STATE OF MINNESOTA
MINNESOTA WASTE MANAGEMENT BOARD

In the Matter of the Proposed
Adoption of Rules Governing the
Management of Waste Tires and the
Permitting of Waste Tire Facilities,
Minn. Rules Pts. 9220.0200-9220.0680.

STATEMENT OF NEED AND REASONABLENESS

Minnesota Waste Management Board
1350 Energy Lane
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I. Introduction

Improper disposal and storage of waste tires endangers the public health and poses a variety of environmental hazards. Waste tires collect rain water which provides an ideal breeding habitat for disease carrying mosquitos. Waste tires also pose a major fire hazard when improperly stockpiled. Although tires do not ignite easily, once a tire stockpile begins to burn, it is nearly impossible to extinguish and burning tires doused with water generate a synthetic crude oil that can contaminate surface and ground water.

A 1985 investigation of waste tire disposal in Minnesota revealed that only 10% of the waste tires generated in the state were being processed for recycling or resource recovery. The remaining 90% were either stockpiled, illegally landfilled, or dumped along roadways, streams, and lakes. Because no rules prohibited or regulated the stockpiling of tires, the tire dumps were growing and owners had no end-use for the waste tires, nor funds to cleanup their sites.

Because of the problems associated with improper management of waste tires, the Legislature banned waste tires from landfills after July 1, 1985, and it directed the Minnesota Pollution Control Agency (hereinafter "Agency") to issue permits to tire collectors and tire processers. Minn. Stat. § 115A.902 (1986). The Agency spent three years researching and developing rules for waste tire management and the permitting of waste tire facilities. Background on the Agency's rulemaking process is contained as part of the Statement of Need and Reasonableness for Minn. Rules parts 7001.0020, 7001.0040, 7001.0050, 7001.0190, 7001.4000 - 7001.4150, and 7035.8200 - 7035.8710, pp. 1 - 15. The Agency's waste tire rule was approved by the Attorney General's Office in July of 1987. A reorganization order from the Department of Administration (Number 144), transferred waste tire responsibilities from the Agency to the Minnesota Waste Management Board (hereinafter "Board") on July 1, 1987.

The Board is proposing to repeal the Agency rule and promulgate a modified waste tire rule that it believes will better serve the needs of the state and the regulated community. The rationale for this action is contained on pages 2 - 3 of this document.

This document is divided into six parts. After the introduction, part II provides the Board's explanation of the need for the proposed rules; part III contains the Board's explanation, part by part, of the reasonableness of the proposed rules; part IV documents how the Board has considered the methods for reducing the impact of the proposed rules on small business, pursuant to the requirements of Minn. Stat. § 14.115 (1986), Small Business Considerations in Rulemaking, pursuant to Minn. Stat. § 116.07, subd. 6 (1986); part V contains the Board's conclusion; and part VI contains a list of exhibits relied on by the Board to support the proposed rules. (The exhibits are available for review at the Board's offices at 1350 Energy Lane, St. Paul, MN 55108).

II. NEED FOR REPEAL OF THE AGENCY RULE AND ADOPTION OF THE PROPOSED BOARD RULE

After the Board gained responsibility for the state's waste tire programs it conducted a thorough review of the Agency's waste tire permitting rule. At its October Board meeting, the Board directed the staff to redraft the Agency permit rule so that a less complicated regulatory framework could be established.

There are three major parts and numerous subparts of the Agency rule that have been modified by the Board. Because of this, and because the Board has developed a permit rule specific to waste tires, it was much easier and less confusing for the Board to repeal the Agency rule and promulgate a new Board rule. The primary sections that the Board modified, and the reasons for modifications are explained in the paragraphs below.

Permit Application Procedure

The Agency's waste tire permit rule referred back to the Agency's general permit rule which governs the issuance of permits for solid and hazardous waste facilities as well as feedlots and sewage treatment plants. The Board's proposed permit rule creates a rule specific to waste tire facilities. The Agency envisioned a two step permitting process. First, it required existing facilities to send written notification to the Agency director of their existence. Provisional status would then be granted provided the facility maintained financial assurance and followed streamlined operational guidelines. The director would then request that the facility submit a permit application. Once a facility submits an application, a draft permit would be prepared and public comment solicited. Finally, the Agency determined if a permit should be granted.

The Board is proposing a modification of this section to shorten and simplify the permitting process. The Board will have a one-step application process, without a notification period. All facilities that desire a permit must submit an application during the time period specified. This should prevent confusion and insure that all persons seeking a permit are treated equally.

Old Tire/New Tire Distinction

The Agency permit rule retains the distinction between old tires and new tires created in the Agency tire dump abatement rule. Old tires are defined as tires accumulated before November 21, 1985, new tires are ones accumulated after this date. A facility owner or operator is not eligible to obtain a permit for old waste tires located at the site. Thus, in theory, a site could be partially permitted and also a tire dump and subject to abatement. Furthermore, a facility that wanted to obtain a permit and process old waste tires would be prevented from doing this under the Agency rule.

The Board proposes to eliminate the distinction between old and new waste tires in the Board's permitting rule. The Board does not want to discourage anyone with old waste tires from applying for a permit.

If a tire dump owner or operator can meet the permitting requirements, (including the requirement to establish financial assurance) the state would be best served by having a permitted waste tire facility rather than a tire dump subject to abatement.

Another problem with the old tire/new tire language is that it is physically impossible to distinguish between old and new tires. Tires have no date designation on them and the November 21, 1985 date was an Agency imposed deadline used to establish which tires would be eligible for reimbursement from the abatement program. Retaining this date could create tremendous enforcement problems.

Financial Assurance Requirements

The Agency permit rule envisioned two stages of financial assurance. "Phase I" financial assurance was to be obtained by tire collectors by July 1, 1988. It covered the cost of removing and processing waste tires collected from the effective date of the rule through July 1990. "Phase II" financial assurance was then to be obtained to cover all tires at the facility at any one time after July 1990. Phase II financial assurance was to be established by July 1990. The Board found these dates to be arbitrary and it proposes that a copy of the financial assurance mechanism be submitted with the permit application. The mechanism should cover the number of waste tires that the facility is permitted for. This requirement will be easy for the regulated community to understand and it will insure that there will be adequate financial assurance to cover all waste tires received at a permitted facility. Facilities desiring a phased approach have the option of using a trust fund, or requesting a permit for a smaller number of tires.

An additional problem the Board identified in the Agency rule was that it would be difficult for the owner or operator of the waste tire facility to determine the dollar amount of financial assurance needed for their site. It was quite possible that the facility owner or operator would need to hire a financial consultant to assist them in making this determination. Under the proposed Board rule, there is a straightforward formula for determining the amount of financial assurance needed. This formula will be based on the statewide average cost of processing and transporting waste tires. The rule requires that the Chair annually re-evaluate the per/tire cost component of the formula to insure that it is accurate and equitable.

III. REASONABLENESS OF THE PROPOSED RULES

Introduction

The Board is required to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Minn. Stat. § 14.23 (1986). Reasonableness is the opposite of arbitrariness and caprice and means that there is a rational basis for the Board's proposed action. The purpose of this section is to demonstrate that each provision is a reasonable approach to its defined function.

SCOPE
Part 9220.0200

This part, which specifies to whom the requirements of the proposed rules apply, is reasonable because it informs affected persons, the public, and other governmental units of the applicability of the proposed rules. It is reasonable to provide this information so that persons managing waste tires will know with which parts of the proposed rules they are required to comply.

DEFINITIONS
Part 9220.0210

This part contains the definitions of key words and phrases used in the waste tire permit rules. The definitions are needed so that the rule may be subject to consistent interpretation. The definitions of person, processing, tire, tire collector, tire dump, tire processor, and waste tire reference the statutory provision where the definition for these terms can be found. It is reasonable to include these definitions so that persons covered by these rules know where to look to find the definition of the terms used in these rules. The definition of Board, Chair, floodway, ravine, residuals from processing, shoreland, sinkhole, tire-derived products and wetland are identical to the definitions of these terms as they are used in the Board rules governing the abatement of waste tire dumps. It is reasonable to use the same definitions in both sets of rules since they both relate to the regulation of waste tires. To use different definitions would cause confusion for persons subject to both sets of rules. The reasonableness of the remaining definitions is set out below:

Subpart 2. Agricultural purposes.
A definition of agricultural purposes is given to clarify the allowable use of waste tires on an agricultural site. It is reasonable to provide a definition of agricultural purposes because legislature did not define agricultural purposes when creating an exemption from the requirement to get a permit for waste tires used for agricultural purposes. The definition given includes uses of waste tires in agricultural settings, where uses are related to agricultural work. The burning of waste tires on an agricultural site is not listed as an agricultural purpose and it is therefor prohibited. This definition can be easily applied.

Subpart 5. Closure.
A definition of closure is given to clarify what the Board means when it requires a facility owner or operator to provide financial assurance for closure of the waste tire facility. This definition is reasonable because it includes all actions that are part of closure and can easily be applied.

Subpart 6. Closure plan.
A definition for closure plan is given to clarify what the Board requires in the closure plan which must be submitted by the facility owner or operator with the permit application. This definition is reasonable because the Board requires a closure plan for the facility which provides

for the proper disposal of any waste tires, tire-derived products or residuals remaining at the site after the facility has ceased operations.

Subpart 7. Current closure cost estimate.
A definition of current closure cost estimate is given to clarify that the current closure cost estimate is required by part 9220.0490 of these rules.

Subpart 8. Existing Waste Tire Facility.
The definition is given to clarify which facilities are covered by these rules.

Subpart 10. Operator.
The definition is given to clarify who is the operator of a waste tire facility. Under the waste tire permit rules, operators are co-permittees of a facility. The reference to the statutory definitions of tire collector and tire processor is provided to alert operators of their responsibility under the statute.

Subpart 11. Owner.
The definition of owner is included to alert tire collectors and tire processors as to who the Board considers responsible for obtaining a permit from the Board as required by statute.

Subpart 12. Permit.
A definition of permit is given to clarify the document required of persons who collect or process waste tires. This is reasonable to ensure compliance with the requirements of this rule.

Subpart 24. Transporter.
A definition of transporter is provided because this term is unique to the waste tire permit rules. The definition is needed to clarify who is subject to certain provisions of the proposed rule.

Subpart 26. Waste tire facility or facility.
The definition is needed to clarify a term unique to the waste tire permit rule. The definition should provide tire collectors and tire processors with an easily applied method of determining if their site is a waste tire facility subject to regulation. The definition encompasses all types of waste tire facilities. Because the definition can be easily applied, it is reasonable.

Subpart 27. Waste tire processing facility.
The definition is needed to clarify a term unique to the waste tire permit rule and to distinguish the type of activity being conducted at the facility. Because the definition can be easily applied, it is reasonable.

Subpart 28. Waste tire storage facility.
The definition is needed to clarify a term unique to the waste tire permit rule and to distinguish the type of activity being conducted at the facility. Because the definition can be easily applied, it is reasonable.

Subpart 29. Waste tire transfer facility.
The definition is needed to clarify a term unique to the waste tire permit rule. The definition is also needed to distinguish the type of activity being conducted at the facility. Because the definition can be easily be applied, it is reasonable.

LAND DISPOSAL PROHIBITED
9220.0220

Minn. Stat. §115A.904 prohibits the disposal of waste tires in the land. Because Board and State policy seek to minimize the dependence on landfilling, this rule extends the prohibition on land disposal to include tire-derived products, i.e. tires that are halved, quartered, or chipped. As stated under Minn. Stat. § 116D.02, subd. 2:

> In order to carry out the policy set forth in Laws 1973, Chapter 412, it is the continuing responsibility of the state government to use all practicable means consistent with other essential considerations of state policy, to improve and coordinate state plans, function, programs and resources to the end that the state may: ... conserve natural resources and minimize environmental impact by encouraging extension of product lifetime, by reducing the number of unnecessary and wasteful materials practices, and by recycling materials to conserve both materials and energy....

Tires, whether whole or in pieces, are recyclable. Since public opposition to landfill sites is increasing, it is reasonable to prohibit the landfilling of usable waste tires whether whole or in pieces to encourage recycling and to reduce the quantity of waste being landfilled.

PERMIT REQUIRED
Part 9220.0230

This part establishes the activities for which a waste tire facility permit is required.

Subpart 1. Permit Required.
This subpart establishes the general requirement that a permit be obtained for the operation or establishment of a waste tire facility. The rule requires that a permit be obtained to store, process, or dispose of waste tires or tire-derived products or to establish, construct, modify, own, or operate a waste tire facility.

The requirement that a permit be obtained is broad, to enable the Board to regulate all forms of activity that might be associated with the collection or processing of waste tires, for which Minnesota statute requires a permit. The broad requirement reflects a decision to include tire processors and tire collectors with less than 500 waste tires under the requirement to obtain a permit. Including those persons with fewer than 500 waste tires in the general requirement is reasonable because, according to information available to the Board, even a small facility can be hazardous. The Board proposes to reduce the burdensomeness of the permit requirement by including a permit by rule provision applicable to small facilities.

The Board has also required those who store, process or dispose of tire-derived products to obtain a waste tire facility permit. This reflects the Board's decision to regulate tire-derived product in the same manner as waste tires. Tire chips are flammable and can be a fire hazard if stored in an unsafe manner. In addition, tire chips can be recycled, burned for fuel, or marketed and thus should be regulated to encourage these uses.

Subpart 2. Exclusions.
Subp. 2 lists those activities and facilities for which a permit is not required. Four of these exemptions are identical to the statutory exemptions provided by Minn. Stat. § 115A.902, subd. 2 (1986). The fifth exemption regarding agricultural use of waste tires is based on a statutory exemption provided by Minn. Stat. § 115A.902, subd. 2 (1986). The Board believes that the use of waste tires on agricultural equipment or as ballast to retain objects are legitimate agricultural uses, as is reflected in the definition of that term.

The sixth exemption, listed in item F, is not a statutorily created exemption. Under item F, a person conducting abatement activities under an abatement order or stipulation agreement entered into under Minn. Rules pt. 7035.8020, is exempt from the requirement to obtain a permit for those activities. Under the waste tire dump abatement rules, Minn. Rules pts. 7035.8000 to 7035.8080, a person who is the owner or operator of a waste tire dump that is the subject of an abatement action must enter into a stipulation agreement with the Board or be issued an order by the Board. In either case, the abatement activities at the waste tire dump are regulated through the stipulation agreement or order. It is therefore reasonable to exempt a person conducting such activities from the requirement to obtain a permit.

If the owner or operator of the abatement site desires to continue processing or storing tires after the completion of the abatement activities, he or she must apply for a waste tire facility permit to do so. This is reasonable since the rule requires that a permit be obtained for these activities.

PERMIT BY RULE
Part 9220.0240

This part allows certain low-volume waste tire facilities to operate without having to go through the process of obtaining a permit. To allow the operation of certain facilities without a formal permit is reasonable because the activities at these facilities should not threaten human health, natural resources or the environment, provided certain minimal standards established in the permit by rule section are met. To allow the operation of certain facilities without a permit will reduce the burdensomeness of compliance with the rules where full regulation is not needed.

Subpart 1. Facilities Eligible.
Subp. 1 lists the types of facilities that are eligible for permit

by rule status.

Under Item A, a facility used for the storage of at least 50, but no more than 500 waste tires can qualify for a permit by rule, provided that the owner or operator removes all the waste tires at least once each year, and provided the facility is located in an area where it will not be subject to immersion in water. The Board does not believe that a facility that meets these standards poses an environmental threat. Moreover, because so many persons stockpile small numbers of waste tires incidental to other business activities, it would be a waste of Board resources to attempt to permit all these small stockpiles. The cutoff number, 500, is by statute the smallest number of tires that can be stored without a permit. The time limit for storage is reasonable to ensure that the pile does not become a tire dump or become infested with rodents or mosquitos.

Under Item B, the permit by rule approach is used to regulate a small processing facility. As with a small stockpile, the operation of a small, low-volume processing facility should pose little environmental danger. As above, the facility is required to be located where it will not be subject to immersion in water.

Subpart 2. Eligibility for Owners and Operators of Mobile Equipment.
Under this subpart, the permit by rule approach is used to regulate mobile processing equipment. As with a small stockpile, the operation of mobile processing equipment poses little environmental hazard, provided that the products produced from the operation of the equipment are removed. Because it is anticipated that the mobile shredding or baling equipment will be used to process stockpiles that are currently located in areas that violate the locational requirements, compliance with the locational requirement cannot be required. However, because the equipment is located at the site for a short period of time (90 days or less), the risk of an environmental problem is greatly reduced. It is reasonable to limit processing operations to 90 days because the intent of the permit by rule provision is to allow only short-term mobile processing. The Board believes that in most cases mobile processing operations will occur at tire dumps, permitted solid waste facilities or waste tire transfer facilities. Operations at tire dumps conducted under a stipulation agreement or abatement order are exempt under Minn. Rules pt. 7001.4020, subp. 2. Allowing for set-up time and processing time, 90 days provides sufficient time to process and remove more than 100,000 waste tires, and is therefore a reasonable time limit. See Exhibit 7.

Subpart 3. Written Notification.
Subp. 2 establishes that the owner and operator of a facility that qualifies for permit by rule status must submit certain information to the Board to obtain permit by rule status. The information is needed so that the Board has a record of where the facilities are located, the type of operation being conducted and an assurance that the owners and operators have an arrangement to acquire fire protection services for the facilities. In addition, the owners and operators must document that they have an agreement to use or dispose of the waste tires, tire-derived products, or residuals from processing. To require this minimal information

is reasonable because it allows the Board to ascertain whether small facilities are being managed appropriately.

Subpart 4. Termination of Eligibility for Permit by Rule.
Subp. 3 allows the Board to terminate the permit by rule status of an owner or operator after notice and public comment if it finds that the facility does not qualify for permit by rule status, or if it finds that the waste tire facility is a health or safety hazard. Because the decision to terminate permit by rule status is based on factual findings, the owner or operator will be given notice and an opportunity to request a public informational meeting or a contested case hearing.

It is reasonable to terminate the permit by rule status of a facility which does not meet, or has violated, the requirements of subps. 1 and 2 of this part because compliance with these conditions and requirements serves as the basis for eligibility to be permitted by rule. It is also reasonable to terminate the eligibility of a facility to be permitted by rule if it appears that further controls on the operation of the facility are necessary to protect human health or the environment.

Sixty days is a reasonable amount of time in which to require that the facility either close or submit a waste tire facility permit application.

DESIGNATION OF PERMITTEE
Part 9220.0250

This part specifies that all owners and operators of the waste tire facility will be designated as co-permittees when a waste tire facility permit is issued by the Board. It is reasonable to require that all owners and operators be permittees to ensure that all who have control over the facility are directly responsible for compliance with the permit and rules. Permitting only facility operators would not be reasonable because it would allow absentee owners to escape responsibility for the day to day control of the facility. Further, statutory provisions such as those contained in Minn. Stat. § 116.07 subds. 4g and 4h apply to both facility owners and operators. Insofar as this rule interprets those statutory provisions, it is reasonable that all owners and operators fall within its scope.

WASTE TIRE FACILITY PERMIT APPLICATION PROCEDURE
Part 9220.0260

Subp. 1. Form.
Subp. 1 describes the application requirements for new and existing waste tire facilities. This part provides for the submission of a general permit application, and additional application information specific to the facility that is the subject of the application. A reference is given to additional application information requirements specific to facility types so that the applicant will be alerted that additional information will be required.

Subp. 2. Submittal.
Subp. 2 requires the applicant to retain a copy of the application for their records. This is reasonable because it insures that there

will be a copy if the applicant's copy is lost in the mail when it is sent to the Board.

Subp. 3. Time of Submittal.
Subp. 3 establishes when permit applications must be filed. Item A applies to waste tire processing or storage facilities. A person who proposes to construct a new waste tire facility must submit a permit application at least 180 days before the planned date for beginning construction. The requirement is reasonable because the Board needs time to review the application, confer with the applicant and put the proposed permit on public notice and consider comments and requests for public informational meetings. A 180-day period is considered to be the minimum time needed to process a permit application for a new facility.

The second part of item A applies to existing waste tire processing and storage facilities. A person who wishes to seek a permit for an existing facility must do so within 90 days of the effective date of this rule. This is reasonable because the review and permit issuance process will be faster for an existing facility. Ninety days will be needed though to enable the Board to comply with the notice requirements of part 9220.0340.

Item B applies to waste tire transfer facilities. New or existing transfer facilities should submit permit applications 90 days after the effective date of these rules or 90 days before facility construction. This deadline is reasonable as the permit process for a transfer facility should not require the 180 days needed to review a storage or processing facility. Transfer facilities will be storing a relatively small number of tires for short periods of time and they will not be altering the form of the tires. Because of the decreased potential for hazards at a waste tire transfer facility, it is unlikely that many public informational meetings or contested case hearings will be needed.

Subp. 4. Renewal of Existing permit.
This subpart requires that an application for renewal of a permit be submitted 90 days before the expiration date of that permit. This is reasonable as the Board will need this amount of time to review the permit application, the permittee's file and comply with the public notice requirements of part 9220.0340.

WRITTEN APPLICATION
Part 9220.0270

This part specifies the information that must be submitted with all waste tire facility permit applications.

The information required by the Board in this part and pts. 9220.0280, 9220.0290, and 9220.0300 is needed to provide the Board with information to allow it to determine whether to issue, renew, or deny a waste tire facility permit. Information on the facility's location, design, construction, and operation will serve both to allow the Board to evaluate the facility's environmental impact and to provide a basis for imposing conditions in the permit. It is reasonable to require the submission of this

information because it is needed to evaluate whether the technical standards of Minn. Rules pts. 9220.0450 to 9220.0680 can be met.

Subp. 2. General facility information.
Subp. 2 requires the permit application to contain standard background information needed to identify the applicants and the facility. In addition this subpart also requires the applicant to indicate whether the facility to be permitted is new or existing. This information is reasonable because it is needed to enable the Board to gather information on the history of existing facilities.

Subp. 3. Description of facility operation.
Subp. 3 requires the applicant to describe the location and operation of the facility.

Item A is needed for the Board to understand the basic operation of the facility. This information is reasonable because it will enable the Board to ascertain the type of operation and to judge how the facility should be regulated.

Item B is needed for the Chair to establish limits in the permit on the number of waste tires that will be processed or stored at the facility. This number impacts the amount of financial assurance required by part 9220.0570.

Item C will enable the Chair to determine, based on the number of tires indicated in item B, that the storage requirements can be met.

Item D requires the submission of a description of the present use of the land at the site of the facility and within a one-quarter mile radius of the facility. This information is needed to determine compliance with locational standards and to evaluate the risk posed by the facility to neighboring land users. Requiring the applicant to provide the names and addresses of the adjacent landowners is reasonable because in an emergency at the facility these individuals would need to be notified.

Item E requires submission of a description of the weight and use restrictions on the access roads leading to the facility. This information is necessary to determine whether the roads are adequate for the types of vehicles expected to use the facility. If the roads are not adequate, improvements may need to be made or limits may be placed in the permit on the types of vehicles that can use the facility.

Item F requires a description of the location of the facility and a demonstration of compliance with the locational standards of pt. 9220.0450, subp. 2. It is reasonable to require locational information to determine whether the facility is in compliance with these standards.

Item G requires a description of the type, size, condition, function, and availability of the equipment needed for operation and emergency response at the facility. Information on the equipment will allow the Board to evaluate whether the facility has sufficient equipment for proper operation and emergency response.

Item H requires a description of the security procedures and the location of fences, gates, and other access control measures. This information is required to help the Board determine facility compliance with the access control requirements of pt. 9220.0450, subp. 3, Item B. Based on this information, special conditions needed to ensure facility security could be included in the permit.

Item I requires a description of the facility's relationship to the applicable county solid waste management plan and the area to be served by the facility. It is reasonable to require that this information be included because the operation of the facility will be affected by county waste tire management plans and the facility and the county should coordinate their efforts.

Item J requires a submission of the description of the expected operating life of the facility and how this number was calculated. It is reasonable to require that this information be submitted so that the Board can use it to judge the accuracy of the closure plan submitted in compliance with pts. 9220.0490 and 9220.0500.

Subp. 4. Map Required.
Subp. 4 requires the submission of a topographic or section map using a scale of at least 1 inch equals 200 feet. This scale is needed to ensure that the map is sufficiently large to show environmental and development details accurately.

Item A requires that the map scale and directions be written on the map. This will ensure correct interpretation.

Item B requires the identification of all wetlands, floodways, shorelands, and surface waters, including permanent and intermittent streams and wetlands on the facility and within a one-fourth mile radius of the facility. It is reasonable for the map to show these areas because they are environmentally sensitive and could be adversely impacted by the operation of a waste tire facility. They are also areas in which the facility may not be located.

Item C requires the map to display information on legal boundaries, land ownership, township, range, and section numbers, easements, and right-of-ways. This information is required so that the exact location of the facility can be determined. Based on this information, the Board may determine the units of government that would have jurisdiction over the facility. These local governmental units would be recipients of public notices as required in pt. 9220.0340.

Item D requires an identification of both operating and abandoned wells. This information is needed because these wells can be conduits to the groundwater aquifers should contamination occur at the facility. They also could be used for sampling, if water samples are needed from the facility site.

Item E requires an identification of all occupied dwellings. This information is needed so the board knows how close residents live to

the proposed or existing waste tire facility.

Items F, G, H. and I require the map to show various elements of facility design: the location of all waste tire storage areas and fire lanes; all structures and buildings at the facility; loading and unloading areas, and access and internal roads. During the permitting process these features will be evaluated to ensure that the proposed or existing facility will be able to operate in compliance with the technical standards.

Item J requires an identification of the run-off control measures and ditches and dikes at the facility. These structures will ensure that contaminated run-off will be controlled in the event of a fire. Thus, the requirement that the development map show these structures is reasonable to ensure proper design.

Item K requires the map to show the area used for collection, storage, or processing of waste tires, tire-derived products and residuals from processing. The total land area in square feet that will be used for storage of waste tires, tire-derived products, and residuals from processing must be shown. This information will allow the Board to evaluate fire hazards, and hazards to employees and the environment at the facility. It will also allow the Board to determine if the owner or operator has allocated adequate space to the various functions.

Subp. 5. Closure plan.
Subp. 5 requires the submission of the closure plan required by pt. 9220.0490. It is reasonable to require that the closure plan be submitted with the permit application because the closure plan provides information to demonstrate that the facility owner or operator has a plan for cleaning up the facility so that the site will not become a tire dump once it closes.

Subp. 6 Closure Cost Estimate.
Subp. 6 requires that the closure cost estimate as described in part 9220.0570, subp. 2 be submitted with the permit application. This is reasonable as it provides a way for the Board to insure that the owner or operator understands how the amount of the financial assurance estimate should be calculated.

Subp. 7 Copy of Financial Assurance Mechanism.
Subp. 7 requires the submission of a copy of the applicants' financial assurance mechanism. Requiring this copy is reasonable as it allows the Board to verify that the owner or operator is in compliance with parts 9220.0550 - 9220.0680.

Subp. 8 Other information relevant to the application.
Subp. 8 requires the applicant to provide additional information as requested by the Chair or as required under parts 9220.0280 to 9220.0310 for specific types of facilities. It is reasonable for the Chair to require additional information from the applicant if it will allow the Chair to clarify unresolved issues and make a final determination on a permit application. Requesting the information required in parts 9220.0280 to 9220.0310 is reasonable because information in these parts relates to specific types of waste tire facilities being permitted

(transfer, storage or processing facilities) and will allow the Board to evaluate permit applications for each type of waste tire facility.

ADDITIONAL APPLICATION INFORMATION REQUIRED FOR WASTE TIRE TRANSFER FACILITIES Part 9220.0280

This part sets out the additional information that is to be included in the permit application submitted by waste tire transfer facilities, beyond what is required in the general permit application.

Item A requires that the types of vehicles intended to use the facility be identified. This requirement is reasonable because a great deal of traffic is expected at these facilities and this information is necessary to determine if the facility design and road conditions are adequate. If the facility design or roads are not adequate, improvements or changes may be needed or load limits could be established in the permit.

Item B requires the applicant to demonstrate compliance with part 9220.0460, subp. 2. This part requires waste tire transfer facilities to limit the quantity of waste tires stored at the facility to 10,000 passenger car tires or the equivalent weight of other waste tires. Only a waste tire transfer facility that can demonstrate that it can meet the standards established in pt. 9220.0460, subp. 2 will be permitted as a waste tire transfer facility. Other facilities must apply for a waste tire storage facility permit.

Item C requires the applicant to identify the method of waste tire storage that will be used at the facility and the storage capacity of the facility. This information is needed to assess whether the method by which the permittee will store tires is adequate.

ADDITIONAL APPLICATION INFORMATION REQUIRED FOR WASTE TIRE PROCESSING FACILITIES Part 9220.0290

This part establishes the information that is to be included in the permit application for waste tire processing facilities.

Item A requires information on the quantity and type of tire-derived products and residuals to be stored at the facility and the current or planned method of storage. This information is needed so that the Board can determine if the facility can be operated in compliance with pt. 9220.0470, subp. 2, which requires that 75 percent of waste tires and tire-derived products stored at the facility be processed and removed each year.

Items B and C require submission of information on the waste tire processes and procedures used at the facility and the processing capacity of

the facility. Information on the processes and procedures utilized will enable the Board to assess the facility's potential to operate as specified in the permit application. In addition, this information is needed so that the Board can assess whether the 75 percent annual processing requirement of part 9220.0470. subp. 2, can be met.

Item D requires the applicant to explain how compliance with pt. 9220.0470, subp. 2, the 75 percent annual processing requirement will be achieved. This requirement is reasonable as it will enable the Board to consider whether the applicant's plan for processing the quantity of tires expected is reasonable.

Item E requires the submittal of information on how residuals from processing will be disposed. It is reasonable to require information on how residuals from processing will be managed to ensure that the facility has a plan for disposing of or recycling unusable tire-derived product.

Item F requires that information on markets for the tire-derived products produced at the facility be included in the application. This information is needed for the Board to evaluate whether the facility will be able to comply with pt. 9220.0470, subp. 2.

Item G requires the submission of the emergency preparedness manual required by pt. 9220.0470, subp. 4. This manual establishes procedures that will be followed at the facility in an emergency. Because this manual will be incorporated into the permit, it is reasonable to require the manual be submitted for Board review. If the manual is inadequate or contains improper response procedures, Board staff will be able to work with the applicant to modify the manual.

ADDITIONAL APPLICATION INFORMATION REQUIRED FOR WASTE TIRE STOARGE FACILITIES Part 9220.0300

Subp. 1 establishes the additional information that is to be included in the permit application for waste tire storage facilities.

Item A requires a description of the procedures that will be used to minimize or prevent mosquito breeding and rodent infestation of the waste tire stockpiles. This information is needed in order for the Board to determine whether the facility will be operated in compliance with pt. 9220.0450, subp. 3, Item H.

Item B requires the submission of the emergency preparedness manual required by pt. 9220.0470, subp. 4. This manual establishes procedures for responding to an emergency at the facility. Because compliance with the procedures established in this manual will be made a condition of the permit, it is reasonable to require that the manual be submitted for Board review with the application. If the manual is inadequate or contains improper response procedures, Board staff will be able to work with the applicant to modify the manual.

Item C requires the applicant to demonstrate that the facility will be operated in compliance with pt. 9220.0480, subp. 3, which limits the quantity of waste tires stored at the facility to 500,000 passenger tires or the equivalent weight of other waste tires or tire-derived products. To be permitted, a waste tire storage facility must meet this standard. Thus, it is reasonable to require this information to be submitted with the application.

SIGNATURES
Part 9220.0310

This part requires that a permit application be signed by all persons who are considered by definition to be owners and operators of a waste tire facility. These requirements also ensure that the signer of the application has authority to bind the applicant. This is reasonable because it makes the signators directly accountable and responsible for the statements made in the permit application.

PROVISIONAL STATUS
Part 9220.0320

Subpart 1. Scope.
This subpart establishes provisional status for existing facilities that submit a waste tire facility permit application. This part does not effect new facilities as they must submit an application 180 days before facility construction so they will not yet be open. This is reasonable as it does not place an existing facility in limbo while the Board is reviewing the application. The facility must adhere to the operating standards for permitted facilities from part 9220.0450 so the public health and the environment should be safeguarded while the permit application is being reviewed.

In addition, this subpart specifies that an annual report will not be required while a facility is provisionally permitted. This is reasonable because the facility will not have the data required by the annual report until it becomes permitted.

Subpart 2. Termination of provisional status.
This subpart states that provisional status will terminate when the facility is permitted, when it is closed, or when a permit is denied by the Board. This is reasonable as provisional status is only granted on a temporary basis until a decision is made on the permanent status of the facility.

REVIEW OF PERMIT APPLICATIONS
Part 9220.0330

This part specifies that the Chair will review permit applications and return incomplete applications to the applicant. Processing of the application will be suspended while the deficiency is corrected. This is reasonable because a permit cannot be issued or denied to the owner of a facility until all the necessary data can be reviewed.

PUBLIC NOTICE
Part 9220.0340

Subpart 1. Scope.
This section provides that before the Board takes any action with regard to a facility permit, the Chair is required to solicit public comments unless specifically exempted from this requirement under part 9220.0410 (modification of permit). It is reasonable to issue public notice of action on permits because it gives affected persons an opportunity to raise issues which the Board should consider.

Subpart 2. Public notice contents.
This part establishes what must be included in a public notice. The information required to be included in the notice is reasonable because the information that must be included is information that would be needed by a member of the public who is interested in commenting on the Board action.

Subpart 3. Duration of notice period.
This part establishes that, unless extended by the Chair, the duration of the public notice period will be 30 days. Thirty days is reasonable because it gives members of the public enough time to study the action and to develop and submit comments on it. It is reasonable to allow the Chair to extend the public comment period to allow for additonal comment if it appears necessary because the goal of those procedures is to ensure that the public has a full opportunity to comment, and that the board has an opportunity to receive and consider public comment.

Subp. 4. Distribution of public notice.
This section lists the ways that the Chair must make the public notice available to members of the public. These or similar types of requirements have been followed in the past in issuing Agency permits. It is reasonable to distribute the public notice in the manner specified in this section because it ensures that the broadest spectrum of the public will be reached.

PUBLIC COMMENTS
Part 9220.0350

Subp. 1. Written comments.
This part specifies that during the public comment period any interested person, including the applicant, may submit written comments on the Board action. The commentor is required to state why they are interested in the action before the Board, what action they wish the Board to take and why they want the Board to take that action. Comments that meet these requirements will be considered by the Board. This is reasonable because it insures that the comments the Board will consider are relevant to the action being considered and that the Board understands what the commentor wants and why.

Subp. 2. Public informational meeting or contested case hearing.
This part states that during the public comment period and at the Board

meeting where the action is proposed to be taken, a person may request that a public informational meeting or contested case hearing be held. It is reasonable to include this subpart to alert persons of their right to request that additional proceedings be held.

Subpart 3. Extension of comment period.
Subpart 3 permits the Chair to extend the public comment period if necessary to facilitate public comment. This is reasonable because occasionally additional public comment may be merited to insure that the Board has an adequate basis for its action.

PUBLIC INFORMATIONAL MEETING
Part 9220.0360

This rule specifies what must be done when the Board receives a request to hold a public informational meeting.

The reasonableness of this rule is best understood in light of the Agency's experience. In the past, the Agency has put permits on public notice and has received requests for a "public hearing." Further discussion with the requester has revealed that in some cases the person does not want to participate in a contested case hearing, but only wants a forum for public discussion to gain a better understanding of the activity proposed to be permitted. The "public informational meeting" serves this purpose.

Subp. 1. Determination of need.
This part provides that the Chair or the Board will hold a public informational meeting if such a meeting would clarify and resolve issues regarding a Board action. This part is reasonable because public informational meetings should not be held unless the Board or the Chair determines that such a meeting would be useful in clarifying or resolving issues regarding a Board action.

Subp. 2. Location.
This subpart is reasonable because it insures that a majority of the persons affected by the Board action will be able to attend the public informational meeting.

Subp. 3. Content of notice.
The rule also provides for the issuance of a notice of the meeting. This is reasonable because the people need to know the time, date, place and subject matter of the meeting in order to attend and participate effectively.

Subp. 4. Distribution of notice.
This subpart requires that the notice be published in a newspaper of general circulation and that it be mailed to city and county officials, and to the applicant. This is reasonable as it is a fair and cost effective way to inform individuals that a meeting will be held.

CONTESTED CASE HEARING

Part 9220.0370

The purpose of this part is to set forth criteria for granting a request for a contested case hearing, to specify the contents of the notice of hearing, and to cross reference the statutes and other rules under which the hearing will be held.

Subp. 1. Hearing required.
This part establishes the standard that a person requesting a contested case hearing must meet if the Board is to grant that request. The criteria established in this part are reasonable because they will ensure that administrative resources will not be wasted in review of issues that are irrelevant to the decision that the Board must make, or of facts that are not material to the decision that the Board must make, or of facts that are not needed for the Board to make its decision. In addition, this part establishes that a person requesting a contested case hearing must be affected by the Board's proposed action. This is reasonable because it insures that the person requesting the hearing has a genuine interest in the matter, and would be an active participant in the hearing if held.

Subp. 2. Hearing notice and order.
The rule specifies the contents of the public notice and cross references the statutes and other rules under which the hearing will be held. These sections are reasonably designed to clarify to the public what procedures will be followed once a contested case hearing is ordered.

FINAL DETERMINATION
Part 9220.0380

Subparts 1 and 2 establish the conditions under which the Board will issue, deny, renew or modify a permit. These conditions must be identified in the rules so applicants understand the criteria on which the Board will base its decision.

Subp. 1. Board Action.
This subpart simply states that the Board will issue, renew, or modify a permit if it determines that the permittees will comply with all permit conditions and all applicable laws and rules, or that actions will be taken to bring the facility into compliance. This is reasonable because the Board should authorize permitted activities only if those activities will be in compliance with standards developed to ensure safe operation.

Subp. 2. Denial of permit.
Permits will be denied for the reasons stated in items A - E under subpart 2. It is only reasonable to deny a permit to any facility that will not or cannot comply with the application requirements, operating standards, or state or federal statutes. It is also reasonable to deny a permit if an applicant submits false, vague or misleading information to the Board. If a permit was not denied for these reasons, the facility could endanger human health, natural resources, or the environment.

TERMS AND CONDITIONS OF PERMITS
Part 9220.0390

This rule provides for the term of the waste tire facility permit, the special conditions to be included in Board permits and the general conditions to be included in Board permits. The reasonableness of these sections is discussed below.

Subpart 1. Term of permit.
This section establishes that the maximum term of a waste tire facility permit will be five years. It is reasonable to include an expiration date in permits which is not greater than five years after the date of issuance so that the permitted activity can be reevaluated and public input may be solicited. This rule forces both the permittee and the Board to make sure that the permit and the operations of the permittee are up to date with state and federal laws.

Subp. 2. Special conditions.
This subpart requires that any facility that is out of compliance with any state or federal statute or rule when its waste tire facility permit application is being considered must agree to achieve compliance with the rule or statute within a reasonable period of time as a condition of permit issuance. This is reasonable because it allows the Board to issue a permit even if the facility receiving the permit is not in compliance with standards so long as there is a seperate condition assuring that compliance will be achieved. This is administratively efficient and will result in more permits being issued.

Subp. 3. General conditions.
This subpart lists the conditions that must be incorporated into all permits issued by the Board. It is reasonable to include a reference to these general conditions in the rule to alert potential permitees to the limits of the authorization granted to them when receiving a permit.

The condition stated in item A is that the permit will not release a permittee from other legal liabilities or duties. This is reasonable because a permit is merely authorization to conduct the permitted activity. The Board does not have authority when issuing permits to releave permittees of legal obligations, except as specifically provided in this rule.

The condition stated in item B is intended to put a permittee on notice that legal obligations can change, and the fact that a permit does not reflect those obligations does not releave the permittee from the duty to comply. This is consistent with item A. The Board does not have the authority to release permittees from legal obligations through the permitting process.

The condition stated in item C is intended to alert permittees to the fact that a permit is not property that can be freely transferred by the permittee, nor are rights attached to property attached to the permit. The condition in item C regarding the exclusivity of the privilege is intended to alert permittees to the fact that the Board is free

to issue permits to others for competing activities, and that the permit does not guarantee that the permittee will be free from competition. It is reasonable to include the condition regarding the permit as property because to protect the environment, the state must control the issuance and transfer of permits. It is reasonable to include the condition regarding exclusivity because the purpose of the regulatory program is to protect the environment, not individual business interests.

The condition stated in item D is intended to ensure that permittees have a continuing obligation to submit correct information to the Board. This condition is reasonable because the Board needs accurate information upon which to base enforcement or other actions involving the permitted facility.

The condition stated in item E assures that the Board will have access to the permitted facility for reasonable inspections. Such access authority is reasonable because the Board is charged with ensuring that the permitted facility is being operated in compliance with the permit and applicable rules and laws.

The condition stated in item F is intended to insure that permittees have an obligation to take action to correct non-compliance with the permit. This obligation exists regardless of whether the Board has initiated enforcement action. This is reasonable to ensure that corrective action is taken at the first opportunity.

The condition stated in item G is intended to ensure that the Chair is immediately notified of any dangerous situations at the facility. It is reasonable to impose this condition on permittees to ensure that the Board is in a position to participate in resolution of the dangerous situation.

The condition stated in item H is intended to alert permittees that the permit is not freely transferable. This item compliments the condition stated in item C. It is reasonable to control transfer of the permit to ensure that responsible, approved permittees own and operate the permitted facility.

The condition stated in item I is intended to alert the permittee and the public that, in issuing the permit, the state has not assumed any liability for damage to person or property resulting from the operation, nor has the state waived any immunity it might have. It is reasonable to include this condition as it is consistent with court interpretations of the liability of regulatory agencies, and with state law that provides limits on how the state can assume liabilities.

CONTINUATION OF EXPIRED PERMIT
Part 9220.0400

This part allows permittees to continue to conduct the permitted activity after the expiration date of the permit when the Board has failed to act on a renewal application in a timely manner. The permittee must continue to comply with the terms and conditions of the expired permit.

This part is reasonable because it does not penalize the permittee for a delay caused by the Board. Although delays are not expected, unforseen circumstances might cause a delay and this part insures that a permittee will not be unreasonably penalized.

MODIFICATION OR TRANSFER OF PERMIT
Part 9220.0410

Subp. 1. Modification.
This subpart specifies that the Chair can modify a permit without following the public notice procedures in part 9220.0340 if the Chair determines that the modification will not result in a significant change in facility operation. This is reasonable as public comment is not necessary on nonsubstantive permit modifications. The public notice procedure must be followed for all other modifications.

Subp. 2. Change in facility ownership or operation.
Item A under this subpart requires that the permittee submit a signed written request for transfer of ownership of the facility to the Board for approval. The request must contain all information in part 9220.0270, subpart 2 and an explanation of the reason for the request for transfer of ownership. This is reasonable as the Board should be apprised of this information so that they can make an informed decision on the request for transfer of ownership.

Item B under this subpart specifies that the Chair will give the public notice following the procedures in parts 9220.0340 to 9220.0370 of the Chair's intent to transfer the permit. This is reasonable as transfer of the permit is a substantive issue and the public should have an opportunity to comment on it.

Item C states that transfer of the permit, if approved by the Board, shall occur when the change in ownership or operation becomes effective. If the expected change does not occur, the owners and operators shall remain responsible for the waste tire facility under the terms of the permit. This part is reasonable as the permit should not be transferred until the change in ownership or operation becomes effective so that the permittees are at all times the current owners and/or operators of the waste tire facility.

REVOCATION OF PERMIT
Part 9220.0420

Subp. 1. Justification for revocation.
This subpart lists three justifications for revocation of a waste tire facility permit. These justifications involve failure of the permittee to comply with the permit or applicable state and federal statutes and rules, termination of the permitted activity, or finding that the activity endangers human health or the environment and that the danger cannot be removed by modifying the permit. These justifications are reasonable because operation of a permitted facility is conditional on compliance with rules designed to ensure safe operation. If a facility does not comply, operation should not continue. A facility which has

ceased operations should be closed and its permit should be revoked.

Subp. 2. Procedure for revocation.
This subpart specifies that the Chair give notice of the Chair's intent to revoke a permit and that the notice state that the permittee has the right to request that the Board schedule a contested case hearing prior to revocation of the permit. This gives the public time to comment on the Chair's intent to revoke the permit and ensures that the permittee has an opportunity to provide information to the Board on the proposed revocation, so that the Board can make an informed decision.

INTERACTION OF PERMIT AND ABATEMENT RULES
Part 9220.0430

This part is needed to clarify that, in an abatement action in which the tire collector has elected to operate a permitted facility after the completion of the abatement activity, the tire collector must notify the Chair within 90 days of the effective date of this rule or at the time the abatement plan is submitted. In addition the collector must agree to develop a plan to bring the site into compliance with the technical rules for waste tire transfer, processing, or storage facilities, and obtain a permit by following the procedures established in parts 9220.0260 to 9220.0310.

The requirement that the owner or operator notify the Chair of the intent to obtain a permit is reasonable since it informs the Chair of the collector's intent and enables the Chair to review the abatement plan with the understanding that a permit may be issued for the facility. The time limit for a decision (90 days after the effective date of the rules or with the abatement plan, whichever is later) is reasonable since it allows the owner or operator to make the decision regarding permitting when decisions regarding abatement activities are being made. However, owners or operators who have already submitted their abatement plans are given 90 days to provide such notification.

Ninety days is needed to insure that the public notice requirement of part 9220.0340 can be met. This time period is consistent with that allowed for notification by existing facilities under Minn. Rules pt. 9220.0260, subp. 3. Stipulation agreements and orders for abatement actions do not address other activities at the facility. Therefore, it is reasonable to require the owner or operator to obtain a permit for activities other than the abatement action. Such a requirement will ensure that the activities are regulated.

WASTE TIRE FACILITY STANDARDS

RULE CONFLICTS
Part 9220.0440

This part states that even though a person has met the obligation imposed by the Board rules, that person must still comply with all other federal, state or local rules that regulate how the facility will operate. This is reasonable since the granting of a permit does not relieve any person from obligations or duties imposed by any other laws, statutes, rules, standards, or ordinances.

This part also states that in the event the Board rules conflict with other rules, the more stringent provisions apply. This is reasonable because it clarifies which provisions apply and eliminates the need to amend the rule if conflicts occur.

GENERAL STANDARDS FOR PERMITTED FACILITIES
Part 9220.0450

This part contains the general standards that apply to all waste tire transfer, processing, and storage facilities. This part contains technical and performance standards that relate to the operation of waste tire facilities. This part also references the criteria that the Board will use in determining if a facility qualifies for regulation as a waste tire transfer, processing, or storage facility. The reasonableness of these standards is set out below.

Subpart 1. Scope.
This subpart specifies that permitted waste tire facilities are regulated under this part. The Board believes it is reasonable to clearly specify to whom the requirements apply so that the facility owners and operators will know what is required of them.

Subpart 2. Location of facility.
The requirements set forth in this subpart ensure that the waste tire facility will not be located in an area unsuitable for the storage of waste tires or where the storage of waste tires could cause damage to the environment. This subpart prohibits the operation or construction of a waste tire facility in an area in which the tires could be subject to immersion in water. Tires that hold standing water can become mosquito breeding grounds, and wet or muddy tires are difficult to process. In addition, sinkholes, shorelands, ravines, and wetlands are environmentally sensitive areas, it is therefore reasonable for the Board to require that waste tire facilities not be located in these areas.

Subp. 3. Operation.
This part is divided into items A to I which set out the minimal operational standards that must be met at a permitted waste tire facility. The standards set forth in this subpart are designed to ensure that a waste tire facility is operated in an environmentally sound manner.

Item A (burning prohibited) is needed to reduce the danger of fire at a waste tire facility. By restricting the use of open flames within 50 feet of a tire pile, the danger of accidental fire should be reduced. Due to the environmental damage which could result from a fire at the facility it is reasonable to restrict activities which could cause a fire.

Item B (access control) requires that the approach and access road to the facility be maintained to ensure that illegal dumpers or other persons cannot reach the site when it is not in operation. It is reasonable to require access control to ensure that unauthorized persons are not allowed to enter the facility and dump tires, start fires, or otherwise cause noncompliance with the rules.

Item C (attendant on duty) is needed to ensure that there is a person available to monitor the facility while in operation to ensure that the facility is used properly.

Item D (storage area) requires a specific area to be designated at the facility for storage of waste tires and tire-derived products. This area must be maintained free of vegetation. It is reasonable to segregate waste tires to prevent a fire from spreading from other items that may be present at a waste tire facility (solid waste, recyclable materials, buildings and equipment, etc.) to the waste tire storage area. It is reasonable to require that the storage area be free of vegetation as dry vegetation would allow a small fire to spread rapidly through the waste tire storage area increasing the possibility of a large fire.

Item E (indoor storage) is needed to minimize the hazards posed by the storage of waste tires indoors. The standard referenced in this subpart is used in all areas of the United States and is generally accepted by fire protection agencies. To promote consistency, it is reasonable to use nationally accepted standards governing the indoor storage of waste tires. See Exhibit 4.

Items F and G (tire pile limitation and fire lane) set forth standards that will ensure that the danger posed by a fire at a waste tire facility is minimized. These items establish that the permittee shall construct waste tire stockpiles and fire lanes that meet the following requirements. Tire piles must have an area not greater than 10,000 square feet and a vertical height not greater than 20 feet. A minimum 50-foot fire lane between the stockpiles must be created and maintained free of rubbish, vegetation, and obstructions at all times. Tire pile size limitations and the requirement that fire lanes be maintained are accepted fire agency methods of limiting the spread of fires. The tire pile size limitations and the fire lane requirements are identical to those used in the Board rules governing the abatement of waste tire dumps.

A 50-foot fire lane is reasonable as it allows emergency equipment to adequately manuever around the waste tire piles. The storage pile limitation is reasonable as it is accepted in other jurisdictions and it enables fire fighters to work effectively.

Item H (mosquito and rodent control) are needed to ensure that waste tire stockpiles are maintained free of mosquitos and rodents. It is reasonable to require controls as tire piles provide breeding areas for these vectors. See Exhibit 1.

Item I (surface water drainage) requires that surface water must be diverted away from the waste tire storage area. This requirement is reasonable as water accumulating in the waste tire storage area will encourage mosquito breeding. See Exhibit 1.

Subp. 4. Annual report.
This subpart requires the permittee of a waste tire facility to submit an annual report to the Chair. This report is needed to allow the permittee and the Chair to evaluate the facility's compliance with the other requirements of this rule.

Items A and B are needed so that the Chair can distinguish which permittees are covered by the annual report and the time period covered by the report.

Items C, D, and E are needed so that the Chair can determine if the permittee is in compliance with the storage requirements of this rule and the storage requirement contained in their permit. If the permittee is not in compliance, the chair needs to know this so the chair can take appropriate action.

It is also necessary to document the types of tires received because of the special handling that truck, heavy equipment, and off-the-road vehicle tires require. Truck and heavy equipment tires will need more storage space, and the design of the facility may have to be adjusted if the facility is doing a higher volume of oversize tires than was aniticipated at the time of permit issuance.

Items F, G, and H (receipt, shipment, and removal of waste tires at the facility) are needed to verify compliance with the storage and processing requirements of pts. 9220.0470, subp. 2 and 9220.0450, subps. 2 and 3. The information regarding transporter identification numbers is needed to verify compliance with pt. 9220.0520 and 9220.0530 regarding the transportation of waste tires and the shipment of waste tires to acceptable waste tire facilities. It is reasonable to require such information to determine facility compliance with applicable rules.

Item I, the most recent closure cost estimate, is needed to ensure that the closure cost estimate has been updated as required by pt. 9220.0590. The Board needs to know the most recent closure cost estimate to verify that sufficient financial assurance is provided.

WASTE TIRE TRANSFER FACILITY STORAGE LIMITATION
Part 9220.0460

This part sets out the qualifications for regulation as a permitted waste tire transfer facility.

Subp. 1. Storage Limitation.
Under this subpart, a storage limitation is imposed on the quantity of tires stored at a waste tire transfer facility and removal requirements are delineated.

The waste tire storage limitation imposed on the facility is 10,000 passenger car tires or the equivalent weight of other tires. The number 10,000 was chosen by the Board because it is an economical number of tires to accumulate and transport. These facilities are designed to accumulate a load large enough to ship economically and 10,000 tires can be shipped in approximately 10 trailer loads. Because waste tire transfer facilities can have only 10,000 or fewer tires, they are not considered to be a major environmental hazard and thus are subject to less stringent requirements and standards. If a facility desires to store more than 10,000 tires it should be regulated as a waste tire storage facility which is subject to the more stringent reguirements which better protect public health and the environment from the hazards of larger facilities.

Considering the substantial differences in size between various types of tires, a standard size should be used in the rules to clarify storage site limitations. Since passenger car tires constitute the vast majority of waste tires, it is reasonable that passenger car tires should be used as the standard, with other size tires having limitations based on an equivalent weight of passenger car tires.

The second section of this subpart requires that the accumulated waste tires be shipped to a processing facility at least twice annually or in accordance with the plan approved during the permitting process. This requirement is reasonable as it decreases the likelihood that mosquito and rodent infestation will occur in the tire stockpiles.

The Board does realize that there may be certain waste tire transfer facilities which would require a different shipment schedule. A very small waste tire transfer facility located in a distant corner of the state may find it economically feasible to ship its stockpile only once per year. This section of the rule is reasonable as it allows flexibility for small or distant facilities.

ADDITIONAL STANDARDS FOR WASTE TIRE PROCESSING FACILITIES
Part 9220.0470

Subp. 1. Scope.
This subpart sets forth the standards that must be met in order to qualify for regulation as a permitted waste tire processing facility. This section adds standards in addition to the general standards in part 9220.0450 that must be met by waste tire processing facilities.

Subp. 2. Storage Limitation.
Under this subpart, a storage limitation is imposed on the quantity of tires at the processing facility. The limit of two separate piles, one of waste tires and one of tire-derived product meeting the limits stated in pt. 9220.0450, subp. 3, item F of the general facility standards

was chosen by the Board for several reasons.

It was determined through conversations with waste tire processors that a stockpile of 70,000 tires would ensure an adequate supply for the facility during seasonal fluxuations and it would allow for the accumulation of tires during equipment down time. Placing the ceiling at 70,000 also keeps the fire hazard to a minimum.

The other qualification that waste tire processing facilities must meet is that at least 75 percent of the waste tires and tire-derived products must be processed and removed from the facility during each calendar year. Compliance with the 75 percent annual processing requirement is determined based on the amount of waste tires and tire-derived products that are delivered to the facility during the year or are contained on the site of the waste tire processing facility at the beginning of each year.

This requirement is reasonable as it prevents the facility owner or operator from accumulating waste tires and tire-derived products and not processing them. If tires are not being processed the facility should apply for a storage facility permit. The Board does not want individuals to acculumate tires in anticipation of better prices or new markets. This requirement will insure that tires delivered to a processing facility will be processed in a reasonable amount of time.

Subp. 3. Emergency Equipment.
This part is needed to ensure that should an emergency occur at a facility, services are available to minimize adverse effects to human health and the environment. With emergency equipment on site, the tire processor may be able to extinguish the fire or control its spread before local fire personnel arrive. Having communications equipment available will enable the processing facility to quickly summon local fire personnel.

Subp. 4. Emergency preparedness manual.
This part requires that an emergency preparedness manual be prepared and submitted to the Chair along with the permit application. Once the Chair approves the manual, it becomes a condition of the facility permit and must be maintained at the facility. This is reasonable since this manual is needed to ensure that the operating personnel know what to do and who to contact in the event of an emergency at the facility. It is also reasonable that the Board review the manual to determine the adequacy of the procedures that are proposed to be followed by the owner or operator in the event of an emergency.

The emergency preparedness manual must be updated if there is a change in the operation of the waste tire processing facility. The Chair can also require an update. This is reasonable because the circumstances affecting the facility may change during the life of the permit, and the Chair is in the best position to respond.

This manual should ensure that the permittee, emergency personnel, and the Board understand the actions to be taken at the facility in the event of an emergency so that a cooperative effort may be made to successfully minimize adverse effects to human health and the environment.

Items A to E under this subpart set out the information and procedures to be contained in the manual. It is required that the manual include a list of names and telephone numbers of persons to be contacted in the event of an emergency at the facility; the equipment available on or off-site to respond to the emergency, and a brief description as to how the equipment will be used; an assessment of the possible hazards to human health and the environment should an emergency occur; the procedures to be followed by facility personnel during an emergency; the location of known water supplies or other materials that may be used for fire fighting purposes; and any additional relevent information.

Items A to E of this subpart are reasonable because they will enable the permittee to respond to an emergency situation in an expeditious and responsible manner. It is also reasonable that the local police and fire protection authorities be contacted by the owner or operator prior to the development of the emergency preparedness manual. Since these are the people who will be responding to an emergency at the facility, prior knowledge of the conditions and type of operation at the facility will enable them to estimate what services might be needed should an emergency occur.

Subp. 5. Emergency procedures.
This subpart requires the permittee to implement the emergency procedures in the event of an emergency. Since the intent of developing emergency procedures is to inform facility personnel of what to do during an emergency, it is reasonable to require that the procedures be implemented during an emergency.

Subp. 6. Emergency notification and reports.
This subpart requires that the permittee immediately notify the Chair in the event of a fire or other emergency. This is reasonable because Board personnel could assist the permittee in responding to the emergency. This part also requires the permittee to submit a report regarding the emergency to the Chair. This report is needed to enable the Chair to evaluate whether the emergency preparedness manual properly addressed the emergency and whether a change in the emergency preparedness manual is warranted.

ADDITIONAL STANDARDS FOR WASTE TIRE STORAGE FACILITIES
Part 9220.0480

Subpart 1. Scope.
This subpart, which specifies the applicability of the standards contained in this part, is reasonable because it informs persons that storage facilities must be operated in compliance with these standards in addition to the standards in part 9220.0450.

Subpart 2. Emergency preparedness standards. This subpart requires the permittee of a waste tire storage facility to comply with the emergency preparedness standards for waste tire processing facilities set out in part 9220.0470, subparts 3 to 6. The reasonableness of part 9220.0470, subparts 3 to 6 is discussed in that section and will not be repeated

here.

Subpart 3. Storage limitation.
This subpart requires that no more than 500,000 passenger tires or the equivalent weight of other tires or tire-derived products be stored at the facility at any one time. The Board believes that a limitation at this level will insure that fire and vector hazards can be controlled. The limitation will also prevent the establishment of enormous tire dumps.
Considering the substantial differences in size between various types of tires, a standard size should be used in the rules to better address storage site requirements. Since passenger car tires constitute the vast majority of waste tires, it is reasonable that this size tire be used as the standard, and larger or smaller tires or tire-derived products should be converted to the equivalent weight of passenger car tires when determining storage limitations.

Subpart 4. Additional information.
This subpart requires the permittee to submit the following information in the annual report in addition to the information required by part 9220.0450, subpart 4. The permittee must submit information on the procedures used at the facility to minimize or prevent mosquito and rodent infestation in the waste tire stockpiles including the dates when mosquito and rodent control operations were conducted. It is reasonable to require such information to insure that the facility is in compliance with part 9220.0450, subpart 3, item H.

Subpart 5. Removal of soil contaminated with pyrolytic oil.
This subpart provides that any soil contaminated by pyrolytic oil be removed in accordance with any applicable rules governimg the removal, transportation, and disposal of such material. Requiring removal is reasonable since pyrolytic oil can result in ground water contamination.

CLOSURE
Part 9220.0490

This part sets out the standards applicable to the closure of all waste tire facilities. The objective of this part is to require facilities to close in the manner necessary to protect human health and the environment.

Subpart 1. Closure required.
Subpart 1 requires the owner or operator of the facility to cease accepting waste tires and to close the facility immediately if any of the conditions established in this subpart exist. Additionally, this subpart requires that the facility be closed in compliance with any special closure conditions established in the permit, this part, and part 9220.0500 which specifies the actions that must be taken and the procedures that must be followed if closure occurs. Closure procedures insure that all steps needed to ensure orderly termination of operations are followed.

More specific closure standards that are established in an individual permit, are reasonable in order to address specific conditions that

exist at a particular facility. A waste tire processing facility that has dangerous equipment on the site may be requested in the permit to remove the equipment to another location should the facility close.

Item A acknowledges that the owner or operator may elect to close a facility at any time. This is reasonable since there is no obligation on the owner or the operator to continue business once a decision is made to close the facility.

Item B is necessary since the financial assurance requirements of parts 9220.0560 to 9220.0590 require owners or operators to maintain financial assurance for closure of the facility. This closure provision is reasonable since it is consistent with the requirements of parts 9220.0560 to 9220.0590 and clearly informs the owner or operator of the duty to close when adequate financial assurance is not maintained.

Items C and D are based on the status of the facility's permit from the Board. Item C applies if the permit expires and the permittee does not apply for renewal of the permit, or the permit is applied for and denied. Item D applies if the permit is revoked. Since a facility owner or operator is required to hold a permit in order to operate the facility, it is reasonable to require closure of the facility once the facility no longer has the necessary permit.

Items E and F apply when direct enforcement actions are taken by the Board. These provisions are reasonable since a facility that endangers human health and the environment will not be allowed to operate. It is reasonable to include these provisions under the closure conditions to inform owners and operators that if such action is taken by the Board, the facility is to be closed in accordance with the procedures and standards specified in the rules and the permit.

Item G requires a facility that has not received or shipped tires in a continuous six-month period to close. The Board believes this is reasonable in order to address the concern that a facility could cease operation without any assurance that the facility would resume in the future, thus avoiding the requirement that it be properly closed. It is reasonable to require that if operations cease the facility should then close. The Board does recognize that there may be times when operation of the facility will cease for a short period of time due to equipment failure, lack of tires, or other situations. The Board believes that a six month period is sufficient to address such situations.

Subpart 2. Submittal of closure plan.
This subpart is needed to ensure that waste tire facility owners and operators have a plan by which they will remove waste tires, tire-derived products and residuals from processing from the facility in the event of closure. It is reasonable to require that the closure plan become a condition of a permit, stipulation agreement, or order to ensure that the plan is adhered to.

Subpart 3. Contents of closure plan.
This subpart requires that a copy of the closure plan be retained at

the facility until closure is complete and is certified by the facility owner or operator. Since the owner or operator will have to follow the closure plan in order to perform closure properly, it is reasonable that a copy of the plan be maintained at the facility.

In order for the Board to approve a closure plan, the plan must identify steps needed to close the facility at any point during its intended operating life, and to completely close the facility at the end of its operating life. To make this evaluation, the Board needs to know how and when the facility will be closed, the ultimate disposition of the waste tires, tire-derived products, and an estimate of the maximum inventory of waste tires, tire-derived products in storage at any time during the life of the facility. The Board also needs to know the schedule for the closure procedures of part 9220.0500 to ensure that closure will be done in compliance with the requirements of part 9220.0500. It is reasonable to require such information so that the Board will be able to review and approve the plan to ensure that closure activities will take place in a timely and environmentally sound manner.

Subp. 4. Amendment of the plan.
This subpart is needed to ensure that the closure plan can be amended if the owner or operator determines it is necessary. It also requires that the plan be amended if changes in the operating plan or facility design affect the closure procedures, or if the expected year of closure changes. These requirements are reasonable because the circumstances affecting the facility may change during the life of the facility, and a provision is needed in the rule to allow for this change to be made. The amended plan must be submitted to the Chair for review and approval. Since the Board is responsible for reviewing and approving the initial plan, it is reasonable that amendements to the plan also be subject to review and approval to ensure that such amendments provide for proper and timely closure of the facility.

CLOSURE PROCEDURES
Part 9220.0500

This part sets out the procedures necessary to close a waste tire facility in a manner protetive of human health, natural resources and the environment.

Subpart 1. Time for completion of closure.
This subpart requires that all facility closure activities required by this part be completed within 90 days after closure of the facility unless otherwise approved in the closure plan. All closure activities should be easily completed within 90 days. It is reasonable to have a defined time period so that the closed facility does not sit idle and become a health or safety hazard and so that the Chair can gain access to the financial assurance mechanism required by part 9220.0560 in a reasonable time.

Subpart 2. Closure procedures.
This subpart sets forth the procedures necessary to close the facility in an orderly manner to ensure that the facility's operations will be terminated with a minimum of disruption to the public.

Item A, which requires that public access to the facility be closed, is reasonable because during closure waste tires may not be accepted at the facility and provisions should be taken to prevent unauthorized dumping of waste tires.

Item B requires that a gate notice be posted indicating that the facility is closed and the location of the nearest facility where waste tires can be deposited. Such information will enable persons bringing waste tires to the facility to dispose of them properly.

Item C requires that notice of the facility's closing be given to various governmental agencies. Such notification is reasonable so that each agency which is either responsible for regulation of the facility or is concerned about the facility for fire or health reasons is informed that the facility is closing. Such notification will allow the agencies to oversee closure activities to ensure that the facility is properly closed.

Items D, E, and F require the removal and proper disposal of solid waste, waste tires and tire-derived products from the facility. Such removal is necessary to ensure that the facility is completely cleaned up and that the materials are properly managed. Since the facility will no longer be operating, there is no need for these materials to remain at the facility site after closure. One of the main purposes of the waste tire permit program is to prevent the establishment of additional tire dumps. Therefore, it is reasonable to require that all waste tire materials be removed when the facility closes.

Item G requires the owner or operator to notify the Chair when closure activities are completed. It is reasonable to require such notification so that the Chair will be able to inspect the facility as required by subpart 3 of this part, to ensure that closure has been completed in accordance with all applicable requirements.

Subpart 3. Certification of closure.
This subpart is needed to ensure that closure of the facility has been completed properly. It is reasonable that Board staff have an opportunity to inspect the facility to ensure that all duties of the owner or operator required by these rules and by the facility permit have been discharged. Also, due to the financial assurance requirements of parts 9220.0550 to 9220.0680, it is reasonable to have a certification of closure so that the Chair will be able to release the owner or operator from the financial assurance requirements once closure has been completed.

PETITION PROCEDURES
Part 9220.0510

This part establishes the procedures for submitting a petition for an exemption from the 75 percent annual processing requirement. It also sets forth the standards and criteria to be applied in determining whether an exemption should be granted.

Subpart 1. Scope.
This subpart specifies the applicability of the petition procedures. This is needed to inform persons of the opportunity to petition for an exemption to the 75 percent annual processing requirement.

Subpart 2. Submission of the petition.
This subpart allows a permittee who fails to process and remove 75 percent of the waste tires and tire-derived products received at the facility in a given calendar year to petition the Chair for an exemption under this part. Minn. Rules part 9220.0470 subpart 2, requires a waste tire processor who does not process and remove 75 percent of the waste tires and tire-derived products received or produced over the period of a year to be regulated as a storage facility under part 9220.0480. However, in certain situations, there may be valid reasons why compliance with this part will not be achieved. These reasons could include equipment failure, market failure, or a large influx of tires due to waste tire dump abatement activities. Under such circumstances, it may be appropriate to exempt the facility from regulation as a storage facility. Therefore, it is reasonable to have a provision which allows a permittee to petition for an exemption from the processing requirement. It is also required that the petition be submitted as soon as the permittee becomes aware that compliance with the 75 percent annual processing requirement cannot be achieved. Since noncompliance with the rules is grounds for enforcement action, it is reasonable to require the permittee to seek an exemption before noncompliance occurs. The Board believes that in some cases the permittee will know that compliance will not be achieved prior to the end of the year due to situations such as equipment failure or marketing problems. However, in many cases the permittee will not know that noncompliance has occured until the annual report is prepared. If this is the case, the petition may be submitted with the annual report.

Subpart 3. Information required.
This subpart sets forth the information that shall be included in the petition. The rule needs to specify under what conditions a petition will be granted by specifying the findings the Chair must make in order to grant the petition request. The petition must contain information sufficient to allow the Chair to make the findings necessary to either grant or deny the petition.

Item A specifies that the 75 percent annual processing requirement must be met for the year following the year in which the exemption is obtained. This is reasonable because the intent of the exemption is to address the situation where a permittee did not meet the processing requirement due to an unusual or unexpected occurrance. The exemption is not intended to address ongoing problems at the facility. Since petitions are granted for a one-year period and cannot be granted for two consecutive years, the permittee of a facility which cannot meet the processing requirement the next year must apply for a storage facility permit, not an exemption.

Item B requires that the exemption not cause the facility to be out of compliance with any other standard applicable to the facility. The exemption applies only to the 75 percent annual processing requirement.

The facility is still required to comply with all other applicable standards even if the exemption is granted. Therefore, it is reasonable to require that the granting of the petition not cause noncompliance with any other applicable requirements.

The information required to make the needed finding includes the following: the quantity of waste tires and tire-derived products present at the facility and expected to be received or produced at the facility during the calendar year; the quantity of waste tires and tire derived products to be processed and removed during the calendar year; the reason compliance with the 75 percent annual processing requirement was not met; and the methods to be used to ensure compliance with all applicable facility standards. Specific information requirements will vary based on the situation at the facility and the need to make the necessary findings.

Subpart 4. Determination by the Chair.
This subpart is needed to inform the permittee of the action the Chair will take in deciding whether to grant the petition. Once sufficient information has been submitted, the Chair will either grant or deny the petition within 60 days. Since the petition process will include a site inspection the Board believes a 60-day review period is needed to process a petition, evaluate the information adequately, and make a determination regarding the findings. If a petition is processed in less than 60 days, the Chair can grant or deny it sooner.

This part also provides that if a petition is granted, the exemption is valid for one year and that exemptions cannot be granted for two consecutive years. It is reasonable to limit the time period for the exemption because the exemption is intended to address short-term situations at the facility not an on-going processing capacity problem. For an on-going problem, the permittee should apply for a storage facility permit rather than an exemption.

GENERATION AND TRANSPORTATION
WASTE TIRE DISPOSAL
PART 9220.0520

This part sets out the requirements that apply to all persons who dispose of waste tires.

Subpart 1. Scope.
This subpart, which specifies who is subject to the requirements of this part, is reasonable because it informs persons who dispose of over 100 tires each year that they are subject to this rule.

Subpart 2. Waste tire disposal.
Subpart 2 requires that any person who disposes of waste tires and contracts for their disposal must contract with a person who has been issued a waste tire transporter identification number or a person exempt under Minn. Rules part 9220.0530 subpart 2. This requirement ensures that the person transporting the waste tires has notified the Board of such activities and is therefore being regulated by the waste tire management program. This requirement is reasonable to ensure that generators use transporters who properly manage waste tires in compliance

with the applicable rules and in a manner which is not a threat to human health and the environment.

Subpart 3. Record keeping.
This subpart requires persons who dispose of more than 100 waste tires per year to document all transactions involving disposal of the waste tires. The Board chose 100 waste tires per year as a cut-off level for regulation under subpart 3 because it exempts the very small disposer from the record keeping requirement. Persons who dispose of fewer than two tires each week should not be burdened by the record keeping requirement. Small gasoline service stations would be an example of a person that disposes of fewer than 100 tires each year.

For an amount less than 100, the person still must properly manage the waste tires but record keeping is not required. The goal of the waste tire management program is to protect the environment and the public from the mismanagement of waste tires. In order to do this, the Board must track all waste tires from their source to their final disposition. This tracking system involves the keeping of records by disposers, transporters and facility owners and operators. Therefore, it is reasonable to require the disposer to record all transactions with a transporter or facility owner or operator to minimize the possibility for illegal or improper disposal of waste tires. It is also reasonable that the disposer retain the transaction record and make this record available to Board staff for inspection, since the Board must be able to ensure that disposers and transporters are managing waste tires in compliance with the applicable rules.

WASTE TIRE TRANSPORTATION
Part 9220.0530

This part sets out the requirements that apply to persons in the business of transporting waste tires.

Subp. 1. Scope.
This subpart is needed so that persons governed by this rule are aware that it applies to them.

Subp. 2. Exempt persons.
This subpart is needed to inform transporters, disposers and the public that persons specified in items A to F are exempt from the requirements of this part.

Under item A, a person who transports household quantities of waste tires incidental to municipal waste collection, and who delivers those tires to a permitted solid waste facility or waste tire facility is exempt from the requirements of this part. This is reasonable since the transportation of waste tires is not the primary activity of rubbish collectors. Further, the Board does not want to discourage the continued collection of household quantities of waste tires through the existing solid waste collection system. Use of this existing system is very effective and efficient for the small number of waste tires generated by households, and it is encouraged. It is therefore reasonable to

exempt such transporters from the requirements of this part.

Item B addresses persons or organizations that receive waste tires incidental to collection of recyclable materials. It is reasonable to exempt these persons and organizations from the requirements of this part as long as the tires are delivered to a permitted solid waste facility or a waste tire facility, and as long as the transportation of tires is incidental to collecting recyclable materials since these persons are not primarily in the business of transporting waste tires. The Board realizes that such incidental transportation of waste tires will occur and does not want to discourage the collection of recyclable materials. Therefore, to encourage such activities, it is reasonable to exempt such persons from regulation under this part provided the waste tires are properly managed.

Under item C, persons transporting no more than ten waste tires at any one time to a permitted solid waste facility, or a permitted or exempt waste tire facility, are exempt from the requirement of this part. The Board chose the number ten because many households have two cars, which would account for ten waste tires if all the tires were replaced at the same time. Therefore, it is reasonable that a person transporting no more than ten waste tires be exempt from the requirements of this part provided the waste tires are properly managed.

Item D exempts persons who are transporting waste tires to be used for agricultural purposes from the requirements of this part. Since the legislation exempts a person using waste tires for agricultural purposes from the requirement to obtain a permit, the Board believes it is reasonable to allow the person transporting the waste tires to the site of use to also be exempt from regulation.

Item E exempts persons transporting tire-derived products to a market from the requirement of this part. Since these persons are incidental to the recycling and reuse of waste tires, the Board does not want to place unnecessary record keeping restrictions on them.

Item F of this subpart exempts a waste tire disposer from the requirements of this part if the disposer removes the waste tires from its site and delivers those tires to a waste tire facility. Since the disposer is only transporting its own waste tires and is not in the business of transporting waste tires generated by other persons, it is reasonable to not require this person to obtain a waste tire transporter identification number. Since this person is subject to regulations under Minn. Rules part 9220.0520, subp. 3, additional record keeping requirements are not necessary.

Subpart 3. Board identification number required.
Subpart 3 requires persons not exempt under subpart 2 who transport waste tires to obtain a waste tire transporter identification number. As the waste tire permit rules were developed, it was decided that it would be necessary to impose a degree of regulation on persons who transport waste tires to waste tire facilities. Without this regulation, the Board would have limited authority to insure that disposers were using reputable waste tire transporters and it would be difficult to

track the end user or the storage or transfer facility that receives the waste tires.

The system the Agency and Board developed requires that waste tires be delivered to acceptable facilities, and that disposers, transporters and facilities document shipments of waste tires. The Board has chosen to develop a simple manner of regulation involving the use of waste tire transporter identification numbers. By requiring a transporter to obtain an identification number and to manage the waste tires properly, and by requiring disposers to use only transporters with identification numbers, a system is established which insures that the Board can track waste tires.

The Board believes this approach is reasonable because it requires proper waste tire management in a manner which does not place a burden on either the disposer or the transporter.

Subpart 4. Waste tire transportation.
This subpart requires persons who transport waste tires to deliver the waste tires to a waste tire facility with a permit or provisional status, or one which is exempt from the permit requirement. As discussed under subpart 3 above, it is reasonable to require such delivery in order for the tire regulatory system to function. Since the intent of the waste tire permitting program is to ensure proper waste tire management, it is reasonable to require that the waste tires be delivered to an acceptable facility to prevent indiscriminate dumping.

Subpart 5. Record keeping.
This subpart requires transporters to maintain records regarding waste tire shipments. As discussed under subpart 3, in order for the waste tire regulatory system to operate, records of waste tire shipments must be maintained. Based on these records, the Board will be able to determine compliance with the applicable rules. The information required under items A to C is necessary and reasonable so that the flow of waste tires can be tracked from disposer to transporter to permitted facility.

Subpart 6. Submittal of operating record.
This subpart requires transporters to submit an operating record containing the information required under subpart 5 above. This record is to be submitted quarterly. It is reasonable to require the submittal of records so that the Board can determine compliance with applicable rules. A quarterly time period was chosen. The Board believes that such records must be submitted quarterly so that the Board can respond quickly when noncompliance occurs. The Board believes this is reasonable because it will allow sufficient staff time to review and act on the records while still providing a fairly current representation of what is occuring in the waste tire management system. Considering that the waste tire program is new and that it will take some time to implement fully, it is reasonable to require quarterly reports so that the Board can act in a timely manner to ensure compliance with the rules.

TRANSPORTER APPLICATION REQUIREMENTS

Part 9220.0540

Subp. 1. Scope.
This subpart refers transporters to the part of the rule that contains the application procedures that must be followed to obtain a waste tire transporter identification number.

Subp. 2. Application.
This part lists the five items that must be included in the transporter application and it specifies the time period in which the transporter must obtain an identification number. Transporters are required to submit an application to the Chair within 60 days after the effective date of the rule. This time period is reasonable because the information to be submitted is not complex. The information that must be included in the application is listed in items A through E.

Item A, name, address, and telephone number, is reasonable because the Board needs to know who will be using the identification number to prevent fraudulent use of that number.

Item B, geographical area to be served, is reasonable because it will help the Board prevent fraud and it will enable the Board to assist in developing a waste tire transportation system in regions of the state that are underserved.

Item C, vehicle identification information, is reasonable because it will facilitate regulation of the use of the identification number.

Item D, where tires are to be collected and delivered, will enable the Board to ascertain that the waste tires collected the transporter were disposed of properly.

Item E, estimate of the quantity and type of tires to be collected, is reasonable because it will enable the Board to estimate the number of tons of waste tires that should be disposed by the transporter.

WASTE TIRE FACILITY FINANCIAL ASSURANCE REQUIREMENTS

Parts 9220.0550 to 9220.0680 include financial assurance requirements for waste tire facilities. The objective in requiring financial assurance is to ensure that funds will be available to remove all stockpiles of waste tires and tire-derived products when the facility closes. The Board has attempted to insure that proper closure occurs without placing an undue economic burden on the owner or operator.

The current management system for waste tires does not guarantee or encourage removal and proper management of the waste tires. Under the current system, tire collectors have created tire dumps. This resulted in the legislation that directed the Agency and then the Board to develop and administer a tire dump abatment program to clean up existing tire dumps.

The financial assurance section of the rule as promulgated by the Agency was not retained by the Board due to its complexity. The section as redrafted is easier to understand and a method for calculating the amount of financial assurance required has been provided that will make compliance easier.

SCOPE
Part 9220.0550

This part informs affected persons, the public, and other governmental units of the financial assurance requirements, Minn. Rules pts. 9220.0550 to 9220.0680. It is reasonable to inform affected parties of the scope of the rules.

This part provides that the financial assurance requirements do not apply to waste tire facility owners and operators who are exempt from the requirement to obtain a permit or who are permitted by rule. Minn. Stat. § 115A.902, subd. 1 states that "...a tire collector or tire processor with more than 500 waste tires shall obtain a permit from the Agency [Board] unless exempted in subdivision 2." Subd. 2 lists five exemptions. The statute indicates that the intent of the legislature was to exempt certain facilities from regulation. It is therefore reasonable to exempt these facilities from technical regulatory requirements including financial assurance. Since facilities which are eligible for permit by rule status are limited in the amount and duration of storage of waste tires and tire-derived products, it is reasonable to exempt the facility owner or operator from the financial assurance requirements.

FINANCIAL ASSURANCE REQUIRED
Part 9220.0560

This part requires waste tire facility owners or operators to obtain financial assurance for closure of their facilities as part of the permitting process. The reasonableness for requiring financial assurance of waste tire facility owners and operators was discussed previously.

This part also refers the reader to part 9220.0580 which sets out the time period for establishing financial assurance. The reasonableness of the time period is discussed under that part.

COST ESTIMATE FOR CLOSURE
Part 9220.0570

Subp. 1. Average cost of closure estimate.
This part explains that the Chair will calculate the average cost of closure for waste tire facilities by examining the cost of transportation of waste tires to processing facilities and the cost of processing waste tires. By establishing a statewide average, cost estimates will be uniform and accurate and the Board will have the financial and personnel resources to insure that the estimate is kept up-to-date. Using a

formula to determine the amount of financial assurance required will simplify the application process for the tire collector or processor.

The rule promulgated by the Agency required the permittee to calculate the cost of closure for their facility. This would have been a difficult and potentially expensive undertaking for facility owners and the cost estimates would have varied widely. Under the Agency rule, it is likely that the permittee would need to hire a consultant to make an accurate estimate for them. The Board did not want to discourage facility owners from applying for a facility permit by making the financial assurance requirements difficult and costly.

Subp. 2. Amount.
This part specifies that the amount of financial assurance to be provided must be greater than or equal to the current closure cost estimate derived by multiplying the Chair's estimate of the per/tire statewide average cost of closure by the maximum number of tires that will be maintained at the facility as stated in the permit application. This formula insures that the facility owner or operator does not have to provide financial assurance for all tires that pass through the site in a given year, but only for the maximum number of tires that will be on the site at a given time. Should the facility close with tires still on the site, having financial assurance for the maximum number of tires will ensure that funds will be available to clean up the site completely.

SCHEDULE FOR ESTABLISHING FINANCIAL ASSURANCE
Part 9220.0580

Subp. 1. Surety bond or letter of credit.
This part requires that the owner or operator of a waste tire facility using a bond or a letter of credit to satisfy the financial assurance requirements submit evidence to the Chair with the permit application that a bond or letter of credit has been obtained. This is reasonable as it is necessary for the Board to know that the applicant will be able to cover the cost of closure before they begin to accept waste tires or before they begin to operate as a permitted waste tire facility. The approximate cost of a bond or letter of credit is 1.25% to 2% of the face value of the instrument. This should not be an unreasonable financial burden for the facility owner or operator.

Subp. 2. Closure trust fund.
This part requires owners or operators who use a closure trust fund to satisfy the financial assurance requirements to make annual payments into the closure trust fund as specified in part 9220.0610 and submit evidence to the Chair with the permit application that a trust fund has been established. The Board cannot make a decision on the permit application until it knows that the facility will have funds available to cover the cost of closing the facility.

Because a closure trust fund will require that the permittee deposit the entire amount needed to close the facility into the fund over the pay-in-period, the permittee has a longer period of time in which to make these payments. It would be very unlikely that the owner or operator

of a facility would have the resources to cover the cost of closure when the facility opens. As an example, a storage facility permitted for 200,000 tires could need as much as $100,000 to cover the cost of closing the facility if the Chair's estimate of the cost of closure is 50¢ per tire. By giving the permittee approximately five years to deposit the necessary amount of money into the closure trust fund, the Board will not be placing an unreasonable financial burden on the facility owner or operator, but will be ensuring that a financial commitment to close the facility is established.

ADJUSTMENTS TO FINANCIAL ASSURANCE LEVEL
Part 9220.0590

Subp. 1. Annual recalculation.
This subpart states that the Chair will recalculate the statewide average cost of closure annually and at other times if the cost of transportation or processing changes significantly. This is reasonable as it insures that the per/tire closure cost estimate will be accurate and thus sufficient to cover the current cost of closing the facility. More frequent recalculations will be costly, both for the Board and the permittee, who will be required to adjust the level of financial assurance when the estimate changes.

Subp. 2. Change in closure cost estimate.
This subpart requires that the permittee adjust the level of financial assurance according to parts 9220.0610 to 9220.0640 if the closure cost estimate increases. This is reasonable as the financial assurance mechanism should be sufficent to cover the cost of closing the facility.

COUNTY-HELD FINANCIAL ASSURANCE MECHANISM
Part 9220.0600

Subp. 1. Scope.
This subpart establishes that a facility owner or operator may use a county-held financial assurance mechanism to meet the financial assurance requirements of part 9220.0540. Since some counties require waste tire facility owners to establish financial assurance, the Board will allow the owner or operator to use this mechanism to meet the requirements of this rule. The intended purpose of the financial assurance is the same in both cases. Allowing a county-held mechanism meeting the standards established in the rule is reasonable because it will decrease costs to permittees while protecting the interest of the state in assuring that closure money is available.

Subp. 2. Action by the county.
This subpart establishes the circumstances (items A, B and C) when a county holding a financial assurance mechanism must gain access to the mechanism's funds. Providing this criteria in the rules is reasonable because it informs a county holding a financial assurance mechanism of the specific circumstances under which it is required to gain access to the closure funds. This provides for clear understanding and consistent action under the rules.

Item A requires that a county gain access to the funds if the facility owner or operator fails to begin or complete closure as required by this rule. This item is reasonable as it insures that the county will gain access to the financial assurance mechanism before it expires. The funds must be used to clean up the waste tire facility site as required by the rule.

Under item B, the county must gain access to a county-held financial assurance mechanism when the facility owner or operator fails to establish alternate financial assurance within the specified time period. In this case, the Board has no assurance that the facility owner or operator will establish alternate financial assurance before the existing financial assurance mechanism expires. This item is reasonable to ensure that access to the financial assurance mechanism is obtained prior to expiration of the existing financial assurance mechanism so that closure may be completed.

Item C provides that a county must gain access to a county-held financial assurance mechanism's funds if the owner or operator fails to fund the standby trust fund. Pt. 9220.0580 requires the facility owner or operator to fund the standby trust according to the time schedules established in these rules. This item is reasonable to protect the interests of the Board reqiring that the county obtain access to the funds when needed.

Subp. 3. Action by the Chair.
This subpart establishes that the Chair may gain access to a county-held assurance mechanism when the county either fails to obtain access within 30 days of the facility owner or operator's failure to perform as specified in subp. 2 or fails to use the funds for proper closure of the facility.

Allowing the county 30 days to obtain access to the funds is a reasonable amount of time for the county to act. It is reasonable to allow the Chair access to the funds under these circumstances to ensure that proper closure of the facility occurs, because the state stands as a third party beneficiary to the county's financial assurance contract.

Subp. 4. Notice.
This subpart requires the Chair to inform the county, the facility owner or operator, and all affected financial institutions of action taken under subp. 3 of this part. This provision is reasonable because each has an interest in knowing who is in control of the financial assurance money.

CLOSURE TRUST FUND
Part 9220.0610

Facility owners or operators may comply with the rules by establishing a trust fund. A trust agreement is the contract involving three or more persons which governs initiation and administration of a fund. The person who finances the trust is the grantor, and the fund's administrator is the trustee. The trustee holds legal title to the property in the trust and administers the trust for the benefit of one or more persons who are referred to as the beneficiary or beneficiaries.

A general description of how this relationship will work for waste tire facilities may prove helpful. If a facility owner or operator chooses to comply with the rules by using a trust fund, the owner or operator must choose a trustee who is empowered by state law to administer trusts. The owner or operator will make regular payments to the trust. The amount of payment is determined by the cost estimate developed under pts. 9220.0570 and 9220.0590. These payments will be set at levels that make the trust fully funded within a five year period or at the time of closure if it is scheduled to occur sooner. The Chair will give approval for disbursement from the fund after reviewing evidence that qualifying closure expenses have been paid. The rules provide for the owner or operator to be released from financial assurance responsibilities once the elements of the closure plan have been completed. Any balance remaining in the trust fund after the facility owner or operator has been released from financial assurance responsibilities will be returned to the grantor.

Subp. 1. Scope.
This subpart references parts of the rules that relate to trust funds, subps. 2 through 13 of this part. This informs waste tire facility owners and operators of the steps they must follow to establish a trust fund for financial assurance. The rule gives facility owners and operators a guide for establishing a trust fund for financial assurance. This subpart also establishes that the provisions in this part which refer to the Chair also apply to the county for trust funds held by a county. Since the rules allow a county-held financial assurance mechanism (pt. 9220.0600), this provision is reasonable so that the county may be in compliance with the rules when holding a trust fund financial assurance mechanism for a facility.

Subp. 2. Establishment of the trust fund.
This subpart references subparts 2-13 of the rule, subparts that relate to trust funds. This subpart requires that an originally-signed copy of the trust agreement accompany the facility permit application or be submitted to the Chair in accordance with the time schedule for establishing financial assurance (pt. 9220.0580). This means that a facility owner or operator who wants to obtain a waste tire facility permit must provide evidence of compliance with the applicable financial assurance requirements. This requirement provides the owner or operator of a waste tire facility with reasonable notice that compliance must be achieved before the permit can be issued.

This subpart also limits the facility owner or operator's choice of trustees. Not all financial institutions in the State have the authority to administer trust agreements. Financial institutions that want to do trust business must comply with reserve and reporting requirements. This limitation helps facility owners and operators exercise care when choosing a trustee. The limitation is reasonable to keep facility owners and operators from wasting time setting up trust agreements with companies that cannot legally administer trusts.

Subp. 3. Wording of the trust agreement.
This subpart specifies that the owner or operator of the waste tire facility use a form provided by the Chair to establish the trust agreement. This is reasonable as it ensures that all agreements will be uniform and adequate.

Subp. 4. Pay-in period.
This subpart requires facility owners or operators to make uniform annual payments into the trust fund to ensure that fund development is orderly and systematic.

This subpart also establishes that the pay-in period for a trust fund must be five years or the remaining operating life of the facility, whichever is shorter. Since a waste tire facility permit is issued for a period of up to five years, this provision is reasonable to meet the objective of providing adequate financial assurance should the facility cease operations.

Subp. 5. Payments.
This subpart sets forth the payment schedule for waste tire facility owners or operators. It requires the owner or operator to make the first payment into the trust fund six months after the waste tire facility permit is issued. This is reasonable as it gives the permittee six months to accumulate funds to provide financial assurance. Typically, this money will be collected through the waste tire tipping fee.

The rule requires the facility owner or operator to send the Chair a trustee's receipt for the first payment made into the trust fund. This is reasonable as it gives the Chair a means to determine whether the facility owner or operator has complied with the rules.

This subpart also informs the facility owner or operator how to calculate the amount of each trust fund payment. The first payment must equal

the sum of the cost estimate divided either by the number five or the number of years the facility will be open, if it is less than five years. Again, the requirement is reasonable because it puts all facility owners or operators on the same accounting basis, thus avoiding disruptive differences in rates and billing systems among facilities.

The rules require that subsequent payments be made no later than 30 days after each anniversary date following the first payment. That is, if the first payment is made on March 1, all following payments must be made by March 31 of each subsequent year. This requirement is designed to make sure that the process of developing trust funds proceeds in an orderly manner.

The rules provide a formula to assist facility owners and operators in calculating the size of trust fund payments after the first payment. The basic estimating formula is:

$$\text{Next Payment} = \frac{CE - CV}{Y}$$

in which: CE = the sum of the current closure cost estimate,
CV = the current value of the trust fund, and
Y = the number of years remaining in the pay-in period.

This formula is straightforward. It calculates relatively uniform payments that, over a fixed period, will yield a target sum. Interest on the trust fund will increase the CV variable and decrease the amount of annual payments. This formula is reasonable because it is strightforward and will enable facility owners and operators to calculate their payments into the trust funds on an equitable basis.

Subp. 6. Establishment of trust fund as an alternate financial assurance mechanism.
This subpart relates to instances where facility owners or operators initially comply with the rules by using an alternative financial instrument and then switch to a trust fund mechanism. This subpart requires facility owners or operators who switch to a trust fund to make their first deposit equal to the amount that would have been in trust if they had chosen a trust fund from the beginning.

For example, assume that a facility owner or operator first submits a surety bond in compliance with the rules and maintains the bond for three years. If the owner or operator then establishes a trust fund, the first payment made into the trust fund will be equal to 3 multiplied by the value of an annual payment. This provision allows facility owners and operators flexibility in financial planning, while protecting the interests of facility users.

A facility owner or operator can execute a surety agreement for the entire period of the facility's operating life. They can, at the same time, set aside closure funds that remain under their control. Once closure occurs, the facility owners and operators can execute a trust agreement and place in trust all the funds reserved for closure.

This provision reasonably protects the interests of all parties. The facility owners and operators retain use of set-aside funds and the Board gets the protection offered by the surety, during the operating life of the facility. When the facility has closed, a trustee provides the needed security. The same advantage exists if facility owners or operators choose to purchase a letter of credit. The arrangement is formalized in pt. 9220.0620. This provision is needed to provide facility owners and operators with flexibility.

Subp. 7. Additional payments.
This subpart covers situations where cost estimates change. If a change occurs that increases costs, the facility owner or operator has 60 days to make appropriate adjustments. The owner or operator can either adjust the trust fund amount or rely on other financial instruments to cover the difference. This requirement gives facility users and the Board a reasonable assurance that the trust fund will be developed to reflect current conditions.

Subp. 8. Request for release of excess funds.
This subpart gives facility owners and operators the same assurances provided to facility users and the Board under subp. 7. This provision makes it possible for a facility owner or operator to receive the excess funds if conditions change and the value of the trust fund exceeds cost estimates.

The facility owner or operator must send the Chair a written request for release of the excess funds. The owner or operator must submit evidence of the difference between the cost estimates and the fund balance. This provision is reasonable because facility owners and operators should not have to set aside more resources than are needed.

Subp. 9. Substitution of alternate financial assurance mechanisms.
This subpart allows the facility owner or operator to substitute another financial instrument for the trust fund. For this to occur, the owner or operator must establish the alternate mechanism and then send the Chair a written request to release funds held in trust. This provision is reasonable because once the facility owner or operator has executed an acceptable alternate instrument, there is no further need for the trust fund.

Subp. 10. Release of funds.
This subpart sets limits on the time the Chair has to respond to requests submitted under subps. 8 and 9. This subpart requires the Chair to instruct the trustee to release the requested funds within 60 days after the Chair receives the request. This is reasonable because facility owners and operators should not have to wait indefinitely for excess funds to be returned. The release is limited to the amount in excess of current closure cost estimate.

Subp. 11. Notification.
This subpart relates to missing or late trust fund payments. If a facility owner or operator misses a scheduled trust fund payment, the trustee has to notify both the facility owner or operator and the Board Chair within ten days. This requirement is customary and reasonable. Representatives

of trust companies have indicated that they can easily manage this reporting requirement.

The facility owner or operator has 60 days after the Chair receives notice of nonpayment to make up the payment. This can be done by making the required payment (item A) or by providing an alternate financial assurance mechanism (item B). This allows the facility owner or operator a reasonable time to correct the error.

This subpart also provides that the facility owner or operator may not accept additional waste tires and must begin facility closure if the required payment is not provided or alternate financial assurance mechanism is not established within the 60 days of its due date (item C). This requirement insures that facility closure will begin before financial assurance is lost. If the facility remained open it would continue to accumulate waste tires thus adding to closure costs at a time when the facility owner or operator is not setting aside funds to cover those costs.

Subp. 12. Reimbursement.
This subpart describes trust fund use. This subpart specifies that trust money can only be used to reimburse incurred expenses. This means that the money cannot be released in advance of expenses.

This provision is reasonable for two reasons. First, this should not disrupt contractual relations between the permittees and clean up contractors. Contractors are not ordinarily paid in advance. Instead, they receive regular payments for orderly progress on a specified work schedule or they are paid as they complete specified major features of the project. Contractors would not have to be paid directly from the trust fund. Instead, the facility owner or operator could pay the contractor. The trust would then reimburse the facility owner or operator. Second, this provision is reasonable because it decreases the risk that the work will not be done or done poorly. This subpart also allows the Chair up to 60 days to approve the release of funds. This time is allowed so that the Chair can review the requests for reimbursement and inspect the site to make sure that work has been properly completed.

Once the Chair is satisfied that the reimbursement request is proper, the trustee releases the funds to the facility owner, operator or an authorized contractor. However, if the Chair has reason to believe that closure costs will exceed the value of the trust fund, reimbursement may be withheld. This provision is designed to protect the integrity of the trust fund. If closure operations have begun and it becomes obvious that the work has been inadequate, the resources of the trust fund will not be used.

Subp. 13. Termination of trust fund.
This subpart describes the conditions under which the Chair will terminate the trust agreement. The first condition occurs if the facility owner or operator substitutes another approved instrument for the trust fund. The second condition occurs if the Board releases the facility owner and operator from responsibility to comply with the financial assurance rules under pt. 9220.0670. Both conditions describe circumstances under

which the trust fund serves no purpose. It is reasonable to end the trust agreement when it is not needed.

SURETY BOND GUARANTEEING PAYMENT INTO A STANDBY TRUST FUND
Part 9220.0620

Facility owners or operators may comply with the rules by using a surety bond to guarantee that the facility owner or operator will establish a trust fund before the facility is closed. Facility owners or operators who choose this option can control their funds and use them to their benefit. At closure, the owner or operator must place the full amount of the current closure cost estimate into a trust fund. This option is reasonable as it allows the owner or operator to maintain control of their resources while providing users and the Board with assurance that the facility will be closed properly.

A discussion of how surety bonds function will be helpful. The contract used to execute the surety agreement refers to the owner or operator as the "principal." The agreement specifies actions that the principal will perform. In this case, it is development of a standby trust fund. If the principal fails to perform, the Chair can "call in" the bond and the surety must place the specified amount, the "penal sum," in a standby trust fund. This fund is established when the surety agreement is executed. The Board can direct the work to be financed from the trust fund. This leaves the surety with a loss that will be recouped from the principal. Sureties charge for assuming risk. The cost of a surety bond ranges from one to three percent of the bond's penal sum. Sureties may also require collateral before they will execute the surety agreement.

Subp. 1. Scope.
This subpart references parts of the rules that relate to surety bonds, subps. 2 through 10 of this part. This clarifies the steps that must be followed to establish a surety bond for financial assurance. The rule gives owners and operators a reasonable guide to purchase a surety bond. This subpart also establishes that provisions which refer to the Chair also apply to the county if the surety bond is held by a county. Since the rules allow for a county to hold the financial assurance mechanism (pt. 9220.0600), this provision is reasonable so counties can comply by holding a surety bond as the financial assurance mechanism.

Subp. 2. Surety bond requirements.
This subpart limits the owner's and operator's choice of sureties and establishes a compliance schedule. The subpart refers the owner or operator to a federal document, Circular 570, from the Department of the Treasury, which lists the sureties acceptable to bond writers for federal projects. See Exhibit 8 . This list includes almost 300 companies. Over 30 companies are located in Minnesota. This circular will help facility owners and operators choose a responsible firm. It also relieves the Board of the need to develop a certification program for these firms. This requirement is reasonable because it takes advantage of certification work done by the federal government.

The compliance schedule in this subpart is identical to the compliance

schedule of pt. 9220.0630 and 9220.0640, subp. 2. That is, owners or operators must submit their bonds to the Chair with their permit application. This is reasonable as the Chair must know that the facility has financial assurance before a permit can be issued.

Subp. 3. Wording of the surety bond.
This subpart requires that the surety bond duplicate a form provided by the Chair. This requirement is reasonable because it assures that the instrument will be adequate.

Subp. 4. Establishment of a standby trust fund.
This subpart requires that the facility owners and operators who choose surety agreements must also establish standby trust funds which meet the requirements of pt. 9220.0560. This requirement is included as a practical matter. State agencies cannot take and manage money as though it were their own. All receipts must become a part of general revenues. Minn. Stat. § 16A.72 (1986). This means that if the standby trust fund were not required, payments made by sureties to the Board must be transferred to the State's general fund. There would be no guarantee that the payments by a surety would be appropriated to the Board and needed work would be done. The standby trust fund offers the surety a way to honor its commitment without having the Board receive money. If the Chair has to call in a bond, the trustee of the standby trust fund receives the payment. The fund is then administered under pt. 9220.0610. This provision is reasonable because statutes prohibit the Board from managing funds that are not appropriated to the Board.

Subp. 5. Performance guarantee.
This subpart specifies the actions that the surety must guarantee. The surety is required to guarantee that:

- the facility owner or operator will assure that the standby trust has a value at least equal to the penal sum of the bond before the owner or operator begins to close the facility;
- the facility owner or operator will put into the standby trust an amount equal to the penal sum within 15 days after the Chair, the Board or a court issues an order to close the facility; or
- the facility owner or operator will provide alternate financial assurance to comply with the rule within 90 days after the surety sends the owner or operator a notice of cancellation.

The first requirement is reasonable to ensure that the proper amount of funds are available to close the facility before the owner or operator begins closure.

Under this requirement, once the Chair, the Board or a court issues an order to close the facility, proper funding must be established. This subpart is reasonable because it ensures that funds will be available for closure once it is deemed that the facility must close. Fifteen days is a time limit that will enable permittees to take the actions needed to establish the funding.

The third provision is reasonable because it establishes continuity in the coverage of obligation. The reasonableness of allowing the facility

owner or operator 90 days is discussed under the reasonableness for subp. 9 of this part.

These conditions specify the circumstances that the facility owner and operator, the Board and the surety want to occur. If these conditions are met, there is no need to call in the bond. The surety promises that a trust fund will be developed or the surety will pay for closure. These conditions are reasonable because they provide for continuity in the coverage of obligations. It is reasonable to provide the surety with a description of the circumstances that lead to the surety becoming liable.

Subp. 6. Failure to perform.
This subpart notifies the surety of its liabilities. If the Chair determines that any of the conditions described in subp. 5 have not been met, the surety is liable for the penal sum. It is reasonable to let the Chair determine whether there has been noncompliance because the Chair will have the necessary information. It is reasonable to notify the surety of these responsibilities because the state will be the third party beneficiary of the surety contract.

Subp. 7. Penal sum.
This subpart specifies the amount of the bond's penal sum. The penal sum must equal the current closure cost estimate. All interests are protected when the surety, the facility owner and operator and the Board know the extent of the surety's liabilities. This provision is a reasonable limit on the surety's liability.

Subp. 8. Changes to penal sum.
This subpart covers situations where the current closure cost estimate changes. If the current closure cost estimate increases, the facility owner or operator has 60 days to increase the bond penal sum or find an alternative means to cover the difference. This allows the owner or operator a reasonable time to make up the shortfall in coverage. If the current closure cost estimate decreases, the facility owner or operator can reduce the bond's penal sum with written approval from the Chair. The interest of the state is protected by requiring that any reduction be contingent on the Chair's approval.

Subp. 9. Notification.
This subpart specifies the conditions under which a surety may cancel a bond. The surety must notify the Chair and the facility owner or operator if the bond is to be cancelled. The notices must be sent by certified mail at least 120 days before the cancellation is stated to occur. Return receipts will provide evidence of when the Chair receives the notice.

This provision ensures that there will be no gap in coverage caused by the surety's decision to cancel. The period between the notification and the specified cancellation date allows the facility owner or operator time to find another surety or means to comply with the rule. This period is 30 days longer than the time period set in subp. 5, item C., which gives the Chair additional time to call in the bond. During this 30-day period, the surety is liable under the bond's conditions.

An example will help to explain the process. A facility owner or operator receives notice that the surety bond will be cancelled. If the facility owner or operator finds an acceptable alternative financial mechanism within 90 days, then the bond can be cancelled 30 days later with no effect. There will be no gap in coverage. However, if the owner or operator does not find an acceptable alternative mechanism, the Board can then call in the bond.

This provision is reasonable to ensure that coverage will not lapse. Either the surety will guarantee that the owner or operator will fund the trust, or the trustee will manage the trust after the surety pays into the fund.

This subpart also requires a surety bond held by a county to provide a 150-day cancellation period. This provision ensures that there will be no gap in coverage caused by the surety's decision to cancel. This period is 30 days longer than the time period allowed if the Board held the surety bond. The extra 30 days is needed because pt. 9220.0600, subp. 3 does not allow the Chair access to the surety bond until the county has failed to gain access to the funds provided by the surety bond within 30 days following the 90-day period allowed a facility owner or operator to provide an acceptable alternate financial assurance mechanism.

This provision is reasonable to ensure that, once begun, coverage will not lapse at facilities where the county chooses to hold the financial assurance mechanism.

Subp. 10. Cancellation of the surety bond.
This subpart describes the two conditions under which the facility owner or operator can cancel the surety bond. The bond can be cancelled by the owner or operator who provides evidence that an alternative mechanism is in effect, or the bond can be cancelled if closure of the facility is complete in accordance with the closure plan. Once the facility owner or operator sends such evidence to the Chair, the Chair's written approval will allow the facility owner or operator to cancel the bond. This provision reasonably enables the Board to ensure that there is no gap in coverage.

LETTER OF CREDIT
Part 9220.0630

Waste tire facility owners and operators may choose to comply with the rules by using an irrevocable letter of credit. A letter of credit extends the credit of one individual or organization (normally a bank) which is superior to that of a second individual or organization (the facility owner or operator), to a third individual or organization (the Board).

A discussion of how a letter of credit will function will be helpful. The letter of credit will operate like a surety bond. A bank issues the facility owner or operator credit equal to the sum of the current closure cost estimate. The letter of credit will remain in effect until the facility owner or operator is released from the responsibility to

comply with the rules. While the letter is in effect, the bank will honor any draft properly presented by the Chair. If the facility owner or operator has failed to perform the specified closure actions, the Chair presents a draft to the bank, and the bank deposits the sum into a standby trust fund. A bank will recover the extended credits from the facility owner or operator. Banks charge for letters of credit at rates comparable to rates charged for surety bonds. Banks also charge interest on the outstanding balance of extended credit.

Except as noted below, the requirements of subps. 1-10 of this part are substantively the same as the requirements of subps. 1-10 of pt. 9220.0620. The discussion of the reasonableness of the requirements of subps. 1-10 of pt. 9220.0620 also supports the reasonableness of subps. 1-10 of this part and is hereby incorporated by reference.

Subp. 5. Notification.
This subpart specifies the conditions under which the issuing institution may cancel the letter of credit. The letter of credit must be irrevocable for at least one year. This requirement is reasonable to give the facility owner or operator and the Chair certainty about coverage. The letter of credit must also be extended automatically for one year following the expiration date unless 120 days before expiration (or 150 days for a county-held instrument) the issuing institution gives notice of cancelation.

As discussed in connection with pt. 9220.0620, subp. 9, this provision ensures that there will be no gaps in coverage caused by the bank's decision to cancel.

Subp. 8. Failure to perform.
This subpart specifies the conditions under which the Chair shall draw on the letter of credit. If the facility owner or operator does not perform closure according to the closure plan or permit conditions, the Chair shall draw on the letter of credit. This provision is reasonable because it clarifies the conditions under which the issuing institution will incur costs. This specification is reasonable to help all parties understand their responsibility.

Subp. 9. Failure to establish alternate financial assurance.
This subpart gives the facility owner or operator 90 days after receiving a cancellation notice to find another financial assurance mechanism with which to comply with the rules. If the owner or operator does not find an alternate mechanism, the Chair must draw on the letter of credit. The Chair may delay this drawing if the bank further extends the letter of credit. However, the Chair must draw on the letter of credit during the last 30 days of any extension if the facility owner or operator has not established another financial mechanism. These provisions are reasonable to ensure that coverage of closure costs will not lapse.

Subp. 10. Termination of the letter of credit.
This subpart places a further limit on the issuing institution's liability. The facility owner or operator will, at some point, be released from responsibility to comply with the rules. The conditions for such release are in pt. 9220.0670, and will be discussed below. If the owner or

operator is released from financial assurance responsibilities, the Chair must return the letter of credit to the issuing institution. It is reasonable to release the issuing institution from responsibility after the Chair relieves the facility owner or operator from compliance. There is no need for a letter of credit after the Board has released the facility owner or operator from the financial assurance requirement.

SURETY BOND GUARANTEEING PERFORMANCE OF CLOSURE FOR PERMITTED FACILITIES
Part 9220.0640

Facility owners or operators may choose to comply with the rules by using a surety bond that is somewhat different than the bond described in pt. 9220.0620. The surety is required, under this part, to guarantee that the facility owner or operator will perform facility closure as specified in the closure plan. The bond allowed under pt. 9220.0620 uses payment into the required standby trust as the measure of the surety's liability. The bond described in this part requires performance of closure itself. Setting aside this difference, the two bonds operate in the same manner. The requirements of subps. 1-10 of this part are substantially the same as subps. 1-10 of pt. 9220.0620. The discussion of the reasonableness of the requirements of subps. 1-10 of pt. 9220.0620 also supports the reasonableness of subps. 1-10 of this part and is hereby incorporated by reference.

Subp. 11. Limitation on liability.
This subpart places a further limit on the surety's liability. Eventually, the facility owner or operator will be released from responsibility to comply with the rules. This subpart releases the surety from responsibility for the facility owner's or operator's actions after the Chair has released the owner or operator from responsibility. It is reasonable to cancel the surety bond agreement after the Chair has determined there is no need to continue the financial assurance requirement.

USE OF MULTIPLE FINANCIAL ASSURANCE MECHANISMS
Part 9220.0650

This part allows the facility owner or operator to comply with the rules by using more than one financial assurance mechanism. Facility owners or operators can use any combination of trust funds, letters of credit or surety bonds that guarantee payment into trust funds. The instruments must conform to applicable parts of the rules. If the facility owner or operator chooses to use more than one financial assurance instrument, the combined value of these instruments must equal the current closure cost estimate. This provision is reasonable because the Board must make sure that the instruments afford complete coverage of the costs.

The provision is included to help facility owners and operators manage changing circumstances. For example, an owner or operator may have a bond or a letter of credit and a short-term condition arises which changes the closure cost estimate. The surety or bank may not want to extend the terms of its agreement on short notice. The facility owner or operator may then find another instrument or alter an existing

instrument so that the total once again complies with the rule. This provision is reasonable because it gives flexibility to the facility owners or operators without compromising the goals of the rule.

The list of available instruments excludes the surety bond that guarantees performance. If there is default, combining a performance bond with funds from other instruments would become extremely complex. This exclusion is reasonable because other instruments are available to allow facility owners and operators the range of choice they will need.

If a trust fund is used in combination with other instruments, it can serve as the standby trust for the bond or letter of credit. A single standby trust can be used for two or more instruments. This is reasonable because it helps the facility owners or operators reduce the costs of compliance.

USE OF FINANCIAL ASSURANCE MECHANISM FOR MULTIPLE WASTE TIRE FACILITIES
Part 9220.0660

This part allows facility owners or operators who have more than one facility to use a single financial instrument to cover all sites. The face value of that instrument must equal the total value that would result if all facilities had been covered by individual instruments. For example, a facility owner or operator may have three facilities and the current closure cost estimate is $500,000 at each facility. A single letter of credit for $1.5 million can be used to cover all three facilities.

Facility owners or operators who choose this option must identify the facilities covered and the extent of coverage for each facility. This is needed for the Chair to know the limit to which the instrument can be used for each facility. The Chair must know these limits because the rules constrain the use of the instrument to only those amounts specified for coverage at each facility. Referring back to the previous example, the rules would allow the Chair to draw $500,000 for each facility.

RELEASE OF OWNER OR OPERATOR FROM FINANCIAL ASSURANCE REQUIREMENTS
Part 9220.0670

As noted earlier, there will be a time when there is no need for financial assurance at the facility. The owner or operator should be released from financial assurance responsibility at this time. This part establishes the satisfactory closure of the facility as the condition for such a release. It is reasonable to release facility owners and operators from responsibility for financial assurance for closure once closure is completed and financial assurance is no longer needed.

INCAPACITY OF OWNERS OR OPERATORS, GUARANTORS, OR FINANCIAL INSTITUTIONS
Part 9220.0680

This part describes the facility owner's or operator's obligations if bankruptcy occurs. The Board, as regulator of and beneficiary of financial assurance instruments, will have interests to maintain if either the facility owner or operator or one of its financial assurance providers fails.

Bankruptcies occur because persons or business firms cannot pay their debts. Bankruptcy proceedings are usually referred to according to the chapter of the federal Bankruptcy Code under which they appear. Chapter 7 proceedings involve complete liquidation of a firm's assets. Creditors in these cases are reimbursed from the distribution of the bankrupt's property. Chapter 11 proceedings involve debt reorganization. Reorganization provides creditors with a plan that will allow debt repayment from future earnings.

The ability of state environmental agencies to gain compliance from persons or firms in bankruptcy has not been very successful. See Exhibits 5 and 6. The Bankruptcy Code is designed to give debtors a fresh start, while at the same time protecting the interests of creditors. This goal can conflict strongly with environmental protection goals. If a facility owner or operator begins bankruptcy proceedings, it is reasonable to require that the Board be notified so that the Board can actively participate in the proceedings. The Board's interests will be substantial, since the outcome may determine if proper closure will occur.

Subp. 1. Notification of bankruptcy.
The facility owner or operator must notify the Chair within ten days after bankruptcy proceedings have begun. The notice must be sent by certified mail.

Subp. 2. Incapacity of financial institutions.
If the financial intermediary becomes bankrupt or loses authority to conduct business, the facility owner or operator is without financial assurance. In this case, the facility owner or operator has 60 days to find another intermediary and execute an acceptable financial instrument. This provision is reasonable to ensure that coverage will not lapse.

IV. SMALL BUSINESS CONSIDERATIONS

Minn. Stat. § 14.115, subd. 2 (1986) requires State agencies proposing new rules which affect small businesses to consider the following methods for reducing the impact of the rules 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.

Minn. Stat. § 115A.902, subd. 2 (1986) provides that:

A permit is not required for:

(1) a retail tire seller for the retail selling site if no more than 500 waste tires are kept on the business premises;

(2) an owner or operator of a tire retreading business for the business site if no more than 3,000 waste tires are kept on the business premises;

(3) an owner or operator of a business who, in the ordinary course of business, removes tires from motor vehicles if no more than 500 waste tires are kept on the business premises;

(4) a permitted landfill operator with less than 10,000 waste tires stored above ground at the permitted site; or

(5) a person using waste tires for agricultural purposes if the waste tires are kept on the site of use.

The Board may not require a waste tire facility owner or operator to obtain a permit for a waste tire facility which is exempted from the statutory requirement to obtain a permit from the Board. All of the exemptions listed above pertain to small businesses and reduce the impact of the rules on these businesses.

In drafting the proposed waste tire permit rules, the Board gave consideration to small businesses consistent with items (b), (d) and (e) above. For example, Minn. Stat. § 115A.902, subd. 1 (1986) provides that:

> A tire collector or tire processor with more than 500 waste tires shall obtain a permit from the [Board] unless exempted in subdivision 2. The [Board] may by rule require tire collectors or tire processors with less than 500 waste tires to obtain permits unless exempted by subd. 2.

The provision allows the Board by rule to require tire collectors or tire processors with less than 500 waste tires to obtain permits unless exempted by subdivision 2. The Board chose not to issue permits to tire collectors or tire processors with less than 500 waste tires because the risk of environmental damage from such a small number of waste tires is minimal. Instead, an owner or operator of a facility with less than 500 waste tires may be granted a permit without submitting the lengthy application required of larger facilities. This is known as a permit by rule. The Board is convinced that, without sacrificing environmental protection, this permit by rule approach will save the regulated community

the expense and effort involved in applying for a waste tire facility permit. Since many waste tire facilities with less than 500 tires are small businesses, the permit by rule approach will reduce the impact of the rule on these businesses.

Within the permitting rule, there is a technical section containing waste tire facility standards. Compliance with the technical standards is required as part of the permit conditions. This rule classifies waste tire facilities into three categories: transfer facilities, processing facilities, and storage facilities. There are general technical requirements that all facilities must comply with as well as requirements specific to each facility type. In general, the larger the facility (the greater the number of tires to be stored on the site), the more stringent the technical standards. Thus, the proposed rules address the concerns of small businesses to the maximum extent possible without undermining the goals of Minn. Stat. § 115A.902 (1986) or posing a threat to human health, the environment, or natural resources.

Minn. Stat. § 14.115 assumes that if small businesses are affected by new rules, the impact will be negative. The law requires an agency to mitigate the negative impact if possible. While these proposed rules may have a negative impact, they also provide a substantial positive impact on small businesses. As the waste tire permit rules begin to be implemented, the system will offer increased opportunities for entrepreneurship in areas such as collection, processing, and storage systems for waste tires and tire-derived products, waste tire transportation, and waste tire facility construction.

The Agency and Board actively sought and encouraged input from the regulated community, including affected businesses, during the drafting of the proposed rules. Many comments were received during this process from small businesses, and the rule as drafted to take many of these comments into account. However, the objective of Minn. Stat. §§ 115A.90 - 115A.95 is to protect the public health and welfare and the environment from the adverse effects which will result when solid waste is mismanaged. Therefore, except for the provisions discussed above, applying less stringent requirements to the management of waste tires by small businesses, irrespective of quantity, would be contrary to the Board's mandate since waste from a small business can cause the same environmental harm as that of larger businesses.

To reiterate, the Board believes the proposed rules address the concerns of the small business to the maximum extent possible without undermining the goals of Minn. Stat. §§ 115A.90 - 115A.95 (1986).

V. CONCLUSION

The Board staff has in this document and its exhibits made its presentation of facts establishing the need for and reasonableness of the proposed waste tire permit rules. This document constitutes the Board's statement of need and reasonableness for the proposed waste tire permit rules.

VI. LIST OF EXHIBITS

In drafting the proposed rules, the Board relied on technical documents prepared by a number of sources. The following documents were used by Board staff in developing these rules and are relied on by the Board as further support for the reasonableness of the proposed rules. These documents are available for review at the Board at 1350 Energy Lane, St. Paul, Minnesota 55104.

1. Division of Disease Prevention and Control. 1979. "The Association of Artificial Containers and LaCrosse Encephalitis Cases in Minnesota." Minnesota Department of Health. Published. (Attached)

2. Science Magazine. 1984. "The Tire Trap." Published. (Attached)

3. Waste Recovery, Inc. 1985. Scrap Tires in Minnesota. Minnesota Pollution Control Agency. Published. (On file)

4. National Fire Protection Association. 1980. The Standard for Storage of Rubber Tires. NFPA 2310 - 1980 Edition. Published. (Attached)

5. U. S. General Accounting Office. February, 1986. "Hazardous Waste: Environmental Safeguards Jeopardized When Facilities Cease Operating." (Attached)

6. Memorandum from Paul Bailey, et. al., ICF, Inc. to Carole Ansheles and Debra Wolfe, U.S. Environmental Protection Agency dated June 28, 1985. "Preliminary Results of Case Study of Bankrupt TSDF's (Transfer, Storage, and Disposal Facilities)." (Attached)

7. Minnesota Department of Energy and Economic Development Inter Office Memorandum from Marion Kloster to Jeane Endahl Dated December 16, 1986. "International Baler Corporation." (Attached)

8. U.S. Environmental Protection Agency. "Background Document: Standards Aplicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities under RCRA, Subtitle C, Section 3004," 40 CFR Parts 264 and 265, Subpart H, December 1980. pp. I-91 to I-101. (Attached)

Date: 1/25/88

Joseph M. Pavelich, Chair
Minnesota Waste Management Board