

STATE OF MINNESOTA
WASTE MANAGEMENT BOARD

In the Matter of the Proposed
Rule Amendments Governing
Waste Tire Abatement, Minn.
Rules Parts 9220.0100 to 9220.0180

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The waste tire abatement program was authorized by legislation passed in, and codified as Minn. Stat. § 115A.906. Action under the program was initiated by the Minnesota Pollution Control Agency (MPCA), which developed and implemented emergency abatement rules. The emergency abatement rules became effective November 21, 1985, and were effective for one year. During the one year period the emergency abatement rules were effective, the MPCA developed and implemented permanent abatement rules. The permanent abatement rules became effective December 15, 1986. On July 1, 1987 the waste tire program was transferred to the Minnesota Waste Management Board (Board) by Administrative Order No. 144.

II. STATEMENT OF BOARD'S STATUTORY AUTHORITY

The Board's statutory authority to adopt the rule amendments is set forth in Minn. Stat. § 115A.914, which provides:

The agency [board] shall adopt rules for the administration of waste tire collector and processor permits, waste tire nuisance abatement, and waste tire collection.

Under this statute the Board has the necessary authority to adopt the proposed rule amendments. The Board finds that the amendments are needed to implement the program created by Minn. Stat. § 115A.906 properly.

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1986) requires the Board to make an affirmative presentation of the facts establishing the need for and the reasonableness of the rule amendments as proposed. In general terms, this means that the Board must set forth the reasons for its proposed changes, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that the problem exists which requires administrative attention, and reasonableness means that the solution proposed by the Board is appropriate. The need for the rule amendments is discussed below.

The waste tire abatement rules were originally promulgated by the MPCA. The authority to administer the rules has since been transferred to the Board. Therefore, a majority of the amendments to the abatement rule are word changes needed to reflect the transfer of authority. However, the Board is also proposing amendments that are not a result of the transfer of authority. These rule amendments are needed to clarify the existing rule, and to make the program easier to administer.

IV. STATEMENT OF REASONABLENESS

The reasonableness of the proposed changes that are not a result of the transfer of authority are discussed below. There are a total of nine of these amendments. Some amendments provide clarity by adding or changing vague language. Other amendments change the requirements to improve program administration.

1. Part 9220.0110 Subp. 7a, (oversize waste tire definition).

Defining the term "oversize waste tire" will result in the clarification of Part 9220.0170 Subp. 4. As originally drafted, the definition was written into the text of the rule two times.

This proved cumbersome in practice, and developing a definition was therefore reasonable.

2. Part 9220.0130 Subp. 2.c, (additional information required).

The additional information required as a result of this amendment will enable the Board to determine if the market used in the abatement of the waste tires is environmentally acceptable.

3. Part 9220.0130 Subp. 3.d, (additional information required).

The additional information required as a result of this amendment will enable the Board to determine if the market used in the abatement of the waste tires is environmentally acceptable.

4. Part 9220.0130 Subp. 4, (addition of "waste tire permit").

The inserting of "waste tire permit" and the deletion of "technical" clarifies that the responsible tire collector must comply with all aspects of the waste tire permit rule when seeking to obtain a permit while under an abatement action.

5. Part 9220.0160 Subp. 2, (extending burning limit distance).

This proposed amendment extends the required distance between the waste tire pile and open flames, blow torches, or highly flammable substances from ten to fifty feet. The Board believes that the ten foot limit was too close and was inadequate to prevent fires at the tire stockpile. The fifty foot requirement is consistent with the fifty foot requirement for fire lanes and perimeter roads.

6. Part 9220.0170 Subp. 2, (the deletion of the notification requirement).

The notification requirement under this section was originally required under the emergency abatement rules. The notification period was open for a 60 day period from November 21, 1985 to January 21, 1986. The original intent of the notification was to help the MPCA determine which waste tire stockpiles existed before the

effective date of the emergency rules (November 21, 1985) and how many waste tires were in those stockpiles. The reason for this information was needed was that the rules only allowed for the reimbursement of the waste tires stockpiled before the effective date of the emergency rules. In implementing this restriction, however, the Board discovered that the numbers contained in the notices submitted to the Board were inaccurate and could not be used as a basis for calculating waste tires eligible for reimbursement. The Board also found that many tire collectors were unaware of the notice requirement, or assumed that because the site had been inspected it did not apply to them. Thus, many tire dump owners failed to submit the notice and would be ineligible to receive reimbursement. When the Board can estimate the number of waste tires that were at a site before the November 21, 1985 deadline, total elimination of a tire collector from receiving reimbursement seems to be an unnecessarily harsh result. The Board therefore proposes to eliminate it. The proposed amendment does not change the limit on reimbursement. Responsible tire collectors who seek reimbursement for the abatement of a waste tire stockpile will still need to establish that the waste tires were collected before November 21, 1985.

7. Part 9220.0170 Subp. 4, (clarification of the term of the stipulation agreement and the replacement of the terms "oversize waste tire").

The addition of the language "The reimbursement rate shall remain in effect for the term of the stipulation agreement" is necessary to clarify that the reimbursement rate agreed upon between the Board and the responsible tire collector will remain in effect for the full term of the agreement. This is reasonable because it would be administratively burdensome for the Board to recalculate the reimbursement rate with every minor "cost of doing business" change.

The use of the term "oversize waste tire" was discussed under amendment 1, above.

8. Part 9220.0170 Subp. 5, (clarification of the reimbursement total and the deletion of language regarding amendment of the reimbursement total).

The insertion phrase "the waste tires eligible for the reimbursement in the tire dump" clarifies what the Board bases the reimbursement total on. The total was intended to be based on the number of waste tires existing in the waste tire dump before November 21, 1985.

The deletion of the language reading "to change the total, a amendment of the stipulation shall be required. The agency shall not consider or approve requests for reimbursement for more than ten percent above the dollar amount established in the original stipulation agreement" is intended to eliminate amendments of the reimbursement total established in the stipulation agreement. This change is consistent with the change eliminating changes to the reimbursement rate during the course of the abatement action. For administrative efficiency, the Board cannot amend the reimbursement total once established. The total should represent the Board's and the responsible tire collector's best estimate as to the number of waste tires at the tire dump. History has shown the Board's estimating procedure to be fairly accurate. Thus, there should be no need to amend the total. With the amendment, the Board will enter into a stipulation agreement for the abatement of the waste tire stockpile and negotiate a total reimbursement as required by Part 9220.0170 for the abatement of waste tire stockpile, and the Board and the responsible tire collector will both know up front the amount of money to be spent

and received for the abatement of the site. The reimbursement payment will be made to the responsible tire collector pursuant to Part 9220.0180.

9. Part 9220.0180 Subp. 4, (deletion of actual cost requirement).

The amendment to this part changes the requirements for releasing a reimbursement payment to the responsible tire collector. The Board believes that the requirement that reimbursement be based on actual costs incurred was burdensome and unnecessary. The formula in the rules provides an adequate basis for establishing the cost of abatement. More accurate site specific cost figures would be difficult to generate and verify, slowing the reimbursement payments for work completed. This proposed change is consistent with other changes that make the negotiated rate/total for reimbursement the sole basis for the reimbursement payment for the abatement of the site.

Based on the foregoing, the proposed amendments to Minn. Rules pts. 9220.0100 to 9220.0180 are both needed and reasonable.

Date 2/15/88



Joseph M. Pavelich, Chairman

Minnesota Waste Management Board

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