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STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of Proposed
Amendments to Solid Waste
Management Rules Governing
Recycling Facilities, Minn. Rules
Parts 7001.3050, subp. 3, item D,
7035.0300, subp. 88, 7035.2525,
subp. 2, and 7035.2845.

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

In 1984, the Minnesota Pollution Control Agency (MPCA) began work on development of new Solid Waste Management Rules to replace rules the MPCA adopted in the early 1970s. This entire body of rules sets requirements for the location, design, construction and operation of solid waste management facilities. The MPCA staff drafted rules and distributed them for review and comment to a list of interested persons. The rule development period continued for the next three and a half years. The proposed rules were finalized in the winter of 1987 and published in the State Register on March 7, 1988. The Office of Administrative Hearings conducted hearings on the rules throughout the state during May and June of 1988. The Agency Board adopted final rules in September of 1988, and the final rules became effective on November 15, 1988.

Recycling facilities are a component of the solid waste management system of the state, and are regulated by the Solid Waste Management Rules. Recycling facilities have a low potential for adverse effects on human health and the environment if properly managed. Therefore, recycling facilities are allowed to use the permit-by-rule process, which means that they are deemed to have obtained a permit without making application if the owner and operator meet certain conditions required in the rule. Under specified circumstances, the MPCA may terminate eligibility for permit-by-rule status and require an out-of-compliance facility to apply for a permit or to close.

Based on its experience in implementing the program, the MPCA has recognized a need to amend the rules which regulate recycling facilities. The proposed amendments clarify and update the recycling rules.

A Notice of Solicitation of Outside Information or Opinions was published in the State Register on September 7, 1993. MPCA staff received comments regarding amending the recycling rules from 23 parties and took them into consideration when drafting the final rule.

II. STATEMENT OF MPCA'S STATUTORY AUTHORITY

The MPCA's statutory authority to adopt the rules is set forth in Minnesota Statutes section 116.07, subd. 4 (1992), which provides:

Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt, amend, and rescind rules and standards having the force of law relating

to any purpose within the provisions of Laws 1969, chapter 1046, for the collection, transportation, storage, processing, and disposal of solid waste and the prevention, abatement, or control of water, air, and land pollution which may be related thereto, and the deposit in or on land of any other material that may tend to cause pollution. . . . Any such rule or standard may be of general application throughout the state or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to collection, transportation, processing, disposal, equipment, location, procedures, methods, systems or techniques or to any other matter relevant to the prevention, abatement or control of water, air, and land pollution which may be advised through the control of collection, transportation, processing, and disposal of solid waste . . . and the deposit in or on land of any other material that may tend to cause pollution.

Under this statute the MPCA has the statutory authority necessary to adopt the rule amendments.

III. STATEMENT OF NEED

Minnesota Statutes chapter 14 requires the MPCA to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the MPCA 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 which requires administrative attention, and reasonableness means that the solution proposed by the MPCA is appropriate. The need to regulate recycling facilities in Minnesota has not changed from the original rules and the original Statement of Need and Reasonableness. Recycling facilities are an important component of the solid waste management system and have a low potential for adverse effects on human health and the environment if properly managed. However, since the promulgation of the original rules, the universe of recycling facilities has grown. There are now items being recycled that weren't recycled in 1988, such as fluorescent lamps, nickel-cadmium batteries, rechargeable batteries, polystyrene and junkmail, to name a few. In addition, more and more single material recycling companies have become established, such as paper, carpeting, wood waste, textiles and major appliances. Not all items currently being recycled are appropriately regulated by the existing rules.

Some people have been confused over who was originally intended to be regulated as a permit-by-rule recycling facility. Some owners and operators of junkyards, scrapyards and automobile recyclers erroneously thought their facilities were permit-by-rule recycling facilities. Some owners and operators of facilities accepting mixed municipal solid waste for the purpose of extracting recyclables believed that they were permit-by-rule recycling facilities. Through its experience in implementing the recycling program, the MPCA has recognized that many of these recycling operations, such as junkyards, scrapyards and automobile recyclers, are more appropriately regulated by other programs which are more strictly regulated for environmental impact. Some facilities, such as those accepting mixed municipal solid waste for the purpose of extracting recyclables were never intended to be considered recycling facilities.

Due to all of these factors, the MPCA recognizes a need to redefine a recycling facility in order to clearly identify who will be regulated by these rules. Experience has also shown that some of the information originally required is not specifically relevant to recycling facilities. Therefore, the MPCA is amending some of the rules to address the requirements of recycling facilities specifically and deleting some requirements that are no longer applicable. At the same time, the MPCA is reorganizing the rules so that those affected by the rules will find it easier to understand which rules a recycling facility must comply with.

IV. STATEMENT OF REASONABLENESS

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

PERMIT REQUIREMENTS

Minn. Rule part 7001.3050, subp. 3, item D, allows recycling facilities to have a solid waste permit without making application for it, utilizing the permit-by-rule process, provided they meet certain conditions in the rule. The original rule requires recycling facilities to be in compliance with parts 7035.2845 and 7035.2855 in order to be a permit-by-rule facility. Part 7035.2845 relates to recycling facilities. Part 7035.2855 sets out solid waste storage standards. Subpart 3 of part 7035.2845 incorporates by reference into the recycling facility rule the requirement to comply with part 7035.2855. The amendment deletes from part 7001.3050 the requirement to comply with Part 7035.2855 because it is redundant with the requirement of part 7035.2845, subpart 3 to follow 7035.2855. The amendment constitutes no substantive change to the recycling facility regulatory program.

DEFINITIONS

Part 7035.0300, subp. 88, currently defines a recycling facility as "a site used to collect, process and repair recyclable materials and reuse them in their original form or use them in manufacturing processes". The amendment changes the definition.

During the implementation of the recycling rules, the MPCA has recognized a need to clarify this definition. The MPCA set up the regulation of recycling facilities primarily as a permit-by-rule program. The permit-by-rule program is intended for facilities that pose a low potential for environmental harm if properly managed and are therefore subject to less stringent standards and less detailed administrative review. The universe of recyclers has grown dramatically since 1988. There are now many additional items being recycled that were not being recycled during the development of the original rules, such as fluorescent lamps, nickel-cadmium batteries, rechargeable batteries, polystyrene and junkmail. In addition, more and more single material recycling companies have become established, such as paper, carpeting, wood waste, textiles and major appliances. Owners and operators of junkyards and scrapyards also recycle many items. Not all items currently being recycled are appropriately regulated by the existing rules. Through its experience in implementing the recycling rules, the MPCA has recognized that some of these recycling operations fit more appropriately into other programs which are more strictly regulated for environmental impact, such as junkyards, scrapyards and automobile recyclers. Therefore, it has become necessary to change the definition of a recycling facility to allow only those facilities which recycle materials with a low potential for environmental impact to be permitted by the permit-by-rule process.

The MPCA has amended the definition to allow only non-hazardous recyclable materials that fit the definition of mixed municipal solid waste and that have been separated from other mixed municipal solid waste by the generator. The recyclable materials must not include items prohibited from disposal or placement in mixed municipal solid waste, unless approved by the commissioner. Currently, there is only one item, the telephone directory, that is prohibited from placement and disposal in mixed municipal solid waste that would be acceptable for recycling under these solid waste management rules. The phrase "unless approved by the Commissioner" has been added to allow recycling facilities to collect telephone directories for recycling. However, additional items that are acceptable for recycling under these rules

may be prohibited from disposal in the future. This phrase will give the Commissioner the authority to allow recycling facilities to accept those items also.

The amendments to the definition more clearly categorize recycling facilities by the incoming wastestream. Now, clearly, the amended recycling rules will not regulate junkyards, appliance recyclers, automobile salvagers and recycling facilities handling hazardous wastes. These items are more appropriately regulated under other programs which are more strict than the permit-by-rule program. A recycling facility accepting materials separated by the generator prior to collection fits clearly in the permit-by-rule process. Facilities accepting a mixed stream of waste, even if recycling is part of the operation, must be permitted through a more stringent administrative process. It is reasonable to change the definition to allow only the recyclable materials discussed above because these materials have a lower potential for adverse effects on human health and the environment and are therefore more compatible with the permit-by-rule program.

The phrase "...that do not cause the destruction of the materials in a manner that precludes further use" was also added to the recycling facility definition to make the solid waste management rule definition consistent with the definition of "recyclable materials" in Minn. Stat. § 115A.03, subd. 25a. It means that recyclable materials may not be marketed to a RDF plant or an incinerator because turning materials into fuel is not recycling. It is reasonable for the MPCA definition to be consistent with the statutory definition.

Many activities at different businesses and organizations fit the definition of a recycling facility. However, the MPCA does not believe it should regulate generators of recyclables nor manufacturing plants as recycling facilities. To clarify this, the amendment adds language that stipulates that a recycling facility does not include an individual generator of recyclable materials, such as a homeowner, a business, or a government agency or a manufacturer using recyclable materials as feedstock. For example, businesses managing their own recyclable "wastestream" are not permit-by-rule recycling facilities. Small groups such as Girl Scout packs, Cub Scout packs, and churches collecting a few materials for recycling are not permit-by-rule recycling facilities. Manufacturing plants which serve as the end-markets for recyclable materials are not permit-by-rule recycling facilities. By the time recyclable materials reach the end-market they are high-specification feedstock materials that have regained monetary value and are not likely to be abandoned, overaccumulated, or stored in a way detrimental to the environment. It is reasonable to add language to clarify that these groups are not considered recycling facilities.

SOLID WASTE MANAGEMENT FACILITIES GOVERNED

EXCEPTIONS FROM GENERAL REQUIREMENTS FOR PERMIT-BY-RULE RECYCLING FACILITIES

Part 7035.2525 identifies all solid waste management facilities covered by the general technical requirements set out in parts 7035.2535 to 7035.2915. Subpart 1 of part 7035.2525 requires owners and operators of all facilities that treat, transfer, store, process, or dispose of solid waste to meet the general requirements listed in parts 7035.2525 to 7035.2915. All recycling facilities, with the exception of sites handling one waste type only and those collecting and transporting recyclables in volumes less than 30 cubic yards, are currently required to meet all of the general requirements.

Since the implementation of these rules, experience has shown the MPCA that many of the general requirements are not specifically applicable to permit-by-rule recycling facilities. The MPCA is responding in two ways. First, the rules are being amended to delete some of the general requirements. At the same

time, some of the general requirements are being tailored to apply specifically to recycling facilities and are being moved into the recycling rule, part 7035.2845. The reorganization of the rules will make it easier for permittees and the general public to understand which rules recycling facilities must comply with. Recycling facilities that do not qualify for an exception in part 7035.2525 or permit-by-rule status must still comply with all of the general requirements. Other types of facilities where recycling occurs in addition to other solid waste management activities, such as compost facilities, transfer stations, etc., must also obtain a permit through the administrative process and must still comply with all of the general requirements. The permit would be issued for all of the solid waste management activities at the facility and the recycling activities would be regulated by that permit.

Part 7035.2525, subp. 2, item B.(1) has been added in order to specify which of the general requirements will still apply to permit-by-rule recycling facilities. The effect of the amendment is to delete the following general requirements from application to permit-by-rule recycling facilities:

1. Part 7035.2535, subp. 5, INDUSTRIAL SOLID WASTE MANAGEMENT PLAN, details what information must be included in an industrial solid waste management plan. The management of industrial solid waste does not impact recycling facilities because the amendments to the recycling rules only allow recycling facilities to accept recyclable materials. No industrial waste will be accepted and, therefore, this requirement does not apply to recycling facilities. Hence, it is reasonable to delete this requirement.
2. Part 7035.2610, CONSTRUCTION CERTIFICATION, requires the submittal of a construction certification for a new facility or for any new design feature at an existing facility. A construction certification for all design features is the MPCA's source of information for comparing the design approved in a permit against the actual construction results. This comparison should result in a determination by the MPCA that the facility has indeed been constructed as designed, or modified in an acceptable manner that does not significantly change the design function. The comparison should also result in a determination that the facility has been constructed in a manner to protect human health and the environment. This requirement does not apply to permit-by-rule facilities. Permit-by-rule facilities are not required to submit design plans for MPCA approval prior to construction because permit-by-rule facilities present a low potential for harm to human health and the environment, if constructed in compliance with specific standards and if proper management procedures are followed. The technical review of design plans prior to construction would not alter or reduce the potential for adverse effects to human health or the environment for recycling facilities that qualify for permit-by-rule status. Therefore, permit-by-rule recycling facilities are not subject to a technical review process. Hence it is reasonable to delete this requirement.
3. Part 7035.2625, subp. 3, SUBMITTAL AND CONTENTS OF CLOSURE PLAN, requires a facility owner or operator to submit a closure plan with the permit application, or as required by a closure document, or in order to establish financial assurance mechanisms. None of these situations apply to permit-by-rule recycling facilities. They are not required to submit a permit application, the MPCA does not issue closure documents to them, and they are not required to establish financial assurance. Therefore, it is reasonable to delete this requirement.
4. Part 7035.2625, subp. 4, AMENDMENT OF CLOSURE PLAN, discusses the amendment of the closure plan required in subp. 3. Since no closure plan is required, it is reasonable to delete this requirement.

5. Part 7035.2625, subp. 5, NOTIFICATION OF FINAL FACILITY CLOSURE, requires the owner or operator of a facility to notify the MPCA of final closure at least 90 days in advance. The notification is needed in order to allow the MPCA sufficient time to review the alternative solid waste management scheme intended to be followed after closure to ensure it will adequately handle the waste. It is unlikely that the closure of a permit-by-rule recycling facility would significantly affect the solid waste management scheme so that future wastes were inadequately handled. However, the unexpected closure could temporarily cause problems for a community's recycling program.

Therefore, Part 7035.2845, subp. 2, RECYCLING FACILITIES, NOTIFICATION, has been amended to require that the owner or operator of the facility notify the MPCA 30 days prior to closure. In addition, Part 7035.2845, subp. 10, RECYCLING FACILITIES, CLOSURE, has been amended to require the owner or operator of the facility to notify the public at least 30 days prior to closure.

The notification is also needed generally to allow the MPCA sufficient time to ensure that sufficient funds are available to achieve proper closure, and to schedule the necessary construction inspections during closure activities. However, financial assurance is not required for recycling facilities, and construction inspections are not scheduled by the MPCA during closure activities of permit-by-rule recycling facilities. Therefore, the 90 day notification prior to facility closure is not necessary for permit-by-rule recycling facilities. It is reasonable to delete this requirement.

6. Part 7035.2635, CLOSURE PROCEDURES, requires the owner or operator to begin closure activities outlined in the approved closure plan or closure document. It also states the closure procedures that must be followed, and requires that a certification of closure be submitted to the MPCA. The owner or operator of a permit-by-rule recycling facility is not required to prepare a closure plan or to submit a closure certification. Therefore, it is reasonable to delete these requirements.

The closure procedures required are posting a notice of closure, publishing a notice of closure in a local newspaper and submitting a detailed description of the waste types accepted at the facility to the county recorder. The posting and publishing of notices of closure are required to ensure that the public is alerted to the facility's intention to close so that users of the facility can make alternative arrangements. These requirements have been moved to Part 7035.2845, Subp. 10, TECHNICAL REQUIREMENTS FOR RECYCLING FACILITIES, CLOSURE, for better organization of the rules.

The survey plat to be submitted to the county recorder is intended to notify local authorities and new owners what waste was accepted at the facility, how it was managed and where any waste remains at the site in order to ensure that all future activities at the site are compatible with its conditions. No waste will remain at a permit-by-rule recycling facility once it is closed, and it is highly unlikely that any of the activities conducted at the site would affect future land uses. Therefore it is reasonable to delete this requirement.

7. Part 7035.2645, POSTCLOSURE, requires the submittal of a postclosure plan detailing the activities to be conducted at a facility after closure to ensure the protection of human health and the environment. Postclosure activities would only be required at a facility if solid waste is to

remain at the facility after closure. Since no waste will remain at a permit-by-rule recycling facility after closure, it is reasonable to delete this requirement.

8. Part 7035.2655, POSTCLOSURE CARE AND USE OF PROPERTY , establishes the requirements necessary for maintenance and monitoring of a facility after closure. Since no maintenance or monitoring will be required at a permit-by-rule recycling facility after closure, it is reasonable to delete this requirement.

The proposed amendments will delete the following general requirements for permit-by-rule recycling facilities from this part of the rule. MPCA experience in regulating the recycling program has shown that many of the general requirements as written in these parts are not applicable to recycling facilities. Therefore, the following requirements have been rewritten specifically for permit-by-rule recycling facilities and have been moved to Part 7035.2845, TECHNICAL REQUIREMENTS FOR RECYCLING FACILITIES:

1. Part 7035.2535, subp. 4, GENERAL INSPECTION REQUIREMENTS
2. Part 7035.2575, OPERATING RECORD
3. Part 7035.2585, ANNUAL REPORT
4. Part 7035.2615, CONTINGENCY ACTION PLAN

EXCEPTIONS FOR SMALL RECYCLING FACILITIES

Part 7035.2525, subp. 2, Item B has been renumbered Item B (2) and has been substantially rewritten. The original rule excludes two types of recycling facilities from regulation of most provisions of the chapter. Those types are 1) sites handling one waste type and 2) sites collecting and transporting recyclables to a processor in volumes of less than 30 cubic yards. The amendment deletes the exclusion for recycling facilities handling one waste type only.

When the solid waste management rules were written, many household-type recyclables were collected by non-profit organizations such as the Boy and Girl Scouts, Lions Club, and local environmental improvement groups. The exclusion from most of the recycling facility rules relieved the organizers of newspaper drives or aluminum can drives from strict regulation by the MPCA. However, fewer paper drives and can drives are used now to collect recyclables because of the mandates, goals, and funding provided by the Select Committee on Recycling and the Environment (SCORE) legislation, designed to firmly establish recycling in Minnesota. Most communities have curbside or drop-off collection of a variety of recyclable materials and the income from sales is needed to help support facility operations.

In addition, after the solid waste management rules were written, the recycling infrastructure in Minnesota grew enormously . A number of materials were banned from waste disposal facilities. Some companies had always handled just one waste type, but with the industry growth, more and more single-material recycling companies became established: paper, fluorescent lamps, carpeting, wood waste, textiles, and major appliances, for example. These operations were exempt from all regulations by the MPCA except for design and storage requirements, regardless of their size. However, the number of types of materials handled at a facility does not affect an operation's ability to be mismanaged or to cause nuisances or pollution, which are the MPCA's chief concerns. It is reasonable to require facilities that

handle one waste type only to meet all of the recycling facility regulations to ensure proper management. Therefore, it is reasonable to delete this part of the rule .

The amendment also clarifies what was originally intended by the term "recycling sites established to collect and transport recyclables to a processor" by listing the types of containers or small structures that are likely used at these locations, i.e., drop-off sheds, divided roll-off boxes, separate dumpsters and other containers or small structures.

The amendment adds language that exempts from most regulation recyclable materials "that have been separated from mixed municipal solid waste by the generator, in order to avoid contaminating the material or to expedite its collection or processing for recycling". This language has been added in order to limit the collection stream to relatively clean materials that have been separated from the waste stream. It is reasonable to allow only recyclable materials that have been separated from mixed municipal solid waste because this sort of incoming waste stream has a lower potential for adverse effects on human health and the environment and is therefore compatible with the exemption from regulation of most provisions of the chapter.

The amendment also changes the maximum volume allowed from 30 cubic yards to 40 cubic yards. Recyclers pointed out during the response period for the Notice of Solicitation of Outside Information or Opinions that the largest roll-off container that is frequently used holds 40 cubic yards. It is reasonable to match existing business practices with this small change because it does not compromise the objective of these rules.

In addition, the original language "in volumes of less than 30 cubic yards" caused confusion for many recyclers. A commonly asked question was, "30 cubic yards per what, day, week, month?". For clarification, the language has been amended to read "total volumes not exceeding 40 cubic yards at any one time". It is reasonable to change the existing language for clarification.

The amendment deletes the requirement to follow Part 7035.2855 because it is redundant with the requirement to follow Part 7035.2845, subp. 3. One of the requirements of subpart 3 is to follow 7035.2855. It is reasonable to delete a redundant requirement.

The amendment also removes reference to part 7035.0700 which regulates the storage of solid waste at individual properties. This part of the rule, part 7035.2525, Subp. 2, excludes specified solid waste management facilities and persons from compliance with the general technical requirements set out in parts 7035.2535 to 7035.2915. This part of the rule is not intended to apply to any parts of the solid waste management rules outside of parts 7035.2535 to 7035.2915. The reference to part 7035.0700 has been removed because it does not fall within the range of rules addressed by the subpart. The removal of the reference does not change the applicability of part 7035.0700. Recycling facilities must still comply with part 7035.0700. It is reasonable to remove this reference because it is inappropriately located and confuses rather than clarifies.

Many activities at different businesses and organizations fit the definition of a recycling facility. However, the MPCA does not believe it should regulate generators of recyclables nor the manufacturing plants as recycling facilities. To clarify this, the amendment adds language that excludes 3) "individual generators of recyclable materials, such as homeowners, businesses, and government agencies" and 4) "manufacturers using recyclable materials as feedstock." For example, businesses managing their own recyclable "wastestream" are not permit-by-rule recycling facilities. Small groups such as Girl Scout packs, Cub Scout packs, and churches collecting a few materials for recycling are not permit-by-rule

recycling facilities. Manufacturing plants which serve as the end-markets for recyclable materials are not permit-by-rule recycling facilities. By the time recyclable materials reach the end-market they are high-specification feedstock materials that have regained monetary value and are not likely to be abandoned, overaccumulated, or stored in a way detrimental to the environment. It is reasonable to add language to clarify that these groups are exempt from regulation.

TECHNICAL REQUIREMENTS FOR RECYCLING FACILITIES

Minn. Rules pt. 7035.2845 applies exclusively to recycling facilities. Each original subpart has been amended and 4 new subparts have been added. The amendment deletes all references to the term "mixed municipal solid waste" throughout this entire part. This term has been deleted to be consistent with the definition of a recycling facility. The original definition made no reference to mixed municipal solid waste, only to recyclable materials. The reference to "mixed municipal solid waste" recycling facility throughout this part did not clarify who the rules applied to, but only caused confusion because it was not consistent with the definition. The amended definition of recycling facility does not refer to a mixed municipal solid waste recycling facility either. It is reasonable to delete this term throughout this part to be consistent with the definition of a recycling facility.

SCOPE

Currently, part 7035.2845, subp. 1, SCOPE, requires the owner or operator of a recycling facility to comply with this part, and exempts small facilities accepting only source-separated wastes in quantities less than 10 cubic yards a day from all requirements except Notification and Design Requirements. The amendment deletes this exemption. The definition of a recycling facility has been amended to include only recyclable materials that have been separated from mixed municipal solid waste by the generator, which is virtually the same as source-separated wastes. Hence, the only distinction now between the type of facility which is exempt and all other recycling facilities is the size. Part 7035.2525, subp. B. (2) already exempts small facilities less than 40 cubic yards in total volume from all requirements except the design requirements. If the facility accepts more than 40 cubic yards in total volume at any one time but less than 10 cubic yards a day, it is most likely a small facility in a more remote area that does not get sufficient quantities of recyclables to process or transport regularly. The facility must be storing materials on site for a longer period of time and is quite possibly accepting several different types of materials. Even though these smaller facilities probably have a lower potential for harm to human health and the environment than a more complex operation, some of the same concerns apply to them. They must now comply with all of the same requirements as a larger facility. It is reasonable to require these smaller facilities to comply with operational, storage and inspection requirements, to submit an annual report, to keep an operating record, to plan for contingencies, and to close the business properly.

NOTIFICATION

Part 7035.2845, subp. 2, NOTIFICATION, details the information an owner or operator must submit to the Commissioner about the facility operations. It requires that an owner or operator submit notification indicating the existence of the recycling facility within 30 days after the effective date of this part. The amendment deletes this requirement. When the rules were first promulgated, it was necessary for all recycling facilities to notify the MPCA of their existence because this was a new program and the MPCA did not have this information at that time. This provided the MPCA with useful information to share with the public on locations of facilities that accept recyclable materials. However, now that the

MPCA has this information for existing facilities, the requirement is no longer necessary. Therefore it is reasonable to delete this requirement.

The owner or operator of a new recycling facility is still required to notify the MPCA prior to beginning facility operations, as the original rules required. However, the owner or operator is now required to submit the notification on a form prescribed by the commissioner. It is reasonable to require that the same form be used for all facilities so that the initial information gathered is consistent, and it also simplifies the requirement for the owners and operators. The amendment adds the requirements to notify the commissioner no later than 30 days after the facility is relocated, and to notify the MPCA at least 30 days before the effective date of closure. It is reasonable to require these notifications in order to keep the information on file at the MPCA current.

DESIGN REQUIREMENTS

Part 7035.2845, subp. 3, DESIGN REQUIREMENTS, establishes the minimum design requirements for a recycling facility. The amendment adds the requirement to control dispersion of the recyclable materials and residuals by wind. It is reasonable to require this because protecting the recyclable materials from the wind minimizes nuisance problems caused by blowing paper, plastics and other materials. The amendment also clarifies what the proper storage of recyclable materials is by adding the statutory phrase "to protect the recyclability of the materials." Some other minor changes have been made for easier readability that do not change the meaning of the requirement. It is reasonable for the language to be consistent with statute and to be changed for ease of reading.

OPERATION

Part 7035.2845, subp. 4, OPERATION, item A requires the owner or operator of a recycling facility to operate the facility in a manner that controls dust, wind-blown material, vermin and other nuisances. Item B requires the owner or operator to remove residuals at least once a week. The amendment condenses the language and combines items A and B into one paragraph. The word "minimizes" has been replaced by "effectively control". "Effectively control" is a term which is easier to enforce than "minimize". Someone may have minimized a dust problem, but it may still exist. It is reasonable to change the language to allow for a less arbitrary determination of compliance. "At the facility" has been added for clarification. The owner or operator of a recycling facility is not responsible for a condition caused by a neighboring facility. It is reasonable to clarify an owner or operator's responsibility. "All residual waste" has been replaced by "all putrescible materials" for clarification. It is reasonable to require that all putrescible materials be removed weekly in order to avoid odor, vermin infestation, and hazards to recycling facility workers' health. A new provision allows all other residuals to be removed monthly. Some recyclers pointed out during the Notice of Solicitation of Outside Information or Opinions that their residuals were not putrescible and that they shipped them only when they had a large enough amount to be economical. It is reasonable to allow the storage of non-putrescibles for a longer period of time. However, some time limit should be imposed to avoid the over-accumulation of residuals that could in the future cause nuisance problems. Therefore, it is reasonable to allow one month for storage of nonputrescible residuals.

ANNUAL REPORT

Part 7035.2845, subp. 4, item C, which requires the submittal of an annual report, has been moved to a separate Subpart 5, ANNUAL REPORT for better organization. This subpart requires recyclers to mail a report to the MPCA by February 1 of each year detailing their types of materials, tonnages, prices,

markets, and market locations. Many recyclers believe completing this report is a hardship for recycling facilities because it requests too much information vital to the survival of each business. Most recyclers are willing to share volume information, but not market locations and prices. They believe the information could be misused by people who do not understand its importance to the life of a recycling business. Furthermore, even protecting each individual's information with non-public trade secret status did not reassure a number of recyclers of confidentiality and they would not fully complete their reports.

The MPCA published its intent to delete the entire annual report requirement in the Notice of Solicitation of Outside Information or Opinions on September 7, 1993. Public comment supported the deletion of the requirement. However, the MPCA has since reevaluated the need for an annual report, and has concluded that the submittal of an annual report is still a necessary requirement to ensure that the MPCA receives at least annual updates on facility operation. However, the report required will be a much-simplified annual report. The information on prices, markets and market locations will no longer be required. The only information required now by the amended rule will be the name and address of the facility, the year covered by the report, the type and quantity of material handled and the distribution by volume, i.e. how many tons went to an end market, a broker or processor or were managed as solid waste. The deletion of the price and market information should address the recyclers' concern for protection of vital business information for survival. The information required should still provide the MPCA with sufficient information to share with the public on locations of facilities that accept recyclable materials and to understand the management systems established in the state.

In addition, this reporting requirement pre-dated the SCORE legislation requiring counties to report to the Office of Waste Management all recycling activity within their boundaries. The MPCA is no longer the only state agency requiring the submittal of information from recycling facilities. Therefore it is reasonable to amend the reporting requirements as stated.

The amendment adds the requirement to submit the annual report on a form prescribed by the commissioner. It is reasonable to require that the same form be used for all facilities so that the information gathered is consistent. This also simplifies the requirement for owners and operators.

STORAGE

Part 7035.2845, subp. 6, STORAGE, is a new subpart added by the amendment. This subpart requires that all recyclable materials delivered to or stored at the recycling facility be removed from the facility within one year after the date of receipt. This requirement has been added to avoid a situation where recyclable materials are collected but are never processed and removed from the facility, resulting in large quantities of stored materials being left for disposal. Since the original recycling rules were promulgated, the MPCA has encountered a facility which was collecting recyclable materials for a fee but had no intention of actually recycling the materials. A huge amount of recyclable materials were left on site. The MPCA has also encountered legitimate facilities which have collected recyclable materials with the intent of recycling, but due to poor business practices, have improperly stored the materials, reducing the ability to recycle them. This experience has shown the MPCA that it is necessary to restrict the amount of stored materials. However, some recyclers need a large capacity of stored materials in order to make the recycling operation economically feasible. For instance, they may need sufficient quantities to bring a crusher or baler on site, or for transportation purposes. Therefore, it is reasonable to require that all recyclable materials be removed within one year in order to control the quantities stored on site, but still allow some flexibility for economic reasons.

INSPECTION REQUIREMENTS

Part 7035.2845, subp. 7, INSPECTIONS, is a new subpart that has been moved from the general requirements and rewritten specifically for recycling facilities. This subpart addresses the inspection requirements applicable to recycling facilities which are needed to preserve the integrity of the facility design and operation. A regular inspection program is essential in maintaining a facility capable of consistently meeting performance requirements and therefore maintaining a low potential for adverse effects on human health and the environment. Because of the importance of maintaining facility operations in peak condition, it is reasonable to require that a minimum inspection program be conducted at all recycling facilities. The amendment requires that the owner or operator inspect the facility, at least every 30 days, for malfunctions, deterioration, or discharges that may result in either the release of pollutants to the environment or a threat to human health. Should these conditions exist, the potential for the release of pollutants to the environment and for creating a threat to human health is greater. This provision is needed to provide the facility owner or operator general guidance for developing an inspection program. It is reasonable to require that the inspection occur at least every 30 days so that any potential problems may be discovered within a reasonable timeframe.

The amendment requires that the owner or operator develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment used to prevent, detect, or respond to environmental or human health hazards. The amendment also requires that the owner or operator retain at the facility a copy of the schedule which identifies the types of problems to look for during an inspection. It is reasonable to require that this information be kept in order to ensure that facility personnel understand what must be looked for at the facility to ensure the facility is operating properly and when the facility must be inspected.

The amendment also requires that the owner or operator remedy any deterioration or malfunction of equipment no later than two weeks after an inspection. Maintaining facility equipment in proper working order is integral to the overall performance of the facility. If the facility is not in proper working order, the potential for releases of pollutants to the environment or safety hazards will be higher than normal. Because the intent of the proposed rules and the design of the facility is to protect human health and the environment, it is reasonable to require the repair of equipment malfunctions and deteriorations within two weeks after detection.

OPERATING RECORD

Part 7035.2845, subp. 8, OPERATING RECORD, is a new subpart that has been moved from the general requirements and rewritten specifically for recycling facilities. This subpart requires that the owner or operator of a recycling facility keep a written operating record at the facility. The operating record tracks activities at the facility and provides a history of site maintenance activities. It is reasonable to require that an operating record be maintained because it is a normal practice in operating a facility in a manner to minimize risks and it is a tool to determine performance.

The amendment requires that the owner or operator record the type and volume of recyclable materials received for each day, the date received, and their distribution by volume. This is the same information the owner or operator must submit in the annual report. This is also information that the MPCA could use to determine if the owner or operator is complying with the storage requirement of subpart 6. It is reasonable to require that the owner or operator keep this information on a daily basis to have accurate and reliable information for reporting requirements and tracking information.

The amendment also requires that the operating record include summary reports and details of incidents that require implementing the contingency action plan and records and results of inspections. The owner or operator can use the operating record in evaluating the performance of a facility and in determining measures to improve facility operations through modifications to the facility design. It is reasonable to require that this information be kept in summary form so that complete information on the performance of the facility and how it has been maintained is available. It is also reasonable to require the owner or operator to keep this information to track the effectiveness of the contingency action plan to determine if the procedures established are sufficient to minimize hazards to human health and the environment in a timely manner.

CONTINGENCY ACTION PLAN

Part 7035.2845, subp. 5, CONTINGENCY ACTION PLAN, has been renumbered subpart 9. This subpart establishes the contents that must be included in a contingency action plan for a recycling facility. Minor language changes have been made that do not alter the original requirements or the original meaning.

CLOSURE

Part 7035.2845, subp. 6, CLOSURE, has been amended and renumbered subpart 10. The amendment requires the owner or operator to post a notice of closure at the entrance of the recycling facility and to publish a notice of closure in a local newspaper at least 30 days prior to the effective date of closure. This requirement was previously located under Solid Waste Management Facility General Technical Requirements in Part 7035.2635, CLOSURE PROCEDURES. The posting and publishing of notices of closure are required to alert the public to the facility's intention to close so that users of the facility can make alternative arrangements. The time for posting the notice at the entrance to the facility has been changed from 60 days prior to closure to 30 days prior to closure. A 30 day notice should be sufficient to allow the recycling facility users to find alternative arrangements. Therefore, it is reasonable to change the time frame and to move the requirements to this part for better organization of the rules.

This subpart also requires the facility owner or operator to remove and treat or dispose of all waste and contaminated soils or structures at the facility. The amendment requires that this be done no later than 30 days after ceasing operations. It is reasonable to require that closure activities be completed within a 30 day time frame to ensure that the facility closure is attended to promptly. The possibility of damage to the facility resulting in harm to human health and the environment increases the longer that closure activities are delayed.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minnesota Statutes, section 14.115, subdivision 2, requires the MPCA, when proposing rules which may affect small businesses, to consider the following methods for reducing the impact on small businesses:

- (a) the establishment of less stringent compliance or reporting requirements for small businesses;
- (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (c) the consolidation or simplification of compliance or reporting requirements for small businesses;

- (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
- (e) the exemption of small businesses from any or all requirements of the rule.

The proposed rules may affect small businesses as defined in Minnesota Statutes section 14.115. As a result, the MPCA has considered the above-listed methods for reducing the impact of the rule on small businesses. The MPCA must regulate recycling facilities because of their potential to pollute. Even though the potential is slight, MPCA enforcement files show that a number of facilities have mismanaged waste during the last five years the rules have been in existence. However, consideration for small business has caused the MPCA to reduce the annual operating report requirement. The requirement for a recycling facility to provide information on prices, markets, and market locations has been deleted. In addition, the maximum volume of 30 cubic yards for recycling roll-off boxes and dumpsters which are excepted from rule requirement was increased to 40 cubic yards to accommodate existing business practices. This change makes the exception available for more small businesses.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the MPCA is required by Minnesota Statutes section 116.07, subdivision 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 which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

In proposing these rules, the MPCA has given due consideration to available information as to any economic impacts the proposed rules would have. These recycling facility rules do not have a significant economic impact on municipalities, businesses, or organizations. However, the time allowed for removing non-putrescible residuals from facilities has been lengthened from one week to one month to accommodate more economically feasible methods for removal. A maximum time frame of one year for storage of recyclable materials was also established in order to accommodate more economically feasible methods of operation and transportation.

VII. IMPACT ON AGRICULTURAL LANDS AND FARMING OPERATIONS

Minnesota Statutes section 14.11, subdivision 2, requires that if the agency proposing adoption of a rule determines that the rule may have a direct and substantial adverse impact on agricultural land in the state, the agency shall comply with specified additional requirements. The amendments to the rules affecting Minnesota recycling facilities do not have an impact on agriculture in Minnesota.

Minnesota Statutes section 116.07, subdivision 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 amendments to the rules affecting Minnesota recycling facilities do not have an impact on farming operations in Minnesota.

VIII. COST TO LOCAL PUBLIC BODIES

Minnesota Statutes, section 14.11, subdivision 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 rule if the rule would have a total cost of more than \$100,000 to all local bodies in the state in either of the two years immediately following adoption of the rule. This requirement does not apply to the amendments to the recycling facility rules because the rules have no financial impact for local bodies.

IX. REVIEW BY COMMISSIONER OF TRANSPORTATION

Minnesota Statutes section 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 amendments to the recycling facility rules do not impact transportation in Minnesota.

X. CONCLUSION

Based on the foregoing, the proposed amendments to Minnesota Rules parts 7001.3050, subp. 3, item D; 7035.0300, subp. 88; 7035.2525, subp. 2, item B; and 7035.2845 are both needed and reasonable.

Dated: October 25, 1994 Ann Humac
for Charles W. Williams, Commissioner

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 1-800-627-3529.