendments, Minn. Rules pts. 7001.0560,
7001.0590, 7001.0620, 7001.0650, 7035.2535, 7045.0020,
7045.0065, 7045.0075, 7045.0102, 7045.0120, 7045.0121,
7045.0125, 7045.0131, 7045.0135, 7045.0143, 7045.0145,
7045.0206, 7045.0208, 7045.0221, 7045.0225, 7045.0230,
7045.0240, 7045.0243, 7045.0248, 7045.0261, 7045.0270,
7045.0292, 7045.0302, 7045.0310, 7045.0320, 7045.0355,
7045.0371, 7045.0395, 7045.0450, 7045.0454, 7045.0456,
7045.0458, 7045.0466, 7045.0478, 7045.0494, 7045.0498,
7045.0504, 7045.0508, 7045.0514, 7045.0518, 7045.0522,
7045.0524, 7045.0526, 7045.0528, 7045.0538, 7045.0541,
7045.0542, 7045.0552, 7045.0556, 7045.0558, 7045.0562,
7045.0564, 7045.0572, 7045.0584, 7045.0590, 7045.0592,
7045.0594, 7045.0608, 7045.0610, 7045.0620, 7045.0622,
7045.0626, 7045.0628, 7045.0629, 7045.0630, 7045.0632,
7045.0638, 7045.0644, 7045.0665, 7045.0692, 7045.0695,
7045.0790, 7045.0795, 7045.0800, 7045.0805, 7045.0810,
7045.0815, 7045.0820, 7045.0825, 7045.0830, 7045.0835,
7045.0840, 7045.0845, 7045.0855, 7045.0865, 7045.0875,
7045.0885, 7045.0895, 7045.0990, 7045.1300, 7045.1310,
7045.1315, 7045.1333, 7045.1334, 7045.1335, 7045.1339,
7045.1350, 7045.1355, 7045.1360, and 7045.1380.

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of this proceeding is the amendment of the rules of the Minnesota Pollution Control Agency (MPCA) governing the management of hazardous waste. Primarily, the amendments the MPCA is proposing address the management of used oil. These amendments incorporate federal used oil regulations adopted by the U.S. Environmental Protection Agency (EPA) into state rules, with modifications. The MPCA is required to adopt these federal regulations to maintain equivalence with the federal used oil program. The MPCA drafted and modified the proposed amendments in consultation with an advisory committee made up of regulate parties, trade associations, and state and county government officials assembled pursuant to a Notice of Intent to Solicit Outside Opinion published in the November 22, 1993, State Register.

Other miscellaneous amendments not related to the management of used oil have also been included in the proposed amendments. These proposed amendments serve to address inaccuracies, inconsistencies, and inadequacies of the current hazardous waste rules.

This statement of need and reasonableness can be made available in other formats, including Braille, large print, and audio tape. TDD: (612)297-5353 or (800)627-3529.

II. STATEMENT OF MPCA'S STATUTORY AUTHORITY

The MPCA's statutory authority to adopt these amendments is set forth in Minn. Stat. § 116.07, subd. 4, which provides:

Pursuant to Chapter 14, 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 this chapter for generators of hazardous waste, the management, identification, labeling, classification, storage, collection, treatment, transportation, processing, and disposal of hazardous waste and the location of hazardous waste facilities.

Under this statute the MPCA has the necessary statutory authority to adopt the proposed rules.

III. STATEMENT OF NEED

Minn. Stat. ch. 14 requires an Agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules or amendments proposed. In general terms, this means that an Agency must set forth the reasons for its proposal, 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 that requires administrative attention and reasonableness means that the solution proposed by an agency is appropriate. The need for the proposed amendments is discussed below.

In the case of this proceeding, the need for amendments to the MPCA's rules governing the management of hazardous waste is based on four factors:

(A) the need for equivalence with federal regulations; (B) the need for environmentally protective rules; (C) the need to facilitate recycling; and (D) the need for clarity in the rules.

A. The need for equivalence with federal regulations.

The MPCA is currently authorized by the EPA to administer the hazardous waste program in Minnesota. In order to maintain its authorization, the MPCA is required by the EPA to adopt federal hazardous waste regulations that are more stringent than the state's existing rules. State rules that are as stringent as or more stringent than federal regulations are deemed "equivalent to" federal regulations. The majority of the proposed amendments adopt federal regulations regarding the management of used oil promulgated by the EPA on September 10, 1992, May 3, 1993, and March 4, 1994. These regulations are nearly all more stringent than current state rules, and thus must be adopted in order for the hazardous waste rules to be equivalent to federal regulations, and subsequently for the MPCA to maintain its hazardous waste program authorization from the EPA.

B. The need for environmentally protective rules.

The proposed amendments contain provisions that are not required to be adopted by the EPA as specified above in paragraph A. Although not required, these amendments are needed to provide adequate environmental protection. In some circumstances, EPA regulations do not address issues that have been identified as priorities in Minnesota, such as used oil filter management and disposal. The EPA does not regulate used oil filters, while Minnesota state law prohibits their disposal in solid waste. In cases like this, the MPCA

promulgates rules that will enable it to administer its programs and provide additional measures of environmental protection not afforded by EPA regulations. In other cases, the MPCA makes modifications to EPA rules to better meet the need for environmentally protective rules. The proposed amendments contain provisions that both address issues not addressed by the EPA and that modify EPA regulations to increase their stringency and protectiveness to meet this need.

C. The need to facilitate recycling.

Minnesota's waste management hierarchy (see Minn. Stat. § 115A.02) places recycling and energy recovery above disposal as preferred waste management strategies. Both the federal used oil regulations and the state-initiated provisions of the proposed amendments contain provisions that are less stringent than current rules in an effort to encourage recycling and energy recovery.

The proposed used oil amendments expand on the existing used oil rules. In general, the used oil regulations were developed by the EPA to serve as an alternative regulatory framework to full hazardous waste regulation. The used oil rules encourage recycling of used oil (including burning for energy recovery) through deregulation, while still applying basic management standards to used oil and related wastes to ensure environmental protection. The MPCA is incorporating the federal used oil regulations in recognition that a less stringent regulatory framework is needed to facilitate recycling of used oil and to control costs of used oil management for used oil generators.

The proposed amendments to part 7045.0125, subpart 4, item L are intended to better encourage recycling of pipeline interface material. The existing exemption for pipeline interface material that is to be recycled was inadvertently written too narrowly to encourage its recycling. The existing

exemption places constraints upon generators of this material that make recycling an impossibility for some generators. The proposed amendments to this exemption broaden the existing exemption to address this problem and meet this need.

The proposed amendments of part 7045.0125, subpart 4, item M create an exemption for mixtures of different fuel products to facilitate recycling of these materials. These materials are readily recyclable and valuable and thus are appropriate materials to be exempt from regulation. This exemption is needed to prevent regulation of these materials from proving to be a disincentive to recycling.

D. The need to provide clarity in the hazardous waste rules.

The hazardous waste rules are perpetually reviewed and revised in an attempt to correct errors and inconsistencies. The proposed amendments include several provisions that serve to correct these problems and meet the need for clarity in the rules.

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 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 majority of the proposed amendments adopt federal used oil regulations without substantive modification. For these amendments, the MPCA relies on the EPA's rationale to support the reasonableness of the amendments (see the list of exhibits at the end of this document). These amendments are noted below as incorporating federal regulations without substantive modification. For the proposed amendments that are substantively different than the federal

regulations they incorporate, a more detailed explanation of the reasonableness of the amendments is given.

Some of the modifications to the federal used oil regulations are simply references to current laws and rules that apply to the wastes and parties addressed in the proposed amendments. These current laws and rules apply even in the absence of the proposed amendments, and thus are not new amendments that must be justified. They are simply references to these other authorities for informational purposes for the regulated community. These references are identified below, but not justified as new requirements.

The reasonableness of the proposed amendments is discussed below.

A. Various parts of Minn. Rules chs. 7001, 7035, and 7045.

Citations to federal regulations in many places in the rules specify the 1983 version of the regulations, other specific versions of the regulations, or no particular version of the regulations at all. These specific citations are inaccurate since the intent of the rules that contain them is to reference the most current version of the regulation cited. These specific citations in these rule parts are changed by the proposed amendments to reference the regulations cited "as amended". This means that the most recently amended version of the regulation cited applies, not the version of the regulation cited that was in effect at the time the rule containing the citation was adopted, or any other specific past version of the regulations. It is reasonable to make this change to these citations to clarify the proper regulations that apply.

Also, the deletion, addition, and moving of several rule parts, or portions of rule parts necessitate several changes to cross-references in the rules. It is reasonable to change these cross-references to reflect the changes made by the proposed amendments.

B. Minn. Rules pt. 7045.0020 DEFINITIONS.

Subpart 6a of this part defines the term "boiler". Boilers are considered industrial boilers in the current definition if they are located at manufacturing sites using mechanical processes. The proposed amendments to item C of this subpart classify boilers that are located at industrial sites where chemical processes are used as industrial boilers also. It is reasonable to include chemical processes in this definition since chemical processes are commonly used in manufacturing and are also a useful factor in determining if a site is industrial.

Subpart 73a of this part currently addresses the terms "RCRA" and "Resource Conservation and Recovery Act." The term "Resource Conservation and Recovery Act" is not defined by this subpart, so it is reasonable to remove it from the definition.

Subpart 100a of this part defines the term "used oil." This definition incorporates the federal definition with modifications. The proposed definition is much more detailed than the federal definition to provide clarity regarding the types of oils that are considered used oil. The types of used oil listed in the proposed definition are considered to be used oil by the federal definition, but are not specified in the federal definition. The proposed definition also lists materials that are not considered used oil to further clarify the scope of the definition. It is reasonable to modify the federal definition because it is vague and leads to confusion regarding what materials truly are and are not considered used oil. Also, virgin oils that are disposed that were formerly defined as "waste oil" are included in the proposed definition of used oil. It is reasonable to combine these definitions since both substances are subject to the same requirements and are often

confused with each other. Combining the terms will not change the regulation of these materials, but will help prevent confusion created by the existence of two similar terms.

Subpart 100b of this part contains the proposed definition of the term "used oil filter." It is reasonable to define this term in light of the proposed used oil filter amendments of part 7045.0990 and the proposed application of the licensing requirements of parts 7045.0225 to 7045.0250 to used oil filters to ensure that the type of waste considered a used oil filter is understood.

Subpart 102b of this part defines the term "waste oil." The proposed amendments delete this term and definition. It is reasonable to remove this term from the rules in light of the new expanded definition of the term "used oil" that encompasses "waste oil" to prevent these terms from being redundant. The deletion of this term necessitates the replacement of the word "waste" with the term "used" in parts 7035.2535, 7045.0135, 7045.0230, 7045.0310, and 7045.0320.

Subpart 108 of this part defines the term "wetland" by reference. The statutory definition that is currently referenced has been repealed. It is reasonable to change the reference to the definition found in water quality rules to replace the erroneous reference and establish consistency between regulatory programs.

C. Minn. Rules pt. 7045.0065 AVAILABILITY OF REFERENCES.

The current item B of this part includes the National Fire Code issued by the National Fire Protection Association as a reference to this chapter. However, National Fire Codes do not apply in Minnesota. Minnesota instead follows the Minnesota Uniform Fire Code. It is reasonable to replace the

current reference with the reference to the Minnesota Uniform Fire Code since it is the fire code used in Minnesota.

The proposed amendments add a new item I to this part. This item provides a reference to the Standard Industrial Classification Manual cited in part 7045.0790, subpart 9. It is reasonable to add this item to provide a reference to this manual.

D. Minn. Rules pt. 7045.0102 MIXTURES OF WASTES.

Subpart 3 of this part contains the rules regarding mixtures of used oil and hazardous waste. Because the proposed amendments move the provisions regarding used oil mixtures of this subpart to part 7045.0800, it is reasonable to delete this subpart in order to consolidate the used oil rules in one area of the rules for purposes of clarity. The moving of this subpart necessitates changes to references in parts 7045.0020 and 7045.0692 to reflect its new location.

E. Minn. Rules pt. 7045.0120 EXEMPTIONS AND SPECIAL REQUIREMENTS.

This part exempts particular wastes from the hazardous waste rules. The proposed amendments create a new item V to incorporate a federal exemption for used oil rerefining distillation bottoms used as asphalt feedstock. It is reasonable to incorporate this federal exemption to encourage beneficial reuse of this material. The MPCA relies on the EPA's determination that this method of recycling for this material is beneficial.

The proposed amendments to this part also change an erroneous reference to chapter 7150 to the proper reference to the applicable federal regulations. It is reasonable to make this change to correct this inaccuracy.

F. Minn. Rules pt. 7045.0125 MANAGEMENT OF WASTE BY USE, REUSE, RECYCLING, AND RECLAMATION.

Subpart 3a of this part addresses the management of used oil. The proposed amendments of this subpart change the current references to the applicable sections of the rules that used oil is subject to based on the proposed used oil amendments of parts 7045.0790 to 7045.0995. The proposed amendments also specify that used oil that is not recycled is subject to the fee requirements of chapter 7046. This is not a new requirement since used oil that is not recycled is not exempt from fees, but it is reasonable to specify this to provide clarity of the applicability of the fee rules in this situation.

The existing subpart 4, item L of this part exempts pipeline interface material that is recycled from the majority of the hazardous waste rules. This exemption is intended to promote reuse and recycling of pipeline interface material. Discussions with petroleum industry representatives have shown that the current exemption is not written broadly enough to allow recycling of pipeline interface material by all generators of this material. It is reasonable to broaden the current exemption to include the use of pipeline interface material as a fuel ingredient to create an environmentally sound reuse/recycling option for all generators of this material.

The proposed amendments add a new exemption to subpart 4 of this part for mixtures of fuel products being reused or recycled. The materials exempted are limited to fuels that were true products before mixing occurred and mixtures that are readily reusable or recyclable. These limitations are placed on the materials exempted to ensure that waste-like materials remain subject to full hazardous waste regulation to ensure proper management, since waste-like

materials are of questionable value. It is reasonable to exempt these materials because they have an economic value and can be environmentally managed through exempt reuse and recycling.

G. Minn. Rules pt. 7045.0131 CHARACTERISTICS OF HAZARDOUS WASTE.

Subpart 3 of this part describes the characteristic of oxidativity. Item A of this subpart defines an oxidizer by reference to federal transportation regulations. The current reference cites a section of the regulations that no longer contains the definition of an oxidizer. It is reasonable to change this reference to the section of the regulations that defines oxidizers to prevent confusion caused by the erroneous reference and to provide clarity of the definition of the term.

H. Minn. Rules pt. 7045.0135 LISTS OF HAZARDOUS WASTES.

Subpart 4, item C of this part is amended to include a reference to item F of this part. This reference was unintentionally omitted when the equivalent federal rules were incorporated. It is reasonable to include this reference to make state rules as stringent as the federal rules they incorporate in order to maintain required equivalence with federal regulations.

Subpart 5 of this part contains the requirements for management of PCB waste. Item C of this subpart contains the storage requirements for PCBs. Subitem 2 of this item specifies the accumulation standards of part 7045.0292 that generators must follow. The proposed amendments require PCB generators to follow the hazardous waste accumulation standards appropriate for their generator size. This will provide consistency between storage of PCBs and other types of hazardous waste. These proposed amendments are reasonable because they apply the appropriate level of regulation on PCB wastes based on generator size, and remove overly burdensome requirements from generators of

small amounts of this waste. Also, the proposed amendments remove the requirement for PCB items that are required to be labeled as such to also be labeled as hazardous waste. This provision of the proposed amendments is reasonable because it removes a redundancy in the rules.

I. Minn. Rules pt. 7045.0145 DELETION OF CERTAIN HAZARDOUS WASTE CODES

FOLLOWING EQUIPMENT CLEANING AND REPLACEMENT AT WOOD PRESERVING PLANTS.

Subpart 2 of this part contains the requirements for drip pad operations undergoing equipment cleaning and replacement. Item A, subitem 1 and item B of this subpart are amended to add a requirement that in addition to preparing and signing a plan, the generator must also follow the plan. When these rules were first incorporated from federal regulations they did not include the word "follow", thus making Minnesota's rules less stringent than federal regulations. It is reasonable to make this change to maintain required equivalence with federal regulations.

J. Minn. Rules pt. 7045.0206 GENERATOR SIZE DETERMINATION.

The proposed amendments modify item C of subpart 5 of this part to specify that hazardous waste mixed with used oil is not exempt from counting toward generator size. It is reasonable to clarify this point to avoid confusion.

K. Minn. Rules pt. 7045.0208 HAZARDOUS WASTE MANAGEMENT.

The proposed amendments add a new subpart 4 to this part that specifies that hazardous waste is subject to the land disposal restrictions of chapter 7045. This subpart does not add additional requirements to the management of hazardous waste, but merely serves to reference another set of rules to which these wastes are subject. It is reasonable to add this subpart to clarify the applicability of the land disposal restrictions.

L. Minn. Rules pts. 7045.0221, 7045.0225, 7045.0230, 7045.0240, and 7045.0248

GENERATOR LICENSING REQUIREMENTS.

The proposed amendments to these parts specify that generators of used oil, used oil filters, and oily waste are subject to the generator licensing requirements. This clarifies the applicability of the licensing and reporting requirements for used oil generators. Used oil, although an exempt hazardous waste, has been part of the hazardous waste licensing system for years, but this was not clearly stated in the rules. It is reasonable to clarify this issue to prevent confusion regarding the scope of licensing requirements. It is reasonable to include used oil in the licensing requirements since it is one of the largest and most common waste streams generated and poses a substantial hazard to human health and the environment if not properly managed. Licensing used oil generators helps ensure proper management of this waste.

M. Minn. Rules pt. 7045.0243 TERM AND CONDITION OF LICENSE.

Subpart 3 of this part outlines the general conditions of a hazardous waste generator license. Although it is implied, this subpart does not specify that the licensee must comply with the conditions of the license. It is reasonable to add a statement to this subpart to clarify the licensee's responsibilities relative to the license.

N. Minn. Rules pt. 7045.0292 ACCUMULATION OF HAZARDOUS WASTE.

Subparts 1, 5, and 6 of this part contain the accumulation standards for generators. The proposed amendments add language to these subparts that states that generators, though exempt from the majority of the interim status standards, are subject to specific closure requirements. At the request of the EPA, the proposed amendments make the state closure requirements for generators

equivalent to the federal requirements. These proposed amendments are reasonable in that they make state rules as stringent as federal regulations and provide greater consistency with federal regulations.

O. Minn. Rules pt. 7045.0454 PERSONNEL TRAINING.

Subpart 4 of this part sets out the schedule for personnel training required by this part. The proposed amendments delete the segments of this subpart that implemented a phase-in schedule for this requirement that was applicable at the time these rules were adopted. It is reasonable to remove the phase-in schedule from this subpart since the time of the phase-in period has passed and the schedule no longer applies.

P. Minn. Rules pt. 7045.0456 GENERAL REQUIREMENTS FOR IGNITABLE, REACTIVE, OR INCOMPATIBLE WASTE.

The proposed amendments add a new subpart 1a to this part. This new subpart requires that hazardous waste be segregated from other materials located near the waste if the waste and materials have the potential to react with each other. It is reasonable to add this requirement to provide protection for human health.

Q. Minn. Rules pt. 7045.0518 LIABILITY REQUIREMENTS.

Subpart 2, item D of this part sets out a phase-in schedule for establishing liability coverage for existing facilities. The proposed amendments delete this phase-in schedule since the time period specified has passed. It is reasonable to delete this schedule since it is no longer applicable.

R. Minn. Rules pt. 7045.0528 TANK SYSTEMS.

Subpart 4 contains a phase-in schedule for secondary containment requirements for specific types of tank systems. The proposed amendments remove the phase-in schedule because the phase-in period is complete. It is reasonable to remove the schedule since the schedule is obsolete.

Subpart 5 of this part contains requirements for tank systems during the phase-in period of subpart 4. Since the phase-in period is over, the proposed amendments remove subpart 5. It is reasonable to remove subpart 5 since it is obsolete.

Subpart 8 of this part contains the requirements for responses to releases. The proposed amendments clarify subitem 2 of item C of this subpart by changing the term "dispose of" to "manage." It is reasonable to change the term used since owners and operators of facilities that have performed removal of contamination have more responsibilities than disposal of the contaminants.

Subpart 8, item D of this part requires notification of the commissioner within 24 hours in the event of a release. This conflicts with Minn. Stat. § 115.061 that requires immediate notification of the Minnesota Duty Officer. It is reasonable to replace the current notification requirement with a requirement that mirrors the statutory requirement to eliminate this conflict.

Subpart 10 of this part contains requirements for storage of ignitable and reactive wastes. Item C of this subpart includes references to the National Fire Code issued by the National Fire Protection Association. However, National Fire Codes do not apply in Minnesota. Minnesota instead follows the Minnesota Uniform Fire Code. It is reasonable to replace the current reference with the reference to the Minnesota Uniform Fire Code since it is the fire code used in Minnesota.

S. Minn. Rules pt. 7045.0541 DRIP PADS.

Subpart 2 of this part contains the requirements for drip pad leak collection systems. The current language of this subpart indicates that the requirements only apply to the installation of leak collection systems. However, this subpart also entails design, construction, and operation requirements in addition to "installation." It is reasonable to remove the language from this subpart that specifies installation as the scope of this subpart, since this is an erroneous description.

T. Minn. Rules pt. 7045.0552 FACILITIES GOVERNED BY INTERIM STATUS.

Subpart 1 of this part contains a phase-in schedule for the applicability of the interim status standards to facilities. The proposed amendments remove this schedule since the time period of the phase-in has passed. It is reasonable to remove this schedule since it is obsolete.

U. Minn. Rules pt. 7045.0558 PERSONNEL TRAINING.

Subpart 4 of this part sets out the schedule for personnel training required by this part. The proposed amendments delete the segments of this subpart that implemented a phase-in schedule for this requirement that was applicable at the time these rules were adopted. It is reasonable to remove the phase-in schedule from this subpart since the time of the phase in period has passed and the schedule no longer applies.

V. Minn. Rules pt. 7045.0562 GENERAL REQUIREMENTS FOR IGNITABLE, REACTIVE, OR INCOMPATIBLE WASTE.

The proposed amendments add a new subpart 1a to this part. This new subpart requires that hazardous waste be segregated from other materials located near the waste if the waste and materials have the potential to react

with each other. It is reasonable to add this requirement to provide protection for human health.

W. Minn. Rules pt. 7045.0620 LIABILITY REQUIREMENTS.

Subpart 2, item D of this part sets out a phase-in schedule for establishing liability coverage for existing facilities. The proposed amendments delete this phase-in schedule since the time period specified has passed. It is reasonable to delete this schedule since it is no longer applicable.

X. Minn. Rules pt. 7045.0628 TANK SYSTEMS.

Subpart 4 of this part contains a phase-in schedule for secondary containment requirements for specific types of tank systems. The proposed amendments remove the phase-in schedule because the phase-in period is complete. It is reasonable to remove the schedule since the schedule is obsolete.

Subpart 5 of this part contains requirements for tank systems during the phase-in period of subpart 4. Since the phase-in period is over, the proposed amendments remove subpart 5. It is reasonable to remove subpart 5 since it is obsolete.

Subpart 8 of this part contains the requirements for responses to releases. The proposed amendments clarify subitem 2 of item C of this subpart by changing the term "dispose of" to "manage". It is reasonable to change the term used since owners and operators of facilities that have performed removal of contamination have more responsibilities than disposal of the contaminants.

Subpart 8, item D of this part requires notification of the commissioner in the event of a release within 24 hours. This conflicts with Minn. Stat. § 115.061 that requires immediate notification of the Minnesota Duty Officer.

It is reasonable to replace the current notification requirement with a requirement that mirrors the statutory requirement to eliminate this conflict.

Subpart 10 of this part contains requirements for storage of ignitable and reactive wastes. Item C of this subpart includes references to the National Fire Code issued by the National Fire Protection Association. However, National Fire Codes do not apply in Minnesota. Minnesota instead follows the Minnesota Uniform Fire Code. It is reasonable to replace the current reference with the a reference to the Minnesota Uniform Fire Code since it is the fire code used in Minnesota.

Y. Minn. Rules pt. 7045.0629 REQUIREMENTS FOR SMALL QUANTITY AND VERY SMALL QUANTITY GENERATORS THAT ACCUMULATE HAZARDOUS WASTE IN TANKS.

Subpart 2, item B of this part includes a reference to the National Fire Code issued by the National Fire Protection Association. However, National Fire Codes do not apply in Minnesota. Minnesota instead follows the Minnesota Uniform Fire Code. It is reasonable to replace the current reference with the a reference to the Minnesota Uniform Fire Code since it is the fire code used in Minnesota.

Z. Minn. Rules pt. 7045.0644 DRIP PADS.

Subpart 2 of this part contains the requirements for drip pad leak collection systems. The current language of this subpart indicates that the requirements only apply to the installation of leak collection systems. However, this subpart also entails design, construction, and operation requirements. It is reasonable to remove the language from this subpart that specifies installation as the scope of this subpart, since this is an erroneous description.

Subparts 3 and 4 of this part contain improper references to federal regulations. The proposed amendments correct these references to cite the proper regulations. It is reasonable to make these changes to make the rules more accurate.

AA. Minn. Rules pt. 7056.0665 USE CONSTITUTING DISPOSAL.

Subpart 1a of this part contains the land application prohibition for specific types of wastes. The current item A of this subpart prohibits used oil and hazardous waste from disposal in solid waste and from use for dust control or road treatment. The proposed amendments expand the scope of the prohibition to prohibit any placement of hazardous waste in or on the land, or in or on waters of the state. It is reasonable to expand this prohibition to include these forms of improper disposal since these activities pose a direct threat to the environment. Preventing discharges of hazardous waste to the environment is the main objective of the hazardous waste program and must be clearly prohibited by the rules. Item B of this subpart prohibits other land application of used oil, unless approved by the commissioner, as in the case of an accidental spill. This prohibition, with the ban on dust suppression and placement on land and water, is moved to the proposed amendments of the new part 7045.0845, subpart 1.

BB. Minn. Rules pt. 7045.0695 USED OIL BURNED FOR ENERGY RECOVERY.

This part contains the existing used oil burning and marketing requirements. The proposed amendments move these provisions to the new proposed amendments of parts 7045.0790 to 7045.0895. The proposed amendments greatly expand upon the existing requirements and are explained in greater detail below. The deletion of this part necessitates changes to references to this part in parts 7045.0125 and 7045.0692.

CC. Minn. Rules pts. 7045.0790 to 7045.0990 MANAGEMENT OF USED OIL.

The proposed amendments create a new section within the hazardous waste rules addressing the management of used oil. This section supersedes part 7045.0695, which formerly contained the majority of the used oil rules, and incorporates other sections of the rules that contained used oil management requirements. This section incorporates federal used oil regulations originally promulgated September 10, 1992, and subsequent amendments to those regulations that were promulgated May 3, 1993, and March 4, 1994. The reasonableness of these amendments is based in the fact that the MPCA is required by the EPA to adopt these amendments. In general, where the federal regulations have been incorporated without substantive modification, the rationale behind the regulations given by the EPA in the list of exhibits found at the end of this document below will serve as the reasonableness for the proposed amendments. Where the federal regulations have been substantively modified, the proposed amendments are substantively different from the previous rules, or state-initiated amendments are proposed, the reasonableness of the modifications is defined below in this section.

DD. Minn. Rules pt. 7045.0790 DEFINITIONS.

This part defines terms used only in this section of the rules. These definitions are incorporated from the federal regulations without substantive modification. (Please note that the definition for the term "used oil" is found in part 7045.0020 since it is used throughout the hazardous waste rules, not only in this section.) The proposed amendments of this part are reasonable in that they ensure clarity and consistency of meaning within this section of the rules.

EE. Minn. Rules pt. 7045.0795 APPLICABILITY.

This part makes a general statement of the applicability of this section of rules. It also states that the waste code for used oil is M100. This waste code has been used in the past for reporting purposes, but was previously not specified in the rules. The proposed amendments of this part are reasonable in that they provide clarity regarding the scope of the rules and the use of the M100 waste code.

FF. Minn. Rules pt. 7045.0800 MIXTURES OF USED OIL AND HAZARDOUS WASTE.

Subpart 1 of this part provides the general requirements for hazardous waste mixed with used oil. Hazardous waste to be mixed with used oil is subject to all hazardous waste requirements before mixing and is subject to further requirements as spelled out in this part after mixing. The subpart is reasonable because it clarifies how hazardous waste is to be managed both before and after mixing with used oil, which has been a point of confusion in the past.

Subpart 2 of this part defines the requirements for managing used oil that has been mixed with listed hazardous waste. These requirements were moved from part 7045.0102, subpart 3, item B.

Subpart 3 of this part contains the "rebuttable presumption of mixing," previously found in part 7045.0695, subpart 1. This is a mechanism for used oil handlers to use to prove that used oil containing high levels of chlorine has not been mixed with a listed hazardous waste. This subpart also contains new federal provisions that expand use of the "rebuttable presumption" for certain metalworking oils and used oil contaminated with chlorofluorocarbons. Information on testing methods is also included. This subpart is substantively the same as the federal regulations.

Subpart 4 of this part specifies the requirements for the management of used oil mixed with characteristic hazardous waste and hazardous waste listed solely for the characteristic of ignitability. Formerly, ignitable-only listed hazardous waste mixed with used oil was automatically regulated as listed hazardous waste. The new federal regulations allow this type of mixture to be regulated as used oil if it meets the criteria of this subpart. Items C and D of this subpart modify the requirements formerly found in part 7045.0102, subpart 3, items A and C.

Subpart 4, item C contains an exception for mixtures of used oil and waste that is hazardous only for the characteristic of ignitability. This item only requires such mixtures to not display the characteristic of ignitability to be managed as used oil, rather than as hazardous waste. Formerly, these types of mixtures would have to be proven to not display any characteristics before being considered used oil. It is reasonable to only require the mixture to not be ignitable since this is the only potential hazard introduced by the waste. The source of any other characteristics exhibited would be the used oil itself.

Subpart 4, item D replaces the former part 7045.0102, subpart 3, item C. This item clarifies the type of waste very small quantity generators of hazardous waste (VSQGs) can mix with used oil and automatically manage the mixture as used oil without evaluation. The former rules allowed the mixing of waste that is hazardous only for the characteristic of ignitability with used oil. This rule was intended to give VSQGs an effective disposal mechanism for non-chlorinated solvent waste. However questions arose about the toxicity of this type of waste, particularly the levels of heavy metals, and whether or not it truly is only ignitable. VSQGs do not typically have this type of waste

tested to determine what characteristics it exhibits prior to mixing, nor is this felt to be necessary. It is reasonable to change the wording of this part to specify the exact type of waste allowed to be mixed with used oil by VSQGs to avoid causing confusion about the applicability of the hazardous waste characteristics in this situation.

GG. Minn. Rules pt. 7045.0805 WASTE CONTAINING OR CONTAMINATED WITH USED OIL.

Item A of this part incorporates the federal requirement that oily waste be evaluated for hazardous waste characteristics prior to disposal. This item also specifies that oily waste to be burned for energy recovery in accordance with the used oil rules must have a rating of at least 5,000 British Thermal Units per pound, which is the federal minimum BTU limit for sham recycling by burning for energy recovery.

Item B of this part requires that oily waste not contain any free oil when leaving the generator site. It is reasonable to require this to prevent loss of liquid used oil. Parties handling oily waste are anticipating handling a solid material and may not be prepared or equipped to handle free liquids, which could result in drips and spills of used oil should it be present with oily waste.

Item C incorporates the federal requirement that used oil recovered from oily waste be managed as used oil, without substantive modification.

Item D specifies that oily waste that is to be burned for energy recovery as a used oil is subject to the used oil management requirements. It is reasonable to subject these wastes to the used oil management standards since this waste is exempt from hazardous waste management standards and cannot simply be disposed of as solid waste. The used oil management standards will help ensure that oily waste is properly managed.

Item E specifies that used oil filters that are recycled as scrap metal in accordance with part 7045.0995 are not subject to this part. This is reasonable since other standards exist to address this particular waste.

The proposed amendments specify that this part is not effective until July 1, 1995, to allow generators of this material additional time to adjust their management practices to comply with this rule.

HH. Minn. Rules pt. 7045.0810 MIXTURES OF USED OIL WITH PRODUCTS AND REUSE OF USED OIL.

Items A and B of this part incorporate federal provisions regarding the mixing of used oil with fuels without substantive modification.

Item C of this part contains a state-initiated amendment that requires persons recycling used oil by using used oil as a product or as an ingredient in a product to prove that the used oil is not being disposed and that the product does not display the toxicity characteristic. It is reasonable to require this demonstration to ensure that used oil is truly being recycled and that the use of the used oil will not harm human health and the environment.

Item D of this part specifies that used oil that is reused for its original purpose is not subject to chapter 7045. This item replaces part 7045.0125, subpart 3a, item A.

II. Minn. Rules pt. 7045.0815 MATERIALS DERIVED FROM USED OIL.

This part incorporates the federal requirements for materials derived from used oil without substantive modification.

JJ. Minn. Rules pt. 7045.0820 WASTEWATER.

This part incorporates the federal regulations for wastewater contaminated with small amounts of used oil. This provision exempts this type of wastewater

from the used oil requirements. It is reasonable to exempt small, unavoidable discharges of used oil since generators do not have control over these types of incidental losses. However, the proposed amendments emphasize that discharges of used oil in wastewater must be unintentional to be exempt under this provision. It is reasonable to specify that discharges cannot be intentional to prevent improper disposal of used oil via this exemption.

KK. Minn. Rules pt. 7045.0825 USED OIL INTRODUCED INTO CRUDE OIL PIPELINES OR A PETROLEUM REFINING FACILITY.

This part incorporates the federal provisions for the use of used oil as a feedstock with crude oil or natural gas liquids without substantive modifications. These provisions seek to facilitate this alternative form of used oil recycling.

LL. Minn. Rules pt. 7045.0830 USED OIL ON VESSELS.

This part incorporates the federal regulations regarding used oil from shipboard operations without substantive modification.

MM. Minn. Rules pt. 7045.0835 USED OIL CONTAINING PCBs.

This part incorporates the federal provisions regarding used oil contaminated with PCBs. Also, the proposed amendments specify that used oil containing more than 50 parts per million PCBs is subject to the requirements of part 7045.0135, subpart 5. It is reasonable to supply this cross-reference to specify the additional state requirements for PCB wastes.

NN. Minn. Rules pt. 7045.0840 USED OIL SPECIFICATIONS.

This part incorporates the federal used oil specifications, formerly located in part 7045.0695, subpart 1, item B. The proposed amendments also specify that testing to determine specifications need only be performed once per source, unless conditions change such that the specifications of the used

oil may be altered. It is reasonable to require only one-time testing since generators can ensure consistency of a used oil wastestream and since testing costs are expensive.

OO. Minn. Rules pt. 7045.0845 PROHIBITIONS ON DISPOSAL OF USED OIL.

Subpart 1 of this part replaces the prohibition formerly found in part 7045.0665, subpart 1a. The proposed amendments also broaden this prohibition to include waters of the state to provide consistency with Minn. Stat. § 115A.916, which prohibits disposal of used oil in or on waters of the state.

Subpart 2 of this part incorporates without substantive modification the federal regulations that specify the types of devices in which off-specification used oil may be burned.

PP. Minn. Rules pt. 7045.0855 STANDARDS FOR USED OIL GENERATORS.

Subpart 1 of this part defines the parties that are subject to regulation under this part. Item A of this part exempts do-it-yourselfer used oil generators from this part, as do the federal regulations. Item B of this part incorporates without modification the federal exemption for used oil generated on vessels until it is brought ashore. Item C of this part adopts the federal exemption for farmers that generate an average of less than 25 gallons of used oil per month. However, the proposed amendments modify this exemption to subject farmers to the disposal prohibitions for used oil and used oil filters. It is reasonable to narrow this exemption in this manner to conform with Minn. Stat. § 115A.916 that prohibits all parties from disposing of these wastes.

Subpart 2 of this part subjects used oil generators to the licensing requirements of parts 7045.0221 to 7045.0255. This clarifies the applicability of the licensing and reporting requirements for used oil generators. Used oil,

as an exempt hazardous waste, has been part of the hazardous waste licensing system for years, but this was not clearly stated in the rules. It is reasonable to clarify this to prevent confusion regarding the scope of licensing requirements. It is reasonable to include used oil in the licensing requirements since it is one of the largest and most common waste streams generated and poses a substantial hazard to human health and the environment if not properly managed. Licensing used oil generators helps ensure proper management of this waste.

Subpart 3 of this part incorporates, with some modifications, the federal storage regulations for used oil generators. Item A of this subpart incorporates federal requirements that subject used oil storage to existing hazardous waste storage requirements. Item B of this subpart provides references to existing state requirements for used oil storage. This item does not subject generators to new requirements, but merely serves to alert generators to existing requirements. Item C of this subpart incorporates the new federal used oil storage standards. The proposed amendments add to this item the state-initiated requirements that used oil storage containers must be kept closed and must be placed on a surface that is impervious to used oil. These additional requirements are reasonable because they will help prevent spills or other discharges of used oil from containers from occurring and from contaminating the environment. Item D of this subpart incorporates the federal regulations for addressing releases of used oil. The proposed amendments also add a reference to Minn. Stat. § 115.061 requiring notification of the state duty officer in the event of a spill of used oil exceeding 5 gallons. This reference does not subject generators to new requirements, but merely serves to alert generators to the existing notification requirements.

Subpart 4 of this part incorporates the federal regulations for generators burning used oil on-site. These requirements were formerly found in part 7045.0695, subpart 4, item A. The proposed amendments also specify that used oil collected at used oil aggregation points can also be burned on-site. This was not specified in the federal regulations, but was confirmed as within the scope of the regulations by the EPA staff. The proposed amendments also include references to existing applicable sections of the Minnesota Uniform Fire Code. This reference does not subject generators to new requirements, but merely serves to alert generators to the existing notification requirements.

Subpart 5 of this part incorporates the federal requirements for off-site shipments of used oil. The proposed amendments of item A of this subpart also specify that businesses, such as contractors, that generate used oil at other business sites can transport the used oil to their own site of business as a used oil aggregation point under this subpart. It is reasonable to allow contractors to transport used oil to their sites to help ensure that the used oil remains in the hands of a party that is equipped to handle the used oil and that will have access to the used oil recycling system by virtue of accumulating a sufficient amount of used oil from various sites to attract used oil transporters. It is also reasonable to allow self-transport in this situation since the conditions of transport under this subpart minimize the potential for problems from this type of used oil transport.

Item B of this subpart incorporates without modification the federal regulations allowing transportation of used oil by transporters without EPA identification numbers under a tolling arrangement between the generator and transporter. It is reasonable to allow this exemption to facilitate this specific form of used oil recycling.

Item C of this part contains state initiated provisions that require used oil generators to keep records of shipments of used oil from their site. This will allow generators to accurately report their annual generation amounts of used oil, and inspectors to have access to information on the generator's used oil management practices, as may be needed in the case of an enforcement action. The proposed amendments allow the generator to satisfy this requirement by keeping a log of shipments, or by using receipts that are required to be given to generators by transporters. It is reasonable to require recordkeeping of shipments since this is a simple method of documenting how generators are managing their used oil to ensure that generators are operating within the scope of the used oil exemption.

Subpart 6 of this part contains the requirements for generators mixing used oil with hazardous waste. Item A of this subpart incorporates federal requirements without substantive modification. Item B of this subpart is a state-initiated provision that requires used oil generators to document any mixing of used oil and hazardous waste, and any test results for the resulting mixtures. It is reasonable to require this documentation so that there is a record of how the mixtures were managed and proof that the mixtures of used oil and hazardous waste were managed properly based on test results. It is reasonable to require documentation since this is a simple method to prove that the conditions of the rules are met. The proposed amendments of this part also clarify that hazardous waste that is to be mixed with used oil is included in generator size determinations. This is an existing requirement that the proposed amendments clarify.

Subpart 7 of this part contains state-initiated requirements that require generators to perform closure activities for used oil storage equipment when taking the equipment out of service. These requirements are reasonable because they make the generator responsible for managing contaminated storage equipment and wastes generated from storage at their operation, rather than placing that burden on future site owners. This is consistent with the hazardous waste rules that make generators responsible for management of their own waste.

Subpart 8 of this part incorporates without substantive modification the federal regulations that require used oil generators that perform other used oil activities to comply with the requirements for that activity.

QQ. Minn. Rules pt. 7045.0865 STANDARDS FOR USED OIL TRANSPORTERS OR TRANSFER FACILITIES.

This part contains the requirements for transporters of used oil. Subparts 1 to 6 of this part incorporate without substantive modification the federal regulations for used oil transporters, including the applicability of these requirements, import and export requirements, requirements for trucks that were used to transport hazardous waste that are to be used to transport used oil, restrictions on transporters that are not processors or re-refiners, notification of EPA requirements, and general transportation requirements.

Subpart 7 of this part incorporates the federal regulations for used oil discharges by used oil transporters without substantive modification. The proposed amendments of this subpart also include references to existing state laws that address spill prevention and response to alert used oil transporters to these existing requirements.

Subpart 8 of this part incorporates without substantive modification the federal regulations regarding the hazardous waste testing requirements for used oil transporters.

Subpart 9 of this part incorporates the storage requirements for used oil transporters. Item A of this subpart incorporates federal requirements that subject used oil storage to existing federal storage requirements. Item B of this subpart provides references to existing state requirements for used oil storage. This item does not subject transporters to new requirements, but merely serves to alert transporters to existing requirements. Item C of this subpart incorporates the new federal used oil storage standards. The proposed amendments add to this item the state-initiated requirement that used oil storage containers must be kept closed. This additional requirement is reasonable because it will help prevent spills or other discharges of used oil from occurring and from contaminating the environment. This item also contains a reference to state aboveground storage tank rules provided to alert transporters to their existing applicability. Item D of this subpart incorporates the federal regulations for addressing releases of used oil. The proposed amendments also add a reference to Minn. Stat. § 115.061 requiring notification of the state duty officer in the event of a spill of used oil exceeding 5 gallons. This reference does not subject generators to new requirements, but merely serves to alert generators to the existing notification requirements.

Subpart 10 of this part incorporates without substantive modification the federal regulations that require tracking of pickups and deliveries of used oil by used oil transporters. In addition to the federal requirements, the proposed amendments require used oil transporters to supply to the commissioner

upon request information regarding the amounts of used oil transported during the previous year. This requirement is reasonable because it will allow staff to have access to this information for planning purposes regarding the used oil market and for providing data needed in enforcement actions. This requirement is reasonable in that it only requires submittal of this information upon request, not on a scheduled basis.

Subpart 11 of this part contains a state-initiated provision that requires used oil transporters to provide receipts to all parties from whom they accept used oil. This requirement is reasonable because it will provide information to generators about the transporter and provide generators with a record of their used oil shipments. This will help generators comply with their recordkeeping and reporting requirements and provide generators with a level of protection from used oil transporters who are not operating within the rules. It is also reasonable to require transporters to give customers receipts since this is a common practice among used oil transporters.

Subpart 12 of this part incorporates without modification the federal requirements for management of used oil residues by used oil transporters.

Subpart 13 of this part contains state-initiated requirements that require used oil transporters to perform closure activities for used oil storage equipment when taking the equipment out of service. These requirements are reasonable because they make the transporters responsible for managing contaminated storage equipment and wastes generated from storage at their operations, rather than placing that burden on future site owners. This is consistent with the hazardous waste rules that make generators responsible for management of their own waste.

Subpart 14 of this part incorporates without substantive modification the federal regulations that require used oil transporters that perform other used oil activities to comply with the requirements for those used oil activities.

**RR. Minn. Rules pt. 7045.0875 STANDARDS FOR USED OIL PROCESSORS AND
RE-REFINERS.**

This part contains the requirements for used oil processors and re-refiners. Subparts 1 to 4 incorporate without modification the federal regulations regarding the applicability of these requirements, notification requirements, emergency planning, and used oil analysis for used oil processors.

Subpart 5 of this part incorporates the federal requirements for used oil storage and management at used oil processing facilities. Item A of this subpart incorporates without substantive modification the federal references to existing federal regulations to which used oil processors are subject. Item B of this subpart provides references to existing state requirements for used oil storage. This item does not subject used oil processors to new requirements, but merely serves to alert processors to existing requirements. Item C of this subpart incorporates the new federal used oil storage standards. In addition to incorporating the federal standards, the proposed amendments require that containers used to store used oil be kept closed. It is reasonable to require container storage to be kept closed because it is a simple, commonly employed and effective measure to prevent spills and contamination of used oil. This item also contains a reference to existing state aboveground storage tank standards that supersede the new federal tank standards. The state aboveground storage tank rules are an existing requirement that are not put into effect by these rules, but merely are referred to for clarity. Item D of this subitem

incorporates the federal requirements for responding to releases of used oil. This item also includes a reference to the state spill notification law. This is an existing requirement to which the proposed amendments only refer for clarity. Item E of this part incorporates without substantive modification the federal closure requirements for tanks and containers.

Subparts 6 through 10 of this part incorporate without modification the used oil analysis, tracking, recordkeeping and reporting, off-site shipping, and residue management requirements for used oil processors without substantive modification.

Subpart 11 of this part incorporates without substantive modification the federal regulations that require used oil processors that perform other used oil activities to comply with the requirements for those used oil activities.

**SS. Minn. Rules pt. 7045.0885 STANDARDS FOR USED OIL BURNERS WHO BURN
OFF-SPECIFICATION USED OIL FOR ENERGY RECOVERY.**

This part contains the requirements for used oil burners. Requirements for used oil burners were formerly located in part 7045.0695, subpart 4. Subparts 1 through 5 incorporate without substantive modification the federal requirements regarding the applicability of this part, restrictions on burning used oil, EPA notification, and used oil analysis for used oil burners.

Subpart 6 of this part incorporates the federal used oil storage regulations for used oil burners. Item A of this subpart incorporates without substantive modification the federal references to existing federal regulations to which used oil burners are subject. Item B of this subpart provides references to existing state requirements for used oil storage. This item does not subject used oil burners to new requirements, but merely serves to alert burners to existing requirements. Item C of this subpart incorporates the new

federal used oil storage standards for used oil burners. In addition to incorporating the federal standards, the proposed amendments require that containers used to store used oil be kept closed. It is reasonable to require container storage to be kept closed because it is a simple, commonly employed measure to prevent spill and contamination of used oil. This item also contains a reference to existing state aboveground storage tank standards that supersede the new federal tank standards. The state aboveground storage tank rules are an existing requirement that are not put into effect by these rules, but merely are referred to for clarity. Item D of this subitem incorporates the federal requirements for responding to releases of used oil. This item also includes a reference to the state spill notification law. This is an existing requirement to which the proposed amendments only refer.

Subpart 7 of this part incorporates the federal tracking and acceptance requirements for used oil burners. The proposed amendments add a requirement that burners furnish the commissioner with information about the amount of used oil received at their facilities. It is reasonable to add this requirement in order to facilitate the MPCA's accessibility to the information required to be kept by burners by the federal regulations. This requirement is also reasonable in that it only requires submittal of this information on request, not on a regularly scheduled basis. This will help ensure that submittal is not required unless absolutely necessary, as in the case of an investigation or enforcement action.

Subparts 8 and 9 of this part incorporate without substantive modification the federal regulations regarding notices and used oil residue management for used oil burners.

Subpart 10 of this part contains state-initiated proposed amendments that require used oil burners to perform closure activities for used oil storage equipment when taking the equipment out of service. These requirements are reasonable because they make the burner responsible for managing contaminated storage equipment and wastes generated from storage at their operation, rather than placing that burden on future site owners. This is consistent with the hazardous waste rules that make generators responsible for management of their own waste.

Subpart 11 of this part incorporates without substantive modification the federal regulations that require used oil burners that perform other used oil activities to comply with the applicable requirements for those activities.

TT. Minn. Rules pt. 7045.0895 STANDARDS FOR USED OIL FUEL MARKETERS.

This part contains the requirements for used oil fuel marketers. The rules for used oil fuel marketers were formerly found in part 7045.0695, subpart 3. The proposed amendments of this part incorporate without substantive modification the federal regulations applicable to used oil marketers.

UU. Minn. Rules pt. 7045.0990 USED OIL FILTERS.

This part contains the regulations applicable to used oil filter handlers. This part contains only state-initiated proposed amendments. Federal regulations exempt used oil filters from regulation, but state laws and rules apply to used oil filters. Used oil filters pose a risk to the environment because of the residual used oil they contain. However, they are a material resource because of the amount of scrap metal they contain.

Used oil filters have been regulated in Minnesota since 1991, but have not been addressed specifically in the rules. Formerly, they were regulated under

the toxicity characteristic of part 7045.0131, subpart 7, and subsequently under Minn. Stat. § 115A.916. The toxicity characteristic brought used oil filters into regulation, but did not address them directly or specify management requirements for them. Minn. Stat. § 115A.916 addressed used motor oil filters by prohibiting their disposal in solid waste, but also did not specify any management requirements for them. In response to these initial regulations, a used oil filter recycling system has developed. This system operates under the scrap metal exemption of part 7045.0125, subpart 4, item C, which provides that parties recycling used oil filters as scrap metal are exempt from regulation. While this exemption is beneficial in that it encourages recycling of used oil filters through deregulation, there is concern from both regulators and the regulated community that the used oil filter recycling system is not closely regulated. A lack of regulation of used oil filters could result in illegal disposal due to a lack of tracking and accountability, similar to the situation that developed with waste tires in the past.

In response to this concern, the MPCA proposes the following amendments designed to provide for accountability of used oil filter handlers while not inhibiting recycling of used oil filters by burdensome regulations. In general, it is reasonable to place regulation on used oil filters to conserve natural resources, to prevent them from contaminating the environment, to ensure that the state law prohibiting used oil filter disposal is followed, to provide used oil filter handlers with assurance that they and the parties they contract with are handling used oil filters properly, and to prevent used oil filters from becoming a long-term problem through improper management and disposal. The reasonableness of the specific provisions of the proposed used oil filter amendments is discussed below.

Subpart 1 of this part contains the definitions of terms used in the proposed amendments. It is reasonable to provide the definitions contained in this part because the terms defined are not commonly used, and must be explained to provide for clarity in the proposed amendments.

The proposed amendments of subpart 2 of this part set forth the general requirements for used oil filter disposition, including the various options for used oil filter recycling and disposal. The proposed amendments incorporate Minn. Stat. § 115A.916, which prohibits the disposal of used motor oil filters in solid waste or in or on the land, into the used oil rules. It is reasonable to restate this existing prohibition to provide a basis for the specific proposed used oil filter management amendments. The proposed amendments address all types of used oil filters, not just motor oil filters as specified in the statute. It is reasonable to regulate all types of used oil filters equally since they all have similar characteristics and all pose similar hazards.

In light of this prohibition, the proposed amendments of this subpart set forth the specific options for used oil filter disposition. Used oil filters that meet the definition of scrap metal under part 7045.0125, subpart 4, item C may be recycled as such. Nonmetallic used oil filters or nonmetallic portions of used oil filters may be burned for energy recovery as a used oil fuel without any evaluation required. Nonmetallic portions of used oil filters may also be evaluated for hazardous waste characteristics and disposed of in accordance with the results of the evaluation as solid or hazardous waste, as appropriate. Any used oil filter or portion of a used oil filter may be disposed of as hazardous waste if it displays a characteristic of hazardous

waste. These options are those that exist under existing rules. It is reasonable to set out the options for used oil filter disposition to clarify how existing rules apply to this specific waste.

The proposed amendments of subpart 2 of this part also declare that the waste code for used oil filters is M200. This is a code to be used for reporting and tracking purposes. It is reasonable to apply this waste code to simplify recordkeeping and provide for consistency in reporting.

Subpart 3 of this part contains the requirements for used oil filter generators. Used oil generators are the first handlers of used oil filters, and so are regulated to ensure that used oil filters are properly handled from the time of generation.

The proposed amendments of item A of this part subject used oil filter generators to the licensing requirements of parts 7045.0221 to 7045.0255. It is reasonable to require used oil filter generators to be subject to licensing requirements so that there is an accounting of how used oil filter generators are handling used oil filters. The licensing requirements, which require generators to report to the Agency how they are managing used oil filters, serve to encourage generators to manage used oil filters properly. This information is necessary to provide for enforcement of the used oil filter rules. Used oil filter generators have been required to comply with licensing requirements in the past since filters contain used oil. It is reasonable to specify that licensing requirements apply to used oil filters to clarify their applicability to this type of waste.

The proposed amendments of item B require used oil filter generators to store used oil filters in closed, leakproof containers. It is reasonable to require this since this is a simple, commonly used method of preventing discharges of used oil from used oil filters and used oil filter storage equipment. This item also requires used oil filter generators to label used oil storage equipment with the words "Used Oil Filters". It is reasonable to require this labeling as a simple means to prevent stored used oil filters from becoming contaminated with other wastes by mistake.

The proposed amendments of item C of this part address the burning of used oil filters at the site of generation. The proposed amendments require that used oil filters, as a waste contaminated with used oil, be burned in accordance with the used oil burning rules for used oil generators. These requirements include limitations on the size of the burner, limitations on the types of used oil filters burned, a venting provision, and an energy recovery provision. A reference to the Minnesota Uniform Fire Code that addresses the burning of used oil is also included. It is reasonable to place these restrictions on the burning of used oil filters since they are a used oil contaminated waste, and thus should meet the used oil burning requirements. The used oil burning requirements for generators set basic limitations that are intended to promote safety at the burner site and energy recovery from the used oil and oily waste, rather than simple burning for destruction.

The proposed amendments of item D of this subpart set forth the requirements for off-site shipments of used oil filters from used oil generators. Subitem 1 of this item requires that used oil filters be well drained before leaving the generator's site. It is reasonable to require this to prevent discharges of used oil to the environment from used oil filters

during transportation. It is also reasonable to require this in light of the provisions of the scrap metal exemption that specify that scrap metal must not contain liquids to qualify for this exemption. This requirement is also reasonable in that it does not specify the method by which used oil filters must be drained, but allows the generator latitude in determining the appropriate method to be used (e.g., gravity draining, crushing, separation, etc.).

Subitem 2 of this item allows used oil filter generators to transport used oil filters for recycling without becoming a licensed used oil filter collector. It is reasonable to exempt used oil filter generators from collector licensing requirements since they are not performing this activity as a service to other businesses, but are merely managing their own waste. Generators are not transporting used oil filters in large quantities or frequently in this circumstance, so do not merit the same level of scrutiny as a business that performs this service for hire for multiple businesses. However, this subitem also requires generators transporting their own used oil filters to ensure that filters are secure during transport and to keep records of all shipments they make. It is reasonable to place these minimal requirements on generators transporting their own used oil filters to ensure filters do not contaminate the environment and to provide proof that used oil filters were sent for recycling. These requirements are also reasonable in that they are simple methods for allowing generator self-transport without requiring full licensing of generators as collectors.

Subitem 3 of this item requires that used oil filter generators only allow licensed used oil filter collectors to accept their used oil filters. This is reasonable in light of the used oil filter collector requirements of subpart 4.

This subitem also requires generators to keep records of used oil filter shipments made using used oil filter collectors. It is reasonable to require recordkeeping of shipments to provide proof that generators are properly managing used oil filters. It is also reasonable to require recordkeeping in light of the fact that used oil filter collectors are required to provide receipts to generators, which will help to facilitate recordkeeping. This subitem is not effective until January 1, 1996, to allow time for used oil filter collectors to become licensed.

The proposed amendments of subpart 4 of this part contain the requirements for used oil filter collectors. Item A of this part contains the licensing requirements for used oil filter collectors. It is reasonable to license used oil filter collectors since the profits generated by the collectors come primarily at the point of collection, while disposal of the filters may cost the collector money. Concerns have been raised by the regulated community about the possibility of used oil filter collectors improperly disposing of used oil filters to avoid disposal costs. Thus it is reasonable to require used oil filter collectors to be licensed to provide a tracking mechanism for used oil filters to ensure their proper disposition. This is a reasonable means of ensuring that used oil filters are properly managed since the process of licensing involves simple notification and reporting. Persons handling incidental quantities of used oil filters or handling used oil filters as hazardous waste are not subject to licensing. It is reasonable not to require persons handling incidental quantities of used oil filters to be licensed because they comprise a very small part of the used oil filter recycling system and perform used oil filter recycling as an incidental part of their business.

It is reasonable not to require hazardous waste transporters to be licensed as used oil transporters since they are already subject to other, more extensive licensing requirements.

The proposed amendments require used oil filter collectors to register with the commissioner and comply with this subpart in order to be licensed. Registration includes the submission of information by the collector that is necessary for determining compliance with these requirements. It is reasonable to require registration by used oil filter collectors so that their activities can be monitored and so that used oil filter generators can have access to basic information about collectors' regulatory status.

The proposed amendments of item B of this subpart contain the requirements for handling of used oil filters during storage and transportation. Subitem 1 of this item specifies that used oil filter containers must be leakproof and closed to prevent the escape of used oil or used oil filters, and to be labeled ensure that used oil filters are readily recognizable so that they are managed properly. It is reasonable to specify these requirements because they are simple, commonly employed methods of used oil filter management that protect the environment from discharges of used oil from used oil filters. Subitem 2 of this item requires collectors to keep used oil filters within the used oil filter recycling system and to not stockpile used oil filters. These requirements are intended to promote used oil filter recycling and to prevent used oil filter "dumps" from developing. These requirements are reasonable because they conform to and serve to augment the state law prohibiting used oil filter disposal in solid waste and help ensure that used oil storage sites do not become disposal sites.

The proposed amendments of item C of this subpart contain the recordkeeping requirements for used oil filter collectors. The proposed amendments require used oil filter collectors to keep records of all shipments of used oil filters accepted and delivered. The proposed amendments also require used oil filter collectors to provide a receipt to all generators from which they accept used oil filters. It is reasonable to require these records and receipts because this is a simple method to document used oil filter recycling.

The proposed amendments of item D of this subpart require used oil filter collectors to report annually the amount of used oil filters they collected and sent for recycling. This requirement is reasonable because it provides the Agency with a mechanism to ensure that used oil filters are not being stockpiled and are being sent to recyclers as required by other provisions of this subpart. This reporting requirement is reasonable in that it only requires annual reports of the entire volumes of used oil filters collected and delivered, rather than more frequent and more specific reports.

The proposed amendments of item E of this subpart specify that used oil filter collectors that generate used oil are subject to the rules for the management of oily waste of part 7045.0805 and the used oil generator standards of part 7045.0855. This is simply a reference to other applicable standards that is reasonable to include for the sake of clarity.

The proposed amendments of this subpart are not effective until January 1, 1996, to allow time for used oil filter collectors to become licensed.

The proposed amendments of subpart 5 of this part contain the requirements for used oil filter brokers, processors, and recyclers. Item A of this subpart

contains the used oil filter handling requirements for these parties. The proposed amendments require used oil filters to be handled in a manner that will prevent used oil from entering the environment, including being stored in labeled, leakproof containers that are closed or covered. These handling requirements are reasonable because they are simple methods preventing used oil from being discharged from used oil filters to the environment. Item B of this subpart prohibits these parties from stockpiling used oil filters. This requirement is intended to promote used oil filter recycling and to prevent used oil filter "dumps" from developing. These requirements are reasonable because they help ensure that used oil filter storage sites do not become disposal sites. The proposed amendments of item C of this subpart specify that used oil filter brokers, processors, and recyclers that generate used oil are subject to the rules for the management of oily waste of part 7045.0805 and the used oil generator standards of part 7045.0855. This is simply a reference to other applicable standards that is reasonable to include for the sake of clarity. Item D of this subpart requires that used oil filter brokers, processors, and recyclers send used oil filters only to parties in the used oil filter recycling system. This requirement is reasonable because it conforms to and serves to augment the state law prohibiting used oil filter disposal in solid waste.

VV. Minn. Rules pt. 7045.1300 LAND DISPOSAL RESTRICTIONS; APPLICABILITY AND EXEMPTIONS.

Subpart 1 of this part defines the applicability of the land disposal restrictions. However, rather than referring to all of the land disposal restrictions, references in this part refer only to this part. It is

reasonable to correct this error made in the incorporation of the federal regulations to clarify the true applicability of the land disposal restrictions.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 requires the MPCA, when proposing rules that may affect small businesses, to consider the following methods for reducing the impacts on small businesses:

1. the establishment of less stringent compliance or reporting requirements for small businesses;
2. the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
3. the consolidation or simplification of compliance or reporting requirements for small businesses;
4. the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and,
5. the exemption of small businesses from any or all requirements of the rule.

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

For the provisions of the proposed amendments that adopt federal regulations verbatim, the establishment of less stringent standards is not allowable. State rules must be at least as stringent as federal regulations, as discussed above in section III, A.

A delayed effective date for the provisions of part 7045.0805, part 7045.0990, subpart 3, item D, subitem 3, and part 7045.0990, subpart 4 has been established to allow businesses time to comply with this provision. Small used oil filter recycling businesses will mainly benefit from this delay.

The MPCA has not implemented any of the other methods listed above. The MPCA believes that the proposed amendments are needed, for all sizes of businesses, to protect human health and the environment. The MPCA will continue to assess whether or not generators of used oil who generate no other hazardous waste should be subject to licensing requirements. At this time, the proposed rules clarify and formalize that this current requirement will continue to apply. Removing this requirement was considered by the MPCA in this rulemaking, but concerns of MPCA staff and other regulators deemed the requirement essential at this time.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the MPCA is required by Minn. Stat. § 116.07, subd. 6 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 that may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

In proposing these rules, the MPCA has given due consideration to available information as to any economic impacts the proposed rules would have. The MPCA believes that the proposed amendments will not have a negative economic impact. Some of the provisions of the proposed amendments reduce regulatory requirements and will have a positive economic impact on businesses complying with the rules. The provisions of the proposed amendments that are more stringent than current rules will not have a significant economic impact on businesses complying with the rules.

VII. IMPACT ON AGRICULTURAL LANDS AND FARMING OPERATIONS

Minn. Stat. § 14.11, subd. 2, requires that if the MPCA proposing adoption of a rule determines that the rule may have a direct and substantial adverse impact on agricultural land in the state, the MPCA shall comply with specified additional requirements. The proposed amendments are not expected to have an impact on agricultural lands.

Minn. Stat. § 116.07, subd. 4, requires that if a proposed rule affects farming operations, the MPCA must provide a copy of the proposed rule and a statement of the effect of the proposed rule on farming operations to the Commissioner of Agriculture for review and comment. The used oil provisions of the proposed amendments exempt farming operations that generate on average no more than 25 gallons of used oil per month (300 gallons per year). This exemption is incorporated directly from the federal used oil regulations. The MPCA anticipates that this exemption will prevent the proposed rules from having an effect on farming operation. A copy of the proposed rules will be provided to the Commissioner of Agriculture.

VIII. COST TO LOCAL PUBLIC BODIES

Minn. Stat. § 14.11, subd. 1, requires the MPCA to include a statement of the rule's estimated costs to local public bodies in the notice of intent to adopt rules if the rule would have a total cost of over \$100,000 to all public bodies in the state in either of the two years immediately following adoption of the rule. This requirement is not applicable because the proposed amendments will not incur costs to local public bodies exceeding this limit.

IX. REVIEW BY COMMISSIONER OF TRANSPORTATION

Minn. Stat. § 174.05, requires the MPCA to inform the Commissioner of Transportation of all rulemakings that concern transportation, and requires the Commissioner of Transportation to prepare a written review of the rules. The proposed amendments will not have a direct impact on transportation, so this requirement is not applicable.

X. CONCLUSIONS

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

XI. LIST OF EXHIBITS

The MPCA relies on the following documents to support these amendments:

MPCA Ex. No.	Title
1.	<u>Federal Register</u> , Vol. 56, No. 184, pgs. 48000-48074, September 23, 1991.
2.	<u>Federal Register</u> , Vol. 57, No. 98, pgs. 21524-21534, May 20, 1992
3.	<u>Federal Register</u> , Vol. 57, No. 178, pgs. 41566-41626, September 10, 1992.
4.	<u>Federal Register</u> , Vol. 58, No. 83, pgs. 26420-26426, May 3, 1993.
5.	<u>Federal Register</u> , Vol. 59, No. 43, pgs. 10550-10560 March 4, 1994.

Dated: _____

Charles W. Williams
Commissioner

