



## Minnesota Pollution Control Agency

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November 25, 2008

Legislative Reference Library  
645 State Office Building  
100 Constitution Avenue  
St. Paul, MN 55155

RE: In The Matter of the Proposed Rules of the Minnesota Pollution Control Agency Relating  
To Renovation and Demolition Solid Waste; Governor's Tracking AR278

Dear Librarian:

The MPCA intends to adopt rules relating to Renovation and Demolition Solid Waste. We plan to publish a Dual Notice in the December 1, 2008, *State Register*.

The MPCA has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the MPCA is sending the Library a copy of the Statement of Need and Reasonableness at the same time we are mailing our Dual Notice.

If you have questions, please contact me at 651-296-6300.

Sincerely,

A handwritten signature in cursive script that reads "Yolanda Letnes".

Yolanda Letnes  
Rule Coordinator  
Policy, Local Government Assistance and Solid Waste Section  
Municipal Division

YL:wgp

Enclosure: Statement of Need and Reasonableness

Minnesota Pollution Control Agency

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendments to Rules Governing Renovation and Demolition  
Minnesota Rules Chapter 7035

## Table of Contents

I.	INTRODUCTION AND BACKGROUND .....	3
II.	PROCEDURAL HISTORY .....	3
III.	ALTERNATIVE FORMAT .....	4
IV.	MPCA'S STATUTORY AUTHORITY .....	5
V.	REGULATORY ANALYSIS .....	5
VI.	ADDITIONAL NOTIFICATION .....	10
VII.	CONSIDERATION OF ECONOMIC FACTORS .....	12
VIII.	IMPACT ON FARMING OPERATIONS .....	12
IX.	NOTIFICATION OF THE COMMISSIONER OF TRANSPORTATION .....	12
X.	CONSULT WITH FINANCE ON LOCAL GOVERNMENT IMPACT .....	13
XI.	MINN. STAT. § 14.127, SUBDIVISION 1 - COST THRESHOLDS .....	13
XII.	STATEMENT OF NEED .....	13
XIII.	STATEMENT OF REASONABLENESS .....	14
	A. Reasonableness of the Proposed Rule Amendments as a Whole.....	14
	B. Reasonableness of the Amendments to Individual Sections of Rule.....	14
	1. Part 7035.0805, Subp. 1. Scope.....	15
	2. Part 7035.0805, Subp. 2. Definitions.....	15
	3. Part 7035.0805, Subp. 3. Removal requirements.....	15
	4. Part 7035.0805, Subp. 4. NESHAP facilities.....	16
	5. Part 7035.0805, Subp. 5. All items and materials to be removed before renovation and demolition.	16
	6. Part 7035.0805, Subp. 6. Exemption.....	19
	7. Part 7038.0805, Subp. 7. Duties under other law.....	20
	8. Part 7035.0805, Subp. 8. Debris characterization.....	20
	9. Part 7035.0805, Subp. 9. Stop work order.....	21
XIV.	LIST OF AUTHORS, WITNESSES AND EXHIBITS .....	21
	A. Author .....	21
	B. Witnesses .....	21
XV.	CONCLUSION .....	21

## **I. INTRODUCTION AND BACKGROUND**

Residences and commercial and industrial buildings commonly contain fixtures and devices associated with electrical, plumbing, heating, cooling, safety, or lighting systems. Substances that are harmful to human health and the environment such as mercury, lead, polychlorinated biphenyl (PCB), chlorofluorocarbon (CFC), asbestos, and oils are often associated with these fixtures and devices. Other materials such as municipal solid waste, household hazardous waste, industrial or hazardous wastes, tires, appliances, and electronics are often found within structures to be renovated or demolished. Portions of the structure may also be contaminated with hazardous substances from past uses of the structure, for example, mercury may be found in flooring material of a laboratory. In general, under the laws and regulations already applicable in Minnesota, the fixtures, devices, items and materials listed above are not permitted to be disposed of in the majority of landfills. However, based on Minnesota Pollution Control Agency (MPCA) inspections of renovation and demolition sites, these problem items and materials are often not removed prior to the commencement of renovation or demolition. As a result, as confirmed by MPCA inspections at the landfills, these problem items and materials often end up being disposed in landfills, where they may pose an environmental threat if not detected and removed.

The rules and statutes that prohibit landfill disposal of the various fixtures, devices and materials are located in various chapters of Minnesota laws and regulations. This includes various sections of Chapters 115A and 116 of Minnesota Statutes, and various sections of Chapters 7011, 7035, and 7045 of Minnesota Rules. This revision to the solid waste rules will reference these requirements in one rule, and establish the requirement that removal of these problem items and materials be performed prior to renovation or demolition. By listing all the applicable prohibitions and clarifying that removal is required prior to commencement of renovation or demolition, the MPCA hopes to improve compliance with existing laws and effectuate the intention of the legislature.

## **II. PROCEDURAL HISTORY**

The MPCA took the following steps to develop the rule revision and to notify interested parties about the rule revision and to get their input on draft rule language:

1. In 2006, a team of staff from the MPCA Asbestos and Solid Waste Programs met several times to discuss the problems with the current regulations, observations at demolition sites and landfills, and potential rule language that could solve these problems.
2. In May of 2006, the rule concept was sent to MPCA solid waste staff, members of the Solid Waste Administrators' Association (SWAA), the Minnesota members of the National Demolition Association, the Association of General Contractors of Minnesota, and others that have requested to be on the MPCA's mailing list for rule notifications. The purpose was to notify interested parties of the concept of the rule revision and request comments on the idea.
3. On June 25, 2006, MPCA staff met with the SWAA Executive Board to explain the concept and request its comments.

4. On July 31, 2006, the Request for Comments was published in the *State Register* outlining the proposed rule concept. The notice included the public comment period ending date, a potential rulemaking timeline, website information, and contact information.
5. The comment period was open until September 29, 2006. Several comments were received from interested parties, which were considered by MPCA staff.
6. On September 15, 2006, MPCA staff presented the rule concept and potential components to the rule at the SWAA annual meeting in New Ulm, Minnesota.
7. On October 10, 2006, the MPCA sent a letter which included draft rule language and an invitation to the stakeholders listed above to attend a meeting to hear a presentation and offer comments. The letter also encouraged those who could not attend the meetings to submit comments for consideration.
8. The MPCA held the stakeholder meetings on November 6, 2006, in the MPCA Brainerd office, November 7, 2006, via videoconference in all eight MPCA offices, and on November 8, 2006, in Mankato. Comments were accepted during the stakeholder meetings. The MPCA requested that any follow-up comments from the meetings be submitted by November 27, 2006.
9. MPCA staff met on December 18, 2006, to discuss the comments received throughout the process and to finalize draft rule language.
10. On January 4, 2007, MPCA staff presented the final draft language to MPCA management, and received approval to move forward with the rulemaking.
11. MPCA staff conducted two presentations to attendees at the Minnesota Air, Water, and Waste Environmental Conference in February, 2007.
12. The MPCA held an informational meeting on the rulemaking on May 8, 2007. The meeting was held via videoconference and included all MPCA offices.
13. The MPCA scheduled an informational meeting for interested parties on August 29, 2007, to discuss additional language for facilities regulated by the asbestos National Emission Standard for Hazardous Air Pollutions (NESHAP). The meeting was held via videoconference and included all MPCA offices.
14. Throughout this process, a Web site has been maintained at <http://www.pca.state.mn.us/waste/demolition-rules.html>. The Web site contains information on stakeholder meetings, notices, the proposed rulemaking schedule, and contact information.
15. E-mails were sent to various building and trade organizations asking they disseminate rule information to their members. An e-mail was also sent to the League of Minnesota Cities for distribution to its members.

### III. ALTERNATIVE FORMAT

Upon request, this SONAR can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Yolanda Letnes at the MPCA, Municipal Division, 520 Lafayette Road North, St. Paul, MN 55155-4194; phone 651-296-7214; fax 651-297-8676; or e-mail [yolanda.letnes@state.mn.us](mailto:yolanda.letnes@state.mn.us). TTY users may call the MPCA at 651-282-5332 or 800- 657-3864.

#### IV. MPCA'S STATUTORY AUTHORITY

The MPCA's statutory authority to adopt and implement these rules is set forth in Minn. Stat. § 116.07, subd. 4 (2000) 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....*

Under this statute, the MPCA has the necessary statutory authority to adopt the proposed rule amendments. All statutory authority was adopted and effective before January 1, 1996, therefore Minn. Stat. § 14.125 does not apply.

The proposed rule will be enforced in accordance with the authority provided to the MPCA under Minn. Stat. § 115.071 and § 116.072. The MPCA has the general authority to enforce its rules under these statutes. If approved, this rule would be enforceable by the MPCA.

*(Minnesota Rules, part 1400.2070, subpart 1, item D, requires that if an agency's statutory authority was granted after January 1, 1996, the agency must include in its SONAR the effective date of the agency's statutory authority to adopt the rule).*

#### V. REGULATORY ANALYSIS

Minn. Stat. § 14.131, sets out seven factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (7) below quote these factors and then provide the MPCA's response. Paragraph (8) addresses additional requirements listed in Minn. Stat. § 14.131.

**1. "A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule."**

Those affected will include building owners, general contractors, asbestos-abatement and hazardous materials contractors, consultants, solid waste facilities, and facilities that are alternatives to disposal (i.e., recycling, beneficial use). Local government units are impacted if they are owners or operators of a facility or solid waste facility.

Building owners: Building owners may see increased costs as demolition and renovation contractors pass removal and disposal costs to them. However, because the items that must be removed are not allowed to be disposed of in waste under existing law, the increased costs experienced could be characterized as payment of costs that were illegally avoided in the past.

Owners of facilities subject to the asbestos NESHAP will be required under the proposed rule to have all prohibited materials removed two working days prior to commencement of the

demolition of the structure. This two working day waiting period may increase mobilization costs or may require additional management of equipment to prevent down-time.

General contractors: Contractors performing renovation or demolition services will need to pay for the removal and the management of the items listed in the rule. However, as noted, in theory the contractors were already paying for these costs because the listed items are not allowed to be disposed in solid waste under current law. The MPCA anticipates that, in most cases, these costs will ultimately be passed on to the owner of the structure.

Asbestos abatement/hazardous materials contractors: The proposed rule's two working day requirement may result in asbestos abatement contractors having to conduct more final asbestos fiber clearance sampling. Under the Minnesota Department of Health's "24-hour demolition abatement rule" an asbestos abatement contractor can perform asbestos abatement without conducting a final asbestos fiber clearance sampling if the demolition of the structure commences within 24 hours of the completion of abatement. Under the two working day requirement in the MPCA's proposed rule, asbestos fiber clearance sampling will be required because it will not be possible to commence and complete demolition in 24 hours. Asbestos fiber clearance sampling involves aggressive air monitoring to determine if any asbestos fibers are present in the abatement area. The MPCA does not believe that this will result in significant increased costs due to contractors' inability to take advantage of the "24-hour demolition abatement rule" because it is rare that structures are demolished within 24 hours of completion of the abatement activity.

Hazardous materials contractors: The proposed rule may result in increased need for services to dispose of hazardous building materials as the adoption of the rule increases awareness of statutory requirements and makes them easier to enforce.

Consultants: The proposed rule may bring increased revenue to consultants who specialize in identification of and management of hazardous substances in structures.

Solid waste facilities: Compliance with the rule will decrease the amount of hazardous items left in place for demolition and subsequently transported to the landfill. Solid waste facilities will see fewer prohibited materials in waste that require removal and disposal, which will benefit them economically as well as reduce the potential for groundwater contamination.

Costs for county landfills handling prohibited materials such as asbestos, mercury, caulk tubes, paint can, household hazardous waste, etc., can range from \$500 to \$20,000 annually.

Alternative facilities: Compliance with the rule may increase revenue for facilities which provide alternative means for managing products banned from land disposal.

**2. "The probable costs to the MPCA and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues."**

Since the MPCA Asbestos and Solid Waste Programs already conduct inspections to ensure that asbestos and other items restricted from land disposal are removed from buildings undergoing renovation or demolition, and also check for these items as prohibited materials at landfills, no additional time will be spent on inspecting for compliance with this rule. No additional training for current MPCA inspectors will be necessary. If the rule is successful in better communicating existing state requirements regarding waste disposal, less inspection time may be required at demolition sites and landfill sites. MPCA Solid Waste inspectors cite violations for acceptance of prohibited materials at landfills more than any other violation. As a result of this rule, inspectors should have less enforcement actions against landfills since these prohibited materials should appear at the landfill less frequently. The MPCA will be solely responsible for implementing and enforcing this rule, so there will not be any additional costs to any other agency nor any effect on state revenues.

If all prohibited materials were removed at least two working days prior to the demolition, the MPCA could conceivably conduct more inspections with the same resources. Oftentimes buildings are not, in fact, ready for demolition when they are inspected by the MPCA staff. Based on the proposed rule, MPCA staff would spend less time conducting follow-up with building owners or contractors regarding when the prohibited materials would be removed and who would be conducting the removal. Currently, MPCA staff regularly contact regulated parties after inspections to ensure the regulated parties understand what materials must be removed and who will be responsible for removal prior to the commencement of the demolition.

If the rule amendment is adopted, it will take less time to educate stakeholders on requirements restricting land disposal because the applicable requirements will all be in one location in the rules. The rule will contain a list of the items that are likely subject to the existing prohibition (for example, mercury-containing devices). However, because it is not practical in a rule to specify each and every device that may be subject to a prohibition, the MPCA will maintain a fact sheet that can be easily updated as new devices and sources of prohibited materials are identified.

Enforcement actions should take less time to prepare and issue because it will only be necessary to cite one rule. Requests for review and arguments from regulated parties should decrease since the rule will clarify when the materials have to be removed and what constitutes a violation.

**3. “A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.”**

The MPCA has tried to achieve the purpose of the proposed rules in the past by publishing fact sheets for the regulated community to use to help identify objects to be removed from structures prior to demolition. The facts sheets were not fully successful primarily because the MPCA lacked a means to establish a deadline for removal of the prohibited materials, making enforcement of the disposal prohibitions at the most efficient stage-prior to demolition-very difficult. While it might be possible to improve public information about existing laws through promulgation and distribution of fact sheets and guidance documents, the question of “when the removal of prohibited materials must be done” would remain unanswered and be a source of continuing confusion in the regulated community.



**4. “A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.”**

The MPCA considered several options in deciding how to achieve the purpose of the proposed rule. These included requiring certification of inspectors, requiring the submission of an inspection report and/or a signed certification that an inspection was done, and requiring a landfill to review an inspection report prior to waste acceptance. All of these options would have been more intrusive than the current proposed language.

Requiring certification of inspectors would require additional MPCA resources to train and certify inspectors, and track certifications and renewals. It could also lead to increased enforcement against parties who were performing inspections that were not certified to do so. The MPCA believes the Pre-Demolition Environmental Checklist and Guide and updated fact sheets will provide adequate information regarding prohibited items and that special certification and training is not necessary.

The MPCA also considered requiring the submission of an inspection report and/or a signed certification that an inspection was done. However, this was rejected because this would create a large amount of paperwork that would take additional staff time to review.

Requiring a landfill to review an inspection report prior to accepting the waste was discussed as an option. However, the MPCA concluded that it was not necessary to create this requirement. A landfill that wishes to require an inspection report can do so.

**5. “The probable costs of complying with the proposed rule including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.”**

Because the requirements brought together in this proposed amendment already exist in rule or statute, this revision should be cost neutral in general.

There are two general categories of affected parties: persons undertaking demolition and renovation projects (which may include government, businesses, and individuals) and parties who operate waste management facilities where materials are prohibited or restricted from disposal. A third but less significant category of affected party would be persons who manage items and materials resulting from demolition through beneficial use/processing, recycling, or treatment.

By clarifying that the items and materials must be addressed prior to demolition, the proposed amendment will ensure that the cost of management and disposal is not passed to the landfill and (ultimately) to the public. Landfills should see less money spent on personnel removing prohibited items from disposal areas and arranging for proper disposal of the prohibited items.

Parties involved in renovations or demolitions may experience increased costs, if the parties were not complying with existing laws restricting land disposal and were passing the compliance costs on to the waste facility operator.

Parties conducting demolitions already have their own personnel or hire contractors to handle the prohibited materials and therefore, probable costs would be the same. By complying with the additional two working day waiting period, contractors may experience some additional costs due to arranging schedules. Costs would be fairly insignificant as equipment scheduling is the main issue contractors would need to adjust. MPCA believes that most persons conducting demolitions would have the equipment necessary to remove the materials and items listed in the rule so it is unlikely that additional costs would be incurred to obtain the equipment needed to comply with the rule. For projects subject to the two working day waiting period, there may be costs associated with holding equipment idle or remobilizing the equipment to another site during the two working day waiting period. However, MPCA anticipates that these costs would be relatively small or could be passed on to customers.

Parties who recycle, dispose or treat items and materials that are prohibited from land disposal may experience a modest increase in business if the proposed rule amendment is successful in increasing compliance.

**6. “The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.”**

If the proposed rule is not adopted, MPCA enforcement staff will continue to devote its present level of resources to pursue enforcement actions at renovation and demolition sites and landfills.

The MPCA would have to continue taking enforcement actions at transfer stations and landfills for acceptance of prohibited materials at current levels. Neither the MPCA nor the facility operators have the ability to catch all prohibited materials that should have been removed prior to the waste entering the waste collection and disposal system. This creates the possibility of releases to the environment at the renovation or demolition site, and during subsequent transport to the waste disposal site. These releases can affect public health. For example, a mercury containing device can cause a mercury spill if it is mishandled resulting in the exposure of workers at a transfer station.

Landfills will continue to see prohibited materials in incoming waste loads and bear the cost of removing these items in order to comply with their solid waste permit and solid waste regulations. A large number of landfills are owned by counties.

**7. “An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.”**

Federal rules governing asbestos and hazardous waste management would not be changed by this proposed amendment because the amendment does not seek to create any new obligations but only to improve compliance with existing laws. Federal rules governing regulated asbestos require that it be identified and removed prior to commencement of demolition. The proposed rule will only slightly change this. The requirement to have all regulated asbestos-containing materials removed two working days prior to the demolition is reasonable because MPCA inspectors continually conduct inspections of regulated facilities on, or a day prior, to the listed demolition start date and there are still prohibited materials routinely found in the building. The proposed rule will enhance MPCA staff's ability to conduct more inspections and thus have more field presence resulting in increased compliance. The proposed rule will also not change federal requirements that apply to hazardous wastes and CFCs.

**8. "Describe how the agency, in developing the rules, considered and implemented the legislative policy supporting performance-based regulatory systems set forth in section 14.002." Minn. Stat. § section 14.002 states:**

*...the legislature finds that some regulatory rules and programs have become over prescriptive and inflexible, thereby increasing costs to the state, local governments, and the regulated community and decreasing the effectiveness of the regulatory program. Therefore, whenever feasible, state agencies must develop rules and regulatory programs that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulatory party and the agency in meeting those goals...*

The proposed rule includes flexibility as to how the regulated community will achieve compliance, insofar as it does not dictate who must remove the prohibited items or materials or how the removal must be done. The rule also avoids creating recordkeeping requirements, leaving it to landfills and private parties as to whether written proof of compliance will be required.

The MPCA contemplated requiring that an inspection be done, a certification be made showing the inspection was done, and considered requiring the certification to be retained, kept onsite, submitted to the MPCA, or presented at the disposal site. Another potential requirement considered was stating whether the owner, general contractor, or contractor was responsible for compliance with the rule. The MPCA felt these requirements were too prescriptive, so it did not include these provisions in the rule language. Instead, the language simply states that the items must be removed, and does not prescribe which party involved in the project has to do so.

## **VI. ADDITIONAL NOTIFICATION**

Minn. Stat. § 14.131 requires that an agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made.

On July 31, 2006, the MPCA published notice requesting comments on planned rule amendments to Minnesota Rules Chapter 7035. The same notice was also placed on the MPCA's Public Notice Web site.

The MPCA intends to send a copy of the Dual Notice and the proposed rule amendments to the following:

- A. All parties who have registered with the MPCA for the purpose of receiving notice of rule proceedings, as required by Minn. Stat. § 14.14, subd. 1a;
- B. All individuals and representatives of associations the MPCA has on file as interested and affected parties;
  1. National Demolition Association members list of regular members in Minnesota;
  2. Contractor list (extracted from ACTS demolition database);
  3. League of Minnesota Cities;
  4. Various trade and builders associations;
  5. Solid Waste Administrators Association mailing list; and
  6. Other interested and affected parties expressing interest in the rule;
- C. The chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule amendments will receive a copy of the proposed rule amendments, SONAR, and Dual Notice as required by Minn. Stat § 14.116. This statute also states that if the mailing of the notice is within two years of the effective date of the law granting the agency authority to adopt the proposed rules, the agency must make reasonable efforts to send a copy of the notice and SONAR to all sitting house and senate legislators who were chief authors of the bill granting the rulemaking. This does not apply because no bill was authored within the past two years granting rulemaking authority.

In addition, the MPCA plans on:

- A. Sending all relevant staff, managers, and supervisors of the MPCA an e-mail containing a copy of the dual notice and draft rule text;
- B. Issuing a press release regarding this rulemaking on the date the rule appears in the State Register. The press release list (~841) generally includes the following categories:
  - daily newspapers
  - environmentalists
  - industry
  - radio stations
  - T.V. stations
  - weekly newspapers
  - solid waste officers
  - consultants
  - magazines

- staff
- other government staff

In addition, a copy of the dual notice, proposed rule amendments and SONAR will be posted on the MPCA's Public Notice Web site at <http://www.pca.state.mn.us/news/index.html>.

Pursuant to Minn. Stat. § 14.14, subd. 1a, the MPCA believes its regular means of notice, including publication in the *State Register* and on the MPCA's Public Notice web page will adequately provide notice of this rulemaking to persons interested in or regulated by these rules.

## **VII. CONSIDERATION OF ECONOMIC FACTORS**

In exercising its powers, the MPCA is required by identical provisions in Minn. Stat. § 116.07, subd. 6, and Minn. Stat. § 115.43, subd. 1, to 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 there from, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances...*

As noted above, this rule shall serve to consolidate multiple existing requirements into one, for ease of use by both the regulated parties and the MPCA. The rule includes a list of specific items to be removed in order to assist with compliance. As a result, this rule should not affect commerce. Consulting firms and specialty (for example, asbestos abatement or hazardous waste management) contractors may see increased business to aid owners and other contractors in complying with the rule. While some NESHAP demolitions may see a small cost related to the requirement to allow a "two working day window" before demolition, the MPCA does not believe that this represents a substantial burden.

## **VIII. IMPACT ON FARMING OPERATIONS**

Minn. Stat. § 14.111 requires an agency to provide a copy of the proposed rule changes to the Commissioner of Agriculture no later than thirty days prior to publication of the proposed rule in the *State Register*, if the rule has an impact on agricultural land.

The rule is expected to impact structures, as defined in the rule, including those on agricultural land. Therefore, a copy will be sent to the Commissioner of Agriculture at the same time it is submitted to the Governor's Office for review.

## **IX. NOTIFICATION OF THE 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.

This rule is not expected to impact transportation, however, a courtesy copy of the rules will be sent to the Commissioner of Transportation.

## **X. CONSULT WITH FINANCE ON LOCAL GOVERNMENT IMPACT**

Minn. Stat. § 14.131 requires the MPCA to consult with the Department of Finance to help evaluate the fiscal impact and benefits of proposed rules on local governments. In accordance with the interim process established by the Department of Finance on June 21, 2004, the MPCA provided the Department of Finance with a copy of the proposed rule and SONAR at the same time as the Governor's Office. This timing allowed the fiscal impacts and fiscal benefits of a proposed rule to be reviewed by the Department of Finance concurrent with the Governor's Office review (up to 21 days).

The rule is not expected to increase operating costs to the local governmental unit such as a county landfill owner. In fact, the proposed amendment may result in a decrease in prohibited materials coming into the disposal facility, reducing operating costs. For example, for one year, Becker County spent approximately \$20,000 disposing of prohibited materials from its landfill. This cost would be essentially eliminated with compliance with the rule.

## **XI. MINN. STAT. § 14.127, SUBDIVISION 1 - COST THRESHOLDS**

Minn. Stat. § 14.127 require the MPCA to assess the potential economic impact to small businesses of complying with this proposed rule amendment. The statutory provision is as follows:

*An agency must determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees. For purposes of this section, "business" means a business entity organized for profit or as a nonprofit, and includes an individual, partnership, corporation, joint venture, association, or cooperative.*

The following is offered to fulfill the requirements of Minn. Stat. § 14.127:

Since these rules brought together in this proposed amendment already exist, this revision should be cost neutral in general.

## **XII. STATEMENT OF NEED**

Minn. Stat. § ch. 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 not be arbitrary or capricious in proposing rules. 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 the MPCA is appropriate. The need for the rule is described below.

Substances that are harmful to human health and the environment are often associated with fixtures and devices found throughout most structures. Other materials such as municipal solid waste, household hazardous waste, industrial or hazardous wastes, tires, appliances, and electronics are often found within structures to be renovated or demolished. Portions of the structure may also be contaminated with hazardous substances from past uses of the structure, for example, mercury may be found in flooring material of a health care facility. In general, under the regulations already applicable in Minnesota, the items and materials listed above are not permitted to be disposed of in the majority of landfills. However, based on MPCA inspections of renovation and demolition sites, these problem items and materials are often not removed prior to the commencement of renovation or demolition. MPCA landfill inspections confirm that these problem items and materials often end up being disposed in landfills, where they may pose an environmental threat if not found and removed. The rules and statutes that prohibit landfill disposal of the various devices and materials are located in various chapters of Minnesota laws and regulations. This leads to confusion among regulated parties.

### **XIII. STATEMENT OF REASONABLENESS**

Minn. Stat. § ch. 14 requires the MPCA to explain the facts establishing the reasonableness of the proposed rule amendments. “Reasonableness” means that there is a rational basis for the MPCA’s proposed action. The reasonableness of the proposed rule is explained in this section. This section is broken into two main parts: A. Reasonableness as a whole; and B. Reasonableness of the individual rule parts.

#### **A. Reasonableness of the Proposed Rule Amendments as a Whole.**

This rule is reasonable because it serves to consolidate requirements located within various rules and statutes. It does not prescribe who must remove these materials before commencement of renovation or demolition. It provides an extensive list of items to be removed as an aid to regulated parties. It provides an exemption if the structure is a safety hazard. It encourages parties to contact the MPCA for assistance and information on proper disposal and/or recycling of items. It serves to protect human health and the environment by requiring removal of potentially harmful materials *before* the building is demolished, creating less of a possibility of release during renovation, demolition, transport, and disposal.

#### **B. Reasonableness of the Amendments to Individual Sections of Rule.**

This section addresses the reasonableness of each rule part and attempts to answer questions about what each rule requirement is intended to do, why it is needed, and why it is reasonable. Some rule parts are obvious as far as their need and reasonableness and therefore are only explained briefly, while others are explained in more detail for future rule interpretation.

### **1. Part 7035.0805, Subp. 1. Scope.**

It is reasonable to include a Scope because it lists all potential parties that may be involved with the project who are responsible for compliance with the rule. This does not put the responsibility on one particular entity, rather it allows for flexibility depending on the project and the parties involved. It also clarifies that it includes renovations, demolitions, and authorized demolition by fire, so as to notify parties as to what types of activities are regulated.

### **2. Part 7035.0805, Subp. 2. Definitions.**

#### Item A. Commencement of renovation or demolition.

It is reasonable to provide a definition of commencement of renovation or demolition because the rule requires that the prohibited items and materials be removed prior to commencement of renovation and demolition. The definition is reasonable because it describes what types of physical actions constitute commencement. By describing the physical activities, the definition is clear and therefore reasonable. Using physical activities as the commencement point for renovation or demolition is reasonable because it gives the party doing the demolition the maximum amount of time prior to beginning to generate waste to remove the prohibited items and materials, as opposed to a definition that places commencement at, for example, the time the contract for demolition is entered into. The definition is also reasonable because it provides a list of physical activities that do not constitute commencement of renovation or demolition.

#### Item B. Structures

It is reasonable to provide a definition of structure so parties understand what types of buildings are regulated. The definition is reasonable because it serves the purpose of the rule by identifying those buildings that are likely to contain the prohibited materials due to the fact that they have fixtures and devices associated with electrical, plumbing, heating, cooling, safety or lighting systems.

### **3. Part 7035.0805, Subp. 3. Removal requirements.**

It is reasonable to identify the parties responsible for ensuring that all prohibited items are removed prior to the commencement of the renovation or demolition. The rule is reasonable in making owners, persons authorizing demolition, and contractors responsible for compliance. When the MPCA must enforce the rule, it is not practical for the MPCA to interject itself into the contractual relations of the parties to entangle who



took responsibility for completing the actions required by the rule. It therefore is reasonable to make all potentially responsible parties responsible. It would not be reasonable just to name the owner, because in reality, many owners depend on contractors to be familiar with the requirements of the law. By making the contractors responsible, the MPCA has an opportunity to reach the party that most likely knew or should have known about the requirements.

**4. Part 7035.0805, Subp. 4. NESHAP facilities.**

Item A. For “NESHAP facilities”, it is reasonable to require the persons conducting the demolition to remove all hazardous materials at least two working days prior to the start date on the most recently submitted ten working day notification form because of the MPCA’s existing NESHAP facility inspection program. By requiring the removal two working days prior to the scheduled start of demolition, the MPCA has an opportunity to inspect the structure at the point when all materials should have been removed. This is reasonable to enable the MPCA to determine compliance without having to return to the structure multiple times. It would not be reasonable to require this “two working day waiting period” for other structures because the MPCA would not likely inspect other structures,

Item B. It is reasonable to define working day for the ten working day notification requirement as required under Title 40 Code of Federal Regulation, section 61.145 paragraph (b).

**5. Part 7035.0805, Subp. 5. All items and materials to be removed before renovation and demolition.**

The heart of this rulemaking is to bring together in one place all the various items that are generally prohibited from disposal in typical demolition debris management facilities so that the regulated community and the MPCA know what needs to be removed prior to demolition, and to establish the requirement that the items be removed prior to “commencement of renovation or demolition” as defined so that it is possible to enforce the prohibitions that exist prior to the generation of the waste requiring disposal. It is reasonable to provide an extensive list because parties can then use it as a reference for items that must be removed prior to commencement of renovation or demolition. It is reasonable to require these materials be removed prior to commencement so as to reduce the possibility of release of harmful materials during demolition, handling, transport, and/or disposal.

It is reasonable to state that all items must be properly characterized, tested, managed and disposed of and reused or recycled as a general statement because it is not always possible to be specific in this rule due to the fact that material to be managed will vary greatly. It is reasonable to encourage parties to contact the MPCA to do this so as to

increase compliance and also offer alternatives to disposal, which may be cheaper and will produce less waste.

Item A. It is reasonable to require the removal of items that would normally be disposed of as “mixed municipal solid waste” (MMSW) because these items are not allowed in facilities permitted to accept demolition debris, which in many cases are unlined. Facilities that accept MMSW are required to have a liner. See Minn. R. 7035.2815, subp. 7.

Item B. It is reasonable to require the removal of household hazardous waste because although sometimes considered a sub-category of MMSW that would be covered under Item A, it is even more important that these items be identified and removed from the structure prior to demolition due to their potential to cause groundwater contamination.

Item C. It is reasonable to require the removal of hazardous waste because, in general, hazardous waste is not allowed to be disposed of in demolition debris facilities. Minn. R. 7035.2535, subp. 1, item A. It is also reasonable to require industrial waste to be removed prior to demolition. Some permitted demolition debris facilities are allowed to accept industrial solid waste. However, such waste can generally only be accepted if included in an industrial solid waste management plan detailing the special handling and disposal of these wastes at the facility. Minn. R. 7035.2535, subp. 5. As a result, even if industrial waste is accepted, industrial solid waste would need to be managed as a segregated waste stream. To be tested and handled in compliance with the industrial waste management plan, industrial waste needs to be removed prior to demolition and managed separately.

Item D. Waste tires are not allowed to be disposed of in the land. Minn. Stat. § 115A.904. As a result, it is reasonable to require them to be removed prior to demolition or renovation.

Item E. It is reasonable to require the removal of major appliances as defined by statute because major appliances often contain components that are prohibited from disposal with solid waste, i.e., PCB capacitors, mercury switches, chlorofluorocarbons. It is reasonable to require the removal of major appliances because Minn. Stat. § 115A.9561 prohibits land disposal of such appliances.

Item F. It is reasonable to require the removal of items that may contain elemental mercury because Minn. Stat. § 115A.932 prohibits the placement of “mercury” and certain electrical devices or any “other electrical device” from which mercury has not been removed in solid waste. While the list cannot reasonably be limited, it is reasonable to attempt to provide as complete a list as possible of devices known to contain mercury as in this proposed rule.

Item G. It is reasonable to require the removal of items that may contain liquid PCBs because liquid PCBs are considered hazardous wastes under state and federal law. See 40 CFR 761; Minn. Stat. § 116.07, subd. 2b. Liquid PCBs may not be disposed of in a landfill.

Item H. It is reasonable to require the removal of items that may contain CFCs because these items would likely be crushed during demolition, releasing the CFCs into the environment. Minn. Stat. § 116.731, subd. 4a prohibits a person from venting or releasing into the environment any CFC used as a refrigerant.

Item I. It is reasonable to require the removal of items containing oil because failing to remove such items could lead to a release of oil into the environment that would need to be reported and remediated. See Minn. Stat. § 115.061. Oil is a pollutant and could contaminate ground water at an unlined facility.

Item J. It is reasonable to require the removal of lead-containing items. Minn. Stat. § 115A.915 prohibits land disposal of lead-acid batteries. Other lead items can leach lead in the acidic environment of a landfill and may constitute hazardous waste. It is reasonable to require lead paint that is not firmly adhered to the substrate to be removed because demolition can result in the generation of large quantities of dust at the site of the demolition and at intermediate facilities. If this dust contains lead paint, it can pose a health risk. Removal of loose lead paint also reduces the potential for ground water contamination when the waste is interred in a landfill. This item is reasonable in that it makes use of existing standards for the definition of lead paint.

Item K. It is reasonable to require the removal of cathode ray tubes prior to demolition because this is another item that the legislature has specifically prohibited from disposal in mixed municipal solid waste. See Minn. Stat. § 115A.9565. If such items are specifically prohibited from a lined facility, such items should not be allowed to enter a demolition debris disposal facility which may not have a liner.

Item L. Items containing a circuit board should be removed before demolition because circuit boards often test as hazardous waste. Although most items with a circuit board would likely be removed under Item A, it is reasonable to include this item because circuit boards are of special concern.

Item M. It is reasonable to require in this rule the removal of asbestos that is required to be removed under the existing state and federal asbestos regulations. It is reasonable to include this in the rule so that the list of prohibited items to be removed is complete in this rule (“one stop”).

Item N. It is reasonable to require material trapped in sumps and traps to be removed unless it has been characterized as nonhazardous and nonliquid. Sumps and traps often collect waste such as oil that would not be allowed to be disposed at a demolition landfill.

Minn. R. 7035.2535, subp. 1(F) states that free liquids are not allowed to be disposed of at landfills.

Item O. It is reasonable to require the removal of radioactive waste prior to demolition because solid waste facilities are not allowed to accept radioactive waste under Minn. R. 7035.2535, subp. 1(E), and failing to remove radioactive waste prior to demolition could cause a large amount of waste to require special management.

Item P. Certain facilities have restrictions on the types of waste that can be accepted. It is reasonable to require materials or items that are prohibited from disposal at the intended facility to be removed prior to demolition.

#### **6. Part 7035.0805, Subp. 6. Exemption.**

This section establishes four situations in which the items required to be removed under subpart 5 are excepted from the removal requirement. The four situations are: (1) if the building is unsafe as determined by local government; (2) if the items were not identified prior to commencement of demolition; (3) items within components of the structure that are needed during the demolition/renovation process; and (4) items that cannot be removed in a timely manner due to emergency maintenance conditions. It is reasonable to include these exceptions to the rule because there are some circumstances where removal is unwise or infeasible.

Item A(1). It is reasonable to include an exemption from removal of items prior to commencement for situations of structural failure, or if the building is unsafe to enter, because it is not worth risking the lives of workers to remove the materials. It is reasonable to require that a local authority or other person authorized to determine structural integrity decide this, so the exemption is not abused. The exemption still requires that the items be removed if certain areas of the structure are accessible, or after the structure has been renovated or demolished. This will aid to minimize release during transport and disposal, yet still take safety concerns into account. It should be noted that the inability to remove items prior to demolition may affect how the waste from the building is managed at disposal.

Item A(2). It is reasonable to include an exemption for materials that are unexpected. The MPCA understands that it is not always possible, particularly with an older building that has undergone many renovations, to predict what might be under a particular ceiling or behind a particular wall. Materials uncovered unexpectedly will, however, require proper management and their discovery may affect how the waste from the building is managed at disposal. The exemption specifies that the items "could not have reasonably been identified." This exemption is not intended to allow owners and contractors to deliberately create conditions of "surprise."

Item A(3). Often demolition will commence in a particular location of a building and the demolition contractor will use existing building features such as lifts or lighting during the demolition. It is reasonable to allow materials associated with these systems to remain until the systems themselves are demolished.

Item A(4). Sometimes equipment failure results in an immediate need to conduct renovation or demolition in order to preserve health and safety or the integrity of the structure. It is reasonable under these limited circumstances to allow emergency demolition to commence before materials are removed.

Item B is reasonable because it requires compliance with the requirements of this rule “to the extent possible” even if an exemption applies. This is reasonable because the exemption is not intended to wholly free the persons conducting the demolition from the obligation to remove the listed items before renovation or demolition. It should also be noted that failure to remove the listed items after renovation or demolition may cause the waste to be rejected from certain disposal facilities.

**7. Part 7038.0805, Subp. 7. Duties under other law.**

It is reasonable to state that other laws establish requirements for management of certain materials, because it notifies regulated parties that other laws exist, and that this rule does not relieve them from those requirements. This serves to promote compliance with those other laws.

**8. Part 7035.0805, Subp. 8. Debris characterization.**

It is reasonable to require parties to characterize debris for proper disposal. The MPCA is aware of many situations in which past improper disposal practices or past uses of a structure have caused it to become contaminated with an environmentally harmful material. For example, the MPCA is aware of a case in which a building formerly used for laboratories was demolished. Unfortunately, the structure was not adequately characterized prior to demolition and as a result, floorboards contaminated with mercury were sold to secondary users. In addition, the warehouse where the boards were stored was also contaminated with mercury. Therefore, it is reasonable to require parties who know, or should know, that the structure is or may be contaminated to obtain samples to ensure that the debris is properly managed and disposed. Contacting the MPCA will aid parties in compliance with this part.

It is also reasonable for sampling to be conducted in accordance with all state and federal regulations. For example, asbestos inspections must be conducted by a Minnesota Department of Health certified asbestos inspector in accordance with Minn.

R. 4620.3330.

**9. Part 7035.0805, Subp. 9. Stop work order.**

The MPCA has authority under Minn. Stat. § 116.11 to issue an order to abate an imminent and substantial danger to the health and welfare of the people of the state as the result of noncompliance. It is reasonable to include a reference in this rule to this “stop work” authority because noncompliance with this rule has the potential to cause an imminent and substantial danger to the health and welfare of the people.

**XIV. LIST OF AUTHORS, WITNESSES AND EXHIBITS**

**A. Author**

Katie Koelfgen, Municipal Division, Minnesota Pollution Control Agency.  
Jackie Deneen, Industrial Division, Minnesota Pollution Control Agency.

**B. Witnesses**

The MPCA anticipates that the proposed amendments will be non-controversial, and that no public hearing will be necessary. If these rules go to a public hearing, the MPCA anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

1. Ms. Katie Koelfgen, Municipal Division. Ms. Koelfgen is the principal author of the SONAR and will testify on the general need for and reasonableness of the proposed rules.
2. Ms. Jackie Deneen, Industrial Division. Ms. Deneen is a secondary author of the SONAR and will testify on the general need for and reasonableness of the two working day waiting period for NESHAP regulated facilities.

**XV. CONCLUSION**

Based on the foregoing, the proposed rules are both needed and reasonable.

Dated: 9/17/08

Brad M. Moore  
Brad Moore  
Commissioner