



Minnesota Pollution Control Agency

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December 4, 2009

Legislative Reference Library
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St. Paul, Minnesota 55155

RE: In The Matter of the Proposed Rules of the Minnesota Pollution Control Agency Governing
Underground Storage Tank Training Rules; Governor's Tracking #AR 418

Dear Librarian:

The Minnesota Pollution Control Agency intends to adopt rules governing Underground Storage Tanks Training Rule 7150.0010-7150.0450. We plan to publish a Dual Notice of Intent to Adopt Rules with or without a Public Hearing if fewer than 25 persons request a hearing, in the December 7, 2009 *State Register*.

The Minnesota Pollution Control Agency has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Minnesota Pollution Control Agency is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 651-757-2825.

Sincerely,

A handwritten signature in black ink that reads "William P. Wilde".

William P. Wilde
Planner
Policy, Local Government Assistance and solid Waste Section
Municipal Division

WPW:wgp

Enclosure: Statement of Need and Reasonableness

AR418

Minnesota Pollution Control Agency

STATEMENT OF NEED AND REASONABLENESS

**Proposed Amendment to Rule Governing the Underground Storage Tanks (UST) Program,
Minnesota Rules, Chapter 7150**

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Statement of Need and Reasonableness

MINNESOTA POLLUTION CONTROL AGENCY

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I. INTRODUCTION AND BACKGROUND

The subject of this Statement of Need and Reasonableness (SONAR) is the amendment of certain rules of the Minnesota Pollution Control Agency (MPCA) governing the operation of regulated Underground Storage Tank (USTs) systems in Minnesota. The purpose of these rules (Minn. R. ch. 7150) is to prevent the improper design, installation, use, maintenance, and closure of USTs and their appurtenances such as piping and dispensers, which could adversely affect water quality and the public health, safety, and general welfare through releases of petroleum or hazardous materials to the land, groundwater, and surface water of the state of Minnesota (State).

Due to rising concern with leaking underground storage tanks throughout the State, the MPCA was authorized and directed by the 1987 Minnesota Legislature to adopt rules applicable to USTs as necessary to protect human health and the environment (Minn. Stat. § 116.49). In 1988, the United States Environmental Protection Agency (EPA) published its final rule outlining technical requirements for USTs and state UST program approval (40 CFR pt. 280).

In 1991, the MPCA published final rules for USTs (Minn. R. ch. 7150). The 1991 rules addressed standards for design of new (post-1991) petroleum and hazardous material USTs and appurtenant piping, such as cathodic protection and secondary containment and requirements for upgrading existing (pre-1991) UST systems by December 22, 1998, the federal UST upgrade deadline. New and upgraded tanks are required to have cathodic protection, release detection, spill prevention equipment, and overfill protection equipment. The majority of existing UST systems were either upgraded to meet the new requirements or taken out of service by the December 22, 1998 deadline.

Despite the existence of the UST rule, leaks and spills from UST systems have continued to occur in Minnesota and around the nation. On August 8, 2005, President Bush signed the Energy Policy Act of 2005 (Act). Title XV, subtitle B of this Act contains amendments to Subtitle I of the Solid Waste Disposal Act, the original legislation that created the federal UST program. The Energy Policy Act of 2005 significantly affects federal and state underground storage tank programs, requires major changes to these programs, and is aimed at reducing underground storage tank releases to the environment. The UST provision of the Energy Policy Act of 2005 focuses on preventing releases. Among other things, the Act expands eligible uses of the Leaking Underground Storage Tank (LUST) Trust Fund, and includes provisions regarding facility inspection frequency, training of facility operators, delivery prohibition in the case of non-compliance, public availability of tank release records and owner/operator compliance records, groundwater protection through either secondary containment or manufacturer/installer financial assurance, and cleanup of releases that contain oxygenated fuel additives. A variety of deadlines were given to state programs to implement these provisions.

The MPCA revised Minn. R. ch. 7150, effective March 24, 2008, to comply with the secondary containment requirement of the Energy Policy Act, as well as to update and clarify existing language to account for new technologies, deadlines no longer applicable, common owner/operator compliance problems, and other concerns that have emerged during the past 16

years of the UST program. The other requirements of the Act were addressed in the 2007 SONAR (Exhibit 1).

This rulemaking is intended to comply with the operator training requirements in Section 1524 of the Energy Policy Act of 2005, codified at 42 U.S.C. § 6991i. A copy of Section 1524 of the Act is attached as Exhibit 4. The Act requires the EPA to publish guidelines that specify training requirements that address the requirements of the Act. The Act also requires that each state that receives funding from EPA for its UST program must adopt operator training requirements that are consistent with the guidelines published by EPA. In August 2007, the EPA published "Grant Guidelines to States for Implementing the Operator Training Provision of the Energy Policy Act of 2005." A copy of the EPA guidelines is attached as Exhibit 5. The guidelines establish minimum requirements that a state's UST program must contain in order for a state to comply with the Act and to receive federal funding for its UST program. The guidelines include a description of the three classes of operators, the responsibilities of each class of operator, the required training for each class of operator, and the deadlines for completion of operator training.

In developing the operator training rules, the MPCA incorporates the framework and requirements in the EPA guidelines. The proposed rules create distinct classes and responsibilities of operators to ensure that UST systems are managed properly. The MPCA is also proposing other changes to the rules to clarify and update the language.

II. PROCEDURAL HISTORY

The proposed rule revisions to the UST rules were developed with significant input from regulated parties, interest groups, and the EPA, and after examining other state's UST programs. The MPCA took the following steps to notify interested parties about the proposed rule revisions and to get their input on early drafts of the rule prior to publishing the proposed rule in the *State Register*:

1. A stakeholder group was developed in January 2008, to develop direction and build structure for the rule development. This group met on February 6, 2008; March 4, 2008; and May 22, 2008.
2. A notice was published in the *State Register* on June 30, 2008, entitled "Request for Comments on Planned Rule Amendments to Minnesota Rule Chapter 7150 Governing Underground Storage Tanks (UST)." The notice identified the subject and scope of the proposed rules, the persons likely to be affected, the MPCA's statutory authority, a tentative timeline for rule development, and how to get more information.
3. In July 2008, a public Web site for the UST rules development process was updated to include the operator training provisions (<http://www.pca.state.mn.us/rulesregs/ust-rules.html>). The Web site has been used to notify stakeholders of meetings, maintain a schedule for the rules process, provide online access to rule drafts and other relevant documents and links to related Web sites, and how to contact the MPCA for more information.

4. Public informational meetings were held in St. Paul on July 15, 2008; in Brainerd on July 16, 2008; and in Mankato on July 17, 2008. The meeting schedule was posted on the rules Web site, distributed via e-mail notice to the tanks list-serve subscribers, and mailed to the stakeholder group. Verbal comments on training techniques, issues, and concerns were received from the attendees.

5. On August 26, 2008, a public informational meeting was held at the MPCA regional offices via video conference to seek stakeholder input on the preliminary written draft of the rule revisions. The meeting was advertised by posting on the UST rules Web site, by e-mail notice to the tanks list-serve subscribers, and by e-mail notice to the stakeholder group. The draft rules were available for downloading and were also distributed at the meeting sites. Verbal comments were received from attendees.

6. On October 3, 2008, a public informational meeting was held at the MPCA regional offices via video conference to seek stakeholder input on a second written draft of the rule revisions. The meeting was advertised by posting on the UST rules Web site, by e-mail list-serve subscribers, and by e-mail to the stakeholder group. The second draft of the rules along with the summary of changes from the preliminary draft were available for downloading and were also distributed at the meeting sites. Verbal comments were received from attendees.

III. ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Hannah Pierce at the MPCA, Industrial Division, 520 Lafayette Road North, St. Paul, MN 55155-4194; phone: 651-757-2651; fax: 651-297-2343; or e-mail: Hannah.pierce@state.mn.us. TTY users may call the MPCA at 651-282-5332 or 800-657-3864.

IV. STATUTORY AUTHORITY

The MPCA's statutory authority to adopt the rules is set forth in Minn. Stat. § 116.49, Environmental Protection Requirements, which provides:

Under Minn. Stat. § 116.49, the MPCA has the necessary statutory authority to adopt the proposed rules.

Subdivision 1. Rules. The agency must adopt rules applicable to all owners and operators of underground storage tanks. The rules must establish the safeguards necessary to protect human health and the environment. The agency may delay adopting the rules until the United States Environmental Protection Agency proposes regulations for regulated substances, as defined in section 116.46, subdivision 6, clause (1). The agency shall delay adopting the rules for regulated substances, as defined in section 116.46, subdivision 6, clause (2), until the United States Environmental Protection Agency publishes final regulations for underground storage tanks, or February 8, 1987, whichever is earlier.

The proposed rules can be enforced in accordance with the authority provided to the MPCA including authority in Minn. Stat. § 115.071, Minn. Stat. § 116.072, and Minn. Stat. § 116.073. The MPCA has general authority to enforce its rules under these statutes. If approved, the changes to the existing rule will be enforceable by the MPCA.

Minn. Stat. § 14.125 requires the MPCA to publish a notice of intent to adopt a rule within 18 months from the effective date of the law authorizing the rulemaking. This statute also provides that if rules are adopted within the deadline from the authorizing legislation, the MPCA may subsequently amend or repeal the rules without additional legislative authorization. This rulemaking is an amendment to existing rules and thus the Minn. Stat. § 14.125 deadline does not apply.

V. REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out seven factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (7) below quote these factors and then give the Agency's response. Paragraph (8) addresses additional requirements listed in Minn. Stat. § 14.002.

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

The classes of persons who will potentially be affected by the proposed rule changes are:

- Owners and operators of regulated UST systems.
- Contractors and consultants who provide UST-related maintenance and operational services.
- State and federal government agencies which regulate or are otherwise involved with UST systems.
- Citizens of the state of Minnesota.

The costs of the proposed rule changes will predominantly be on owners and operators of UST systems who are primarily responsible for the operation and maintenance of the systems. Owners and operators, tank service contractors, consultants, marketers and distributors of petroleum product and equipment, and government agencies will bear some administrative costs in learning about and complying with the new requirements.

The citizens of the state of Minnesota will benefit from the implementation of additional preventative maintenance and proper operation of tank systems, which will reduce the number and amount of leaks and spills from tank systems to the waters of the State. This in turn will reduce the State's liability for reimbursing owners and operators for costs associated with the cleanup of tank leaks and spills covered by the State's Petroleum Tank Fund (Petrofund) program under Minn. Stat. § 115C.08 and 115C.09.

All classes of affected parties will benefit from clarification of rule language, and elimination of uncertainty and ambiguity.

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

The additional cost to the MPCA of implementation and enforcement of the proposed UST rule changes is anticipated to be minimal, since funding to develop the examination will come from the Federal government. Some administrative effort will be expended to give technical guidance in the development of the examination, update Agency databases, written forms and documents to reflect the new rules, and to communicate the changes to the regulated community. The regulated community's costs will not significantly change since there are no anticipated costs expected for taking the examination. Compliance and enforcement procedures will continue to be conducted at the same level with existing staff resources. The rule changes are not anticipated to have any effects on any other State agency, other than costs incurred by State agencies that are also owners or operators of regulated UST systems.

The UST rules are not anticipated to have any negative impact on State revenues. They are anticipated to reduce the Petrofund expenditures for leak site cleanup projects over time, since there will be fewer releases from properly maintained and operated UST systems.

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

In the Energy Policy Act of 2005, Congress required that states adopt an operator training program under guidelines developed by the EPA that specify training options. The EPA published the following options (or combinations thereof) to meet the operator training requirements; all options must include an evaluation of operator knowledge:

- Training developed and/or conducted by the state, including but not limited to, in-class, on-site, or online.
- Training developed or conducted by a third-party, including but not limited to, in-class, on-site, or online.
- An appropriately administered and evaluated verification of operator knowledge designed to measure operator knowledge.
- Class C operators may be trained by a Class A or B operator.
- State reciprocity.

The MPCA evaluated the options listed and is proposing that the Class A and B operators pass an examination developed and administered by the MPCA and that the Class A or Class B operator train the Class C operator. An MPCA approved training course, developed by third parties, will be available, but is not required as a pre-requisite to taking the exam.

In selecting this approach, the MPCA concluded that it would not be possible for the MPCA to routinely conduct training for Class A and B operators because of the Agency resources that this training would require. Due to the high turnover of employees at UST facilities, the MPCA believes that it would be unreasonable to mandate that these operators attend training if they are able to demonstrate their knowledge of the UST requirements by passing an examination. However, the MPCA is making training available by encouraging third-parties to apply for MPCA approval to produce and administer a training program.

The MPCA is proposing to require Class A and Class B operators to pass an examination that evaluates the operator's knowledge of the UST system(s) for which the operator is responsible for. If operators want training before they take the examination, this can be done in any way that is convenient to the owner or operator in charge of designating the Class A and B operators. However, the Class A and B operators will be required to attend training if the operator fails the initial examination or if the facility in which he/she operates is found to be in non-compliance with certain requirements. The examination is proposed to be available on-line.

The MPCA has concluded that the proposed method will be the least costly and intrusive method. UST system operators are initially required to pass an examination, which would then certify them for the duration of the system, with the following stipulations: training is required only if the initial examination is failed or the facility is in violation of certain UST requirements in Minnesota Rule Chapter 7150. Training can be accomplished through various methods, which include, but are not limited to: online, classroom, on-site, or any combination of these. Any third-party training programs must be approved by the MPCA to ensure that certain training criteria are met and that operators are getting proper training. Although training costs will be left up to the trainer, it is assumed that operators that require training will be able to find a training program that suits the needs of the owner/operator.

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

The MPCA discusses the training options and reasons for rejection in Section V.3 of this SONAR.

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

Estimated types of costs of compliance, by category of affected parties are:

- Owners and operators of regulated UST systems:

Testing and training costs: The MPCA is proposing to offer the exam online at no cost to the operators, but is estimating that at some point in time there could be a cost for taking the exam. Third-party training costs may vary, depending on the type of training offered and

the length of time that will be required. For example, an eight-hour training course for an operator may cost \$300. The cost for an employee's time away from work to take the training could be \$240.00(8 hours @ \$15 per hour). Total cost to a facility is estimated to be less than \$1,000.

- Contractors and consultants who provide UST-related maintenance and operational services:

There will be minor administrative costs to contractors and consultants in adopting and offering customers technical assistance/training to comply with, and be aware of, the type of UST system and requirements that operators need to know in order to pass an examination.

- State and federal government agencies which regulate or are otherwise involved with UST systems:

There will be minor administrative costs to the MPCA to develop guidance documents and procedures to conform to the new requirements. The MPCA will also devote some staff time to develop the exam questions along with a small group of stakeholders.

- Citizens of the state of Minnesota:

There will be no costs to the citizens of the State.

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

- Owners and operators of regulated UST systems:

Tank owners/operators who do not obtain proper knowledge on how to operate and maintain the UST system at the facility are more susceptible to releases going unnoticed for potentially prolonged periods of time. Tank owners/operators will also bear the portion of remediation costs not covered by the State Petrofund program. The MPCA may also use its enforcement authority for noncompliance with tank requirements,

- Contractors and consultants who provide UST-related maintenance and operational services:

There would be no consequences to contractors and consultants if the MPCA does not adopt the proposed rules.

- State and federal government agencies which regulate or are otherwise involved with UST systems:

More staff time will be spent on enforcement due to lack of proper operation and maintenance requirements to prevent leaks and spills from the UST system. If the MPCA does not adopt the proposed rules it will be out of compliance with the Act, and therefore has the potential to lose funding from the EPA for its UST program.

- Citizens of the state of Minnesota:

If the MPCA does not adopt the proposed rules the State may not have an EPA authorized and funded UST program. This would affect citizens because more state funding would be required in order to run the program. Also, more leaks may occur from lack of operator knowledge which in turn could contaminate potential groundwater and drinking water resources.

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

In general, the Minnesota UST rules are intended to follow federal UST policies and regulations, unless there is specific State concern or difference where the State wants to be more stringent. State UST rules may be more stringent than federal rules, but are not allowed to be less stringent. State UST program guidelines are reviewed by EPA ensure that minimum federal requirements are met.

The EPA developed a guidance document to specify training requirements for certain classes of operators, as laid out in the Energy Policy Act. The MPCA developed the operator provisions of the rule using this guidance document and selected options available under the federal guidance. Further discussion of the reasonableness of the operator provisions can be found in Section VIII.B of this SONAR.

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

Minnesota Statute § section 14.002 states:

The legislature recognizes the important and sensitive role for administrative rules in implementing policies and programs created by the legislature. However, the legislature finds that some regulatory rules and programs have become overly prescriptive and inflexible, thereby increasing costs to the state, local governments, and the regulated community and decreasing the effectiveness of the regulatory program. Therefore, whenever feasible, state agencies must develop rules and regulatory programs that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulatory party and the agency in meeting those goals.

The proposed rule revisions relating to operator training for UST systems are specific in nature to meet the minimum federal requirements in the Energy Policy Act of 2005; therefore, the use of a performance-based approach does not readily apply.

VI. ADDITIONAL NOTIFICATION

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

The MPCA intends to send a copy of the Dual Notice to the following people and organizations:

- A. All parties who have registered with the MPCA for the purpose of receiving notice of rulemaking proceedings, as required by Minn. Stat. § 14.14, subd. 1a;
- B. All individuals and representatives of associations the MPCA has on file for this rulemaking as interested and affected parties; and
- C. The chairs and ranking minority party members of the legislative policy and budget committees, with jurisdiction over the subject matter of the proposed rule amendments, will also receive a copy of the proposed rule amendments, SONAR, and Dual Notice as required by Minn. Stat. § 14.116. This statute also states that if the mailing of the notice is within two years of the effective date of the law granting the agency authority to adopt the proposed rules, the agency must make reasonable efforts to send a copy of the notice and SONAR to all sitting house and senate legislators who were chief authors of the bill granting the rulemaking. However, since the original legislative authorization dates from the 1987 legislative session, this provision does not apply.

The MPCA intends to notify all registered owners of underground storage tanks and certified UST contractors of its intent to adopt proposed rules by mailing a postcard that will contain the following information: (a) how to obtain a hard copy of the proposed rules, SONAR, and Dual Notice; (b) the address of the MPCA Web page where these three documents will be located and additional rulemaking information is available; (c) the proposed phase in deadlines for taking the exam; and (d) how to submit comments on the proposed rules. The MPCA believes this is a reasonable approach given the number of registered owners and contractors (approximately 5,000).

In addition, a copy of the Dual Notice, proposed rule amendments and SONAR will be posted on the MPCA's Public Notice Web site at (www.pca.state.mn.us/new.index.html) and on the MPCA's Underground Storage Tank Rules Web site at: <http://pca.state.mn.us/rulesregs/ust-rules.html>.

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

VII. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the MPCA is required by similar provisions in Minn. Stat. § 116.07, subd. 6, and Minn. Stat. § 115.43, subd. 1, to give due consideration to various economic factors. Minn. R. § 116.07 provides:

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

The MPCA has chosen to assess the impact of revised UST rules on business and commerce, and the feasibility and practicability of specific rule requirements, though an extensive consultation process with affected parties and their representatives during the development of this proposal. The consultation process is described in Part II of this SONAR. The MPCA believes that the process used for development of the UST rule revisions was open and provided many opportunities for those in UST-related businesses to participate and provide input into the revisions. The MPCA has made many modifications to its initial proposals based on feasibility and practicality of specific requirements for owners and operators, so long as the intent and requirements of the Energy Policy Act of 2005 could be met.

VIII. IMPACT ON FARMING OPERATIONS

Minn. Stat. § 14.111 requires an agency to provide a copy of the proposed rule changes to the Commissioner of Agriculture no later than thirty days prior to publication of the proposed rule in the *State Register*, if the rule has an impact on agricultural land. The proposed rules will have a minor impact on agricultural land; therefore, the MPCA will provide the required notification to the Commissioner of Agriculture.

UST systems located on farms are, in general, subject to MPCA regulations on the same terms and conditions as other types of UST facilities, except that farm USTs of 1,100 gallons or less capacity which store motor fuel for non-commercial purposes are exempt. The MPCA does not propose to change the applicability of the UST rules to agricultural operations.

A review of the MPCA tank registration database, which includes USTs and Above Ground Storage Tanks (ASTs), as well as the data gathered during the MPCA's AST rulemaking in 1998, indicates that the vast majority of tanks, approximately 98 percent, that are used for agricultural purposes and located on farms, are ASTs. Most of the USTs that are found on farms are small, less than 1,100 gallons capacity, and thus not subject to regulation. The MPCA believes that only a very small number of larger agricultural USTs, perhaps less than 25, are currently located on farms and regulated by the MPCA.

The primary incremental cost of the proposed rules to traditional agricultural operations would be the same as the additional cost to other owners and operators of USTs – the cost of training operators, when applicable.

IX. NOTIFICATION OF THE COMMISSIONER OF TRANSPORTATION

Minn. Stat. § 174.05 requires the MPCA to inform the Commissioner of Transportation of all rulemakings that concern transportation, and requires the Commissioner of Transportation to prepare a written review of the rules. Although the MPCA does not believe this rulemaking will be of any special concern regarding transportation, the Commissioner of Transportation will receive the Dual Notice and the proposed rule amendments.

X. CONSULT WITH FINANCE ON LOCAL GOVERNMENT IMPACT

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

The proposed rules will impact local units of government which may own or operate underground storage tanks to the same extent as private owners and operators. See Section V, Sections 1, 5, and 6 for further discussion.

XI. MINNESOTA STATUTE § 14.127, SUBDIVISION 1 - COST THRESHOLD

Minn. Stat. § 14.127, subd. 1, requires the MPCA to assess the potential economic impact to small businesses of complying with this proposed rule amendment. The statutory provision is as follows:

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

These rules are proposed in part pursuant to a specific federal statutory mandate. The federal law that mandates certain requirements in the proposed rules is discussed in more detail in Section I of this SONAR. The primary requirement mandated by federal law in this proposal is the requirement to ensure that operator knowledge is evaluated. Cost of the proposed rule amendment

was discussed in Section V.5, and is not estimated to exceed the \$25,000 threshold for small businesses.

XII. STATEMENT OF NEED

Minn. Stat. ch. 14 requires the MPCA to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the MPCA must not be arbitrary or capricious in proposing rules. However, to the extent that need and reasonableness are separate, "need" has come to mean that a problem exists that requires administrative attention, and "reasonableness" means that the solution proposed by the MPCA is appropriate. The need for the rule is described below.

With the passage of the Federal Energy Policy Act of 2005, the MPCA is required to modify State UST rules to comply with the minimum requirements of the Act, as interpreted through guidance issued by the EPA, in order to continue to receive federal funding for State UST programs. Federal funding, when combined with State funding, has been an important factor in Minnesota's UST regulatory oversight program for many years, as with most other environmental programs in the State and in other states. This rulemaking is needed to maintain federal funding and continue the effective state-federal partnership in protecting the State's environment and natural resources.

Despite the initiation of the UST rules in 1991 and the final deadline for upgrading of existing UST systems in 1998, releases from tanks and piping have continued to occur, although with a much lower frequency than in the years prior to 1991. These releases have had an impact on the soil and water resources of Minnesota, as well as a financial impact on the public through the Petrofund cleanup program. In 2008, the MPCA adopted the secondary containment requirements of the Energy Policy Act in order to prevent releases from UST systems to the environment. This rulemaking is needed to adopt the operator requirements of the Act in order to reduce or eliminate the risk of future releases from UST systems by requiring that all UST systems have designated operators to oversee the operation of the UST systems and that those operators be required to demonstrate knowledge, by passing an examination, of how to operate and maintain the UST systems. Reduction or perhaps elimination of spills and leaks from UST system spills and leaks will protect the waters of the State and reduce the burden on State taxpayers to fund cleanups, and may eventually lead to the phase-out of the Petrofund program.

Although the UST rules were reviewed in the 2008 rulemaking process, there are still some language updates that need to be made that are unclear or capable of multiple interpretations.

XIII. STATEMENT OF REASONABLENESS

Minn. R. ch. 14 requires the MPCA to explain the facts establishing the reasonableness of the proposed rule amendments. "Reasonableness" means that there is a rational basis for the MPCA's proposed action. The reasonableness of the proposed rule is explained in this section. This section is broken into two parts, addressing reasonableness as a whole and reasonableness of the individual rule parts.

A. Reasonableness of the Proposed Rule Amendments as a Whole

The purpose of MPCA's Underground Storage Tank rules is to prevent the improper design, installation, use, maintenance, and closure of USTs and their appurtenances such as piping and dispensers, which could adversely affect water quality and public health, safety, and general welfare through releases of petroleum or hazardous materials to the land, groundwater, and surface waters of the State. The federal government, through Congress' enactment of the 2005 Energy Policy Act, has decided that on a national basis, the present requirements for design and operation of UST systems are insufficient to prevent continued releases from UST systems that may affect groundwater, and that states must increase their level of UST preventative regulation. This echoes Minnesota's experience of new leak sites continuing to be added to the Petrofund cleanup program and public money expended for remediation. In 2008, the MPCA adopted the federally required secondary containment requirements of the Energy Policy Act. In this rulemaking, the MPCA is proposing to adopt the operator knowledge requirements of the Act and EPA guidelines required by the Act to prevent leaks and spills from UST systems. It is also reasonable to do so in order for Minnesota to continue to work cooperatively with EPA and receive the benefits of federal funding for State UST programs.

Given that it is reasonable to initiate rulemaking to comply with federal mandates, it is also reasonable to address any additional rule changes that may be needed at the same time. It is administratively efficient and reasonable to address the various rule clarifications described in the Statement of Need and Reasonableness and re-organize the rule section at this time, since rulemaking is inherently a time-consuming and infrequent regulatory process.

B. Reasonableness of the Amendments to Individual Sections of Rule

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

(1) Minnesota Rule 7150.0010 APPLICABILITY

Subp. 4. Emergency power generator tanks

Parts 7150.0300 to 7150.0340 and 7150.0450, subpart 3, item D, do not apply to underground storage tank system installed before December 22, 2007, that stores fuel solely for use by emergency power generators.

Prior to the 2008 rulemaking, emergency generator tanks were deferred from release detection requirement both by the Federal and State rules. EPA's "Grant Guidelines to States for Implementing the Secondary Containment Provision of the Energy Policy Act of 2005" (exhibit 5) requires that emergency generator tanks be installed with secondary containment and conduct interstitial monitoring. The addition of the term "installed before December 22, 2007" is to clarify

that the secondary containment requirements apply to emergency power generator tank systems installed after this date. Emergency power generator tank systems are federally regulated and therefore are required by the federal Energy Policy Act to be secondarily contained and have release detection conducted using interstitial monitoring. The word "solely" has been removed because emergency power generator tanks are often used as heating oil tanks in addition to fueling emergency power generators, and it is reasonable to clarify that such "dual use" tanks must follow the stricter requirement for emergency power generator tanks.

Subp. 5. Heating oil tanks

Parts 7150.0010; 7150.0030; 7150.0090, subparts 1, 2, 4, and 6; 7150.0100, subparts 7, 9, and 10; and 7150.0205, subparts 1 to 4; and 7150.0215, apply to an underground storage tank system of over 1,100 gallons capacity used exclusively for storing heating oil for consumptive use on the premises where stored.

According to the 2007 UST rule SONAR (exhibit 1), "The MPCA is not altering the requirements applicable to heating oil tanks with greater than 1,100 gallons capacity in the existing [1991] rules. The only changes are to cross references to renumbered sections of the new rules." The requirement of Minn. R. 7150.0215 was not in the original 1991 rule references and was unintentionally added to the 2008 rule language. Therefore, the MPCA is proposed to remove this requirement from the language.

(2) Minnesota Rule 7150.0100 PERFORMANCE STANDARDS FOR UNDERGROUND STORAGE TANK SYSTEMS

Subp. 10. Repairs allowed

Owners and operators of underground storage tank systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the underground storage tank system is used to store regulated substances. The owner and operator shall ensure that the person performing the repairs has been certified under chapter 7105. The repairs must meet the requirements in items A to ~~EF~~.

C. ...Within 30 days after completion of a piping repair, the piping must pass a tightness test in accordance with part 7150.0340, subpart 3, item A.

D. Within six months after the repair of a cathodic protection system, the cathodic protection system must be tested according to part 7150.0215 to ensure that it is operating properly.

E. Impressed current cathodic protection systems must be repaired by a corrosion expert who is qualified to repair impressed current cathodic protection systems.

F. Sacrificial anode cathodic protection systems must be repaired by a cathodic protection tester or a corrosion expert who is qualified to repair sacrificial anode cathodic protection systems.

Reference to A-E is proposed to be changed to A-F because an additional subitem was added to the rule.

In Subitem C, the phrase "item A" is being proposed to clarify which of the two listed methods (A or B) in the revised rule is the acceptable method of release detection for piping. The MPCA is proposing to allow only Item A (0.1 Gallons Per Hour or GPH test), because Item B (a 0.2 GPH test) cannot meet the standard post-repair tightness testing threshold of 0.1 GPH.

In subitem E and subitem F, the MPCA is separating the cathodic protection system repair requirements into two distinct categories – impressed current systems, which require repairs to be done by a corrosion expert, and sacrificial anode systems, for which the MPCA is proposing to allow a cathodic protection tester to make repairs.

A cathodic protection tester is defined in Minn. R. ch. 7150.0030, subp. 6 as:

"a person who has demonstrated an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems, by passing a cathodic protection test given by the National Association of Corrosion Engineers or the Steel Tank Institute. Such person must also have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems."

In subitem F, the MPCA is proposing to allow sacrificial anode cathodic protection systems to be repaired by either a corrosion expert, which is currently allowed, or a cathodic protection tester. The MPCA is proposing to allow a cathodic protection tester to repair such systems because sacrificial anode systems are generally part of a shop fabricated STI-P3 tank which do not require field design by a cathodic protection expert. Most repairs to sacrificial anode systems are much less technical than impressed current systems, and generally require replacing anode bags, which can be safely performed by a qualified cathodic protection tester.

Subp. 12. Sump and basin maintenance.

Spill catchment basins, submersible pump sumps, and dispenser sumps shall ~~have liquid-tight sides and bottom and be maintained free of storm water and debris.~~ Regulated substances spilled to any spill catchment basin, submersible pump sump, or dispenser sump shall be immediately removed.

The MPCA is proposing to delete the phrase “*have liquid tight sides and bottom and*” because the requirement for liquid tight construction is covered under existing Minn. R. 7150.0205, subps. 6.A. and 7.A. Since subpart 12 applies to maintenance of sumps and basins, not construction requirements, deletion of this phrase is reasonable to clarify that the liquid tight construction requirement is not a maintenance requirement.

Subpart 14. Drop tubes

All underground storage tanks shall have a drop tube that extends to within ~~12~~ six inches of the tank bottom.

The MPCA is proposing to change the length of a drop tube to extend to within six inches of the tank bottom in order to be consistent with standards referenced in existing rules. Minn. R. ch. 7150.0100, subp. 7 requires that all underground storage tank systems be installed in accordance with listed codes. Two tank installation standards, the American Petroleum Institute’s “Installation of Underground Petroleum Storage Systems” (API Recommended Practice 1615, 1996 – Exhibit 2) and the Petroleum Equipment Institute’s “Recommended Practices for Installation of Underground Liquid Storage Systems” (PEI RP100, 2005 – Exhibit 3), which indicate a drop tube needs to extend to within four to six inches of the tank bottom. These practices have been in place since 1986 without a change in requirements. Also, the Code of Federal Regulations, Title 40 CFR pt. 63, subp. CCCCCC – “Protection of the Environment, National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Dispensing Facilities” requires drop tubes at high throughput gasoline dispensing facilities to extend to within six inches of the tank bottom.

(4) Minnesota Rule 7150.0205 DESIGN AND CONSTRUCTION

Subpart 1. Tanks

Each tank must be properly designed and constructed and any part underground that routinely contains product must be protected from corrosion using one of the following methods, except that all hazardous materials tanks and all tanks, other than heating oil tanks, installed or replaced after December 22, 2007, must comply with item D. The corrosion protection methods must be in accordance with one of the codes of practice in subpart 2 developed by a nationally recognized association or independent testing laboratory. Tanks that do not meet the requirements of this subpart must be permanently closed according to part 7150.0410.

The MPCA is proposing to clarify that UST systems that have not been upgraded to meet the corrosion protection requirements in subpart 1 by the December 22, 1998 deadline, will not be allowed to retroactively comply with corrosion protection requirements by installing either cathodic protection or an internal tank lining and continuing in service. Recent inspections have found a number of tanks that were not upgraded with either cathodic protection or an internal lining,

and tank owners have requested to install corrosion protection and continue using the tank. Such tanks that have continued in service for more than ten years past the deadline without any effective corrosion protection will be significantly prone to failure and releases to the environment from corrosion of the steel shell. Allowing retroactive compliance would also be inconsistent with the December 22, 1998, federal upgrade deadline and would be unfair to other owners who did meet the requirements. Therefore, the MPCA is proposing to require immediate permanent closure of these tanks.

Subpart 6. Submersible pumps

A. After December 22, 2007, any new or replacement submersible pump, including pump head, shall be provided with secondary containment around and beneath the pump head. Secondary containment shall be: ...

(2) designed with liquid-tight sides, bottom, cover, and points of piping penetration;...

Subpart 7. Dispensers

A. After December 22, 2007, any new dispenser, and any replacement dispenser where work is performed beneath any shear valves or check valves or on any flexible connectors or unburied risers, shall be provided with secondary containment beneath the dispenser. Secondary containment shall be:...

(2) designed with liquid-tight sides, bottom, and points of piping penetration;...

The MPCA is proposing to clarify that all points of penetration are required to be liquid-tight, not just points where piping enters. Electrical conduit and other points of piping penetration enter the submersible pump secondary containment and dispenser secondary containment. In order to maintain liquid-tight sides, all points of penetration, not just piping points of penetration, must be liquid-tight.

(5) Minnesota Rule 7150.0211 CLASS A, B, AND C OPERATOR REQUIREMENTS

The MPCA has reviewed the EPA's "Grant Guidelines to States for Implementing the Operator Training Provision of the Energy Policy Act Of 2005," (Exhibit 5) and believes that these proposed revisions to Minnesota's UST rules fully comply with the minimum requirements of the Energy Policy Act of 2005 and the EPA Guidelines. The MPCA discusses below how each operator is to be designated, the operator's responsibilities, and the examination and training procedures.

Subpart 1. Definitions

For purposes of this part, the following definitions apply.

The MPCA believes it is reasonable to place the definitions in items A through D under this part of the rule, because this part is the only part to which these definitions apply.

A. "Class A operator" means an individual who has primary responsibility to operate and maintain the underground storage tank system.

The definition of Class A operator is taken from the EPA guidance. This class of operator has primary responsibility to operate and maintain the UST system. Having primary responsibility means that the Class A operator must be knowledgeable in all administrative and some technical requirements of UST release detection and release prevention, including notification, release detection methods, reporting, UST closure, delivery prohibition, and the training requirements for Class B and C operators. This individual may be an owner, operator, or employee of the owner or operator who would delegate job assignments to ensure that the facility is in proper working order. In general, this individual will focus on the broader aspects of the statutory and regulatory requirements necessary to operate and maintain the system. It is reasonable to have an operator who has knowledge of the administrative and managerial tasks associated with the proper operation of an underground storage tank system in order to ensure that the UST system is operated and maintained to comply with MPCA's UST system requirements.

B. "Class B operator" means an individual who has daily responsibility to operate and maintain the underground storage tank system.

This definition of Class B operator is taken from EPA guidance. This class of operator has responsibility for daily operation and maintenance of the UST system. A Class B operator must be knowledgeable about, and have daily responsibility for specific technical requirements, including release detection, release prevention, reporting and other UST system requirements at a specific UST site. Daily responsibility does not necessarily mean the Class B operator has to be physically on site every day; rather, this person is responsible for the daily operational duties to ensure proper operation and maintenance of the UST system.

C. "Class C operator" means an individual who has daily on-site presence and responsibility to handle emergencies and alarms pertaining to a spill or release from the underground storage tank system.

This definition of Class C operator is taken from EPA guidance. This class of operator must be on-site daily and is responsible for handling emergencies and alarms related to spills or releases from UST systems. The Class C operator must be knowledgeable about initial response procedures associated with an emergency caused by an UST release or suspected release, including procedures for contacting Class A or Class B operators and, when necessary, emergency responders. Because a Class C operator is required to be on-site daily, this person may also be in charge of the dispensing of gasoline to customers, overseeing fuel deliveries, and viewing inventory to detect a potential release. It is reasonable to have a person trained in emergency procedures to mitigate any potential damage that could be caused from a release or spill.

D. "Unattended card-lock facility" means a facility where control of the dispensing of a regulated substance is through a mechanical or electronic method without the constant on site presence of a Class A, Class B, or Class C operator.

It is important to differentiate this type of facility from other UST facilities since the unattended card-lock facility does not have a person present on-site during the operation of the tank system and therefore, would not be able to comply with the general operator requirements. These types of facilities are often operated by co-op organizations or fleet fueling facilities, and the dispensing of fuel is often controlled through an access (mechanical method) or credit card only (electronic method) operation. Owners, operators, or a designated Class A or B operator may be able to remotely access release detection and other operating data, but may only be physically on site on an intermittent basis. The MPCA does not consider it necessary to require these facilities to adjust the way that they conduct business to meet other operator requirements. The MPCA is, however, imposing different requirements in other subparts of the rule that specifically apply to unattended card-lock facilities. Thus, the MPCA is proposing a definition of these types of facilities to distinguish such facilities from other types of facilities that are required to have an on-site Class A, B, or C operator.

Subpart 2. General

Class A, B, and C operators must be either the owner or operator of the underground storage tank system, or a designated employee of the owner or operator. The owner or operator of an underground storage tank system must designate a Class A, Class B, and Class C operator for the tank system, except that the owner or operator is not required to designate a Class C operator for unattended card-lock facilities. A Class A, Class B, or Class C operator must be present on site during the operation of the tank system, except at unattended card-lock facilities, which must have a sign posted according to subpart 3. The owner and operator of an underground storage tank system are responsible for ensuring that the Class A, Class B, and Class C operators are fulfilling their responsibilities under this chapter.

The MPCA is proposing to have owners or operators of underground storage tank systems designate a Class A, B, and C operator. The proposed rule requires that the Class A, B, and C operators must be either the owner or operator or an employee of the owner or operator. One person may be designated as a Class A and B operator as long as this person qualifies under the definitions of the operators and can fulfill the responsibilities of the operators provided in the proposed rules. Any one person may also be the designated operator at multiple facilities. It is reasonable to require that a designated operator be present on-site during the operation of the tank system because a designated operator is trained and has knowledge in how to respond to emergencies or operating problems.

The MPCA is proposing that an unattended card-lock facility is not required to designate a Class C operator. Because unattended card-lock facilities control the dispensing of fuel through access

only or credit card only operations an employee of the owner/operator does not have to be present during the operation of the UST system.

Subpart 3. Unattended card-lock facility

An unattended card-lock facility must have a legible sign posted in a conspicuous place with the name and address of the facility and the telephone number of the facility owner, operator, or local emergency response.

The MPCA is proposing to add sign requirements for unattended card-lock facilities. This requirement is similar to the above-ground storage tank rule, Minn. R. 7151.5300, subp. 3, which requires that an above-ground storage tank facility, that does not have a person on-site 24 hours a day, must have a sign with the name of the owner and operator or the local emergency response provider. The sign requirement is also consistent with the fire marshal requirements. The importance of having a sign posted at these particular facilities is that there is not an operator present during the operation of the tank system. If an emergency would occur, a person that is dispensing a regulated substance, or filling the UST with a regulated substance, would have the necessary information needed to notify the appropriate individuals and assist responders in a timely manner.

Subpart 4. Class A operator responsibilities

The Class A operator is responsible for managing resources and personnel to achieve and maintain compliance with this chapter.

This description of the Class A operator's responsibilities is taken from EPA guidelines. The Class A operator has primary responsibility to manage resources and personnel to ensure that the tank system is properly operated and maintained so that all requirements in Minn. R. ch. 7150 are met. This requirement typically includes establishing work assignments and ensuring that appropriate individuals properly operate and maintain the tank system, keep records, are training, properly respond to emergencies, and meet all of the other requirements in Minn. R. ch. 7150. It is reasonable to have an operator who has resources available and proper knowledge of the administrative and managerial tasks associated with the proper operation of an underground storage tank system.

Subpart 5. Class B operator responsibilities

The Class B operator is responsible for daily operation and maintenance of the underground storage tank system. The Class B operator shall be present on site at least one time per month to ensure proper operation and maintenance of the tank systems, except that the Class B operator of an unattended card-lock facility must be present on site at least one time per week. Each month, the Class B operator shall validate that:

A. required release detection monitoring is being performed according to parts 7150.0300 to 7150.0340;

B. required reporting is being performed and records are being according to part 7150.0450;

C. spill, overfill, and corrosion protection systems are in place and operational according to part 7150.0205;

D. cathodic protection testing has been performed according to part 7150.0215;

E. unusual operating conditions or release detection system indications have been reported and investigated according to Minnesota Statutes, section 115.061; and

F. routine operation and maintenance activities have been accomplished.

This description of a Class B operator's responsibilities as being responsible for daily operation and maintenance of the tank system is taken from the EPA guidelines. The Class B operator is responsible for implementing the specific operational requirements of the facility's tank systems. The Class B operator is required to have knowledge and validate each month that the following tank system requirements, as well as the corresponding reporting and recordkeeping requirements, are met:

- Release detection method for monitoring of tanks and piping
- Spill, overfill, and corrosion protection systems are in place and operational
- Cathodic protection testing has been performed on tanks and piping
- Unusual conditions or release detection system indicators have been investigated and reported and
- Operation and maintenance requirements have been accomplished

The MPCA is proposing to add specific requirements for a Class B operator. It is reasonable to expect the Class B operator to be on-site at least monthly because this operator is the person who knows how the system should be operating and thus, can identify unusual operating conditions. Monthly is also a reasonable time frame because tank (and some piping) release detection methods and sump/basin monitoring is required to be conducted at least monthly. It is also reasonable to have the Class B operator at an unattended cardlock facility be on-site at least weekly since no other trained person is routinely on-site to observe and report unusual conditions.

Subpart 6. Class C operator responsibilities

The Class C operator must be present on-site daily and is responsible for handling emergencies and alarms pertaining to a spill or release from a tank system.

including reporting spills and releases. The Class C operator must be trained by a Class A or B operator before assuming responsibility for the tank system.

This definition of responsibilities of a Class C operator is taken from the EPA guidelines. A Class C operator is necessary because the Class C operator is the first line of response when an emergency occurs. The Class C operator is required to be on-site daily because they are typically the individual at the facility who controls/monitors the dispensing of fuel and is responsible for the initial response to alarms/releases. The MPCA is proposing that this person be trained by a Class A or B operator to take action in response to emergencies pertaining to spills or releases. It is reasonable for the Class A or B operator to train the Class C operator because the Class C operator will notify either the Class A or B operator of an emergency or alarm. This person would notify the Class A or Class B operator and, when necessary, the appropriate emergency responders.

Subpart 7. Class A and B operator examinations

A. Class A and B operators must pass an agency-administered examination verifying operator knowledge of the underground storage tank system with a score of 75 percent or higher.

B. Class A and B operators must pass the agency-administered examination within 30 days after being designated by the owner or operator of the tank system, except as provided in item C. The Class B operator must retake the examination within 30 days after a change in any of the following tank system components:

- (1) tank or piping construction material;
- (2) tank or piping release detection method; or
- (3) cathodic protection system.

C. Class A and B operators must be designated and pass the initial agency-administered examination according to the following deadlines:

- (1) Operators at underground storage tank facilities where the facility telephone area code is 651 or 952 must pass the examination no later than August 8, 2010. After August 8, 2010, item B applies;
- (2) Operators at underground storage tank facilities where the facility telephone area code is 612 or 763 must pass the examination no later than August 8, 2011. After August 8, 2011, item B applies; and
- (3) Operators at underground storage tank facilities where the facility telephone area code is 507, 218, or 320, or other area code must pass the examination no later than August 8, 2012. After August 8, 2012, item B applies.

The MPCA is proposing to require a score of 75 percent in order to pass the examination because

this score is consistent with the MPCA tank contractor course passing requirement. It is also consistent with other MPCA rules requiring passing scores on examinations. The exam is proposed to be administered by the agency because it is the agency that will be following up on the exam and issuing the certificates. The MPCA is also the enforcing agency, so it would only be appropriate to have it administer the exam.

The MPCA is proposing to require the exam be taken by the Class A or B operator within 30 days of being designated to ensure that the operators in charge of the tank system have the proper knowledge necessary to prevent releases to the environment. Class A and B operators must have knowledge in how to properly operate and maintain the underground storage tank system and how to respond to emergencies caused by releases or spills from the systems at the facility. In order to verify this knowledge the Class A or B operator must pass the examination.

It is proposed that Class B operators must re-take the examination whenever there is a change in the pipe or piping construction material, the release detection method for the tank or piping, or the corrosion protection system. It is reasonable to require that the operator re-take the exam when any of these tank system components has changed so that the operator can be evaluated on the requirements of the new components. A change in the components above are significant changes to tank operation and require a different knowledge base than what the operator had been trained and tested on prior to the change. Proper knowledge on all tank system components ensures that the tank is operating to prevent releases to the environment.

The MPCA is proposing to phase in the operator requirements because of MPCA's experience with facilities attempting to meet the upgrade requirement deadline on December 22, 1998. It is reasonable to require the phase-in because it will alleviate technical problems with the proposed web-based testing method, and will allow time for trainers to be approved by the MPCA and for trainers to offer training and accept registrations for training. Furthermore, it is reasonable for the MPCA to phase in the operator requirements by facility area codes so that the phase-in can be completed regionally.

Subpart 8. Class A and B operator training requirements

A. If the Class A or B operator does not receive a passing score of 75 percent or higher on the examination under subpart 7, the Class A or B operator must attend an agency-approved training course and retake and pass an agency-administered examination within 60 days after notification by the commissioner.

B. If the commissioner determines that the owner or operator of a tank system has violated part 7150.0205, subpart 5; 7150.0215; 7150.0300; 7150.0330; 7150.0340; or 7150.0400, the Class B operator of the tank system must attend an agency-approved training course and retake and pass an agency-administered examination within 60 days after notification by the commissioner.

The MPCA is proposing that Class A and Class B operators must take a training course and re-take

and pass the examination if the operator fails the examination or if the Commissioner determines that there are violations of certain UST requirements at the facility. It is reasonable to require the operators to attend training in both of these circumstances to ensure that operators have proper knowledge of the tank system. The Energy Policy Act of 2005 also requires that operators be able to verify that they have proper knowledge of the tank system they operate; this is being done through the Agency-administered examination. Additionally, the Act requires that the operator must repeat applicable training requirements for failure to comply with requirements of the state program. The MPCA is proposing that only certain violations result in a requirement to attend training and re-take and pass an exam. Those violations pertaining to spill and overfill prevention, cathodic protection, release detection, and tank closure. These violations were selected because failure to comply with these requirements can result in a release to the environment. The EPA considers violations of these requirements to be significant operational compliance issues. The MPCA believes that 60 days is a reasonable timeframe to take the training and the exam because this is the timeframe that is used in the MPCA's enforcement tool, called a Citation Warning, to correct all violations that are found during an inspection of the facility.

Subpart 9. Application procedures for training course approval

A. Persons seeking to train Class A and B operators must submit an application to the commissioner approval according to this subpart.

B. To apply for commissioner approval of an operator training course, a training provider must submit an application to the commissioner on an application form provided by the commissioner. The application must contain the following information:

- (1) the course sponsor's name, address, and telephone number;*
- (2) a list of states that currently approve the training course;*
- (3) the course curriculum, including topics to be covered and length of the training;*
- (4) a letter from the training course sponsor that clearly indicates how the course meeting the requirements of this chapter;*
- (5) a copy of all course materials, such as student manuals, instructor notebooks, and handouts;*
- (6) a copy of the certificate that will be issued to students who attend the course; and*
- (7) other information determined by the commissioner to be relevant to evaluating whether the course will provide knowledge to operators to meet the requirements of this chapter.*

C. Training must provide the knowledge necessary for operators to monitor and maintain tank systems in a manner that complies with this chapter, prevents releases to the environment, minimizes the size of accidental releases through early detection, and mitigates damage from releases with proper emergency response.

D. The commissioner shall suspend or revoke approval of a training course if the commissioner finds that the course is no longer providing training that meets the requirements of this chapter.

E. Except as provided in item D, approval of a training course remains in effect until the commissioner notifies the approved training provider that changes in the course are required to maintain commissioner approval. At that time, the training provider must submit a revised training course to the commissioner for approval.

Proper training is essential to ensure that operators gain the appropriate knowledge necessary to operate and maintain their facility's tank systems. A trainer must be familiar with all types of UST systems. Due to the MPCA not having the resources to administer training, the MPCA is proposing to require MPCA operator training courses. It is important to ensure that persons seeking to perform training are offering adequate training to operators to make certain that operators who take the course will gain proper knowledge of MPCA underground storage tank system requirements and knowledge of how to prevent and respond to releases. It is necessary and reasonable for the MPCA to require the submittals listed to ensure that proper training is being provided.

The MPCA believes that it is reasonable to retain the right to suspend or revoke approval that it has issued to a particular trainer if the MPCA finds that the course the trainer is providing is not offering training on the appropriate requirements of the rule. The MPCA believes that it is reasonable to allow for changes in the training course requirements through a notice to the training provider because requirements are susceptible to changes.

(6) Minnesota Rule 7150.0215 OPERATION AND MAINTENANCE OF CATHODIC PROTECTION

Subpart 3. Impressed current systems

B. systems must be tested by a corrosion expert or a cathodic protection tester within six months of installation and at least annually thereafter, and within six months after any repairs and at least annually thereafter; and

A cathodic protection tester is trained in how to test impressed current cathodic protection systems for proper function in the National Association of Corrosion Engineers (NACE) and Steel Tank Institute (STI) cathodic protection tester courses; therefore, the MPCA is proposing to add cathodic protection testers to subpart 3 because they are qualified to conduct the cathodic protection test on impressed current systems. However, any necessary repairs or adjustments identified during testing must be performed by a corrosion expert, as required by Minn. R. 7150.0100 subp. 10(E).

(7) Minnesota Rule 7150.0300 RELEASE DETECTION

Subpart 5. Tanks

Tanks must be monitored at least every 30 days for releases using one of the following methods or combination of methods, except that hazardous materials tanks and tanks installed on or after December 22, 2007, must comply with item B:

The intent of the 2008 UST rule revisions and requirement set forth in the EPA's "Grant Guidelines to States for Implementing the Secondary Containment Provision of the Energy Policy Act of 2005" was to require secondarily contained systems (systems installed on or after December 22, 2007) for all new and replacement tanks; and for these tanks to utilize interstitial monitoring as the method of release detection. Interstitial monitoring ensures that in the event of a failure of the inner wall of the tank; the release will be detected and captured by the outer wall, preventing an actual release to the environment. Interstitial monitoring is more pro-active and preventative than other forms of release detection because other forms of release detection alert the operator after a release to the environment has occurred, where interstitial monitoring alerts the operator before a release to the environment. The MPCA is proposing to add this statement to clarify that these tanks not only need to be designed and installed with interstitial monitoring capability, but owners/operators must use interstitial monitoring as the primary form of release detection for these tanks.

Subpart 6. Piping

Underground piping that routinely contains regulated substances must be monitored for releases using one of the following methods or combination of methods, except that piping installed on or after December 22, 2007, must comply with item A, subitem (3) or (4):

The intent of the 2008 UST rule revisions and requirement set forth in the EPA's "Grant Guidelines to States for Implementing the Secondary Containment Provision of the Energy Policy Act of 2005" was to require secondarily contained systems (systems installed on or after December 22, 2007) for all new and replacement piping, and to utilize interstitial monitoring as the method of release detection. Interstitial monitoring ensures that in the event of a failure of the inner wall of the piping the release will be detected and captured by the outer wall, preventing an actual release to the environment. Interstitial monitoring is more pro-active and preventative than other forms of release detection because other forms of release detection alert the operator after a release to the environment has occurred, where interstitial monitoring alerts the operator before a release to the environment. The MPCA is proposing to add this statement to clarify that piping not only needs to be designed and installed with interstitial monitoring capability, but owners/operators must use interstitial monitoring as the primary form of release detection for piping.

A. Pressure piping. Underground piping that conveys regulated substances under pressure must use one of the following methods:

~~*(1) be equipped with and operate a continuous automatic line-leak detector according to part 7150.0340, subpart 2; and*~~

~~*(2) have an annual line tightness test conducted according to part 7150.0340, subpart 3, or have monthly interstitial monitoring conducted according to part 7150.0340, subpart 4.*~~

(1) line leak detection according to part 7150.0340, subpart 2, and annual line tightness testing according to part 7150.0340, subpart 3, item A;

(2) line leak detection according to part 7150.0340, subpart 2, and monthly line tightness testing according to part 7150.0340, subpart 3, item B;

(3) line leak detection according to part 7150.0340, subpart 2, and monthly interstitial monitoring according to part 7150.0340, subpart 4, item A, subitem (2); or

(4) continuous interstitial monitoring according to part 7150.0340, subpart 4, item A, subitem (1).

To more clearly define the various combinations of methods available for pressure piping release detection, the MPCA is proposing to separate the methods into four options. Subitem (2) is a method discussed further in Part XIII.B(9) of this SONAR,

B. Suction piping.

(1) Except as described in subitem (2), underground piping that conveys regulated substances under suction must:

(a) have a line tightness test conducted at least every three years according to part 7150.0340, subpart 3, if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure; or

The MPCA had clarified existing requirements in Minn. R. 7150.0340 (discussed further in Part XIII.B(9) of this SONAR), and to remain consistent, is adding this phrase to the suction piping requirement. This method has not been changed.

Subpart 7. Sump and Basin Monitoring

...Regulated substances spilled to sumps and basins shall be immediately removed and the source of the spills, drips, or leaks must be investigated and remedied.

It is reasonable to propose that the source which is causing a regulated substance to enter the sumps and basins be fixed so that the substance is no longer continuing to enter the sump or basin and there is no longer a concern for a release occurring from the source.

(8) Minnesota Rule 7150.0330 METHODS OF RELEASE DETECTION FOR TANKS

Subpart 2. Inventory control

Product inventory control must be conducted monthly to detect a release of at least 1.0 percent flow-through plus 130 gallons on a monthly basis in the following manner:

D. deliveries are made through a drop tube that extends to within one-foot six inches of the tank bottom;

The MPCA is proposing to change the drop tube extension to six inches from one foot to be consistent with the changes it is proposing to make to Minn. R. 7150.0100, subp. 14. The reasonableness for this proposed change is stated in Section XIII.B.(3) of this SONAR.

(9) Minnesota Rule 7150.0340 METHODS OF RELEASE DETECTION FOR PIPING

Subpart 2. Automatic Line Leak Detectors

Methods ~~which~~ that continuously alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping, or by triggering an audible or visual alarm, may be used only if they detect leaks of three gallons per hour at ten pounds per square inch line pressure within one hour. An annual test of the operation of any ~~mechanical~~ line leak detector must be conducted...

The MPCA is proposing to clarify the options for alerting the operator in this requirement. The separation of the sentence with commas and the addition of the word "by" make it clear that there are two methods that can be used by automatic line leak detectors to alert the operator. One method is to restrict or shut off the flow; the other method is to use an audible or visual alarm to alert the operator. The word "mechanical" has been stricken from this subpart because there are two types of automatic line leak detectors, mechanical and electronic, both of which are capable of being tested for proper function and have been required to be tested annually since 1991. The word "mechanical" was inadvertently added in the 2008 rulemaking. In the first sentence, the word "which" has been changed to "that" for grammatical reasons.

Subpart 3. Line tightness testing

A periodic test of piping may be conducted only:

A. annually, if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure; or

B. monthly, if it can detect a 0.2 gallon per hour leak rate at standard operating pressure.

As one option for piping leak detection, periodic line tightness testing can be performed annually or monthly, depending on the leak detection threshold (sensitivity) of the specific testing equipment. The two combinations of frequency and sensitivity will yield a roughly equivalent leak detection capability. Line tightness testing may be performed either by a third-party provider or using an automatic line leak detector with the required sensitivity. The MPCA is proposing to clarify these options for line tightness testing, which have always been approved to meet the piping leak detection requirement.

(10) Minnesota Rule 7150.0400 TEMPORARY CLOSURE

Subpart 4. Tanks out of service one year

When an underground storage tank system is out of service for one year or more, owners and operators must permanently close the underground storage tank system according to part 7150.0410, unless the owner or operator requests an extension of the closure period ~~and completes a site assessment according to part 7150.0420~~, by submitting an application for an extension on a form approved by the commissioner and the commissioner approves the extension in writing based on compliance with this part. Conditions of extension shall include record keeping requirements according to part 7150.0450, and the continued operation and maintenance of cathodic protection according to part 7150.0215. The underground storage tank system may not be returned to service without the written approval of the commissioner, based on compliance with the applicable requirements of this chapter.

The MPCA is proposing to add the word "operator" as an entity that can request an extension of the closure period because the owners and operators have joint responsibility for the tank system. The MPCA is also proposing to remove the requirement that a site assessment be performed and replace it with a requirement to submit an application to the commissioner for approval in order to allow a tank, out-of-service one year or more, to be kept in the temporary closure rather than be permanently closed. The MPCA is deleting the site assessment requirement in this rule because of the high cost associated with conducting a site assessment, including assessment of soil beneath the tank. The MPCA is proposing to replace this requirement with the submittal of an application to the commissioner for approval. The application will be approved if the commissioner determines, based on information submitted, shows that the cathodic protection system has been continuously operated and maintained, and operating requirements have been met based on records

required to be kept under Minn. R. 7150.0450. The application will verify that the owner/operator is in compliance with the temporary closure requirement. If the owner/operator is out of compliance with the temporary closure requirements the commissioner can deny the application and require permanent closure of the tank system.

(11) Minnesota Rule 7150.0410 PERMANENT CLOSURE AND CHANGE IN STATUS TO STORAGE OF NONREGULATED SUBSTANCES.

Subpart 1. Requirements

In addition to the requirements of the most current Minnesota Fire Code, owners and operators must comply with the provisions in subparts 2 to 7 relating to permanent closure ~~and~~ or change in status to storage of nonregulated substances.

The MPCA is proposing to clarify that the provisions apply when a tank is either permanently closed or the status of the tank has changed to storage of a nonregulated substance. These two actions do not occur at the same time.

(12) Minnesota Rule 7150.0420 SITE ASSESSMENT

When permanently closing a tank, or making a change in status to storage of a nonregulated substance, ~~or temporarily closing a tank for one year or more,~~ owners and operators must measure through laboratory analysis for the presence of a release where contamination is most likely to be present at the underground storage tank site...

It is reasonable to remove the statement regarding temporarily closed tanks for the reasons stated in Section XIII.B.(10) of this SONAR. The MPCA is adding the word "or" because by removing the phrase "or temporarily closing a tank for one year or more," the remaining two requirements to which the site assessment applies need to be separated by the word "or."

(13) Minnesota Rule 7150.0450 REPORTING AND RECORDKEEPING

Subpart 3. Record Retention

D. Documentation of compliance with release detection requirements under parts 7150:0300 to 7150:0340, as follows:

(2) the results of any sampling, testing, or monitoring must be maintained for at least ten years, including:

~~(g) monthly electronic line leak detection according to part 7150.0340, subpart 2;~~

~~(h)~~(g) annual testing of any mechanical line leak detector according to part 7150.0340, subpart 2;

~~(i)~~(h) ~~monthly or~~ annual line tightness testing according to part 7150.0340, subpart 3, item A;

(i) monthly line tightness testing according to part 7150.0340, subpart 3, item B;

The MPCA is proposing to clarify the requirements in (g) through (i) in order to be consistent with the revisions in Minn. R. 7150.0300 and 7150.0340. The 2008 rulemaking inadvertently specified recordkeeping for a monthly electronic line leak detector, but there is no monthly test requirement. The function test is required annually and applies to both electronic and mechanical detectors, as clarified in new (g). New (h) and (i) represent a separation of recordkeeping for monthly versus annual line tightness testing, to follow the separation that is proposed for Minn. R. 7150.0340, subp. 3.

(4) documentation of the commissioner's approval of alternate release detection methods under part 7150.0330, subpart 7, or 7150.0340, subpart 5, must be maintained for as long as the methods are being used to comply with the requirements of this chapter; and

E. results of the site assessment conducted at permanent closure or change in status to a nonregulated substance under part 7150.0420 and any other records that are capable of demonstrating compliance with closure requirements under parts 7150.0420 must be maintained for at least three years after completion of permanent closure or change in status in one of the following ways:

(3) by mailing these records to the commissioner if the records cannot be maintained at the closed facility;

The MPCA made punctuation changes above. There are no additional or repealed requirements.

F. certification that the facility's Class A operator and Class B operator have passed the operator examination requirements. Certifications on current personnel must be kept until closure of the facility. Certifications on former personnel must be kept for at least three years from the date of the employee's termination;

G. records of monthly or weekly on-site presence of the Class B operator according to part 7150.0211, subpart 5, must be kept for at least ten years; and

H. records that document that the Class C operator has received the training required in part 7150.0211, subpart 6, including the date of training, who performed the training, and

the contents of the training. Training records on current personnel must be kept until closure of the facility. Training records on former personnel must be kept for at least three years from the date of the employee's termination.

The MPCA is proposing to add new record retention requirements to document that all classes of operator are in compliance with the operator requirements. Retaining records is necessary to provide proof that the owners and operators maintain records showing that the operator exam and on-site requirements are in compliance with the rules. The MPCA is proposing that certifications that show that current Class A and B operators have passed the operator exam and records that document that the current Class C operators have received the required training be kept until closure of the facility. The reason the MPCA is proposing retention period is because requiring that records of current operators be kept until closure of the facility ensures that operators do not need to go through a re-certification procedure.

With respect to former operators, the MPCA is requiring that certifications of passing examinations for Class A and B operators and proof of training for Class C operators be kept for three years from the date of the employee's termination. The three year time period for former employees was selected because it is consistent with other MPCA rules pertaining to record retention for past employees.

The MPCA also believes that it is reasonable to require that records documenting the Class B operator's monthly or weekly on-site presence be kept for at least ten years. The Class B operator's primary responsibility is to ensure that the tank system is in proper operational order, which includes validating that release detection, sump and basin monitoring, and other testing has been carried out. To be consistent with the release detection, including sump and basin monitoring, record retention time from of ten years, the MPCA is proposing to require the Class B operator's on-site presence be the same.

XIV. LIST OF AUTHORS, WITNESSES, AND EXHIBITS

A. Author and Witnesses

If these rules go to a public hearing, the Agency anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

- (1) Ms. Hannah Pierce, Industrial Division. Ms. Pierce is the principal author of the SONAR and proposed rule language. Ms. Pierce will testify on the general need for and reasonableness of the proposed rules, as well as on the technical requirements listed in the rule.
- (2) Mr. Robert Dullinger, Industrial Division. Mr. Dullinger will testify on the general need for and reasonableness of the proposed rules, as well as on the technical requirements listed in the rule.
- (3) Mr. Nathan Blasing, Industrial Division. Mr. Blasing will testify on the technical requirements listed in the rule.

B. Exhibits

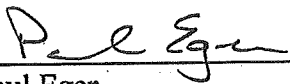
In support of the need for and reasonableness of the proposed rules, the Agency anticipates that it will enter the following exhibits into the hearing record:

- (1) 2007 SONAR – UST Chapter 7150.
- (2) American Petroleum Institute. "Installation of Underground Petroleum Storage Systems." Recommended Practice 1615, 1996.
- (3) Petroleum Equipment Institute. "Recommended Practices for Installation of Underground Liquid Storage Systems." Recommended Practice 100, 2005.
- (4) Energy Policy Act of 2005, section 1524
- (5) U.S. Environmental Protection Agency. "Grant Guidelines to States for Implementing the Operator Training Provision of the Energy Policy Act of 2005." Office of Underground Storage Tanks, 2007.

XV. CONCLUSION

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

Dated: 7/13/09



Paul Eger
Commissioner