

STATE OF MINNESOTA  
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rule  
Amendments Governing the Training  
and Certification of Underground Storage Tank  
Contractors, Minn. Rules. ch. 7105

STATEMENT OF NEED  
AND REASONABLENESS

I. INTRODUCTION

The subject of this proceeding is the amendment of the rules of the Minnesota Pollution Control Agency (hereinafter "Agency") governing the certification of underground storage tank (UST) supervisors and contractors. On November 9, 1992, the Agency published a Notice to Solicit Outside Opinion in the State Register seeking public comment concerning the recertification program. At the same time, the Agency provided notice that a rule advisory group would be formed to assist the staff in developing the rule amendments. In addition to being published, the notice was also mailed to each certified supervisor.

The Agency is proposing UST training and certification rule amendments that include several housekeeping measures to refine parts of the existing rules that have been identified by Agency staff, the regulated community, and an advisory work group consisting of tank contractors, tank owners, and industry representatives as needing clarification or correction. The revisions fall into two categories; amendments proposed solely to enhance clarity and reduce ambiguity, and amendments proposing minor program modifications, especially regarding requirements for recertification of UST supervisors. The authority to adopt the proposed amendments is provided under Minn. Stat. § 116.07, subp. 4 (1992) and Minn. Stat. § 116.491 (1992).

This Statement of Need and Reasonableness is divided into seven parts. Following this introduction, Part II contains the Agency's explanation of the need for the proposed amendments. Part III discusses the reasonableness of the

proposed amendments. Part IV documents how the Agency has considered the methods of reducing the impact of the proposed amendments on small businesses as required by Minn. Stat. § 14.115 (1992). Part V considers the costs to local public bodies as required by Minn. Stat. § 14.11, subd.1 (1992). Part VI discusses the economic factors the Agency considered in drafting the amendments as required by Minn. Stat. § 116.07, subd. 6 (1992). Part VII sets forth the Agency's conclusion regarding the amendments.

## II. NEED FOR THE PROPOSED AMENDMENTS

Minn. Stat. ch. 14 (1992) requires an agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules or amendments proposed. In general terms, this means that an agency must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention and reasonableness means that the solution proposed by an agency is appropriate.

Need is a broad test that does not lend itself to evaluation of each proposed revision. In the broad sense, the need to amend the Agency's UST training and certification rule is the ongoing need to improve the accessibility of the rules for certified supervisors and contractors and to improve the ability of the regulated community to comply with the rules by improving the clarity and readability of the rules.

Specifically, the proposed amendments would establish program requirements for recertification of UST supervisors. As the rule is currently written, certified supervisors are required to receive the same training for recertification as they did when they were initially certified. The proposed amendments define the parameters of a recertification program which requires

two days of classroom training (as opposed to five days for initial certification) and considerable flexibility in course content.

This rulemaking is in direct response to needs expressed by Agency staff and work group members and by the regulated community. Clear and unambiguous administrative rules are a goal of both the regulated community and the Agency.

### III. REASONABLENESS OF THE PROPOSED AMENDMENTS

The Agency is required by Minn. Stat. ch. 14 (1992) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules or amendments. The reasonableness of the proposed amendments to the State Underground Storage Tank Training and Certification rules is discussed below.

#### MINN. RULES PT. 7105.0010 Definitions

Subp. 1a. Active participation. "Active participation" has not been previously defined even though it is used in Minn. Rules pt. 7105.0060, subp. 1, item B. Inquiries from applicants for certification and certified supervisors indicate that a definition is needed to clarify that active participation in an UST project is limited to the process of installing, repairing or closing a tank.

Subp. 3. Approved training provider. The term "installer" is replaced with the term "tank service provider". A discussion relating to "tank service provider" will follow under Minn. Rules pt. 7105.0010, subp. 24a. The phrase "recertification course" is added to expand the definition to include recertification training.

Subp. 6. Certified supervisor or supervisor. The phrase "on-site" is added allowing the Agency to enforce lack of on-site supervision violations. Without this addition, the Agency is limited by interpretation as to the meaning of the phrase "supervision and direction to workers engaged in a storage tank project". The addition makes it clear that supervision must occur at the job site.

Subp. 9. Contractor. The phrases "public agency" and "any other association" that holds itself "out" are added, allowing any form of organization to become certified. The phrase "duly constituted individual proprietorship" is deleted due to the addition of more generic language.

Subp. 12. Diploma. The phrase "issued by an approved training provider" is added to clarify who is qualified to issue diplomas verifying the successful completion of the required training course.

Subp. 13. Disciplines of certification or disciplines. The definition of "installation or repair" has been modified. This modification results in two distinct disciplines of "installation/repair" and "closure". This change also specifies more clearly what the certified supervisor's or contractor's responsibilities are under the current law. Currently, the rule lists three specific disciplines of installation, repair and closure. With only three percent of the certified contractors disciplined in "repair", and the fact that tank liners, which make up the majority of repairers, must have training from lining manufacturers, it is no longer necessary to provide for separate disciplines of "installation" and "repair".

Subp. 13a. Employ. "Employ" has not been previously defined even though it is used in Minn. Rules pts. 7105.0050 subp. 1, item A. Inquiries by certified contractors and Agency staff indicate that a definition is needed to clarify that employment must be by contract or written agreement.

Subp. 15. Installation. The phrase "or the movement of a UST to a new position and preparing it to be placed in service" is deleted. Installation clearly involves the "movement" of the tank before placing it in service. The revision is for clarity only.

Subp. 16. Installer. The term "installer" has a specific meaning in the UST training and certification rules which does not meet the intent of this provision. Generic terminology "tank service provider" is clearer in its meaning and will refer to supervisors or contractors that install/repair, and close USTs. This definition "installer" is repealed [See Repealer] to eliminate confusion for the Agency staff, regulated community, and general public.

Subp. 21. Repair. The phrase "the lining of a tank through the application of materials such as epoxy resins;" is deleted. This language is no longer needed in the definition of repair. The tank lining industry has developed its own training program for this type of work. The definition of "repair" will exclude the lining of a tank. Repairs or modifications to the tank vessel before lining would remain in the definition of repair.

Subp. 23. Storage tank project. The phrase "within a common excavation upon which discrete work is done that is separated in time and space" is added. This language allows the Agency guidance in interpreting the definition, specifically addressing multiple tank excavations at one facility.

Subp. 24a. Tank service provider. The definition of "tank service provider" is added. Under the current rule "installer" means a person who installs, repairs or removes USTs. "Tank service provider", formerly "installer", is less confusing to the regulated community and is more descriptive in that it emphasizes the service aspects of a tank job regardless of whether it is an installation, repair or closure.

## 7105.0050 Contractor Certification

Subp. 1. Contractor certification requirements. Language is added which would require contractors to maintain documentation of financial assurance for the duration of the certification period. The current rule requires financial assurance documentation for initial or renewal certification, however, it does not address the need for continuing the coverage for the entire certification period. In addition, language is also added which would require contractors to meet the standards of performance of part 7105.0070.

Subp. 2. Disciplines of contractor certification. The disciplines of installation and repair would be combined into one discipline, "installation/repair". Therefore, contractors will be disciplined in installation/repair and closure. See Minn. Rules pt. 7105.0010. subp. 13.

Subp. 3. Application procedures for contractor. Language requiring the contractor to notify the commissioner within 30 days of any changes in status is added. This allows that Agency the means of tracking supervisor and contractor changes. Currently, the Agency has no means of tracking movement of supervisors between companies.

## 7105.0060 Supervisor Certification

Subp. 1. Supervisor certification requirements. Application requirements are modified to allow smaller businesses which may only perform one or two tank jobs a year into the certification process. Time frames for experience are expanded from two to four years. In addition, the phrase "five-day" training course has been deleted to allow recertification training which will consist of two days of training instead of the original five days. The initial and renewal storage tank service provider training courses are discussed under Minn. Rules pt. 7105.0080.

Subp. 3. Disciplines of supervisor certification. The disciplines of installation and repair would be combined into one discipline of "installation/repair". Therefore, supervisors will be disciplined in installation/repair and closure only. See Minn. Rules pt. 7105.0010, subp. 13.

Subp. 4. Application procedures for supervisor certification. The requirement for the applicant to submit a social security number is deleted. This information is not needed and poses data privacy issues.

Subp. 5a. Certification renewal schedule for supervisors. This subpart has been added to specify the certification renewal schedule for supervisors as the rule requirements are phased in. This renewal schedule was developed so that approved training providers could develop courses and to allow supervisors reasonable time to gain training. Recertification training will follow this table until all supervisors are on the same recertification schedule of four years.

Subp. 7. Reciprocity. The term "installer" is replaced with "service provider". See Minn. Rules pt. 7105.0010, subp. 24a.

7105.0080 Storage Tank Service Provider Training Course Requirements.

The term "installer" is replaced with "tank service provider" in the title header. See Minn. Rules pt. 7105.0010, subp. 24a.

Subp. 1. Initial storage tank service provider training course. Language for the initial tank service provider training is added. Initial training of supervisors will differ from the renewal training course. See Minn. Rules pt. 7105.0080, subp. 2. for a discussion of renewal training.

Subp. 2. Renewal storage tank service provider training course. Subpart 2 is added to establish requirements for the renewal storage tank service provider training course. Renewal certification must be at least two days in length and must include lectures, demonstration, course review, and a final written examination. Renewal training can specialize into various topics listed under Minn. Rules. pt. 7105.0080, subp. 3.

Subp. 3. Storage tank service provider training course requirements. Subpart 3 is added. This language specifies the content requirements which must be included in the initial course. One or more of these topics must be included in the renewal course, subject to approval by the commissioner of a list submitted by training providers, and requirements of Minn. Rules pt. 7105.0100. This modification also allows for other topics outside the cited list to be covered in the renewal course if the commissioner approves them.

Item C, subitem (1). The reference to Code of Federal Regulations, title 29, part 1926, subpart P is deleted. The phrase "confined space; and competent person requirements" is added to reflect new Occupational Health and Safety Administration (OSHA) standards in this area. Because of the varied and changing OSHA rules, reference to OSHA's areas of concern are mentioned but not specifically cited.



Item H, subitem (1), unit (b). The phrase "hydrostatic pressure" is deleted. This term means generally the same as the term "precision test" that is in the sentence and therefore unnecessary.

Item O, subitem (3). The phrase "or video tapes" is added. This phrase is provided specifically to allow video tape records to meet Agency record keeping requirements, which is consistent with other programs and laws which recognize the validity of video tape records.

### 7105.0090 Examinations and Diplomas

Subp. 2. Examination specifications. The phrase "final" is replaced with "initial or renewal training course." The modification reflects the renewal as well as the initial certification requirements. The phrase "objective" replaces "multiple choice." This modification allows the approved training provider to administer a test in other objective formats.

Subp. 3. Examination requirements. The phrase "or recertification" is added to address supervisor recertification examinations. The requirement of having to pass an examination is the same for both initial and renewal training. Examinations must be passed within ten days of course completion, unless a person fails the examination, in which case, subpart 4 applies.

Subp. 4. Retest. The phrase "final" is replaced with "initial or renewal training course". The phrase "within 30 days after a person receives a notice of failure" is added. Currently the rule does not address a time requirement for retesting. Thirty days after the notice for the retest is reasonable in that it gives the applicant enough time to reschedule an examination.

Subp. 5. Diplomas. The requirement of a "numbered" diploma is deleted. The numbering of the diploma is unnecessary. The phrase of "initial or renewal" is added for the training course. See Minn. Rules pt. 7105.0080 for a discussion on initial or renewal training course requirements.

Item D. The conjunction "and" between items E and F is deleted. The proposed amendment changes the location of the conjunction to tie items D and E.

Item E. The phrase "except as provided by part 7105.0060, subpart 5a" is added. The reference is made to the renewal schedule for supervisor recertification.

Item F. This item is deleted. A numbered diploma is no longer necessary.

#### **7105.0100 Approval of Certification Training Courses**

Subp. 1. Application procedures for training course approval. This provision reflects the renewal as well as the initial certification training course requirements. The term "installer" is also modified to reflect the term "tank service provider" added under Minn. Rules ch. 7105.0010. subp. 24a.

Item H. The phrase "numbered" is deleted. See Minn. Rules ch. 7105.0090. subp. 5 for a discussion of diploma requirements.

#### **7105.0110 Sanctions**

Subp. 1, Item C. The phrase "or its counterpart in Minnesota" is replaced by "technical standards for USTs, under Minnesota Statutes, section 116.49, subdivision 1;". During original rule development, Minn. Rules ch. 7150 was not complete so a reference to the federal counterpart Code of Federal Regulation, title 40, part 280 was made. It is now reasonable to site the adopted state rules.

7105.0130 Incorporation by Reference

Subp. 4. PEI document. The revised edition of PEI/RP 100 (1990) is cited, which supersedes the 1987 edition.

**IV. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING**

In order to comply with Minn. Stat. § 14.115 (1992), the Agency has considered the following methods for reducing the impact of the proposed rules on small businesses.

1. The establishment of less stringent renewal certification training course.
2. The establishment of a phase-in schedule for certification renewal.
3. The consolidation and simplification of the disciplines of installation, repair and closure into the disciplines of installation/repair and closure.
4. The establishment of less stringent time frames for gaining on-the-job experience.
5. The establishment of flexible, more meaningful renewal training course development requirements.

The proposed amendments for the Underground Storage Tank Training and Certification rules will not have a negative impact on small businesses since the amendments are offered to reduce ambiguity in the current rules. Many of the modifications are proposed in order for small businesses that provide UST service to easily understand Minnesota's certification and training requirements. The certification renewal amendments to the training and certification rules reduce costs for the regulated small businesses through reduced training course costs, reduced travel and lodging costs, and reduced

time "off-the-job" associated with two days of training instead of five. In addition, experience time frames have been expanded explicitly to incorporate small businesses with limited experience into the approval process.

#### V. CONSIDERATION OF COSTS TO LOCAL PUBLIC BODIES

In order to comply with Minn. Stat. § 14.11, subd. 1 (1992), the Agency has considered the costs of the proposed rule amendments to local public bodies and determined that the total cost to those bodies to implement the rule for two years following adoption of the rule will be negligible. The certification program is a state program being implemented at the state level and no involvement in its administration is being required of local bodies.

#### VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. § 116.07, subd. 6 (1992) to give due consideration to economic factors. The statute provides:

In exercising all its powers the Pollution Control Agency shall give due consideration to the establishment, maintenance, operation, and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax that may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

The proposed amendments for clarifying already existing rules will not have a negative economic impact. The clarifications and new program requirements are proposed in direct response to needs expressed by the regulated community, by Agency staff, and from input received from the advisory work group. As

stated in section II, clear and unambiguous administrative rules are a goal of both the regulated community and the Agency. As a broad goal, clear communication between the regulating Agency and the regulated community can have a positive economic effect by providing efficiency of implementation.

There will likely be some beneficial economic impacts from the proposed amendments. By continuing to increase the technical expertise and environmental awareness of contractors conducting tank projects there should continue to be fewer releases to the environment in the future. When considering the economic impacts that result from the cleanup costs associated with contamination, the amendments should result in continuing cost savings to municipalities, small businesses and the general public as a whole.

#### VII. CONCLUSION

The Agency, in this document, makes its presentation of facts establishing the need for and reasonableness of the proposed amendments to Minnesota's Underground Storage Tank Training and Certification Rules. The Agency has also stated in this document that the proposed amendments will not adversely affect small businesses and will not incur greater economic costs. This document constitutes the Agency's Statement of Need and Reasonableness for the proposed amendments to Minn. Rules ch. 7105.

Date: March 23, 1993



A handwritten signature in cursive script, appearing to read 'C. Williams', is written over a horizontal line.

Charles W. Williams

Commissioner

