

Minnesota Attorney General: Administrative Rules Proceedings

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File

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : April 25, 1988

TO : ANN COHEN
Special Assistant
Attorney General - Environmental Protection

FROM : MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE : 296-6839

SUBJECT : In the Matter of the Adopted Permanent Rules Relating to Waste Tire Permits

The above-referenced rule has been approved as to its legality by the Attorney General on April 25, 1988.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must establish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

MJC:bbl

Enclosures

cc: Maryanne Hruby
Duane Harves

RULE REVIEW CHECKLIST

File No. 1472
DATE RECEIVED 4/15/88
REVIEW DATE 4/24/88
DUE DATE 4/29/88

APPROVED 4-25-88 mjc
DISAPPROVED
WITHDRAWN

Docket No. 05.0009.0838
ADOPTED W/O HEARING X
EMERGENCY RULE

REVISOR APPROVED
REVISOR DISAPPROVED
FIELD W/SEC.STATE 4/26/88
RETURNED TO AGENCY 4/26/88

✓ Rule as adopted (4 copies)

~~Notice to Solicit Outside Information/Opinion~~

~~Date published in State Register~~

~~Comments~~

~~Petition for Adoption of a Rule~~

✓ Board's Authorizing Resolution

✓ Proposed rule

yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule

115A.914 Statutory Authority

n/a yes Small Business Statement

no Expenditure of public money statement

yes Signature

✓ Statement of Need and Reasonableness

yes Small Business Statement

no Fees - § 16A.128 (at brief & lanai)

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

1/18/88 Date (30)/25 days before adoption

✓ Publication in State Register

1/25/88 Date (30)/25 days before adoption

✓ Resolution Adopting 3/9/88

✓ Findings of Fact, Conclusions & Order Adopting

3/24/88 Date

✓ Written requests, submissions or comments (5)

✓ Declaration of attorney

Ann Cohen Name of SAAG representing agency

~~Notice of Submission to Attorney General~~

~~Affidavit of Mailing Notice to Attorney General~~

mjc

Rec'd
4-15-88

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

ADDRESS REPLY TO:
SUITE 200
520 LAFAYETTE ROAD
ST. PAUL, MN 55155
TELEPHONE: (612) 297-1075

April 12, 1988

Ms. Christie Eller
Assistant Attorney General
Office of the Attorney General
515 Transportation Building
John Ireland Boulevard
St. Paul, MN 55155

Re: In the Matter of Proposed Rules Governing Waste Tire Permits, Minn. Rules Parts 9220.0200-.0680

Dear Ms. Eller:

On March 29, 1988, the Minnesota Pollution Control Agency adopted the above-captioned rules governing Waste Tire Permits. Enclosed for your review are the following:

1. Rules as adopted (original and three copies).
2. Findings of Fact, Conclusions, and Order Adopting Rules (two copies).
3. Resolution Adopting Rules.
4. Certificate of Resolution Adopting Rules.
5. Resolution to Give Notice of Intent to Adopt Rules Without a Public Hearing.
6. Certificate of Authorizing Resolution.
7. Notice of Intent to Adopt Rules Without a Public Hearing and rules as proposed (12 S.R. 1564, January, 25, 1988).
8. Notice of Intent to Adopt Rules Without a Public Hearing, as mailed.
9. Comments received during comment period.

10. Affidavit of Mailing the Notice of Intent to Adopt Rules Without a Public Hearing and Certificate of Mailing List.

11. Rules as proposed.

12. Statement of Need and Reasonableness.

13. Declaration of Counsel.

Very truly yours,

Ann E. Cohen

ANN E. COHEN
Special Assistant
Attorney General

AEC:mti

Enclosures

Permanent
PLOMER BOND
25% COTTON FIBER
U.S.A.

Waste Management Board

Adopted Permanent Rules Relating to Waste Tire Permits

Rules as Adopted

7001.0020 SCOPE.

Except as otherwise specifically provided, parts 7001.0010 to 7001.0210 apply to the following:

A. to K. [Unchanged.]

7001.0040 APPLICATION DEADLINES.

Subpart 1. **Application for new permit.** Except as otherwise required by parts 7001.0530 and 7001.1050, a permit application for a new facility or activity may be submitted at any time. However, it is recommended that the permit application be submitted at least 180 days before the planned date of the commencement of facility construction or of the activity.

Subp. 2. and 3. [Unchanged.]

7001.0050 WRITTEN APPLICATION.

A person who requests the issuance, modification, revocation and reissuance, or reissuance of a permit shall complete, sign, and submit to the director a written application. The person shall submit the written application in a form prescribed by the director. The application shall contain the items listed in items A to I unless the director has issued a written exemption from one or more of the data requirements. After receiving a written request for an exemption from a data requirement, the director shall issue the exemption if the director finds that the data is unnecessary to determine whether the permit should be issued or denied. The application must contain:

A. to H. [Unchanged.]

I. other information relevant to the application as required by parts 7001.0550 to 7001.0640, 7001.1050, 7001.1215,

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7001.1290, or 7040.0500 and 7040.0600.

7001.0190 PROCEDURE FOR MODIFICATION; REVOCATION AND REISSUANCE; AND REVOCATION WITHOUT REISSUANCE OF PERMITS.

Subpart 1. [Unchanged.]

Subp. 2. **Modification solely as to ownership or control.** Upon obtaining the consent of the permittee, the agency shall consider a request to modify a permit as to the ownership or control of a permitted facility or activity without following the procedures in parts 7001.0100 to 7001.0130 if the agency finds that no other change in the permit is necessary. If the permit is a permit described in part 7001.0020, item A or B, the agency shall also find that the agency has received a binding written agreement between the permittee and the proposed transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities between the permittee and the proposed transferee. Within 60 days of receipt of a complete written application for modification as to ownership and control, the director shall place the matter on the agenda for consideration by the agency. The agency shall not unreasonably withhold or unreasonably delay approval of the proposed permit modification.

Subp. 3. **Minor modification.** Upon obtaining the consent of the permittee, the director may modify a permit to make the following corrections or allowances without following the procedures in parts 7001.0100 to 7001.0130:

A. and B. [Unchanged.]

C. to change a provision in the permit that will not result in allowing an actual or potential increase in the emission or discharge of a pollutant into the environment, or that will not result in a reduction of the agency's ability to monitor the permittee's compliance with applicable statutes and rules; and

D. if applicable, to make a change as provided in parts 7001.0730, subpart 3 and 7001.1350.

Subp. 4. [Unchanged.]

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9220.0200 SCOPE.

This chapter applies to owners and operators of facilities that store, transport, or process waste tires. This chapter governs the requirement for waste tire facility permits and establishes standards and requirements for the operation of waste tire facilities.

9220.0210 DEFINITIONS.

Subpart 1. **Scope.** The terms defined in this part apply to this chapter.

Subp. 2. **Agricultural purposes.** "Agricultural purposes" means the use of waste tires as bumpers on agricultural equipment or as a ballast to maintain covers or structures on the agricultural site.

Subp. 3. **Board.** "Board" means the Minnesota Waste Management Board.

Subp. 4. **Chair.** "Chair" means the chair of the Minnesota Waste Management Board.

Subp. 5. **Closure.** "Closure" means the removal of all stockpiles of waste tires and other materials from the waste tire facility in compliance with procedures established by statute, rule, order, or permit.

Subp. 6. **Closure plan.** "Closure plan" means the plan for closure required in part 9220.0490, subpart 3, and the applicable requirements of parts 9220.0490 and 9220.0500.

Subp. 7. **Current closure cost estimate.** "Current closure cost estimate" means the most recent of the estimates prepared under part 9220.0570.

Subp. 8. **Existing waste tire facility.** "Existing waste tire facility" means a facility that is receiving waste tires on the effective date of this chapter.

Subp. 9. **Floodway.** "Floodway" has the meaning given in Minnesota Statutes, section 104.02, subdivision 4.

Subp. 10. **Operator.** "Operator" means the person responsible for the overall operation of the waste tire facility. An operator is a tire collector or tire processor as

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defined in Minnesota Statutes, section 115A.90, subdivisions 8 and 10.

Subp. 11. **Owner.** "Owner" means a person who owns, in whole or in part, a waste tire facility, the waste tires located at a facility, or the land on which the facility is located.

Subp. 12. **Permit.** "Permit" means an authorization from the board to operate or construct a waste tire facility.

Subp. 13. **Person.** "Person" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 5.

Subp. 14. **Processing.** "Processing" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 6.

Subp. 15. **Ravine.** "Ravine" means a deep, narrow cleft or gorge in the earth's surface. A ravine cannot be smoothed out by ordinary tillage.

Subp. 16. **Residuals from processing.** "Residuals from processing" means the unusable materials resulting from chemical or physical processing of waste tires.

Subp. 17. **Shoreland.** "Shoreland" means land located within 1,000 feet from the normal high water mark of a lake, pond, or flowage, or land within 300 feet of a river or stream, or a floodplain as established by ordinance.

Subp. 18. **Sinkhole.** "Sinkhole" means a closed depression formed by subsidence of the underlying bedrock.

Subp. 19. **Tire.** "Tire" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 7.

Subp. 20. **Tire collector.** "Tire collector" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 8.

Subp. 21. **Tire-derived products.** "Tire-derived products" means the usable materials produced from the chemical or physical processing of a waste tire.

Subp. 22. **Tire dump.** "Tire dump" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 9.

Subp. 23. **Tire processor.** "Tire processor" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 10.

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Subp. 24. **Transporter.** "Transporter" means a person who removes waste tires from a source of generation, a tire dump, or a waste tire facility.

Subp. 25. **Waste tire.** "Waste tire" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 11.

Subp. 26. **Waste tire facility or facility.** "Waste tire facility" or "facility" means an area where more than 50 waste tires or an equivalent amount of tire-derived products are collected, deposited, stored, or processed. The incidental storage of tire-derived products at the site of final use does not make the site a waste tire facility.

Subp. 27. **Waste tire processing facility.** "Waste tire processing facility" means an area where waste tires or tire-derived products are processed. A waste tire processing facility must meet the qualifications in part 9220.0470.

Subp. 28. **Waste tire storage facility.** "Waste tire storage facility" means an area where waste tires, or tire-derived products, are collected, deposited, or stored. A waste tire storage facility is a facility that does not meet the qualifications for regulation as a waste tire transfer facility or a waste tire processing facility.

Subp. 29. **Waste tire transfer facility.** "Waste tire transfer facility" means an area where waste tires are concentrated for transport to waste tire processing facilities. A waste tire transfer facility must meet the qualifications in part 9220.0460.

Subp. 30. **Wetland.** "Wetland" means an area that is covered by standing water during any portion of a year. Wetland includes but is not limited to wetlands as defined in Classification of Wetlands and Deep Water Habitats of the United States, 1979. This publication is available at the Minnesota State Law Library, Ford Building, 117 University Avenue, Saint Paul, Minnesota 55155. This publication is incorporated into this definition by reference and is not subject to frequent change.

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9220.0220 LAND DISPOSAL PROHIBITED.

Disposal of waste tires and tire-derived products in the land is prohibited.

9220.0230 PERMIT REQUIRED.

Subpart 1. **Permit required.** Except as provided in subpart 2, no person may do any of the following without obtaining a waste tire facility permit from the board:

A. store, process, or dispose of waste tires or tire-derived products; or

B. establish, construct, modify, own, or operate a waste tire facility.

Subp. 2. **Exclusions.** The following persons are not required to obtain a waste tire facility permit:

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

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

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

D. a permitted landfill operator with less than 10,000 waste tires stored above ground at the permitted site;

E. a person using waste tires for agricultural purposes if the waste tires are kept on the site of use; or

F. a person conducting abatement activities under an abatement order or stipulation agreement entered into under part ~~7035.8020~~ 9220.0120. This exemption does not exempt the person from the duty to obtain a waste tire facility permit for activities other than the abatement action.

Subp. 3. **Closure of facilities.** The owner or operator of a waste tire facility who does not seek a waste tire facility permit or who does not qualify for permit by rule status shall

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within 90 days after the effective date of this chapter close the facility in compliance with part 9220.0500.

9220.0240 PERMIT BY RULE.

Subpart 1. **Facilities eligible.** The owners and operators of the following waste tire facilities are considered to have obtained a waste tire facility permit without submitting the application described in part 9220.0270 if the chair has received the notification described in subpart 3:

A. a waste tire facility used for the storage of no more than 500 waste tires at any one time if the owner or operator, at least once a year, removes all the waste tires, and the facility is in compliance with the location requirements of part 9220.0450, subpart 2; and

B. a waste tire facility used for processing not more than 500 waste tires during any 30 days if the facility is in compliance with the location requirements of part 9220.0450, subpart 2.

Subp. 2. **Eligibility for owners and operators of mobile equipment.** The owners or operators of mobile shredding or baling equipment are considered to have obtained a waste tire facility permit if they submit the notice required under subpart 3 and if they comply with the following conditions:

A. the shredding or baling equipment is located at the tire dump or waste tire facility for less than 90 days; and

B. all bales or tire shreds and residuals are removed from the site 30 days after the completion of the shredding or baling operation.

Subp. 3. **Written notification.** To obtain permit by rule status, the owners and operators of a qualifying waste tire facility or mobile shredding or baling equipment shall submit the following information to the chair. For an existing facility, the notification must be submitted within 90 days of the effective date of part 9220.0200. For a new facility and for each new shredding or baling site, the notification must be submitted 15 days before the operation begins. The notification

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must contain:

A. the name, address, and telephone number of the owner and operator of the facility or equipment, and the name, address, and telephone number of the facility;

B. a description of the general operation of the facility or equipment, including quantities of waste tires accumulated or processed per month;

C. a description of arrangements made to acquire fire protection services for the facility;

D. the township, range, and section numbers of the facility; and

E. a description of how the waste tires, tire-derived products, and residuals from processing will be disposed.

Subp. 4. **Termination of eligibility for permit by rule.** The board shall terminate the eligibility of owners and operators of a facility for permit by rule status after notice and opportunity for a contested case hearing if the board finds that the facility does not qualify for permit by rule status or that the facility should be permitted to protect human health or the environment. When eligibility to be permitted under this part has been terminated, the owner and operator of the facility must apply within 60 days for a waste tire facility permit or close the facility in compliance with part 9220.0490 and the applicable requirements of part 9220.0500.

9220.0250 DESIGNATION OF PERMITTEE.

The board shall designate all owners and operators of the waste tire facility as co-permittees when issuing a waste tire facility permit.

9220.0260 WASTE TIRE FACILITY PERMIT APPLICATION PROCEDURES.

Subpart 1. **Form.** The application for a waste tire facility permit consists of a general application that includes the appropriate supporting documents, map, and additional application information specific to the facility that is the subject of the application. The content requirements of the general permit application are set forth in part 9220.0270. The

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additional application information requirements specific to the facility type are set forth in parts 9220.0280 to 9220.0310, and must be submitted with the permit application.

Subp. 2. **Submittal.** Applicants for a waste tire facility permit shall submit a completed permit application to the chair, and a copy to the county where the facility is located or proposed to locate, and shall retain a copy for their records.

Subp. 3. **Time of submittal.** A person shall submit a permit application in accordance with items A and B.

A. For a waste tire processing or storage facility, a person shall submit a permit application at least 180 days before the planned date of facility construction for a new facility or for an existing facility no later than 90 days after the effective date of this chapter.

B. For a waste tire transfer facility, a person shall submit a permit application at least 90 days before the planned date of facility construction for a new facility or for an existing facility no later than 90 days after the effective date of this chapter.

Subp. 4. **Renewal of existing permit.** A written application for renewal of an existing permit must be submitted 90 days before the expiration date of the existing permit.

9220.0270 WRITTEN APPLICATION.

Subpart 1. **Scope.** A person who requests the issuance or renewal of a permit shall complete, sign, and submit to the chair a written application in a form prescribed by the chair. The application must contain the information in subparts 2 to 10. If a provision does not apply to the particular facility, the applicant shall explain why the provision does not apply.

Subp. 2. **General facility information.** The application must include the following:

A. the name, address, and telephone number of all owners and operators of the facility for which the application is submitted and identification of each applicant as an individual, business, partnership, public entity, or other

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entity;

B. the name, address, and telephone number of the person who prepared the application; and

C. an indication of whether the facility to be permitted is new or existing.

Subp. 3. **Description of facility operation.** The application must include a description of the following:

A. the type of facility operation, the manner in which waste tires will be collected at the facility, and how those waste tires will be stored, processed, or used;

B. the quantity and type of waste tires stored at the facility currently and the maximum quantity and type of waste tires to be stored at the facility at any time;

C. the facility's ability to meet the technical standards that apply to waste tire storage of part 9220.0450, subpart 3, items D to G;

D. the present use of the land at the site of the facility and of the land within a one-quarter mile radius of the facility, identifying the landowners and their addresses, and zoning designation;

E. weight and use restrictions on the access roads that lead to the site;

F. the location of the facility and whether that location complies with the restrictions established in part 9220.0450, subpart 2;

G. the types, sizes, conditions, and availability of equipment needed for operation and emergency response at the facility, and the functions of each piece of equipment described;

H. the security procedures and the location of fences, gates, and other access control measures;

I. the relationship of the facility to the applicable county solid waste management plan, and the area to be served by the facility; and

J. the expected operating life of the facility and how this number was calculated.

Subp. 4. **Map required.** The application must include a

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topographic or section map using a scale of no less than one inch equals 200 feet. This map must show the waste tire facility and surrounding area for one quarter mile in detail. At a minimum, the map must show the following:

A. the map scale and directions;

B. wetlands, floodways, shorelands, and surface waters, including intermittent streams;

C. legal boundaries and land ownership, including county, township, and municipal boundaries; township, range, and section numbers; and easements and rights-of-way;

D. the locations of wells, both operating and abandoned;

E. occupied dwellings;

F. the facility design and the location of all waste tire storage areas and fire lanes;

G. all structures and buildings that are or will be constructed at the facility, including those used in collection, storage, or processing operations;

H. loading and unloading areas;

I. access and internal roads;

J. run-off control measures, ditches, and dikes; and

K. the location of the area used for collection, storage, or processing of waste tires, tire-derived products, and residuals from processing; and the total land area in square feet used for storage of waste tires, tire-derived products, and residuals from processing.

Subp. 5. **Closure plan.** The application must include a plan for closing the facility in compliance with part 9220.0500.

Subp. 6. **Closure cost estimate.** The application must include a closure cost estimate prepared following the procedures in part 9220.0570.

Subp. 7. **Copy of financial assurance mechanism.** The application must include a copy of the financial assurance mechanism required by part 9220.0560.

Subp. 8. **Other information.** The applicant shall submit other information relevant to the application as requested by

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the chair or as required by parts 9220.0280 to 9220.0310.

9220.0280 ADDITIONAL APPLICATION INFORMATION REQUIRED FOR WASTE TIRE TRANSFER FACILITIES.

The application for a waste tire transfer facility must include the following information in addition to the information required by part 9220.0270:

A. a description of the types of vehicles that the facility will service;

B. information on how the accumulation of waste tires at the transfer facility will be controlled so that no more than 10,000 passenger tires or the equivalent weight of other waste tires will be present at the transfer facility at any time; and

C. information on the type, size, and capacity of storage that will be present at the facility, designating drop boxes, containers, trailers, or stockpiles.

9220.0290 ADDITIONAL APPLICATION INFORMATION REQUIRED FOR WASTE TIRE PROCESSING FACILITIES.

The application for a waste tire processing facility must include the following information in addition to the information required by part 9220.0270;

A. the maximum quantity and type of tire-derived products and residuals from processing to be stored on the site at any time, specifying the quantity and type of tire-derived products and residuals from processing stored on the site currently and how they are being stored;

B. a description of the processes and procedures used at the facility for processing waste tires;

C. the processing capacity of the facility, and the number of tons of waste tires currently being processed;

D. a description of how the facility will comply with the 75 percent annual processing requirement of part 9220.0470, subpart 2;

E. a description of how residuals from processing will be disposed of;

F. the existing and proposed markets for the

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facility's tire-derived products; and

G. a copy of the emergency preparedness manual required by part 9220.0470, subpart 4.

9220.0300 ADDITIONAL APPLICATION INFORMATION REQUIRED FOR WASTE TIRE STORAGE FACILITIES.

The application for a waste tire storage facility must include the following information in addition to the information required by part 9220.0270:

A. the procedures that will be used at the facility to minimize or prevent mosquito and rodent breeding in the waste tire stockpiles;

B. a copy of the emergency preparedness manual required by part 9220.0270, subpart 4; and

C. information on how the accumulation of waste tires at the waste tire storage facility will be controlled so that no more than 500,000 passenger tires or the equivalent weight of other waste tires are ever stored at the facility.

9220.0310 SIGNATURES.

A permit application must be signed by all owners and operators. If an owner or operator is a corporation, the president or executive office of the corporation shall sign. If an owner or operator is a partnership, two partners shall sign. If an owner or operator is a governmental unit, a certification of the signer's authority must be included.

9220.0320 PROVISIONAL STATUS.

Subpart 1. **Scope.** When the owner of a waste tire facility submits a permit application, the facility is considered provisionally permitted. Provisionally permitted facilities must conform to the requirements and standards described in part 9220.0450, except that the annual report required by part 9220.0450, subpart 4, is not required while the waste tire facility has provisional status.

Subp. 2. **Termination of provisional status by permitting, closure, or denial of permit.** Provisional status terminates

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when a permit is issued, when the chair verifies that closure is complete, or when the board denies a permit.

9220.0330 REVIEW OF PERMIT APPLICATIONS.

The chair shall review all permit applications for completeness. If the chair finds that the application is incomplete or otherwise deficient, the chair shall promptly advise the applicant in writing and suspend further processing of the portion of the application affected by the deficiency until the applicant has supplied the necessary information or otherwise corrected the deficiency.

9220.0340 PUBLIC NOTICE.

Subpart 1. **Scope.** Before the board acts to issue, renew, modify, revoke, or deny a permit, the chair shall seek public comment on the action, unless specifically exempted from this requirement under part 9220.0410.

Subp. 2. **Public notice contents.** The chair shall prepare and issue a public notice of an intended board action. The public notice must include, at a minimum:

A. the address and telephone number of the board office and a statement that additional information may be obtained at this office;

B. the names and addresses of all applicants or permittees, and of the facility that is the subject of the action;

C. a concise description of the facility that is the subject of the action;

D. a statement of the action the chair intends to request the board to take;

E. for action involving the issuance or renewal of permits, the duration of the permit that the chair intends to request the board to issue or renew;

F. a brief description of the procedures and standards for public comments, and the dates on which the public comment period begins and ends; and

G. a brief description of the procedures the board

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will follow in reaching a decision on the chair's intended action, and the procedures to be followed for requesting a public information meeting or contested case hearing.

Subp. 3. **Duration of notice period.** Unless extended by the chair, the public notice period is 30 days.

Subp. 4. **Distribution of public notice.** The chair shall distribute the public notice in the following manner:

A. A copy of the public notice must be available at the board office.

B. A copy must be mailed to the applicant.

C. A copy must be mailed to the county where the facility is located or proposed to be located.

D. Copies must be circulated in the geographic area within a 45-mile radius of the planned or existing facility. The chair shall circulate the public notice in one or more of the following ways:

(1) by posting the notice in the post office, public library, or other buildings used by the general public;

(2) by posting the notice at or near the entrance of the applicant's premises, if located near the facility that is the subject of the permit application; or

(3) by publishing the notice in one or more newspapers or periodicals of general circulation in the designated geographical area.

9220.0350 PUBLIC COMMENTS.

Subpart 1. **Written comments.** During the public comment period established in the public notice, any interested person may submit written comments on the action before the board. To be considered by the board in taking the action, comments must be in writing and must include the following:

A. a statement of the person's interest in the action;

B. a statement of the action the person wishes the board to take; and

C. the reasons why the person wants the board to take the action.

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Subp. 2. **Public information meeting or contested case hearing request.** During the public comment period and at the board meeting where the action is proposed to be taken, a person may request a public informational meeting or contested case hearing.

Subp. 3. **Extension of comment period.** The public comment period may be extended if the chair finds an extension of time is necessary to facilitate additional public comment. Notice of the extension of the comment period must be given in the same manner as the original notice.

9220.0360 PUBLIC INFORMATION MEETING.

Subpart 1. **Determination of need.** If the chair or the board determines that a public information meeting would help clarify and resolve issues regarding action on a permit, the chair shall hold a public information meeting.

Subp. 2. **Location.** The public information meeting must be held in the geographical area of the facility that is the subject of the action or at a place selected by the chair that is generally convenient to persons expected to attend the meeting.

Subp. 3. **Content of notice.** The chair shall publish a notice of the public information meeting. The notice must contain a reference to the action and the date, time, and location of the public information meeting and the issues to be discussed.

Subp. 4. **Distribution of notice.** The chair shall publish the notice in a newspaper of general circulation in the geographical area of the facility or activity that is the subject of the action, and shall mail a copy of the notice to the affected persons, the appropriate city and county officials, and all other persons who have indicated an interest in the permit application.

9220.0370 CONTESTED CASE HEARING.

Subpart 1. **Hearing required.** The board shall hold a contested case hearing if it finds all of the following:

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A. that a person requesting the contested case hearing has raised a material issue of fact or of the application of facts to law related to the chair's proposed action;

B. that the board has jurisdiction to make determinations on the issues of fact or of the application of facts to law raised by the persons requesting the contested case hearing;

C. that the record before the board is not adequate to allow the board to resolve a material issue of fact or of the application of fact to law raised by the person requesting the hearing, and that a contested case hearing would result in the creation of a record that would allow the board to resolve the issues raised; and

D. that the person requesting the contested case hearing would be affected by the board's action.

Subp. 2. **Hearing notice and order.** If the board decides to hold a contested case hearing, the chair shall prepare a notice of and order for hearing. The notice of and order for hearing must contain:

A. the information required by part 1400.5600 to the Office of Administrative Hearings;

B. a reference to the public notice of the board action and the date of issuance of the public notice;

C. identification of the affected parties and a concise description of the issues that have been raised by any party; and

D. the address of the board office where interested persons may inspect or obtain copies of the public notice of the board action, and other information relevant to the board action.

9220.0380 FINAL DETERMINATION.

Subpart 1. **Board action.** The board shall issue, renew, or modify a permit if it determines that the proposed permittees will comply with all permit conditions and applicable state or federal statutes and rules, or will undertake a schedule of

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compliance that will result in the facility being operated in compliance with state or federal statutes and rules.

Subp. 2. **Denial of permit.** The board shall refuse to issue a new permit or to modify or renew an existing permit if it finds:

A. that the proposed facility or permittee will not comply with all applicable state and federal statutes and rules or conditions of the permit;

B. that there exists at the facility unresolved noncompliance with applicable state or federal statutes and rules or conditions of the permit and that the permittee will not undertake a schedule of compliance to resolve the noncompliance;

C. that the permittee has failed to disclose fully all facts relevant to the facility to be permitted, or that the permittee has submitted false or misleading information to the board or to the chair;

D. that the permitted facility endangers human health or the environment and that the danger cannot be removed by a modification of the conditions of the permit; or

E. that applicable requirements of Minnesota Statutes, chapter 116D, and the rules adopted under Minnesota Statutes, chapter 116D, have not been fulfilled.

9220.0390 TERMS AND CONDITIONS OF PERMITS.

Subpart 1. **Term of permit.** A waste tire facility permit must be issued for up to five years.

Subp. 2. **Special conditions.** Each permit must require the facility to be operated consistent with the application for the facility permit, conditions placed by the board on permit approval, and all applicable state and federal statutes and rules. If the facility receiving the permit is not in compliance with any applicable state or federal statute or rule at the time of issuance, the permit must require the permittees to achieve compliance with the statute or rule within a reasonable period of time.

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Subp. 3. **General conditions.** Unless specifically exempted by statute or rule, each permit must include the following general conditions, and the board shall incorporate these conditions into all permits either expressly or by specific reference to this part:

A. The board's issuance of a permit does not release the permittee from any liability, penalty, or duty imposed by Minnesota or federal statutes or rules or local ordinances, except the obligation to obtain the permit.

B. The board's issuance of a permit does not prevent the future adoption by the board of rules or orders more stringent than those in existence at the time the permit is issued and does not prevent the enforcement of these rules or orders against the permittee.

C. The permit does not convey a property right or an exclusive privilege.

D. The permittee may not knowingly make a false or misleading statement, representation or certification in a record, report, plan, or other document required to be submitted to the board or to the chair by the permit. The permittee shall immediately upon discovery report to the chair an error or omission in these records, reports, plans, or other documents.

E. Upon presentation of proper credentials, the board or an authorized employee or agent of the board, shall be allowed by the permittee to enter the permitted facility at reasonable times to examine and copy books, papers, records, or memoranda pertaining to the facility, and to conduct surveys and investigations pertaining to the facility.

F. If the permittee discovers, through any means, including notification by the board, that noncompliance with a condition of the permit has occurred, the permittee shall take all ~~reasonable~~ necessary steps to minimize the adverse impacts on human health, welfare, or the environment.

G. If the permittee discovers that noncompliance with a condition of the permit has occurred that could endanger human health, welfare, or the environment, the permittee shall

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immediately notify the chair.

H. The permit is not transferable to any person except as provided in part 9220.0410, subpart 2.

I. The permit authorizes the permittee to perform the activities described in the permit under the conditions of the permit. In issuing the permit, the state and board assume no responsibility for damage to person, property, or the environment caused by the activities of the permittee in the conduct of its actions, including those authorized, directed, or undertaken under the permit. To the extent the state and board may be liable for the activities of its employees, that liability is explicitly limited to that provided in the Tort Claims Act, Minnesota Statutes, section 3.736.

9220.0400 CONTINUATION OF EXPIRED PERMIT.

A person who holds an expired permit and who submits a timely and complete application for renewal may continue to conduct the permitted activity until the board takes final action on the application if the chair determines that both of the following are true:

A. the permittee is in compliance with the terms and conditions of the expired permit; and

B. the chair, through no fault of the permittee, has not taken final action on the application on or before the expiration date of the permit.

9220.0410 MODIFICATION OR TRANSFER OF PERMIT.

Subpart 1. **Modification.** The chair shall modify a permit if the modification is needed to reflect changed state or federal statutes or rules applicable to the facility, to incorporate changes in a facility closure plan or emergency response manual, or to make other modifications consented to by the permittees. The procedures for giving public notice established in part 9220.0340 do not apply to permits modified by the chair under this subpart if the chair finds that the modification would not result in a significant change in facility operation. For all other modifications, the chair

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shall follow the public notice procedures of part 9220.0340, and the board shall determine whether the permit should be modified.

Subp. 2. **Change in facility ownership or operation.** The following conditions apply to the change in facility ownership or operation.

A. Before any change in facility ownership or operation, a written request for transfer of the permit must be submitted to and approved by the board. The request for transfer must indicate the reason the permit transfer is being requested, must be signed by all existing permittees and all persons seeking to become permittees, and must contain all information required in part 9220.0270, subpart 2.

B. If the chair finds that the proposed transfer of the permit would not affect present or future compliance with the permit, the chair shall give the public notice of the chair's intent to transfer the permit following the procedures in parts 9220.0340 to 9220.0370.

C. The board shall approve the transfer of the permit if it determines that the new permittee or permittees will comply with all permit conditions and all applicable laws and rules. After approval, permit transfer occurs when the change in facility ownership or operation becomes effective. In the event that the expected change in facility ownership or operation does not occur, the owners and operators remain fully responsible under the terms of the permit.

9220.0420 REVOCATION OF PERMIT.

Subpart 1. **Justification for revocation.** The following constitute justification for the chair to begin proceedings to revoke a permit:

A. existence at the facility of unresolved noncompliance with the permit or applicable state and federal statutes and rules, and the permittee is unwilling or unable to resolve the noncompliance;

B. the operation of the facility has terminated; or

C. the chair finds that the facility endangers human

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health or the environment and that the danger cannot be removed by a modification of the permit.

Subp. 2. **Procedure for revocation.** The chair shall give notice of the chair's intent to revoke a permit by following the procedures in part 9220.0340. This notice must state that the permittee may request that a contested case hearing be held on the proposed action. If the board grants a contested case hearing, the board shall hold the hearing in accordance with the rules of the Office of Administrative Hearings, parts 1400.5100 to 1400.8500.

9220.0430 INTERACTION OF PERMIT AND ABATEMENT RULES.

If a tire collector wishes to obtain a board permit for a site that is the subject of an abatement action, the tire collector shall notify the chair of this intent within 90 days of the effective date of part 9220.0200 or at the time the abatement plan is submitted and agree to develop a plan for bringing the site into compliance with the technical rules for waste tire transfer, processing, or storage facilities. Notification and agreement under this part does not exempt the owner or operator of a facility that is the subject of an abatement action from the duty to obtain a permit by following the procedures in parts 9220.0260 to 9220.0310 for activities other than the abatement action.

WASTE TIRE FACILITY STANDARDS

9220.0440 RULE CONFLICTS.

Nothing in parts 9220.0440 to 9220.0680 relieves any person from obligations or duties imposed by other laws, statutes, rules, standards, or ordinances of the federal, state, or local governments or any agency thereof now in effect or that become effective in the future. In the event parts 9220.0440 to 9220.0680 conflict with any of those laws, statutes, rules, standards, or ordinances, the more stringent provisions apply.

9220.0450 GENERAL STANDARDS FOR PERMITTED FACILITIES.

Subpart 1. **Scope.** All permitted waste tire facilities

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must comply with the technical and operational standards in this part. In addition, each permitted facility must comply with requirements specific to the operation conducted at the facility and any special conditions as specified in parts 9220.0460 to 9220.0480 established in a permit.

Subp. 2. **Location of facility.** A waste tire facility must not be constructed or operated in a wetland, sinkhole, shoreland, ravine, floodway, or any area where it may be subjected to immersion in water.

Subp. 3. **Operation.** A waste tire facility must be operated in compliance with the following standards:

A. No operations involving the use of open flames, blow torches, or highly flammable substances must be conducted within 50 feet of a waste tire pile.

B. An approach and access road to the waste tire facility must be maintained passable for any vehicle at all times. Access to the facility must be strictly controlled through the use of fences, gates, or other means of controlling access.

C. An attendant shall be present at all times the waste tire facility is open for business.

D. A waste tire storage area must be designated. Only waste tires and tire-derived products may be stored in the designated waste tire storage area. This area must be maintained free of vegetation.

E. Waste tires stored indoors must be stored under conditions that meet or exceed those in the current edition of The Standard for Storage of Rubber Tires, National Fire Protection Association (NFPA) 231D, written by the NFPA Committee on Standards for Rubber Tires, published by the NFPA Standards Council. This publication is available at the Minnesota State Law Library, Ford Building, 117 University Avenue, Saint Paul, Minnesota; the Office of Public Safety, Fire Marshal Division; or any local fire department. This publication is incorporated by reference and is not subject to frequent change.

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F. No waste tire pile must have an area greater than 10,000 square feet or a vertical height greater than 20 feet.

G. A 50-foot fire lane must be placed around the perimeter of each waste tire pile. Access to the fire lane for emergency vehicles must be unobstructed at all times. The fire lane must be maintained free of rubbish and vegetation at all times.

H. All tire piles must be maintained free of mosquitoes and rodents.

I. Surface water drainage must be diverted around and away from the waste tire storage area.

Subp. 4. **Annual report.** A permittee of a waste tire facility shall submit a report containing the following information to the chair annually, on March 1 of each year:

A. the facility name, address, and permit number;

B. the year covered by the report;

C. the total quantity and type of waste tires or weight of tire-derived products received at the facility during the year covered by the report;

D. the total quantity and type of waste tires or weight of tire-derived products shipped from the facility during the year covered by the report;

E. the total quantity and type of waste tires and weight of tire-derived products located at the facility on the date of reporting;

F. for all waste tires and tire-derived products shipped from the facility, the name and waste tire transporter identification number of the transporter who accepted the waste tires or tire-derived products for transport, and the quantity of waste tires or volume of tire-derived products shipped with that transporter; and if the waste tires were shipped with a person who is not a waste tire transporter, the number of tires shipped, the person's name and telephone number, and the place where the tires were deposited;

G. for all waste tires and tire-derived products received at the facility, the name and waste tire transporter

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identification number of the transporter who delivered the waste tires or tire-derived products to the facility, and the quantity of waste tires or volume of tire-derived products received from that transporter; and if the waste tires were delivered by a person who is not a waste tire transporter, the number of tires delivered and the person's name and telephone number;

H. for all waste tires removed for recapping, the quantity and type removed, and the name and location of the recapping facility receiving the tires; and

I. the most recent closure cost estimate prepared using the criteria in part 9220.0570.

9220.0460 WASTE TIRE TRANSFER FACILITY STORAGE LIMITATION.

Waste tires stored at the waste tire transfer facility must be limited to 10,000 passenger car tires or the equivalent weight of other waste tires. In addition, all waste tires received at the facility must be transported to a permitted waste tire processing facility at least twice annually or unless otherwise provided in the facility's permit.

9220.0470 ADDITIONAL STANDARDS FOR WASTE TIRE PROCESSING FACILITIES.

Subpart 1. **Scope.** This part sets out the additional standards that apply to the operation of a permitted waste tire processing facility in addition to the general standards in part 9220.0450. To qualify for regulation as a waste tire processing facility, the standards in part 9220.0450 must be met.

Subp. 2. **Storage limitation.** A waste tire processing facility must not store more than 70,000 passenger car tires or the equivalent weight of other tires or tire-derived products at any time. Waste tires stored must be limited to one pile of waste tires and one pile of tire-derived product meeting the limits in part 9220.0450, subpart 3, item F, of the general facility standards. In addition, at least 75 percent of the waste tires and tire-derived products that are delivered to or are contained on the site of the waste tire processing facility at the beginning of each year must be processed and removed from

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the facility during the year.

Subp. 3. **Emergency equipment.** Equipment for communications and the control of fires must be provided and maintained at the waste tire processing facility at all times.

Subp. 4. **Emergency preparedness manual.** The operator of the waste tire processing facility shall maintain an emergency preparedness manual at the facility. This manual must be submitted to the chair with the permit application. Once approved, the manual becomes part of the permit. This manual must be updated if a change in the operations of the waste tire processing facility occurs, or if the chair requests an update. This emergency preparedness manual must, at a minimum, contain:

A. a list of names and telephone numbers of persons to be contacted in the event of a fire, flood, or other emergency involving the waste tire processing facility;

B. a list of the emergency response equipment present at the waste tire processing facility or available for use at the facility, the location of the equipment, and how it should be used in the event of a fire or other emergency;

C. the procedures to be followed by facility personnel from discovery of an emergency until the situation is corrected, including the measures that will be taken to minimize the occurrence, recurrence, or spread of fires, explosions, and releases;

D. the locations of known water supplies, fire hydrants, dry-chemical extinguishers, or other materials that may be used for firefighting purposes; and

E. additional relevant information.

No emergency preparedness manual shall be approved unless the permittee demonstrates that arrangements to acquire police and fire protection services for the waste tire processing facility have been made.

Subp. 5. **Emergency procedures.** The operator of the waste tire processing facility shall implement the emergency procedures of subpart 4, item C, in the event of a fire or other emergency.

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Subp. 6. **Emergency notification and reports.** The operator of the waste tire processing facility shall immediately notify the chair in the event of a fire or other emergency with potential off-site impacts. Within one week of correcting an emergency situation at the waste tire processing facility, the permittee of the facility shall submit to the chair a report on the emergency. This report must set out the type of emergency, the date and time of the emergency, the origins of the emergency, the actions that were taken to respond to the emergency, the results of the actions that were taken, and an analysis of the success or failure of the actions.

9220.0480 ADDITIONAL STANDARDS FOR WASTE TIRE STORAGE FACILITIES.

Subpart 1. **Scope.** This part sets out the standards that apply to the operation of a permitted waste tire storage facility in addition to the general standards in part 9220.0450. A waste tire facility that cannot qualify for regulation as a waste tire transfer facility or as a waste tire processing facility must comply with the standards in this part.

Subp. 2. **Emergency preparedness standards.** Waste tire storage facilities must comply with the emergency preparedness standards for waste tire processing facilities in part 9220.0470, subparts 3 to 6.

Subp. 3. **Storage limitation.** No waste tire storage facility shall store more than 500,000 passenger car tires or the equivalent weight of other waste tires or tire-derived products at any time.

Subp. 4. **Additional information.** In addition to the information required to be submitted in the annual report required under the general facility standards of part 9220.0450, subpart 4, the operator of the waste tire storage facility shall submit information on the procedures used at the facility to minimize or prevent mosquito breeding and rodent infestation, including the dates when mosquito or rodent control operations were conducted.

Subp. 5. **Removal of soil contaminated with ~~pyrolitic~~**

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pyrolytic oil. If ~~pyrolitic~~ pyrolytic oil is released at the waste tire facility, the permittee shall remove contaminated soil in accordance with any applicable rules governing the removal, transportation, and disposal of the material.

9220.0490 CLOSURE.

Subpart 1. **Closure required.** The owner or operator of a waste tire facility shall cease to accept waste tires and immediately close the facility in compliance with any special closure conditions established in the permit, this part, and part 9220.0500, if:

A. the owner or operator declares the facility closed;

B. the owner or operator fails to maintain adequate financial assurance;

C. the board permit for a facility expires and renewal of the permit is not applied for, or is applied for and denied;

D. the board permit for the facility is revoked;

E. a board order to cease operations is issued;

F. a board stipulation agreement specifies closure is to begin; or

G. the owner or operator of a permitted facility has failed to receive and ship waste tires for a continuous six-month period.

Subp. 2. **Submittal of closure plan.** The owner or operator of a waste tire facility shall submit to the chair a closure plan with the permit application, or as required by an order or stipulation agreement. The chair shall approve the closure plan as part of the permit issuance procedure or as part of a submittal required by a stipulation agreement or order. Compliance with the approved closure plan must be made a condition of any permit, order, or stipulation agreement. No closure plan shall be approved unless the closure plan is consistent with this part and the applicable closure requirements of part 9220.0500.

Subp. 3. **Contents of closure plan.** The closure plan must

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include:

A. a description of the facility's operation, including the maximum inventory of waste tires and tire-derived products that will be collected at the facility at any time during the operating life of the facility;

B. when or under what circumstances the facility will close;

C. how all waste tires and tire-derived products will be removed from the facility upon closure, and what end-use is planned for the waste tires and tire-derived products; and

D. a schedule for the applicable closure procedures of part 9220.0500, including the time period for completing the closure procedures.

Subp. 4. **Amendment of the plan.** The permittee may amend the closure plan at any time during the life of the facility. Any amendments to the closure plan must be submitted to and approved by the chair before they become effective. The permittee shall amend the closure plan and submit the amended plan to the chair for approval whenever changes in the operating plan or facility design affect the closure procedures required, or whenever the expected year of closure changes.

9220.0500 CLOSURE PROCEDURES.

Subpart 1. **Time for completion of closure.** Unless otherwise approved in a waste tire facility closure plan, the owner or operator shall within 90 days complete the closure procedures of subpart 2.

Subp. 2. **Closure procedures.** If the conditions of part 9220.0490, subpart 1, exist, the owner or operator shall:

A. close public access to the facility;

B. post a gate notice indicating to the public that the facility is closed and indicating the nearest facility where waste tires can be deposited;

C. notify the board, local units of government, local land use authorities, and fire and health authorities of the closing of the facility;

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D. remove all solid waste to a permitted solid waste facility;

E. remove all waste tires to a waste tire processing facility that has a permit or provisional status;

F. remove all tire-derived products to a market; and

G. notify the chair when the closure activities are completed.

Subp. 3. **Acceptance of removed tires.** If a waste tire processing facility is not available to accept the waste tires removed under subpart 2, item E, the chair shall approve shipment of the waste tires to a waste tire storage or transfer facility willing and able to accept the waste tires.

Subp. 4. **Certification of closure.** After receiving certification from the owner or operator of the facility that the closure procedures have been completed in accordance with subpart 2, the chair shall inspect the facility site. If all procedures have been correctly completed, the chair shall verify that the facility has been closed in compliance with parts 9220.0440 to 9220.0500, and that all duties established by parts 9220.0440 to 9220.0500, and by the facility permit, have been discharged.

9220.0510 PETITION PROCEDURES.

Subpart 1. **Scope.** This part sets out the procedures for submitting a petition for an exemption from the 75 percent annual processing requirement in part 9220.0470, subpart 2.

Subp. 2. **Submission of the petition.** The permittee of a waste tire processing facility may petition the chair for an exemption from the 75 percent annual processing requirement by submitting a petition containing the information described in subpart 3, as soon as the permittee becomes aware that compliance with the 75 percent annual processing requirement cannot be achieved.

Subp. 3. **Information required.** The petition for an exemption from the 75 percent annual processing requirement must contain information sufficient to allow the chair to find:

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A. that the 75 percent annual processing requirement will be met in the year following the year for which the exemption is obtained;

B. that an exemption from the 75 percent annual processing requirement will not cause the facility to be out of compliance with any other standard applicable to the facility; and

C. that an exemption from the 75 percent annual processing requirement will not cause the facility to become a hazard to human health, natural resources, or the environment.

Subp. 4. **Determination by the chair.** If the chair, upon evaluation of the information submitted as part of the petition, makes the findings listed under subpart 3, the chair shall grant the petition. The chair shall determine whether the petition shall be granted within 60 days of receiving a petition containing information sufficient for the chair to make the required findings. An exemption granted under this part is valid for one year. The chair shall not grant the permittee of a waste tire processing facility an exemption from the 75 percent annual processing requirement for any two consecutive years.

GENERATION AND TRANSPORTATION

9220.0520 WASTE TIRE DISPOSAL.

Subpart 1. **Scope.** The requirements of subpart 2 apply to all persons who dispose of waste tires. The requirements of subpart 3 apply only to persons who dispose of more than 100 waste tires in a calendar year.

Subp. 2. **Waste tire disposal.** On and after 90 days from the effective date of this chapter, any person who disposes of waste tires, and who contracts or arranges with a person for their disposal, shall only contract or arrange for disposal of waste tires with a person displaying a waste tire transporter identification number, or a person exempt under part 9220.0530, subpart 3.

Subp. 3. **Record keeping.** All persons who dispose of more

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than 100 waste tires in a calendar year shall maintain a record of the quantity and type of waste tires sent for disposal. For shipments made under subpart 2, this record must also note the name of the person transporting the waste tires, the identification number of the waste tire transporter, if applicable, and the date of the transaction. For persons who transport their own waste tires for disposal, this record must also note the date of shipment and the name of the waste tire facility where the waste tires were delivered. When requested by the chair, the record must be made available for inspection. The record must be retained for three years from the date of the transaction.

9220.0530 WASTE TIRE TRANSPORTATION.

Subpart 1. **Scope.** This part sets out the requirements that apply to persons who are in the business of transporting waste tires.

Subp. 2. **Exempt persons.** The requirements of this part do not apply to:

A. a person transporting household quantities of waste tires incidental to municipal waste collection, and who delivers those waste tires to a permitted solid waste facility, a waste tire facility with a permit or provisional status, or a waste tire facility that is exempt from the requirement to obtain a waste tire permit;

B. a person receiving waste tires incidental to the collection of recyclable materials and who delivers those waste tires to a permitted solid waste facility, a waste tire facility with a permit or provisional status, or a waste tire facility that is exempt from the requirement to obtain a waste tire facility permit;

C. a person transporting no more than ten waste tires to a permitted solid waste facility, a waste tire facility with a permit or provisional status, or a waste tire facility that is exempt from the requirement to obtain a waste tire facility permit;

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D. a person transporting waste tires that will only be used for agricultural purposes;

E. a person transporting tire-derived products to a market; and

F. a business delivering its own waste tires to a waste tire facility that has obtained provisional status or a permit or is exempt under part 9220.0230, subpart 2, to obtain a waste tire facility permit.

Subp. 3. **Board identification number required.** Except as exempted by subpart 2, a person who transports waste tires must obtain and display a waste tire transporter identification number when transporting waste tires. The information that must be submitted to the chair to obtain a board identification number is specified in part 9220.0540. The board's issuance of a waste tire transporter identification number does not release the transporter from any liability, penalty, or duty imposed by Minnesota or federal statutes or rules or local ordinances, except the obligation to obtain the waste tire transporter identification number.

Subp. 4. **Waste tire transportation.** A transporter who collects waste tires from a person who disposes waste tires shall deliver the waste tires to a waste tire facility with a permit or provisional status, or a waste tire facility that is exempt from the requirement to obtain a waste tire permit.

Subp. 5. **Record keeping.** Transporters shall record and maintain the following information regarding their activities for each month of operation:

A. the type and quantity of waste tires collected;

B. where the waste tires collected were deposited, specifying the number and type deposited at each location; and

C. where or from whom the waste tires were collected.

Subp. 6. **Submittal of operating record.** Transporters shall submit to the chair an operating record that identifies the transporter by name and identification number, and that summarizes the information accumulated under subpart 5 for the three months preceding the month the record is to be submitted.

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This record must be submitted April 10, July 10, October 10, and January 10 of each year.

9220.0540 TRANSPORTER APPLICATION REQUIREMENTS.

Subpart 1. **Scope.** A person required to obtain a waste tire transporter identification number under part 9220.0530, subpart 3, shall follow the procedures established in subpart 2.

Subp. 2. **Application.** To obtain a waste tire transporter identification number and approval to transport waste tires, a transporter shall submit a written application to the chair. For a transporter currently transporting waste tires, the application must be submitted not more than 60 days after the effective date of this chapter. For a new transporter, the application must be submitted 15 days before the transporter begins transporting waste tires. The application must contain the following information:

A. the name, address, and telephone number of the person who will be transporting waste tires; and if a company will be transporting waste tires, the name, address, and telephone number of the officers of the company, along with an identification of the number of drivers that will be transporting tires for the company;

B. the geographical area that will be served;

C. the type of vehicle or trailer or both vehicle and trailer that will be used, the license number, and registered vehicle owner;

D. where the waste tires will be collected, and where delivered or deposited; and

E. an estimate of the quantity and type of waste tires that will be collected quarterly.

WASTE TIRE FACILITY
FINANCIAL ASSURANCE REQUIREMENTS

9220.0550 SCOPE.

Parts 9220.0550 to 9220.0680 apply to owners and operators of waste tire facilities, except those who are exempt from the requirement to obtain a waste tire facility permit under part

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9220.0230, subpart 2, or are permitted by rule under part 9220.0240.

9220.0560 FINANCIAL ASSURANCE REQUIRED.

The owner or operator of a waste tire facility shall establish financial assurance for closure of the facility within the time periods established in part 9220.0580, by obtaining one or more of the financial assurance mechanisms approved by the chair, or by obtaining a county-held financial assurance mechanism that has been approved by the chair.

9220.0570 COST ESTIMATE FOR CLOSURE.

Subpart 1. **Average cost of closure estimate.** The chair shall calculate the average cost of closure of a waste tire facility by examining the cost of transportation of waste tires to processing facilities and the average cost of processing waste tires in the state. The chair shall express the average cost of closure through use of a per tire average cost figure.

Subp. 2. **Amount.** The amount of financial assurance to be provided by the owner or operator of a waste tire facility must be greater than or equal to the closure cost estimate derived by multiplying the chair's estimate of the per tire statewide average cost of closure by the maximum number of tires that will be maintained at the facility as stated in the permit application part 9220.0270, subpart 3, item B.

9220.0580 SCHEDULE FOR ESTABLISHING FINANCIAL ASSURANCE.

Subpart 1. **Surety bond or letter of credit.** The owner or operator of a waste tire facility shall submit evidence to the chair with the permit application that a bond or a letter of credit has been obtained.

Subp. 2. **Closure trust fund.** Waste tire facilities shall make annual payments into a closure trust fund. The first payment must be made six months after the date the waste tire facility permit is issued by the board. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The minimum amount of each payment must

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be determined by the formula in part 9220.0610, subpart 5. Evidence of the establishment of a closure trust fund must be submitted with the permit application.

9220.0590 ADJUSTMENTS TO FINANCIAL ASSURANCE LEVEL.

Subpart 1. **Annual recalculation.** The chair shall recalculate annually the per tire statewide average cost of closure. If a change is made in the statewide average, the chair will notify all permittees by mail.

Subp. 2. **Change in closure cost estimate.** If the closure cost estimate for a permitted waste tire facility increases, the permittee shall adjust the level of financial assurance as specified in parts 9220.0610 to 9220.0640.

9220.0600 COUNTY-HELD FINANCIAL ASSURANCE MECHANISM.

Subpart 1. **Scope.** An owner or operator of a waste tire facility may use a county-held financial assurance mechanism to satisfy the requirements of part 9220.0540.

Subp. 2. **Action by county.** A county controlling financial assurance for a waste tire facility shall take all actions needed to gain access to the funds available through the financial assurance mechanism when the owner or operator of the waste tire facility has failed to:

A. begin or complete closure as required by the permit or part 9220.0500;

B. provide alternate financial assurance and obtain written approval of the financial assurance from the chair and the county within the time period required by part 9220.0580; or

C. fund the standby trust fund within the specified time period as required by part 9220.0620.

Subp. 3. **Action by chair.** In the event that the county has failed to gain access to the funds available through the financial assurance mechanism within 30 days of the owner's or operator's failure to perform as specified in subpart 2, or if the county has failed to use any funds obtained under subpart 2 to close the facility in compliance with the closure plan or part 9220.0490, the chair shall be given access to the funds.

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The county shall take no action that interferes with the chair's access to the funds, and shall cooperate with the chair if necessary to allow the chair to gain access to the funds.

Subp. 4. **Notice.** In the event that the chair takes action under subpart 3, the chair shall give notice of this action to the county and all other involved parties, including the owner or operator of the waste tire facility, and any trustee, surety, or letter of credit institution. Failure by the chair to give notice does not invalidate the chair's actions under subpart 3.

9220.0610 CLOSURE TRUST FUND.

Subpart 1. **Scope.** Subparts 2 to 13 apply to closure trust funds. For trust funds held by a county under part 9220.0600, provisions in this part that refer to the chair apply to both the chair and the county.

Subp. 2. **Establishment of trust fund.** An owner or operator of a waste tire facility may satisfy the requirements of part 9220.0560 by establishing a closure trust fund that conforms to the requirements of subparts 2 to 13 and by submitting an originally-signed duplicate of the trust agreement to the chair with the permit application. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

Subp. 3. **Wording of trust agreement.** The chair shall approve the form of a trust agreement instrument that contains terms adequate to ensure that financial assurance is provided. The chair shall provide a copy of the approved trust agreement instrument with the permit application forms. The owner or operator of the waste tire facility shall use the form provided by the chair when establishing a trust fund financial assurance mechanism.

Subp. 4. **Pay-in period.** The owner or operator shall make annual payments into the trust fund over the period for which the financial assurance is required, hereinafter called the pay-in period. The pay-in period must equal five years or the

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expected operating life of the facility, whichever is shorter.

Subp. 5. **Payments.** The first payment must be made and a receipt submitted to the chair six months after the date the waste tire facility permit is issued. The first payment must at least be equal to the applicable current closure cost estimate, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The minimum amount of each subsequent payment must be determined by this formula:

$$\text{next payment} = \frac{CE - CV}{Y}$$

where CE is the current closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

Subp. 6. **Establishment of trust fund as an alternate financial assurance mechanism.** If the owner or operator chooses to establish a closure trust fund after having used one or more alternate financial assurance mechanisms in part 9220.0550, the first payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this part as applicable.

Subp. 7. **Additional payments.** If, after the pay-in period is completed, the sum of the current closure cost estimate changes, the owner or operator shall within 60 days deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate. The owner or operator shall submit a receipt from the trustee for this payment to the chair. Alternately, the owner or operator may establish other financial assurance mechanisms as specified in parts 9220.0610 to 9220.0640 to cover the difference.

Subp. 8. **Request for release of excess funds.** During the operating life of the facility, if the value of the trust fund is greater than the sum of the current closure cost estimate, the owner or operator may submit to the chair a written request for release of the amount in excess of the current closure cost

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estimate covered by the trust fund.

Subp. 9. **Substitution of alternate financial assurance mechanisms.** If an owner or operator substitutes other financial assurance mechanisms as specified in parts 9220.0610 to 9220.0640 in place of all or part of the trust fund, the owner or operator may submit a written request to the chair for release of the amount in excess of the current closure cost estimate covered by the trust fund.

Subp. 10. **Release of funds.** Within 60 days after receiving a request from the owner or operator for release of funds specified in subpart 8 or 9, the chair shall instruct the trustee to release to the owner or operator any funds in excess of the latest closure cost estimate covered by the trust fund.

Subp. 11. **Notification.** The trust fund instrument must require the trustee to notify the owner or operator and the chair by certified mail within ten days following the expiration of the 30-day period after the anniversary of the establishment of the trust if no payment is received from the owner or operator during the period. Within 60 days after receipt by the chair of a notice of nonpayment of any payment required by this part, the owner or operator shall:

A. make the required payment;

B. provide alternate financial assurance as specified in this part and obtain the chair's written approval of the assurance provided; or

C. stop accepting waste tires and begin closure of the facility.

Subp. 12. **Reimbursement.** After beginning closure of the waste tire facility, an owner, operator, or other person authorized to perform closure may request reimbursement from the trust fund for completed closure expenditures by submitting itemized bills to the chair. Within 60 days after receiving bills for completed closure activities, the chair shall determine whether the closure activities were in accordance with the closure plan or otherwise needed to ensure proper closure, and if so, the chair shall instruct the trustee to make

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reimbursement in the amount the chair specifies in writing. If the chair has reason to believe that the cost of closure will be significantly greater than the value of the trust fund, the chair may withhold reimbursement until it is determined, under part 9220.0670, that the owner or operator is no longer required to maintain financial assurance for closure.

Subp. 13. **Termination of trust fund.** The chair shall agree to termination of the trust if:

A. an owner or operator substitutes alternate financial assurance as specified in parts 9220.0610 to 9220.0670; or

B. the chair releases the owner or operator from the requirements of this part under part 9220.0670.

9220.0620 SURETY BOND GUARANTEEING PAYMENT INTO A STANDBY TRUST FUND.

Subpart 1. **Scope.** Subparts 2 to 10 apply to surety bonds that guarantee payment into a standby trust fund. For surety bonds held by a county under part 9220.0600, provisions in this part that refer to the chair apply to both the chair and the county.

Subp. 2. **Surety bond requirements.** An owner or operator may satisfy the requirements of part 9220.0560 by obtaining a surety bond that conforms to the requirements of subparts 2 to 10 and by submitting the bond to the chair. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in Circular 570, issued by the United States Department of the Treasury, as published annually in the Federal Register on July 1.

Subp. 3. **Wording of surety bond.** The chair shall approve the form of a surety bond that contains terms adequate to ensure that financial assurance is provided. The chair shall provide a copy of the approved surety bond instrument with the permit application forms. The owner or operator of the waste tire facility must use the form provided by the chair when establishing a surety bond financial assurance mechanism.

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Subp. 4. **Establishment of standby trust fund.** The owner or operator who uses a surety bond to satisfy the requirements of part 9220.0560 shall also establish a standby trust fund. The bond shall require the surety to deposit all payments made under the bond directly into the standby trust fund in accordance with instructions from the chair. An originally-signed duplicate of the trust agreement must be submitted to the chair with the surety bond. The standby trust fund must meet the requirements of part 9220.0580, except that compliance with the requirements in items A to D is not required until the standby trust fund is funded under this part:

A. payments into the trust fund as specified in part 9220.0610;

B. updating of the trust agreement to show current closure cost estimates;

C. annual valuations as required by the trust agreement; and

D. notices of nonpayment as required by the trust agreement.

Subp. 5. **Performance guarantee.** The bond must guarantee that the owner or operator will:

A. pay into the standby trust fund an amount equal to the penal sum of the bond before the beginning of closure of the facility;

B. pay into the standby trust fund an amount equal to the penal sum within 15 days after an order to close the facility is issued by the chair, the board, or court of competent jurisdiction; or

C. provide alternate financial assurance as specified in parts 9220.0610 to 9220.0640 and obtain the chair's written approval of the assurance provided, within 90 days after receipt by the chair of a notice of cancellation of the bond from the surety.

Subp. 6. **Failure to perform.** Under the terms of the bond, the surety must become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

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Subp. 7. **Penal sum.** The penal sum of the bond must be at least equal to the sum of the applicable current closure cost estimate.

Subp. 8. **Changes to penal sum.** Within 60 days of an increase in the sum of the current closure cost estimate to an amount greater than the penal sum, the owner or operator shall either cause the penal sum to be increased to an amount at least equal to the sum of the current closure cost estimate and submit evidence of the increase to the chair, or obtain other financial assurance as specified in parts 9220.0610 to 9220.0640 to cover the increase. Whenever the sum of the current closure cost estimate decreases, the penal sum may be reduced to the sum of the current closure cost estimate following written approval by the chair.

Subp. 9. **Notification.** The bond must provide that the surety may cancel the bond only by sending notice of cancellation by certified mail to the owner or operator and the chair. The bond must also provide that cancellation is not effective until 120 days after the chair has received the notice of cancellation, as evidenced by the return receipt. For a surety bond held by a county under part 9220.0600, the bond must provide a 150-day cancellation period rather than a 120-day period.

Subp. 10. **Cancellation of surety bond.** The owner or operator may cancel the bond if the chair has given prior written consent. The chair shall provide written consent if:

A. an owner or operator substitutes alternate financial assurance as specified in parts 9220.0610 to 9220.0640; or

B. the chair releases the owner or operator from the requirements of this part in accordance with part 9220.0670.

9220.0630 LETTER OF CREDIT.

Subpart 1. **Scope.** Subparts 2 to 11 apply to letters of credit. For letters of credit held by a county under part 9220.0600, provisions in this part that refer to the chair apply

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to both the chair and the county.

Subp. 2. **Letter of credit requirements.** An owner or operator may satisfy the requirements of part 9220.0560 by obtaining an irrevocable letter of credit that conforms to the requirements of subparts 2 to 11, and by submitting the letter to the chair. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency. An owner or operator of a waste tire facility shall submit the letter of credit to the chair with the facility permit application.

Subp. 3. **Wording of letter of credit.** The chair shall approve the form of a letter of credit that contains terms adequate to ensure that financial assurance is provided. The chair shall provide a copy of the approved letter of credit instrument with the permit application. The owner or operator of the waste tire facility shall use the form provided by the chair when establishing a letter of credit financial assurance mechanism.

Subp. 4. **Establishment of standby trust fund.** An owner or operator who uses a letter of credit to satisfy the requirements of part 9220.0560 shall also establish a standby trust fund. Under the terms of the letter of credit, the issuing institution shall deposit all amounts paid directly into the standby trust fund in accordance with instructions from the chair. An originally-signed duplicate of the standby trust fund agreement must be submitted to the chair with the letter of credit. The standby trust fund agreement must meet the requirements in part 9220.0610, except that compliance with the following is not required until the standby trust fund is funded under this part:

A. payments into the trust fund as specified in part 9220.0610;

B. updating of Schedule A of the trust agreement to show current closure cost estimates;

C. annual valuations as required by the trust agreement; and

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D. notices of nonpayment as required by the trust agreement.

Subp. 5. **Notification.** The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be extended automatically for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the chair by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days must begin on the date when the chair received the notice, as evidenced by the return receipt. For a letter of credit held by a county under part 9220.0600, the letter of credit must provide a 150-day expiration period rather than a 120-day period.

Subp. 6. **Amount of credit.** The letter of credit must be issued in an amount at least equal to the applicable current closure cost estimate.

Subp. 7. **Changes to amount of credit.** Within 60 days of an increase in the current closure cost estimate to an amount greater than the amount of the credit, the owner or operator shall either cause the amount of the credit to be increased to an amount at least equal to the sum of the current closure cost estimate and submit evidence of the increase to the chair, or obtain other financial assurance as specified in parts 9220.0610 to 9220.0640 to cover the increase. Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the sum of the current closure cost estimate following written approval by the chair.

Subp. 8. **Failure to perform.** The letter of credit must provide that the chair may draw on the letter of credit, when the chair has determined that the owner or operator has failed to perform closure when required to do so in accordance with the closure plan or part 9220.0500.

Subp. 9. **Failure to establish alternate financial assurance.** The chair shall draw on the letter of credit if the

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owner or operator does not establish alternate financial assurance as specified in parts 9220.0610 to 9220.0640 and obtain written approval of the alternate assurance from the chair within 90 days after the chair receives notice that the issuing institution has decided not to extend the letter of credit beyond the current expiration date. The chair may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any extension, the chair shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in parts 9220.0610 to 9220.0640 and obtain written approval of the assurance from the chair.

Subp. 10. **Termination of letter of credit.** The chair shall return the letter of credit to the issuing institution for termination if:

A. an owner or operator substitutes alternate financial assurance as specified in parts 9220.0610 to 9220.0640; or

B. the chair releases the owner or operator from the requirements of this part in accordance with part 9220.0670.

9220.0640 SURETY BOND GUARANTEEING PERFORMANCE OF CLOSURE FOR PERMITTED FACILITIES.

Subpart 1. **Scope.** Subparts 2 to 11 apply to surety bonds that guarantee performance of closure. Surety bonds that guarantee performance of closure can only be used for permitted facilities with approved closure plans. For surety bonds held by a county under part 9220.0600, provisions in this part that refer to the chair apply to both the chair and the county.

Subp. 2. **Surety bond requirements.** An owner or operator may satisfy the requirements of part 9220.0560 by obtaining a surety bond that conforms to the requirements of subparts 2 to 11 and by submitting the bond to the chair. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in Circular 570, issued by the United States Department of the Treasury, as published annually in the

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Federal Register on July 1. The owner or operator of a waste tire facility shall submit the bond to the chair with the permit application.

Subp. 3. **Wording of performance bond.** The chair shall approve the form of a surety bond guaranteeing performance of closure that contains terms adequate to ensure that financial assurance is provided. The chair shall provide a copy of the approved performance bond instrument with the permit application forms. The owner or operator of the waste tire facility shall use the form provided by the chair when establishing a surety bond guaranteeing performance of closure financial assurance mechanism.

Subp. 4. **Establishment of standby trust fund.** The owner or operator who uses a surety bond to satisfy the requirements of part 9220.0560 shall also establish a standby trust fund. The bond must require the surety to deposit all payments made under the bond directly into the standby trust fund in accordance with instructions from the chair. An originally-signed duplicate of the standby trust fund agreement must be submitted to the chair with the surety bond. The standby trust fund must meet the requirements of part 9220.0610, except that compliance with the following requirements is not required until the standby trust fund is funded under this part:

A. payments into the trust fund as specified in part 9220.0610;

B. updating of the trust agreement to show current closure cost estimates;

C. annual valuations as required by the trust agreement; and

D. notices of nonpayment as required by the trust agreement.

Subp. 5. **Performance guarantee.** The bond must guarantee that the owner or operator will:

A. perform closure in accordance with the closure plan, and other requirements of the permit for the facility whenever required to do so; or

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B. provide alternate financial assurance as specified in parts 9220.0610 to 9220.0640 and obtain the chair's written approval of the assurance provided, within 90 days after receipt by the chair of a notice of cancellation of the bond from the surety.

Subp. 6. **Failure to perform.** Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond as determined by the chair.

Subp. 7. **Penal sum.** The penal sum of the bond must be at least equal to the applicable current closure cost estimate.

Subp. 8. **Changes to penal sum.** Within 60 days of an increase in the sum of the current closure cost estimate to an amount greater than the penal sum, the owner or operator shall either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of the increase to the chair, or obtain other financial assurance specified in parts 9220.0610 to 9220.0640. Whenever the sum of the current closure cost estimate decreases, the penal sum may be reduced to the current closure cost estimate following written approval of the chair.

Subp. 9. **Notification.** The bond must provide that the surety may cancel the bond only by sending notice of cancellation by certified mail to the owner or operator and to the chair. The bond must also provide that cancellation shall not be effective until 120 days after the chair has received the notice of cancellation as evidenced by the return receipt. For a surety bond held by a county under part 9220.0600, the bond must provide a 150-day cancellation period rather than a 120-day period.

Subp. 10. **Cancellation of surety bond.** The owner or operator may cancel the bond if the chair has given prior written consent. The chair shall provide written consent if:

A. an owner or operator substitutes alternate financial assurance as specified in parts 9220.0610 to 9220.0640; or

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B. the chair releases the owner or operator from the requirements of this part in accordance with part 9220.0680.

Subp. 11. **Limitation on liability.** The surety is not liable for deficiencies in the owner's or operator's performance of closure after the chair releases the owner or operator from the requirements of this part in accordance with part 9220.0670.

9220.0650 USE OF MULTIPLE FINANCIAL ASSURANCE MECHANISMS.

An owner or operator may satisfy the requirements of part 9220.0560 by establishing more than one financial assurance mechanism per waste tire facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, and letters of credit. The mechanisms must be established as specified in parts 9220.0610, 9220.0620, and 9220.0630, except that it is the combination of mechanisms, rather than a single mechanism, that must provide financial assurance at least equal to the sum of the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The chair may use any or all of the financial assurance mechanisms to provide for closure of the facility.

9220.0660 USE OF FINANCIAL ASSURANCE MECHANISMS FOR MULTIPLE WASTE TIRE FACILITIES.

An owner or operator may use a financial assurance mechanism specified in parts 9220.0610 to 9220.0640 to meet the requirements of part 9220.0560 for more than one waste tire facility. Evidence of financial assurance submitted to the chair must include a list showing, for each facility, the name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. When directing disbursement of funds for closure at any of the facilities covered by the mechanism, the chair

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shall direct that only the amount of funds designated for that facility be disbursed unless otherwise agreed to by the owner or operator.

9220.0670 RELEASE OF OWNER OR OPERATOR FROM FINANCIAL ASSURANCE REQUIREMENTS.

When an owner or operator has completed, to the satisfaction of the chair, all closure requirements in accordance with the closure plan or other closure requirements, the chair shall notify the owner or operator in writing that financial assurance for closure of the waste tire facility is no longer required.

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

Subpart 1. **Notification of bankruptcy.** An owner or operator shall notify the chair by certified mail of the commencement of a voluntary or involuntary proceeding under United States Code, title II, Bankruptcy, naming the owner or operator as a debtor, within ten days after commencement of the proceeding.

Subp. 2. **Incapacity of financial institution.** An owner or operator who fulfills the requirements of part 9220.0560 by obtaining a trust fund, surety bond, or letter of credit will be considered to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution; or in the event that the authority of the trustee to act as trustee is revoked or suspended; or in the event that the institution's authority to issue the surety bond or letter of credit is revoked or suspended. The owner or operator shall establish other financial assurance within 60 days after such an event.

REPEALER. Minnesota Rules, parts 7001.4000; 7001.4010; 7001.4020; 7001.4030; 7001.4035; 7001.4040; 7001.4050; 7001.4060; 7001.4070; 7001.4080; 7001.4090; 7001.4100; 7001.4110; 7001.4120; 7001.4130; 7001.4140; 7001.4150; 7035.8200; 7035.8205; 7035.8210; 7035.8220; 7035.8230;

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7035.8240; 7035.8250; 7035.8260; 7035.8270; 7035.8280;
7035.8290; 7035.8300; 7035.8400; 7035.8410; 7035.8420; 7035.8430;
7035.8440; 7035.8450; 7035.8460; 7035.8470; 7035.8480;
7035.8490; 7035.8500; 7035.8510; 7035.8520; 7035.8530;
7035.8540; 7035.8550; 7035.8560; 7035.8570; 7035.8580;
7035.8590; 7035.8700; and 7035.8710, are repealed.

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by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

APR 26 1988

Joan Anderson Growe
Secretary of State

11:25 AM

APPROVED AS TO FORM AND LEGALITY

April 25 1988

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY M J Carpenter

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of Proposed Rules Governing the Waste Tire Permit Program, Minn. Rules Parts 9220.0200 to 9220.0680.	NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Waste Management Board (Board) intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minn. Stat. §§ 14.22 to 14.28 (1986). Parts and subparts of Minn. Rules Parts 7001.0020, 7001.0040, 7001.0050, 7001.0190, 7001.4000 - .4150, 7035.8200 - .8300, 7035.8400 - .8590, 7035.8700 and 7035.8710, rules governing the Minnesota Pollution Control Agency waste tire regulatory program, will be repealed. The Board's authority to adopt the rule is set forth in Minn. Stat. § 115A.914 pursuant to Reorganization Order No. 144 (Dept. of Admin. 1987).

All persons have until 4:30 p.m. on Wednesday, February 24, 1988, to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the Board will proceed pursuant to Minn. Stat. §§ 14.131 to 14.20 (1986).

Comments or written requests for a public hearing must be submitted to:

Mr. Edward Welsch
Waste Management Board
1350 Energy Lane
St. Paul, Minnesota, 55108
(612) 649-5750

The proposed rule may be modified if the modifications are supported by data and views submitted to the Board and do not

result in a substantial change in the proposed rule as noticed.

The proposed rule, if adopted, will govern the waste tire regulatory program establsihed in Minn. Stat. § 115A.914 (1986) by establishing the substantive criteria and procedural conditions under which the Board will issue permits for waste tire facilities. The proposed rule is enclosed with this notice. One free copy of the rules is available from Mr. Edward Welsch at the address and telephone given above.

A Statement of Need and Reasonableness that describes the need for an reasonableness of each provision of the proposed rule and that identifies the data and information relied upon to support the proposed rule has been prepared and is available from Mr. Edward Welsch upon request.

You hereby advised, pursuant to Minn. Stat. § 14.115 (1986), "Small business considerations in rulemaking," that the proposed rule will have no negative effect on small businesses because the rule contains reduced regulatory requirements for small businesses.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the rule as adopted, must submit a written request to Mr. Edward Welsch.

Dated: 1/11/88

Joseph M. Pavelich, Chair
Waste Management Board

STATE OF MINNESOTA
MINNESOTA WASTE MANAGEMENT BOARD

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

STATEMENT OF NEED
AND REASONABLENESS

Minnesota Waste Management Board
1350 Energy Lane
St. Paul, Minnesota 55108

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I. Introduction

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

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

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

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

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

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

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

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

Permit Application Procedure

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

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

Old Tire/New Tire Distinction

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

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

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

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

Financial Assurance Requirements

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

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

III. REASONABLENESS OF THE PROPOSED RULES

Introduction

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

SCOPE
Part 9220.0200

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

DEFINITIONS
Part 9220.0210

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LAND DISPOSAL PROHIBITED
9220.0220

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

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

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

PERMIT REQUIRED
Part 9220.0230

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

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

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

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

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

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

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

PERMIT BY RULE
Part 9220.0240

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

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

by rule status.

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

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

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

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

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

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

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

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

DESIGNATION OF PERMITTEE
Part 9220.0250

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

WASTE TIRE FACILITY PERMIT APPLICATION PROCEDURE
Part 9220.0260

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

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

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

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

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

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

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

WRITTEN APPLICATION
Part 9220.0270

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the proposed or existing waste tire facility.

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

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

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

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

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

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

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

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

ADDITIONAL APPLICATION INFORMATION REQUIRED FOR WASTE TIRE TRANSFER FACILITIES Part 9220.0280

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

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

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

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

ADDITIONAL APPLICATION INFORMATION REQUIRED FOR WASTE TIRE PROCESSING FACILITIES Part 9220.0290

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

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

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

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

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

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

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

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

ADDITIONAL APPLICATION INFORMATION REQUIRED FOR WASTE TIRE STOARGE FACILITIES Part 9220.0300

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

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

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

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

SIGNATURES
Part 9220.0310

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

PROVISIONAL STATUS
Part 9220.0320

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

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

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

REVIEW OF PERMIT APPLICATIONS
Part 9220.0330

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

PUBLIC NOTICE
Part 9220.0340

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

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

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

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

PUBLIC COMMENTS
Part 9220.0350

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

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

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

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

PUBLIC INFORMATIONAL MEETING
Part 9220.0360

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

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

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

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

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

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

CONTESTED CASE HEARING

Part 9220.0370

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

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

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

FINAL DETERMINATION
Part 9220.0380

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

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

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

TERMS AND CONDITIONS OF PERMITS
Part 9220.0390

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONTINUATION OF EXPIRED PERMIT
Part 9220.0400

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

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

MODIFICATION OR TRANSFER OF PERMIT
Part 9220.0410

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

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

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

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

REVOCATION OF PERMIT
Part 9220.0420

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

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

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

INTERACTION OF PERMIT AND ABATEMENT RULES
Part 9220.0430

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

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

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

WASTE TIRE FACILITY STANDARDS

RULE CONFLICTS
Part 9220.0440

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

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

GENERAL STANDARDS FOR PERMITTED FACILITIES
Part 9220.0450

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WASTE TIRE TRANSFER FACILITY STORAGE LIMITATION
Part 9220.0460

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

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

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

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

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

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

ADDITIONAL STANDARDS FOR WASTE TIRE PROCESSING FACILITIES
Part 9220.0470

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

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

was chosen by the Board for several reasons.

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

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

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

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

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

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

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

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

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

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

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

ADDITIONAL STANDARDS FOR WASTE TIRE STORAGE FACILITIES
Part 9220.0480

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

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

here.

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

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

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

CLOSURE
Part 9220.0490

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CLOSURE PROCEDURES
Part 9220.0500

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

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

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

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

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

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

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

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

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

PETITION PROCEDURES
Part 9220.0510

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

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

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

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

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

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

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

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

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

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

GENERATION AND TRANSPORTATION WASTE TIRE DISPOSAL PART 9220.0520

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

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

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

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

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

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

WASTE TIRE TRANSPORTATION
Part 9220.0530

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

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

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

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

exempt such transporters from the requirements of this part.

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

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

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

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

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

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

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

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

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

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

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

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

TRANSPORTER APPLICATION REQUIREMENTS

Part 9220.0540

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

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

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

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

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

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

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

WASTE TIRE FACILITY FINANCIAL ASSURANCE REQUIREMENTS

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

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

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

SCOPE
Part 9220.0550

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

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

FINANCIAL ASSURANCE REQUIRED
Part 9220.0560

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

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

COST ESTIMATE FOR CLOSURE
Part 9220.0570

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

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

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

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

SCHEDULE FOR ESTABLISHING FINANCIAL ASSURANCE
Part 9220.0580

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

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

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

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

ADJUSTMENTS TO FINANCIAL ASSURANCE LEVEL
Part 9220.0590

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

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

COUNTY-HELD FINANCIAL ASSURANCE MECHANISM
Part 9220.0600

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

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

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

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

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

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

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

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

CLOSURE TRUST FUND
Part 9220.0610

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SURETY BOND GUARANTEEING PAYMENT INTO A STANDBY TRUST FUND
Part 9220.0620

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

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

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

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

The compliance schedule in this subpart is identical to the compliance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LETTER OF CREDIT
Part 9220.0630

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

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

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

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

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

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

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

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

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

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

SURETY BOND GUARANTEEING PERFORMANCE OF CLOSURE FOR PERMITTED FACILITIES
Part 9220.0640

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

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

USE OF MULTIPLE FINANCIAL ASSURANCE MECHANISMS
Part 9220.0650

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

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

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

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

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

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

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

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

RELEASE OF OWNER OR OPERATOR FROM FINANCIAL ASSURANCE REQUIREMENTS
Part 9220.0670

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

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

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

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

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

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

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

IV. SMALL BUSINESS CONSIDERATIONS

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

(a) the establishment of less stringent compliance or reporting requirements for small businesses;

(b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) the consolidation or simplification of compliance or reporting requirements for small businesses;

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule;and

(e) the exemption of small businesses from any or all requirements of the rule.

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

A permit is not required for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. CONCLUSION

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

VI. LIST OF EXHIBITS

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

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

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

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

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

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

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

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

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

Date: 1/25/88

Joseph M. Pavelich, Chair
Minnesota Waste Management Board

STATE OF MINNESOTA
WASTE MANAGEMENT BOARD

In the Matter of the Proposed Rules Governing the Waste Tire Permit Program, Minn. Rules Parts 9220.0200 to 9220.0680

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
)SS.
COUNTY OF RAMSEY)

David Benke, Being duly sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Stat. §§ 14.14, subd 1a and 14.22 (1986) that their names be placed on the Minnesota Waste Management Board's rule making mailing list was accurate, complete, and current as of the 18th day of January, 1988.

That on the 18th day of January, 1988, at the City of St. Paul, County of Ramsey, I mailed the attached notice of Intent to Adopt Rules Without a Public Hearing by depositing in the United States Mail for first class mailing a copy thereof, with postage prepaid, to all persons and associations on the afore mentioned mailing list.

David J. Benke

Subscribed and sworn to before me

this 21st day of March 1988.

June J. Seery

Notary Public

JUNE J. SEERY
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My commission expires Nov. 28, 1990

WP/S/DB:dc

Minnesota Housing Finance Agency

Adopted Permanent Rules Relating to American Indian Housing

The rules proposed and published at *State Register*, Volume 12, Number 6, pages 234-236, August 10, 1987 (12 S.R. 234) are adopted as proposed.

Minnesota Housing Finance Agency

Adopted Permanent Rules Relating to the Definition of Capital Contribution of Investors

The rules proposed and published at *State Register*, Volume 12, Number 19, pages 994-995, November 9, 1987 (12 S.R. 994) are adopted as proposed.

Minnesota Housing Finance Agency

Adopted Permanent Rules Relating to the Definition of Federally Subsidized Mortgages

The rule proposed and published at *State Register*, Volume 12, Number 19, pages 995-996, November 9, 1987 (12 S.R. 995) is adopted as proposed.

Board of Optometry

Adopted Permanent Rules Relating to Terms and Renewal of License

The rules proposed and published at *State Register*, Volume 12, Number 15, pages 744-747, October 12, 1987 (12 S.R. 744) are adopted as proposed.

Waste Management Board

Adopted Permanent Rules Relating to Industrial and Hazardous Waste Processing Grants

The rules proposed and published at *State Register*, Volume 12, Number 16, pages 819-822, October 19, 1987 (12 S.R. 819) are adopted as proposed.

Waste Management Board

Adopted Permanent Rules Governing the Management of Waste Tires and the Permitting of Waste Tire Facilities

The rules proposed and published at *State Register*, Volume 11, Number 42, pages 1918-1950, April 20, 1987 (11 S.R. 1918) are adopted with the following modifications:

NOTICE:
The Waste Management Board has proposed to repeal this adopted rule and replace it with the proposed rule appearing on page 1543, of this issue.

Rules as Adopted

7001.4070 GENERAL INFORMATION REQUIREMENTS FOR A PERMIT APPLICATION.

Subp. 3. **Description of facility operation.** The application shall describe the location and operation of the facility. The application shall, at a minimum, include a description of the following:

B. the maximum quantity and type of waste tires to be stored ~~on the site~~ at the facility at any time, specifying the quantity and type of waste tires stored ~~on the site~~ at the facility currently and the storage capacity of the facility;

E. the access to the site of the facility by roads, including weight or other use restrictions;

7035.8205 DEFINITIONS.

Subp. 25. **Waste tire processing facility.** "Waste tire processing facility" means any area where waste tires or tire-derived products are processed. A waste tire processing facility must meet the qualifications in part 7035.8270.

7035.8240 GENERAL STANDARDS FOR PERMITTED FACILITIES.

Subp. 3. **Operation.** A waste tire facility shall be operated in compliance with the following standards:

H. All tire piles shall be maintained free of mosquitoes, through the use of mosquito control methods such as briquettes, spraying, or removal of water ponded in the waste tires.

7035.8480 SURETY BOND GUARANTEEING PAYMENT INTO A STANDBY TRUST FUND.

Subp. 2. **Surety bond requirements.** An owner or operator may satisfy the requirements of part 7035.8420 by obtaining a surety bond that conforms to the requirements of subparts 2 to 10 and by submitting the bond to the director. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in Circular 570, issued by the United States Department of the Treasury, as published annually in the Federal Register on July 1. ~~An~~ The owner or operator of the waste tire facility shall submit the bond to the director with the facility permit application or ~~under~~ in accordance with part 7035.8450.

7035.8490 LETTER OF CREDIT.

Subp. 2. **Letter of credit requirements.** An owner or operator may satisfy the requirements of part 7035.8420 by obtaining an irrevocable letter of credit that conforms to the requirements of subparts 2 to 11, and by submitting the letter to the director. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency. ~~An~~ The owner or operator of ~~a~~ the waste tire facility shall submit the letter of credit to the director with the facility permit application or ~~under~~ in accordance with part 7035.8450.

Subp. 3. **Wording of letter of credit.** The wording of the letter of credit must be identical to the wording in part ~~7035.8490~~ 7035.8580.

7035.8500 SURETY BOND GUARANTEEING PERFORMANCE OF CLOSURE FOR PERMITTED FACILITIES.

Subp. 2. **Surety bond requirements.** An owner or operator may satisfy the requirements of part 7035.8420 by obtaining a surety bond that conforms to the requirements of subparts 2 to 11 and by submitting the bond to the director. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in Circular 570, issued by the United States Department of the Treasury, as published annually in the Federal Register on July 1. ~~An~~ The owner or operator of ~~a~~ the waste tire facility shall submit the bond to the director with the facility permit application or in accordance with part 7035.8450.

Subp. 4. **Establishment of standby trust fund.** The owner or operator who uses a surety bond to satisfy the requirements of part 7035.8420 shall also establish a standby trust fund. The bond shall require the surety to deposit all payments made under the bond directly into the standby trust fund in accordance with instructions from the director. An originally-signed duplicate of the standby trust fund agreement must be submitted to the director with the surety bond. The standby trust fund must meet the requirements of part 7035.8470, except that compliance with the requirements in items A to D is not required until the standby trust fund is funded under this part:

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or 7815.1100. The record may be established by a stipulation of facts and, when applicable, information gathered under part 7815.1050 or 7815.1100, or by testimony and exhibits containing the necessary information. Comments mailed to the administrative law judge ~~shall~~ become part of the record.

7815.1400 FINAL ORDER OF THE COMMISSION.

If a ~~contested case hearing is not necessary~~ petition is not assigned to the Office of Administrative Hearings under part 7815.1200, the final order of the commission ~~shall~~ must be issued within ~~30~~ 45 days of the public meeting, of the receipt of the informational polling results if a public meeting is not held, or of the receipt of the stipulation of facts if there is no informational polling or public meeting. If a contested case hearing is held, the commission ~~will~~ shall issue a final order within 60 days after receipt of the final report of the administrative law judge. The commission shall order the installation or removal of extended area service if it finds that such an action is required by the public interest.

7815.1500 REPETITIONING.

The commission shall not order the removal of extended area service within five years of installation nor shall the commission consider a petition for installation or removal of extended area service sooner than two years after denying a previous petition for installation or removal of extended area service between the same two exchanges.

7815.1600 REQUEST FOR VARIANCE OR TIME EXTENSION.

Subpart 1. **Request for variance.** Requests for variances for all or specific portions of parts 7815.0700 to 7815.1500 may be filed under part 7830.4400. Unless good cause is shown, requests must be filed with the commission at least seven days before the filing deadline and served upon the department, the petition sponsor, and the affected telephone companies. The request must include an explanation of the reasons for the request. Replies, if any, to requests for a variance, must be filed with the commission and served upon the department, the petition sponsor, and the affected telephone companies within ten days after the receipt of the request for variance.

Subp. 2. **Request for time extension.** Unless good cause is shown, a request for an extension of time must be filed with the commission at least seven days before the filing deadline. In determining whether good cause exists, due regard must be given to the ability of the commission, department, petition sponsor, and affected telephone companies to effectively proceed without a time extension. The request must include an explanation of the reason for the request. A copy of the request must also be served upon the department, the petition sponsor, and affected telephone companies.

Waste Management Board

Proposed Permanent Rules Relating to Waste Tire Permits

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Waste Management Board (Board) intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* §§ 14.22 to 14.28 (1986). Parts and subparts of *Minnesota Rules* Parts 7001.0020, 7001.0040, 7001.0050, 7001.0190, 7001.4000 -.4150, 7035.8200-.8300, 7035.8400-.8590, 7035.8700 and 7035.8710, rules governing the Minnesota Pollution Control Agency waste tire regulatory program, will be repealed. The Board's authority to adopt the rule is set forth in *Minnesota Statues* § 115A.914, pursuant to Reorganization Order No. 144 (Dept. of Admin. 1987).

All persons have until 4:30 p.m. on Wednesday, February 24, 1988, to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the Board will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1986).

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Comments or written requests for a public hearing must be submitted to:

Mr. Edward Welsch
Waste Management Board
1350 Energy Lane
St Paul, Minnesota, 55108
(612) 649-5750

The proposed rule may be modified if the modifications are supported by data and views submitted to the Board and do not result in a substantial change in the proposed rule as noticed.

The proposed rule, if adopted, will govern the waste tire regulatory program established in Minn. Stat. § 115A.914 (1986) by establishing the substantive criteria and procedural conditions under which the Board will issue permits for waste tire facilities. The proposed rule is published below. One free copy of the rule is available upon request from Mr. Edward Welsch, at the address and telephone number stated above.

A Statement of Need an Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and that identifies the dta and information relied upon to support the proposed rule has been prepared and is available from Mr. Edward Welsch upon request.

You hereby advised, pursuant to *Minnesota Statutes* § 14.115 (1986), "Small business considerations in rulemaking," that the proposed rule will have no negative effect on small businesses because the rule contains reduced regulatory requirements for small businesses.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the rule as adopted, must submit a written request to Mr. Edward Welsch.

Joseph M. Pavelich, Chair
Waste Management Board

Rules as Proposed

7001.0020 SCOPE.

Except as otherwise specifically provided, parts 7001.0010 to 7001.0210 apply to the following:

A. to K. [Unchanged.]

~~L. An agency permit required for the collection, deposit, storage, or processing of waste tires and tire-derived products.~~

7001.0040 APPLICATION DEADLINES.

Subpart 1. **Application for new permit.** Except as otherwise required by parts 7001.0530 and~~,~~ 7001.1050, ~~and 7001.4060,~~ a permit application for a new facility or activity may be submitted at any time. However, it is recommended that the permit application be submitted at least 180 days before the planned date of the commencement of facility construction or of the activity.

Subp. 2. and 3. [Unchanged.]

7001.0050 WRITTEN APPLICATION.

A person who requests the issuance, modification, revocation and reissuance, or reissuance of a permit shall complete, sign, and submit to the director a written application. The person shall submit the written application in a form prescribed by the director. The application shall contain the items listed in items A to I unless the director has issued a written exemption from one or more of the data requirements. After receiving a written request for an exemption from a data requirement, the director shall issue the exemption if the director finds that the data is unnecessary to determine whether the permit should be issued or denied. The application must contain:

A. to H. [Unchanged.]

I. other information relevant to the application as required by parts 7001.0550 to 7001.0640, 7001.1050, 7001.1215, 7001.1290, ~~7001.4000 to 7001.4150,~~ or 7040.0500 and 7040.0600.

7001.0190 PROCEDURE FOR MODIFICATION; REVOCATION AND REISSUANCE; AND REVOCATION WITHOUT REISSUANCE OF PERMITS.

Subpart 1. [Unchanged.]

Subp. 2. **Modification solely as to ownership or control.** Upon obtaining the consent of the permittee, the agency shall consider

a request to modify a permit as to the ownership or control of a permitted facility or activity without following the procedures in parts 7001.0100 to 7001.0130 if the agency finds that no other change in the permit is necessary. If the permit is a permit described in part 7001.0020, item A or~~,~~ B, ~~or L.~~ the agency shall also find that the agency has received a binding written agreement between the permittee and the proposed transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities between the permittee and the proposed transferee. Within 60 days of receipt of a complete written application for modification as to ownership and control, the director shall place the matter on the agenda for consideration by the agency. The agency shall not unreasonably withhold or unreasonably delay approval of the proposed permit modification.

Subp. 3. **Minor modification.** Upon obtaining the consent of the permittee, the director may modify a permit to make the following corrections or allowances without following the procedures in parts 7001.0100 to 7001.0130:

A. and B. [Unchanged.]

C. to change a provision in the permit that will not result in allowing an actual or potential increase in the emission or discharge of a pollutant into the environment, or that will not result in a reduction of the agency's ability to monitor the permittee's compliance with applicable statutes and rules; and

D. if applicable, to make a change as provided in parts 7001.0730, subpart 3 and 7001.1350~~; and~~

~~E. if applicable, to make a change as provided in part 7001.4130, subpart 2~~.

Subp. 4. [Unchanged.]

Rules as Proposed (all new material)

9220.0200 SCOPE.

This chapter applies to owners and operators of facilities that store, transport, or process waste tires. This chapter governs the requirement for waste tire facility permits and establishes standards and requirements for the operation of waste tire facilities.

9220.0210 DEFINITIONS.

Subpart 1. **Scope.** The terms defined in this part apply to this chapter.

Subp. 2. **Agricultural purposes.** "Agricultural purposes" means the use of waste tires as bumpers on agricultural equipment or as a ballast to maintain covers or structures on the agricultural site.

Subp. 3. **Board.** "Board" means the Minnesota Waste Management Board.

Subp. 4. **Chair.** "Chair" means the chair of the Minnesota Waste Management Board.

Subp. 5. **Closure.** "Closure" means the removal of all stockpiles of waste tires and other materials from the waste tire facility in compliance with procedures established by statute, rule, order, or permit.

Subp. 6. **Closure plan.** "Closure plan" means the plan for closure required in part 9220.0490, subpart 3, and the applicable requirements of parts 9220.0490 and 9220.0500.

Subp. 7. **Current closure cost estimate.** "Current closure cost estimate" means the most recent of the estimates prepared under part 9220.0570.

Subp. 8. **Existing waste tire facility.** "Existing waste tire facility" means a facility that is receiving waste tires on the effective date of this chapter.

Subp. 9. **Floodway.** "Floodway" has the meaning given in Minnesota Statutes, section 104.02, subdivision 4.

Subp. 10. **Operator.** "Operator" means the person responsible for the overall operation of the waste tire facility. An operator is a tire collector or tire processor as defined in Minnesota Statutes, section 115A.90, subdivisions 8 and 10.

Subp. 11. **Owner.** "Owner" means a person who owns, in whole or in part, a waste tire facility, the waste tires located at a facility, or the land on which the facility is located.

Subp. 12. **Permit.** "Permit" means an authorization from the board to operate or construct a waste tire facility.

Subp. 13. **Person.** "Person" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 5.

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Subp. 14. **Processing.** "Processing" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 6.

Subp. 15. **Ravine.** "Ravine" means a deep, narrow cleft or gorge in the earth's surface. A ravine cannot be smoothed out by ordinary tillage.

Subp. 16. **Residuals from processing.** "Residuals from processing" means the unusable materials resulting from chemical or physical processing of waste tires.

Subp. 17. **Shoreland.** "Shoreland" means land located within 1,000 feet from the normal high water mark of a lake, pond, or flowage, or land within 300 feet of a river or stream, or a floodplain as established by ordinance.

Subp. 18. **Sinkhole.** "Sinkhole" means a closed depression formed by subsidence of the underlying bedrock.

Subp. 19. **Tire.** "Tire" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 7.

Subp. 20. **Tire collector.** "Tire collector" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 8.

Subp. 21. **Tire-derived products.** "Tire-derived products" means the usable materials produced from the chemical or physical processing of a waste tire.

Subp. 22. **Tire dump.** "Tire dump" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 9.

Subp. 23. **Tire processor.** "Tire processor" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 10.

Subp. 24. **Transporter.** "Transporter" means a person who removes waste tires from a source of generation, a tire dump, or a waste tire facility.

Subp. 25. **Waste tire.** "Waste tire" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 11.

Subp. 26. **Waste tire facility or facility.** "Waste tire facility" or "facility" means an area where more than 50 waste tires or an equivalent amount of tire-derived products are collected, deposited, stored, or processed. The incidental storage of tire-derived products at the site of final use does not make the site a waste tire facility.

Subp. 27. **Waste tire processing facility.** "Waste tire processing facility" means an area where waste tires or tire-derived products are processed. A waste tire processing facility must meet the qualifications in part 9220.0470.

Subp. 28. **Waste tire storage facility.** "Waste tire storage facility" means an area where waste tires, or tire-derived products, are collected, deposited, or stored. A waste tire storage facility is a facility that does not meet the qualifications for regulation as a waste tire transfer facility or a waste tire processing facility.

Subp. 29. **Waste tire transfer facility.** "Waste tire transfer facility" means an area where waste tires are concentrated for transport to waste tire processing facilities. A waste tire transfer facility must meet the qualifications in part 9220.0460.

Subp. 30. **Wetland.** "Wetland" means an area that is covered by standing water during any portion of a year. Wetland includes but is not limited to wetlands as defined in Classification of Wetlands and Deep Water Habitats of the United States, 1979. This publication is available at the Minnesota State Law Library, Ford Building, 117 University Avenue, Saint Paul, Minnesota 55155. This publication is incorporated into this definition by reference and is not subject to frequent change.

9220.0220 LAND DISPOSAL PROHIBITED.

Disposal of waste tires and tire-derived products in the land is prohibited.

9220.0230 PERMIT REQUIRED.

Subpart 1. **Permit required.** Except as provided in subpart 2, no person may do any of the following without obtaining a waste tire facility permit from the board:

A. store, process, or dispose of waste tires or tire-derived products; or

B. establish, construct, modify, own, or operate a waste tire facility.

Subp. 2. **Exclusions.** The following persons are not required to obtain a waste tire facility permit:

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

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

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

D. a permitted landfill operator with less than 10,000 waste tires stored above ground at the permitted site;

E. a person using waste tires for agricultural purposes if the waste tires are kept on the site of use; or

F. a person conducting abatement activities under an abatement order or stipulation agreement entered into under part 7035.8020. This exemption does not exempt the person from the duty to obtain a waste tire facility permit for activities other than the abatement action.

Subp. 3. **Closure of facilities.** The owner or operator of a waste tire facility who does not seek a waste tire facility permit or who does not qualify for permit by rule status shall within 90 days after the effective date of this chapter close the facility in compliance with part 9220.0500.

9220.0240 PERMIT BY RULE.

Subpart 1. **Facilities eligible.** The owners and operators of the following waste tire facilities are considered to have obtained a waste tire facility permit without submitting the application described in part 9220.0270 if the chair has received the notification described in subpart 3:

A. a waste tire facility used for the storage of no more than 500 waste tires at any one time if the owner or operator, at least once a year, removes all the waste tires, and the facility is in compliance with the location requirements of part 9220.0450, subpart 2; and

B. a waste tire facility used for processing not more than 500 waste tires during any 30 days if the facility is in compliance with the location requirements of part 9220.0450, subpart 2.

Subp. 2. **Eligibility for owners and operators of mobile equipment.** The owners or operators of mobile shredding or baling equipment are considered to have obtained a waste tire facility permit if they submit the notice required under subpart 3 and if they comply with the following conditions:

A. the shredding or baling equipment is located at the tire dump or waste tire facility for less than 90 days; and

B. all bales or tire shreds and residuals are removed from the site 30 days after the completion of the shredding or baling operation.

Subp. 3. **Written notification.** To obtain permit by rule status, the owners and operators of a qualifying waste tire facility or mobile shredding or baling equipment shall submit the following information to the chair. For an existing facility, the notification must be submitted within 90 days of the effective date of part 9220.0200. For a new facility and for each new shredding or baling site, the notification must be submitted 15 days before the operation begins. The notification must contain:

A. the name, address, and telephone number of the owner and operator of the facility or equipment, and the name, address, and telephone number of the facility;

B. a description of the general operation of the facility or equipment, including quantities of waste tires accumulated or processed per month;

C. a description of arrangements made to acquire fire protection services for the facility;

D. the township, range, and section numbers of the facility; and

E. a description of how the waste tires, tire-derived products, and residuals from processing will be disposed.

Subp. 4. **Termination of eligibility for permit by rule.** The board shall terminate the eligibility of owners and operators of a facility for permit by rule status after notice and opportunity for a contested case hearing if the board finds that the facility does not qualify for permit by rule status or that the facility should be permitted to protect human health or the environment. When eligibility to be permitted under this part has been terminated, the owner and operator of the facility must apply within 60 days for a waste tire facility permit or close the facility in compliance with part 9220.0490 and the applicable requirements of part 9220.0500.

9220.0250 DESIGNATION OF PERMITTEE.

The board shall designate all owners and operators of the waste tire facility as co-permittees when issuing a waste tire facility permit.

9220.0260 WASTE TIRE FACILITY PERMIT APPLICATION PROCEDURES.

Subpart 1. **Form.** The application for a waste tire facility permit consists of a general application that includes the appropriate supporting documents, map, and additional application information specific to the facility that is the subject of the application. The content requirements of the general permit application are set forth in part 9220.0270. The additional application information

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requirements specific to the facility type are set forth in parts 9220.0280 to 9220.0310, and must be submitted with the permit application.

Subp. 2. **Submittal.** Applicants for a waste tire facility shall submit a completed permit application to the chair, and shall retain a copy for their records.

Subp. 3. **Time of submittal.** A person shall submit a permit application in accordance with items A and B.

A. For a waste tire processing or storage facility, a person shall submit a permit application at least 180 days before the planned date of facility construction for a new facility or for an existing facility no later than 90 days after the effective date of this chapter.

B. For a waste tire transfer facility, a person shall submit a permit application at least 90 days before the planned date of facility construction for a new facility or for an existing facility no later than 90 days after the effective date of this chapter.

Subp. 4. **Renewal of existing permit.** A written application for renewal of an existing permit must be submitted 90 days before the expiration date of the existing permit.

9220.0270 WRITTEN APPLICATION.

Subpart 1. **Scope.** A person who requests the issuance or renewal of a permit shall complete, sign, and submit to the chair a written application in a form prescribed by the chair. The application must contain the information in subparts 2 to 10. If a provision does not apply to the particular facility, the applicant shall explain why the provision does not apply.

Subp. 2. **General facility information.** The application must include the following:

A. the name, address, and telephone number of all owners and operators of the facility for which the application is submitted and identification of each applicant as an individual, business, partnership, public entity, or other entity;

B. the name, address, and telephone number of the person who prepared the application; and

C. an indication of whether the facility to be permitted is new or existing.

Subp. 3. **Description of facility operation.** The application must include a description of the following:

A. the type of facility operation, the manner in which waste tires will be collected at the facility, and how those waste tires will be stored, processed, or used;

B. the quantity and type of waste tires stored at the facility currently and the maximum quantity and type of waste tires to be stored at the facility at any time;

C. the facility's ability to meet the technical standards that apply to waste tire storage of part 9220.0450, subpart 3, items D to G;

D. the present use of the land at the site of the facility and of the land within a one-quarter mile radius of the facility, identifying the landowners and their addresses, and zoning designation;

E. weight and use restrictions on the access roads that lead to the site;

F. the location of the facility and whether that location complies with the restrictions established in part 9220.0450, subpart 2;

G. the types, sizes, conditions, and availability of equipment needed for operation and emergency response at the facility, and the functions of each piece of equipment described;

H. the security procedures and the location of fences, gates, and other access control measures;

I. the relationship of the facility to the applicable county solid waste management plan, and the area to be served by the facility; and

J. the expected operating life of the facility and how this number was calculated.

Subp. 4. **Map required.** The application must include a topographic or section map using a scale of no less than one inch equals 200 feet. This map must show the waste tire facility and surrounding area for one quarter mile in detail. At a minimum, the map must show the following:

A. the map scale and directions;

B. wetlands, floodways, shorelands, and surface waters, including intermittent streams;

C. legal boundaries and land ownership, including county, township, and municipal boundaries; township, range, and section numbers; and easements and rights-of-way;

D. the locations of wells, both operating and abandoned;

E. occupied dwellings;

F. the facility design and the location of all waste tire storage areas and fire lanes;

G. all structures and buildings that are or will be constructed at the facility, including those used in collection, storage, or processing operations;

H. loading and unloading areas;

I. access and internal roads;

J. run-off control measures, ditches, and dikes; and

K. the location of the area used for collection, storage, or processing of waste tires, tire-derived products, and residuals from processing; and the total land area in square feet used for storage of waste tires, tire-derived products, and residuals from processing.

Subp. 5. **Closure plan.** The application must include a plan for closing the facility in compliance with part 9220.0500.

Subp. 6. **Closure cost estimate.** The application must include a closure cost estimate prepared following the procedures in part 9220.0570.

Subp. 7. **Copy of financial assurance mechanism.** The application must include a copy of the financial assurance mechanism required by part 9220.0560.

Subp. 8. **Other information.** The applicant shall submit other information relevant to the application as requested by the chair or as required by parts 9220.0280 to 9220.0310.

9220.0280 ADDITIONAL APPLICATION INFORMATION REQUIRED FOR WASTE TIRE TRANSFER FACILITIES.

The application for a waste tire transfer facility must include the following information in addition to the information required by part 9220.0270:

A. a description of the types of vehicles that the facility will service;

B. information on how the accumulation of waste tires at the transfer facility will be controlled so that no more than 10,000 passenger tires or the equivalent weight of other waste tires will be present at the transfer facility at any time; and

C. information on the type, size, and capacity of storage that will be present at the facility, designating drop boxes, containers, trailers, or stockpiles.

9220.0290 ADDITIONAL APPLICATION INFORMATION REQUIRED FOR WASTE TIRE PROCESSING FACILITIES.

The application for a waste tire processing facility must include the following information in addition to the information required by part 9220.0270;

A. the maximum quantity and type of tire-derived products and residuals from processing to be stored on the site at any time, specifying the quantity and type of tire-derived products and residuals from processing stored on the site currently and how they are being stored;

B. a description of the processes and procedures used at the facility for processing waste tires;

C. the processing capacity of the facility, and the number of tons of waste tires currently being processed;

D. a description of how the facility will comply with the 75 percent annual processing requirement of part 9220.0470, subpart 2;

E. a description of how residuals from processing will be disposed of;

F. the existing and proposed markets for the facility's tire-derived products; and

G. a copy of the emergency preparedness manual required by part 9220.0470, subpart 4.

9220.0300 ADDITIONAL APPLICATION INFORMATION REQUIRED FOR WASTE TIRE STORAGE FACILITIES.

The application for a waste tire storage facility must include the following information in addition to the information required by part 9220.0270:

A. the procedures that will be used at the facility to minimize or prevent mosquito and rodent breeding in the waste tire stockpiles;

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B. a copy of the emergency preparedness manual required by part 9220.0270, subpart 4; and

C. information on how the accumulation of waste tires at the waste tire storage facility will be controlled so that no more than 500,000 passenger tires or the equivalent weight of other waste tires are ever stored at the facility.

9220.0310 SIGNATURES.

A permit application must be signed by all owners and operators. If an owner or operator is a corporation, the president or executive office of the corporation shall sign. If an owner or operator is a partnership, two partners shall sign. If an owner or operator is a governmental unit, a certification of the signer's authority must be included.

9220.0320 PROVISIONAL STATUS.

Subpart 1. **Scope.** When the owner of a waste tire facility submits a permit application, the facility is considered provisionally permitted. Provisionally permitted facilities must conform to the requirements and standards described in part 9220.0450, except that the annual report required by part 9220.0450, subpart 4, is not required while the waste tire facility has provisional status.

Subp. 2. **Termination of provisional status by permitting, closure, or denial of permit.** Provisional status terminates when a permit is issued, when the chair verifies that closure is complete, or when the board denies a permit.

9220.0330 REVIEW OF PERMIT APPLICATIONS.

The chair shall review all permit applications for completeness. If the chair finds that the application is incomplete or otherwise deficient, the chair shall promptly advise the applicant in writing and suspend further processing of the portion of the application affected by the deficiency until the applicant has supplied the necessary information or otherwise corrected the deficiency.

9220.0340 PUBLIC NOTICE.

Subpart 1. **Scope.** Before the board acts to issue, renew, modify, revoke, or deny a permit, the chair shall seek public comment on the action, unless specifically exempted from this requirement under part 9220.0410.

Subp. 2. **Public notice contents.** The chair shall prepare and issue a public notice of an intended board action. The public notice must include, at a minimum:

A. the address and telephone number of the board office and a statement that additional information may be obtained at this office;

B. the names and addresses of all applicants or permittees, and of the facility that is the subject of the action;

C. a concise description of the facility that is the subject of the action;

D. a statement of the action the chair intends to request the board to take;

E. for action involving the issuance or renewal of permits, the duration of the permit that the chair intends to request the board to issue or renew;

F. a brief description of the procedures and standards for public comments, and the dates on which the public comment period begins and ends; and

G. a brief description of the procedures the board will follow in reaching a decision on the chair's intended action, and the procedures to be followed for requesting a public information meeting or contested case hearing.

Subp. 3. **Duration of notice period.** Unless extended by the chair, the public notice period is 30 days.

Subp. 4. **Distribution of public notice.** The chair shall distribute the public notice in the following manner:

A. A copy of the public notice must be available at the board office.

B. A copy must be mailed to the applicant.

C. Copies must be circulated in the geographic area within a 45-mile radius of the planned or existing facility. The chair shall circulate the public notice in one or more of the following ways:

(1) by posting the notice in the post office, public library, or other buildings used by the general public;

(2) by posting the notice at or near the entrance of the applicant's premises, if located near the facility that is the subject of the permit application; or

(3) by publishing the notice in one or more newspapers or periodicals of general circulation in the designated geographical area.

9220.0350 PUBLIC COMMENTS.

Subpart 1. **Written comments.** During the public comment period established in the public notice, any interested person may

submit written comments on the action before the board. To be considered by the board in taking the action, comments must be in writing and must include the following:

A. a statement of the person's interest in the action;

B. a statement of the action the person wishes the board to take; and

C. the reasons why the person wants the board to take the action.

Subp. 2. **Public information meeting or contested case hearing request.** During the public comment period and at the board meeting where the action is proposed to be taken, a person may request a public informational meeting or contested case hearing.

Subp. 3. **Extension of comment period.** The public comment period may be extended if the chair finds an extension of time is necessary to facilitate additional public comment. Notice of the extension of the comment period must be given in the same manner as the original notice.

9220.0360 PUBLIC INFORMATION MEETING.

Subpart 1. **Determination of need.** If the chair or the board determines that a public information meeting would help clarify and resolve issues regarding action on a permit, the chair shall hold a public information meeting.

Subp. 2. **Location.** The public information meeting must be held in the geographical area of the facility that is the subject of the action or at a place selected by the chair that is generally convenient to persons expected to attend the meeting.

Subp. 3. **Content of notice.** The chair shall publish a notice of the public information meeting. The notice must contain a reference to the action and the date, time, and location of the public information meeting and the issues to be discussed.

Subp. 4. **Distribution of notice.** The chair shall publish the notice in a newspaper of general circulation in the geographical area of the facility or activity that is the subject of the action, and shall mail a copy of the notice to the affected persons, the appropriate city and county officials, and all other persons who have indicated an interest in the permit application.

9220.0370 CONTESTED CASE HEARING.

Subpart 1. **Hearing required.** The board shall hold a contested case hearing if it finds all of the following:

A. that a person requesting the contested case hearing has raised a material issue of fact or of the application of facts to law related to the chair's proposed action;

B. that the board has jurisdiction to make determinations on the issues of fact or of the application of facts to law raised by the persons requesting the contested case hearing;

C. that the record before the board is not adequate to allow the board to resolve a material issue of fact or of the application of fact to law raised by the person requesting the hearing, and that a contested case hearing would result in the creation of a record that would allow the board to resolve the issues raised; and

D. that the person requesting the contested case hearing would be affected by the board's action.

Subp. 2. **Hearing notice and order.** If the board decides to hold a contested case hearing, the chair shall prepare a notice of and order for hearing. The notice of and order for hearing must contain:

A. the information required by part 1400.5600 to the Office of Administrative Hearings;

B. a reference to the public notice of the board action and the date of issuance of the public notice;

C. identification of the affected parties and a concise description of the issues that have been raised by any party; and

D. the address of the board office where interested persons may inspect or obtain copies of the public notice of the board action, and other information relevant to the board action.

9220.0380 FINAL DETERMINATION.

Subpart 1. **Board action.** The board shall issue, renew, or modify a permit if it determines that the proposed permittees will comply with all permit conditions and applicable state or federal statutes and rules, or will undertake a schedule of compliance that will result in the facility being operated in compliance with state or federal statutes and rules.

Subp. 2. **Denial of permit.** The board shall refuse to issue a new permit or to modify or renew an existing permit if it finds:

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A. that the proposed facility or permittee will not comply with all applicable state and federal statutes and rules or conditions of the permit;

B. that there exists at the facility unresolved noncompliance with applicable state or federal statutes and rules or conditions of the permit and that the permittee will not undertake a schedule of compliance to resolve the noncompliance;

C. that the permittee has failed to disclose fully all facts relevant to the facility to be permitted, or that the permittee has submitted false or misleading information to the board or to the chair;

D. that the permitted facility endangers human health or the environment and that the danger cannot be removed by a modification of the conditions of the permit; or

E. that applicable requirements of Minnesota Statutes, chapter 116D, and the rules adopted under Minnesota Statutes, chapter 116D, have not been fulfilled.

9220.0390 TERMS AND CONDITIONS OF PERMITS.

Subpart 1. **Term of permit.** A waste tire facility permit must be issued for up to five years.

Subp. 2. **Special conditions.** Each permit must require the facility to be operated consistent with the application for the facility permit, conditions placed by the board on permit approval, and all applicable state and federal statutes and rules. If the facility receiving the permit is not in compliance with any applicable state or federal statute or rule at the time of issuance, the permit must require the permittees to achieve compliance with the statute or rule within a reasonable period of time.

Subp. 3. **General conditions.** Unless specifically exempted by statute or rule, each permit must include the following general conditions, and the board shall incorporate these conditions into all permits either expressly or by specific reference to this part:

A. The board's issuance of a permit does not release the permittee from any liability, penalty, or duty imposed by Minnesota or federal statutes or rules or local ordinances, except the obligation to obtain the permit.

B. The board's issuance of a permit does not prevent the future adoption by the board of rules or orders more stringent than those in existence at the time the permit is issued and does not prevent the enforcement of these rules or orders against the permittee.

C. The permit does not convey a property right or an exclusive privilege.

D. The permittee may not knowingly make a false or misleading statement, representation or certification in a record, report, plan, or other document required to be submitted to the board or to the chair by the permit. The permittee shall immediately upon discovery report to the chair an error or omission in these records, reports, plans, or other documents.

E. Upon presentation of proper credentials, the board or an authorized employee or agent of the board, shall be allowed by the permittee to enter the permitted facility at reasonable times to examine and copy books, papers, records, or memoranda pertaining to the facility, and to conduct surveys and investigations pertaining to the facility.

F. If the permittee discovers, through any means, including notification by the board, that noncompliance with a condition of the permit has occurred, the permittee shall take all reasonable steps to minimize the adverse impacts on human health, welfare, or the environment.

G. If the permittee discovers that noncompliance with a condition of the permit has occurred that could endanger human health, welfare, or the environment, the permittee shall immediately notify the chair.

H. The permit is not transferable to any person except as provided in part 9220.0410, subpart 2.

I. The permit authorizes the permittee to perform the activities described in the permit under the conditions of the permit. In issuing the permit, the state and board assume no responsibility for damage to person, property, or the environment caused by the activities of the permittee in the conduct of its actions, including those authorized, directed, or undertaken under the permit. To the extent the state and board may be liable for the activities of its employees, that liability is explicitly limited to that provided in the Tort Claims Act, Minnesota Statutes, section 3.736.

9220.0400 CONTINUATION OF EXPIRED PERMIT.

A person who holds an expired permit and who submits a timely and complete application for renewal may continue to conduct the permitted activity until the board takes final action on the application if the chair determines that both of the following are true:

A. the permittee is in compliance with the terms and conditions of the expired permit; and

B. the chair, through no fault of the permittee, has not taken final action on the application on or before the expiration date of the permit.

9220.0410 MODIFICATION OR TRANSFER OF PERMIT.

Subpart 1. **Modification.** The chair shall modify a permit if the modification is needed to reflect changed state or federal statutes or rules applicable to the facility, to incorporate changes in a facility closure plan or emergency response manual, or to make other

modifications consented to by the permittees. The procedures for giving public notice established in part 9220.0340 do not apply to permits modified by the chair under this subpart if the chair finds that the modification would not result in a significant change in facility operation. For all other modifications, the chair shall follow the public notice procedures of part 9220.0340, and the board shall determine whether the permit should be modified.

Subp. 2. **Change in facility ownership or operation.**

The following conditions apply to the change in facility ownership or operation.

A. Before any change in facility ownership or operation, a written request for transfer of the permit must be submitted to and approved by the board. The request for transfer must indicate the reason the permit transfer is being requested, must be signed by all existing permittees and all persons seeking to become permittees, and must contain all information required in part 9220.0270, subpart 2.

B. If the chair finds that the proposed transfer of the permit would not affect present or future compliance with the permit, the chair shall give the public notice of the chair's intent to transfer the permit following the procedures in parts 9220.0340 to 9220.0370.

C. The board shall approve the transfer of the permit if it determines that the new permittee or permittees will comply with all permit conditions and all applicable laws and rules. After approval, permit transfer occurs when the change in facility ownership or operation becomes effective. In the event that the expected change in facility ownership or operation does not occur, the owners and operators remain fully responsible under the terms of the permit.

9220.0420 REVOCATION OF PERMIT.

Subpart 1. **Justification for revocation.** The following constitute justification for the chair to begin proceedings to revoke a permit:

A. existence at the facility of unresolved noncompliance with the permit or applicable state and federal statutes and rules, and the permittee is unwilling or unable to resolve the noncompliance;

B. the operation of the facility has terminated; or

C. the chair finds that the facility endangers human health or the environment and that the danger cannot be removed by a modification of the permit.

Subp. 2. **Procedure for revocation.** The chair shall give notice of the chair's intent to revoke a permit by following the procedures in part 9220.0340. This notice must state that the permittee may request that a contested case hearing be held on the proposed action. If the board grants a contested case hearing, the board shall hold the hearing in accordance with the rules of the Office of Administrative Hearings, parts 1400.5100 to 1400.8500.

9220.0430 INTERACTION OF PERMIT AND ABATEMENT RULES.

If a tire collector wishes to obtain a board permit for a site that is the subject of an abatement action, the tire collector shall notify the chair of this intent within 90 days of the effective date of part 9220.0200 or at the time the abatement plan is submitted and agree to develop a plan for bringing the site into compliance with the technical rules for waste tire transfer, processing, or storage facilities. Notification and agreement under this part does not exempt the owner or operator of a facility that is the subject of an abatement action from the duty to obtain a permit by following the procedures in parts 9220.0260 to 9220.0310 for activities other than the abatement action.

WASTE TIRE FACILITY STANDARDS

9220.0440 RULE CONFLICTS.

Nothing in parts 9220.0440 to 9220.0680 relieves any person from obligations or duties imposed by other laws, statutes, rules, standards, or ordinances of the federal, state, or local governments or any agency thereof now in effect or that become effective in the future. In the event parts 9220.0440 to 9220.0680 conflict with any of those laws, statutes, rules, standards, or ordinances, the more stringent provisions apply.

9220.0450 GENERAL STANDARDS FOR PERMITTED FACILITIES.

Subpart 1. **Scope.** All permitted waste tire facilities must comply with the technical and operational standards in this part. In

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addition, each permitted facility must comply with requirements specific to the operation conducted at the facility and any special conditions as specified in parts 9220.0460 to 9220.0480 established in a permit.

Subp. 2. **Location of facility.** A waste tire facility must not be constructed or operated in a wetland, sinkhole, shoreland, ravine, floodway, or any area where it may be subjected to immersion in water.

Subp. 3. **Operation.** A waste tire facility must be operated in compliance with the following standards:

A. No operations involving the use of open flames, blow torches, or highly flammable substances must be conducted within 50 feet of a waste tire pile.

B. An approach and access road to the waste tire facility must be maintained passable for any vehicle at all times. Access to the facility must be strictly controlled through the use of fences, gates, or other means of controlling access.

C. An attendant shall be present at all times the waste tire facility is open for business.

D. A waste tire storage area must be designated. Only waste tires and tire-derived products may be stored in the designated waste tire storage area. This area must be maintained free of vegetation.

E. Waste tires stored indoors must be stored under conditions that meet or exceed those in the current edition of The Standard for Storage of Rubber Tires, National Fire Protection Association (NFPA) 231D, written by the NFPA Committee on Standards for Rubber Tires, published by the NFPA Standards Council. This publication is available at the Minnesota State Law Library, Ford Building, 117 University Avenue, Saint Paul, Minnesota; the Office of Public Safety, Fire Marshal Division; or any local fire department. This publication is incorporated by reference and is not subject to frequent change.

F. No waste tire pile must have an area greater than 10,000 square feet or a vertical height greater than 20 feet.

G. A 50-foot fire lane must be placed around the perimeter of each waste tire pile. Access to the fire lane for emergency vehicles must be unobstructed at all times. The fire lane must be maintained free of rubbish and vegetation at all times.

H. All tire piles must be maintained free of mosquitoes and rodents.

I. Surface water drainage must be diverted around and away from the waste tire storage area.

Subp. 4. **Annual report.** A permittee of a waste tire facility shall submit a report containing the following information to the chair annually, on March 1 of each year:

A. the facility name, address, and permit number;

B. the year covered by the report;

C. the total quantity and type of waste tires or weight of tire-derived products received at the facility during the year covered by the report;

D. the total quantity and type of waste tires or weight of tire-derived products shipped from the facility during the year covered by the report;

E. the total quantity and type of waste tires and weight of tire-derived products located at the facility on the date of reporting;

F. for all waste tires and tire-derived products shipped from the facility, the name and waste tire transporter identification number of the transporter who accepted the waste tires or tire-derived products for transport, and the quantity of waste tires or volume of tire-derived products shipped with that transporter; and if the waste tires were shipped with a person who is not a waste tire transporter, the number of tires shipped, the person's name and telephone number, and the place where the tires were deposited;

G. for all waste tires and tire-derived products received at the facility, the name and waste tire transporter identification number of the transporter who delivered the waste tires or tire-derived products to the facility, and the quantity of waste tires or volume of tire-derived products received from that transporter; and if the waste tires were delivered by a person who is not a waste tire transporter, the number of tires delivered and the person's name and telephone number;

H. for all waste tires removed for recapping, the quantity and type removed, and the name and location of the recapping facility receiving the tires; and

I. the most recent closure cost estimate prepared using the criteria in part 9220.0570.

9220.0460 WASTE TIRE TRANSFER FACILITY STORAGE LIMITATION.

Waste tires stored at the waste tire transfer facility must be limited to 10,000 passenger car tires or the equivalent weight of other waste tires. In addition, all waste tires received at the facility must be transported to a permitted waste tire processing facility at least twice annually or unless otherwise provided in the facility's permit.

9220.0470 ADDITIONAL STANDARDS FOR WASTE TIRE PROCESSING FACILITIES.

Subpart 1. **Scope.** This part sets out the additional standards that apply to the operation of a permitted waste tire processing

facility in addition to the general standards in part 9220.0450. To qualify for regulation as a waste tire processing facility, the standards in part 9220.0450 must be met.

Subp. 2. **Storage limitation.** A waste tire processing facility must not store more than 70,000 passenger car tires or the equivalent weight of other tires or tire-derived products at any time. Waste tires stored must be limited to one pile of waste tires and one pile of tire-derived product meeting the limits in part 9220.0450, subpart 3, item F, of the general facility standards. In addition, at least 75 percent of the waste tires and tire-derived products that are delivered to or are contained on the site of the waste tire processing facility at the beginning of each year must be processed and removed from the facility during the year.

Subp. 3. **Emergency equipment.** Equipment for communications and the control of fires must be provided and maintained at the waste tire processing facility at all times.

Subp. 4. **Emergency preparedness manual.** The operator of the waste tire processing facility shall maintain an emergency preparedness manual at the facility. This manual must be submitted to the chair with the permit application. Once approved, the manual becomes part of the permit. This manual must be updated if a change in the operations of the waste tire processing facility occurs, or if the chair requests an update. This emergency preparedness manual must, at a minimum, contain:

A. a list of names and telephone numbers of persons to be contacted in the event of a fire, flood, or other emergency involving the waste tire processing facility;

B. a list of the emergency response equipment present at the waste tire processing facility or available for use at the facility, the location of the equipment, and how it should be used in the event of a fire or other emergency;

C. the procedures to be followed by facility personnel from discovery of an emergency until the situation is corrected, including the measures that will be taken to minimize the occurrence, recurrence, or spread of fires, explosions, and releases;

D. the locations of known water supplies, fire hydrants, dry-chemical extinguishers, or other materials that may be used for firefighting purposes; and

E. additional relevant information.

No emergency preparedness manual shall be approved unless the permittee demonstrates that arrangements to acquire police and fire protection services for the waste tire processing facility have been made.

Subp. 5. **Emergency procedures.** The operator of the waste tire processing facility shall implement the emergency procedures of subpart 4, item C, in the event of a fire or other emergency.

Subp. 6. **Emergency notification and reports.** The operator of the waste tire processing facility shall immediately notify the chair in the event of a fire or other emergency with potential off-site impacts. Within one week of correcting an emergency situation at the waste tire processing facility, the permittee of the facility shall submit to the chair a report on the emergency. This report must set out the type of emergency, the date and time of the emergency, the origins of the emergency, the actions that were taken to respond to the emergency, the results of the actions that were taken, and an analysis of the success or failure of the actions.

9220.0480 ADDITIONAL STANDARDS FOR WASTE TIRE STORAGE FACILITIES.

Subpart 1. **Scope.** This part sets out the standards that apply to the operation of a permitted waste tire storage facility in addition to the general standards in part 9220.0450. A waste tire facility that cannot qualify for regulation as a waste tire transfer facility or as a waste tire processing facility must comply with the standards in this part.

Subp. 2. **Emergency preparedness standards.** Waste tire storage facilities must comply with the emergency preparedness standards for waste tire processing facilities in part 9220.0470, subparts 3 to 6.

Subp. 3. **Storage limitation.** No waste tire storage facility shall store more than 500,000 passenger car tires or the equivalent weight of other waste tires or tire-derived products at any time.

Subp. 4. **Additional information.** In addition to the information required to be submitted in the annual report required under the general facility standards of part 9220.0450, subpart 4, the operator of the waste tire storage facility shall submit information on the procedures used at the facility to minimize or prevent mosquito breeding and rodent infestation, including the dates when mosquito or rodent control operations were conducted.

Subp. 5. **Removal of soil contaminated with pyrolitic oil.** If pyrolitic oil is released at the waste tire facility, the permittee shall remove contaminated soil in accordance with any applicable rules governing the removal, transportation, and disposal of the material.

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9220.0490 CLOSURE.

Subpart 1. **Closure required.** The owner or operator of a waste tire facility shall cease to accept waste tires and immediately close the facility in compliance with any special closure conditions established in the permit, this part, and part 9220.0500, if:

A. the owner or operator declares the facility closed;

B. the owner or operator fails to maintain adequate financial assurance;

C. the board permit for a facility expires and renewal of the permit is not applied for, or is applied for and denied;

D. the board permit for the facility is revoked;

E. a board order to cease operations is issued;

F. a board stipulation agreement specifies closure is to begin; or

G. the owner or operator of a permitted facility has failed to receive and ship waste tires for a continuous six-month period.

Subp. 2. **Submittal of closure plan.** The owner or operator of a waste tire facility shall submit to the chair a closure plan with the permit application, or as required by an order or stipulation agreement. The chair shall approve the closure plan as part of the permit issuance procedure or as part of a submittal required by a stipulation agreement or order. Compliance with the approved closure plan must be made a condition of any permit, order, or stipulation agreement. No closure plan shall be approved unless the closure plan is consistent with this part and the applicable closure requirements of part 9220.0500.

Subp. 3. **Contents of closure plan.** The closure plan must include:

A. a description of the facility's operation, including the maximum inventory of waste tires and tire-derived products that will be collected at the facility at any time during the operating life of the facility;

B. when or under what circumstances the facility will close;

C. how all waste tires and tire-derived products will be removed from the facility upon closure, and what end-use is planned for the waste tires and tire-derived products; and

D. a schedule for the applicable closure procedures of part 9220.0500, including the time period for completing the closure procedures.

Subp. 4. **Amendment of the plan.** The permittee may amend the closure plan at any time during the life of the facility. Any amendments to the closure plan must be submitted to and approved by the chair before they become effective. The permittee shall amend the closure plan and submit the amended plan to the chair for approval whenever changes in the operating plan or facility design affect the closure procedures required, or whenever the expected year of closure changes.

9220.0500 CLOSURE PROCEDURES.

Subpart 1. **Time for completion of closure.** Unless otherwise approved in a waste tire facility closure plan, the owner or operator shall within 90 days complete the closure procedures of subpart 2.

Subp. 2. **Closure procedures.** If the conditions of part 9220.0490, subpart 1, exist, the owner or operator shall:

A. close public access to the facility;

B. post a gate notice indicating to the public that the facility is closed and indicating the nearest facility where waste tires can be deposited;

C. notify the board, local units of government, local land use authorities, and fire and health authorities of the closing of the facility;

D. remove all solid waste to a permitted solid waste facility;

E. remove all waste tires to a waste tire processing facility that has a permit or provisional status;

F. remove all tire-derived products to a market; and

G. notify the chair when the closure activities are completed.

Subp. 3. **Acceptance of removed tires.** If a waste tire processing facility is not available to accept the waste tires removed under subpart 2, item E, the chair shall approve shipment of the waste tires to a waste tire storage or transfer facility willing and able to accept the waste tires.

Subp. 4. **Certification of closure.** After receiving certification from the owner or operator of the facility that the closure procedures have been completed in accordance with subpart 2, the chair shall inspect the facility site. If all procedures have been correctly completed, the chair shall verify that the facility has been closed in compliance with parts 9220.0440 to 9220.0500, and that all duties established by parts 9220.0440 to 9220.0500, and by the facility permit, have been discharged.

9220.0510 PETITION PROCEDURES.

Subpart 1. **Scope.** This part sets out the procedures for submitting a petition for an exemption from the 75 percent annual processing requirement in part 9220.0470, subpart 2.

Subp. 2. **Submission of the petition.** The permittee of a waste tire processing facility may petition the chair for an exemption from the 75 percent annual processing requirement by submitting a petition containing the information described in subpart 3, as soon as the permittee becomes aware that compliance with the 75 percent annual processing requirement cannot be achieved.

Subp. 3. **Information required.** The petition for an exemption from the 75 percent annual processing requirement must contain information sufficient to allow the chair to find:

A. that the 75 percent annual processing requirement will be met in the year following the year for which the exemption is obtained;

B. that an exemption from the 75 percent annual processing requirement will not cause the facility to be out of compliance with any other standard applicable to the facility; and

C. that an exemption from the 75 percent annual processing requirement will not cause the facility to become a hazard to human health, natural resources, or the environment.

Subp. 4. **Determination by the chair.** If the chair, upon evaluation of the information submitted as part of the petition, makes the findings listed under subpart 3, the chair shall grant the petition. The chair shall determine whether the petition shall be granted within 60 days of receiving a petition containing information sufficient for the chair to make the required findings. An exemption granted under this part is valid for one year. The chair shall not grant the permittee of a waste tire processing facility an exemption from the 75 percent annual processing requirement for any two consecutive years.

GENERATION AND TRANSPORTATION

9220.0520 WASTE TIRE DISPOSAL.

Subpart 1. **Scope.** The requirements of subpart 2 apply to all persons who dispose of waste tires. The requirements of subpart 3 apply only to persons who dispose of more than 100 waste tires in a calendar year.

Subp. 2. **Waste tire disposal.** On and after 90 days from the effective date of this chapter, any person who disposes of waste tires, and who contracts or arranges with a person for their disposal, shall only contract or arrange for disposal of waste tires with a person displaying a waste tire transporter identification number, or a person exempt under part 9220.0530, subpart 3.

Subp. 3. **Record keeping.** All persons who dispose of more than 100 waste tires in a calendar year shall maintain a record of the quantity and type of waste tires sent for disposal. For shipments made under subpart 2, this record must also note the name of the person transporting the waste tires, the identification number of the waste tire transporter, if applicable, and the date of the transaction. For persons who transport their own waste tires for disposal, this record must also note the date of shipment and the name of the waste tire facility where the waste tires were delivered. When requested by the chair, the record must be made available for inspection. The record must be retained for three years from the date of the transaction.

9220.0530 WASTE TIRE TRANSPORTATION.

Subpart 1. **Scope.** This part sets out the requirements that apply to persons who are in the business of transporting waste tires.

Subp. 2. **Exempt persons.** The requirements of this part do not apply to:

A. a person transporting household quantities of waste tires incidental to municipal waste collection, and delivers those waste tires to a permitted solid waste facility, a waste tire facility with a permit or provisional status, or a waste tire facility that is exempt from the requirement to obtain a waste tire permit;

B. a person receiving waste tires incidental to the collection of recyclable materials and who delivers those waste tires to a permitted solid waste facility, a waste tire facility with a permit or provisional status, or a waste tire facility that is exempt from the requirement to obtain a waste tire facility permit;

C. a person transporting no more than ten waste tires to a permitted solid waste facility, a waste tire facility with a permit or provisional status, or a waste tire facility that is exempt from the requirement to obtain a waste tire facility permit;

D. a person transporting waste tires that will only be used for agricultural purposes;

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E. a person transporting tire-derived products to a market; and

F. a business delivering its own waste tires to a waste tire facility that has obtained provisional status or a permit or is exempt under part 9220.0230, subpart 2, to obtain a waste tire facility permit.

Subp. 3. **Board identification number required.** Except as exempted by subpart 2, a person who transports waste tires must obtain and display a waste tire transporter identification number when transporting waste tires. The information that must be submitted to the chair to obtain a board identification number is specified in part 9220.0540.

Subp. 4. **Waste tire transportation.** A transporter who collects waste tires from a person who disposes waste tires shall deliver the waste tires to a waste tire facility with a permit or provisional status, or a waste tire facility that is exempt from the requirement to obtain a waste tire permit.

Subp. 5. **Record keeping.** Transporters shall record and maintain the following information regarding their activities for each month of operation:

A. the type and quantity of waste tires collected;

B. where the waste tires collected were deposited, specifying the number and type deposited at each location; and

C. where or from whom the waste tires were collected.

Subp. 6. **Submittal of operating record.** Transporters shall submit to the chair an operating record that identifies the transporter by name and identification number, and that summarizes the information accumulated under subpart 5 for the three months preceding the month the record is to be submitted. This record must be submitted April 10, July 10, October 10, and January 10 of each year.

9220.0540 TRANSPORTER APPLICATION REQUIREMENTS.

Subpart 1. **Scope.** A person required to obtain a waste tire transporter identification number under part 9220.0530, subpart 3, shall follow the procedures established in subpart 2.

Subp. 2. **Application.** To obtain a waste tire transporter identification number and approval to transport waste tires, a transporter shall submit a written application to the chair. For a transporter currently transporting waste tires, the application must be submitted not more than 60 days after the effective date of this chapter. For a new transporter, the application must be submitted 15 days before the transporter begins transporting waste tires. The application must contain the following information:

A. the name, address, and telephone number of the person who will be transporting waste tires; and if a company will be transporting waste tires, the name, address, and telephone number of the officers of the company, along with an identification of the number of drivers that will be transporting tires for the company;

B. the geographical area that will be served;

C. the type of vehicle or trailer or both vehicle and trailer that will be used, the license number, and registered vehicle owner;

D. where the waste tires will be collected, and where delivered or deposited; and

E. an estimate of the quantity and type of waste tires that will be collected quarterly.

WASTE TIRE FACILITY FINANCIAL ASSURANCE REQUIREMENTS

9220.0550 SCOPE.

Parts 9220.0550 to 9220.0680 apply to owners and operators of waste tire facilities, except those who are exempt from the requirement to obtain a waste tire facility permit under part 9220.0230, subpart 2, or are permitted by rule under part 9220.0240.

9220.0560 FINANCIAL ASSURANCE REQUIRED.

The owner or operator of a waste tire facility shall establish financial assurance for closure of the facility within the time periods established in part 9220.0580, by obtaining one or more of the financial assurance mechanisms approved by the chair, or by obtaining a county-held financial assurance mechanism that has been approved by the chair.

9220.0570 COST ESTIMATE FOR CLOSURE.

Subpart 1. **Average cost of closure estimate.** The chair shall calculate the average cost of closure of a waste tire facility by examining the cost of transportation of waste tires to processing facilities and the average cost of processing waste tires in the state. The chair shall express the average cost of closure through use of a per tire average cost figure.

Subp. 2. **Amount.** The amount of financial assurance to be provided by the owner or operator of a waste tire facility must be greater than or equal to the closure cost estimate derived by multiplying the chair's estimate of the per tire statewide average cost of closure by the maximum number of tires that will be maintained at the facility as stated in the permit application part 9220.0270, subpart 3, item B.

9220.0580 SCHEDULE FOR ESTABLISHING FINANCIAL ASSURANCE.

Subpart 1. **Surety bond or letter of credit.** The owner or operator of a waste tire facility shall submit evidence to the chair with the permit application that a bond or a letter of credit has been obtained.

Subp. 2. **Closure trust fund.** Waste tire facilities shall make annual payments into a closure trust fund. The first payment must be made six months after the date the waste tire facility permit is issued by the board. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The minimum amount of each payment must be determined by the formula in part 9220.0610, subpart 5. Evidence of the establishment of a closure trust fund must be submitted with the permit application.

9220.0590 ADJUSTMENTS TO FINANCIAL ASSURANCE LEVEL.

Subpart 1. **Annual recalculation.** The chair shall recalculate annually the per tire statewide average cost of closure. If a change is made in the statewide average, the chair will notify all permittees by mail.

Subp. 2. **Change in closure cost estimate.** If the closure cost estimate for a permitted waste tire facility increases, the permittee shall adjust the level of financial assurance as specified in parts 9220.0610 to 9220.0640.

9220.0600 COUNTY-HELD FINANCIAL ASSURANCE MECHANISM.

Subpart 1. **Scope.** An owner or operator of a waste tire facility may use a county-held financial assurance mechanism to satisfy the requirements of part 9220.0540.

Subp. 2. **Action by county.** A county controlling financial assurance for a waste tire facility shall take all actions needed to gain access to the funds available through the financial assurance mechanism when the owner or operator of the waste tire facility has failed to:

A. begin or complete closure as required by the permit or part 9220.0500;

B. provide alternate financial assurance and obtain written approval of the financial assurance from the chair and the county within the time period required by part 9220.0580; or

C. fund the standby trust fund within the specified time period as required by part 9220.0620.

Subp. 3. **Action by chair.** In the event that the county has failed to gain access to the funds available through the financial assurance mechanism within 30 days of the owner's or operator's failure to perform as specified in subpart 2, or if the county has failed to use any funds obtained under subpart 2 to close the facility in compliance with the closure plan or part 9220.0490, the chair shall be given access to the funds. The county shall take no action that interferes with the chair's access to the funds, and shall cooperate with the chair if necessary to allow the chair to gain access to the funds.

Subp. 4. **Notice.** In the event that the chair takes action under subpart 3, the chair shall give notice of this action to the county and all other involved parties, including the owner or operator of the waste tire facility, and any trustee, surety, or letter of credit institution. Failure by the chair to give notice does not invalidate the chair's actions under subpart 3.

9220.0610 CLOSURE TRUST FUND.

Subpart 1. **Scope.** Subparts 2 to 13 apply to closure trust funds. For trust funds held by a county under part 9220.0600, provisions in this part that refer to the chair apply to both the chair and the county.

Subp. 2. **Establishment of trust fund.** An owner or operator of a waste tire facility may satisfy the requirements of part 9220.0560 by establishing a closure trust fund that conforms to the requirements of subparts 2 to 13 and by submitting an originally-signed duplicate of the trust agreement to the chair with the permit application. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

Subp. 3. **Wording of trust agreement.** The chair shall approve the form of a trust agreement instrument that contains terms adequate to ensure that financial assurance is provided. The chair shall provide a copy of the approved trust agreement instrument with the permit application forms. The owner or operator of the waste tire facility shall use the form provided by the chair when establishing a trust fund financial assurance mechanism.

Subp. 4. **Pay-in period.** The owner or operator shall make annual payments into the trust fund over the period for which the financial assurance is required, hereinafter called the pay-in period. The pay-in period must equal five years or the expected operating life of the facility, whichever is shorter.

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Subp. 5. **Payments.** The first payment must be made and a receipt submitted to the chair six months after the date the waste tire facility permit is issued. The first payment must at least be equal to the applicable current closure cost estimate, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The minimum amount of each subsequent payment must be determined by this formula:

$$\text{next payment} = \frac{CE}{Y} - CV$$

where CE is the current closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

Subp. 6. **Establishment of trust fund as an alternate financial assurance mechanism.** If the owner or operator chooses to establish a closure trust fund after having used one or more alternate financial assurance mechanisms in part 9220.0550, the first payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this part as applicable.

Subp. 7. **Additional payments.** If, after the pay-in period is completed, the sum of the current closure cost estimate changes, the owner or operator shall within 60 days deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate. The owner or operator shall submit a receipt from the trustee for this payment to the chair. Alternately, the owner or operator may establish other financial assurance mechanisms as specified in parts 9220.0610 to 9220.0640 to cover the difference.

Subp. 8. **Request for release of excess funds.** During the operating life of the facility, if the value of the trust fund is greater than the sum of the current closure cost estimate, the owner or operator may submit to the chair a written request for release of the amount in excess of the current closure cost estimate covered by the trust fund.

Subp. 9. **Substitution of alternate financial assurance mechanisms.** If an owner or operator substitutes other financial assurance mechanisms as specified in parts 9220.0610 to 9220.0640 in place of all or part of the trust fund, the owner or operator may submit a written request to the chair for release of the amount in excess of the current closure cost estimate covered by the trust fund.

Subp. 10. **Release of funds.** Within 60 days after receiving a request from the owner or operator for release of funds specified in subpart 8 or 9, the chair shall instruct the trustee to release to the owner or operator any funds in excess of the latest closure cost estimate covered by the trust fund.

Subp. 11. **Notification.** The trust fund instrument must require the trustee to notify the owner or operator and the chair by certified mail within ten days following the expiration of the 30-day period after the anniversary of the establishment of the trust if no payment is received from the owner or operator during the period. Within 60 days after receipt by the chair of a notice of nonpayment of any payment required by this part, the owner or operator shall:

A. make the required payment;

B. provide alternate financial assurance as specified in this part and obtain the chair's written approval of the assurance provided; or

C. stop accepting waste tires and begin closure of the facility.

Subp. 12. **Reimbursement.** After beginning closure of the waste tire facility, an owner, operator, or other person authorized to perform closure may request reimbursement from the trust fund for completed closure expenditures by submitting itemized bills to the chair. Within 60 days after receiving bills for completed closure activities, the chair shall determine whether the closure activities were in accordance with the closure plan or otherwise needed to ensure proper closure, and if so, the chair shall instruct the trustee to make reimbursement in the amount the chair specifies in writing. If the chair has reason to believe that the cost of closure will be significantly greater than the value of the trust fund, the chair may withhold reimbursement until it is determined, under part 9220.0670, that the owner or operator is no longer required to maintain financial assurance for closure.

Subp. 13. **Termination of trust fund.** The chair shall agree to termination of the trust if:

A. an owner or operator substitutes alternate financial assurance as specified in parts 9220.0610 to 9220.0670; or

B. the chair releases the owner or operator from the requirements of this part under part 9220.0670.

9220.0620 SURETY BOND GUARANTEEING PAYMENT INTO A STANDBY TRUST FUND.

Subpart 1. **Scope.** Subparts 2 to 10 apply to surety bonds that guarantee payment into a standby trust fund. For surety bonds held by a county under part 9220.0600, provisions in this part that refer to the chair apply to both the chair and the county.

Subp. 2. **Surety bond requirements.** An owner or operator may satisfy the requirements of part 9220.0560 by obtaining a surety bond that conforms to the requirements of subparts 2 to 10 and by submitting the bond to the chair. The surety company issuing the

bond must be among those listed as acceptable sureties on federal bonds in Circular 570, issued by the United States Department of the Treasury, as published annually in the Federal Register on July 1.

Subp. 3. **Wording of surety bond.** The chair shall approve the form of a surety bond that contains terms adequate to ensure that financial assurance is provided. The chair shall provide a copy of the approved surety bond instrument with the permit application forms. The owner or operator of the waste tire facility must use the form provided by the chair when establishing a surety bond financial assurance mechanism.

Subp. 4. **Establishment of standby trust fund.** The owner or operator who uses a surety bond to satisfy the requirements of part 9220.0560 shall also establish a standby trust fund. The bond shall require the surety to deposit all payments made under the bond directly into the standby trust fund in accordance with instructions from the chair. An originally-signed duplicate of the trust agreement must be submitted to the chair with the surety bond. The standby trust fund must meet the requirements of part 9220.0580, except that compliance with the requirements in items A to D is not required until the standby trust fund is funded under this part:

A. payments into the trust fund as specified in part 9220.0610;

B. updating of the trust agreement to show current closure cost estimates;

C. annual valuations as required by the trust agreement; and

D. notices of nonpayment as required by the trust agreement.

Subp. 5. **Performance guarantee.** The bond must guarantee that the owner or operator will:

A. pay into the standby trust fund an amount equal to the penal sum of the bond before the beginning of closure of the facility;

B. pay into the standby trust fund an amount equal to the penal sum within 15 days after an order to close the facility is issued by the chair, the board, or court of competent jurisdiction; or

C. provide alternate financial assurance as specified in parts 9220.0610 to 9220.0640 and obtain the chair's written approval of the assurance provided, within 90 days after receipt by the chair of a notice of cancellation of the bond from the surety.

Subp. 6. **Failure to perform.** Under the terms of the bond, the surety must become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

Subp. 7. **Penal sum.** The penal sum of the bond must be at least equal to the sum of the applicable current closure cost estimate.

Subp. 8. **Changes to penal sum.** Within 60 days of an increase in the sum of the current closure cost estimate to an amount greater than the penal sum, the owner or operator shall either cause the penal sum to be increased to an amount at least equal to the sum of the current closure cost estimate and submit evidence of the increase to the chair, or obtain other financial assurance as specified in parts 9220.0610 to 9220.0640 to cover the increase. Whenever the sum of the current closure cost estimate decreases, the penal sum may be reduced to the sum of the current closure cost estimate following written approval by the chair.

Subp. 9. **Notification.** The bond must provide that the surety may cancel the bond only by sending notice of cancellation by certified mail to the owner or operator and the chair. The bond must also provide that cancellation is not effective until 120 days after the chair has received the notice of cancellation, as evidenced by the return receipt. For a surety bond held by a county under part 9220.0600, the bond must provide a 150-day cancellation period rather than a 120-day period.

Subp. 10. **Cancellation of surety bond.** The owner or operator may cancel the bond if the chair has given prior written consent. The chair shall provide written consent if:

A. an owner or operator substitutes alternate financial assurance as specified in parts 9220.0610 to 9220.0640; or

B. the chair releases the owner or operator from the requirements of this part in accordance with part 9220.0670.

9220.0630 LETTER OF CREDIT.

Subpart 1. **Scope.** Subparts 2 to 11 apply to letters of credit. For letters of credit held by a county under part 9220.0600, provisions in this part that refer to the chair apply to both the chair and the county.

Subp. 2. **Letter of credit requirements.** An owner or operator may satisfy the requirements of part 9220.0560 by obtaining an irrevocable letter of credit that conforms to the requirements of subparts 2 to 11, and by submitting the letter to the chair. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated

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and examined by a federal or state agency. An owner or operator of a waste tire facility shall submit the letter of credit to the chair with the facility permit application.

Subp. 3. **Wording of letter of credit.** The chair shall approve the form of a letter of credit that contains terms adequate to ensure that financial assurance is provided. The chair shall provide a copy of the approved letter of credit instrument with the permit application. The owner or operator of the waste tire facility shall use the form provided by the chair when establishing a letter of credit financial assurance mechanism.

Subp. 4. **Establishment of standby trust fund.** An owner or operator who uses a letter of credit to satisfy the requirements of part 9220.0560 shall also establish a standby trust fund. Under the terms of the letter of credit, the issuing institution shall deposit all amounts paid directly into the standby trust fund in accordance with instructions from the chair. An originally-signed duplicate of the standby trust fund agreement must be submitted to the chair with the letter of credit. The standby trust fund agreement must meet the requirements in part 9220.0610, except that compliance with the following is not required until the standby trust fund is funded under this part:

A. payments into the trust fund as specified in part 9220.0610;

B. updating of Schedule A of the trust agreement to show current closure cost estimates;

C. annual valuations as required by the trust agreement; and

D. notices of nonpayment as required by the trust agreement.

Subp. 5. **Notification.** The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be extended automatically for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the chair by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days must begin on the date when the chair received the notice, as evidenced by the return receipt. For a letter of credit held by a county under part 9220.0600, the letter of credit must provide a 150-day expiration period rather than a 120-day period.

Subp. 6. **Amount of credit.** The letter of credit must be issued in an amount at least equal to the applicable current closure cost estimate.

Subp. 7. **Changes to amount of credit.** Within 60 days of an increase in the current closure cost estimate to an amount greater than the amount of the credit, the owner or operator shall either cause the amount of the credit to be increased to an amount at least equal to the sum of the current closure cost estimate and submit evidence of the increase to the chair, or obtain other financial assurance as specified in parts 9220.0610 to 9220.0640 to cover the increase. Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the sum of the current closure cost estimate following written approval by the chair.

Subp. 8. **Failure to perform.** The letter of credit must provide that the chair may draw on the letter of credit, when the chair has determined that the owner or operator has failed to perform closure when required to do so in accordance with the closure plan or part 9220.0500.

Subp. 9. **Failure to establish alternate financial assurance.** The chair shall draw on the letter of credit if the owner or operator does not establish alternate financial assurance as specified in parts 9220.0610 to 9220.0640 and obtain written approval of the alternate assurance from the chair within 90 days after the chair receives notice that the issuing institution has decided not to extend the letter of credit beyond the current expiration date. The chair may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any extension, the chair shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in parts 9220.0610 to 9220.0640 and obtain written approval of the assurance from the chair.

Subp. 10. **Termination of letter of credit.** The chair shall return the letter of credit to the issuing institution for termination if:

A. an owner or operator substitutes alternate financial assurance as specified in parts 9220.0610 to 9220.0640; or

B. the chair releases the owner or operator from the requirements of this part in accordance with part 9220.0670.

9220.0640 SURETY BOND GUARANTEEING PERFORMANCE OF CLOSURE FOR PERMITTED FACILITIES.

Subpart 1. **Scope.** Subparts 2 to 11 apply to surety bonds that guarantee performance of closure. Surety bonds that guarantee performance of closure can only be used for permitted facilities with approved closure plans. For surety bonds held by a county under part 9220.0600, provisions in this part that refer to the chair apply to both the chair and the county.

Subp. 2. **Surety bond requirements.** An owner or operator may satisfy the requirements of part 9220.0560 by obtaining a surety bond that conforms to the requirements of subparts 2 to 11 and by submitting the bond to the chair. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in Circular 570, issued by the United States Department of the Treasury, as published annually in the Federal Register on July 1. The owner or operator of a waste tire facility shall submit the bond to the chair with the permit application.

Subp. 3. **Wording of performance bond.** The chair shall approve the form of a surety bond guaranteeing performance of closure that contains terms adequate to ensure that financial assurance is provided. The chair shall provide a copy of the approved performance bond instrument with the permit application forms. The owner or operator of the waste tire facility shall use the form provided by the chair when establishing a surety bond guaranteeing performance of closure financial assurance mechanism.

Subp. 4. **Establishment of standby trust fund.** The owner or operator who uses a surety bond to satisfy the requirements of part 9220.0560 shall also establish a standby trust fund. The bond must require the surety to deposit all payments made under the bond directly into the standby trust fund in accordance with instructions from the chair. An originally-signed duplicate of the standby trust fund agreement must be submitted to the chair with the surety bond. The standby trust fund must meet the requirements of part 9220.0610, except that compliance with the following requirements is not required until the standby trust fund is funded under this part:

A. payments into the trust fund as specified in part 9220.0610;

B. updating of the trust agreement to show current closure cost estimates;

C. annual valuations as required by the trust agreement; and

D. notices of nonpayment as required by the trust agreement.

Subp. 5. **Performance guarantee.** The bond must guarantee that the owner or operator will:

A. perform closure in accordance with the closure plan, and other requirements of the permit for the facility whenever required to do so; or

B. provide alternate financial assurance as specified in parts 9220.0610 to 9220.0640 and obtain the chair's written approval of the assurance provided, within 90 days after receipt by the chair of a notice of cancellation of the bond from the surety.

Subp. 6. **Failure to perform.** Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond as determined by the chair.

Subp. 7. **Penal sum.** The penal sum of the bond must be at least equal to the applicable current closure cost estimate.

Subp. 8. **Changes to penal sum.** Within 60 days of an increase in the sum of the current closure cost estimate to an amount greater than the penal sum, the owner or operator shall either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of the increase to the chair, or obtain other financial assurance specified in parts 9220.0610 to 9220.0640. Whenever the sum of the current closure cost estimate decreases, the penal sum may be reduced to the current closure cost estimate following written approval of the chair.

Subp. 9. **Notification.** The bond must provide that the surety may cancel the bond only by sending notice of cancellation by certified mail to the owner or operator and to the chair. The bond must also provide that cancellation shall not be effective until 120 days after the chair has received the notice of cancellation as evidenced by the return receipt. For a surety bond held by a county under part 9220.0600, the bond must provide a 150-day cancellation period rather than a 120-day period.

Subp. 10. **Cancellation of surety bond.** The owner or operator may cancel the bond if the chair has given prior written consent. The chair shall provide written consent if:

A. an owner or operator substitutes alternate financial assurance as specified in parts 9220.0610 to 9220.0640; or

B. the chair releases the owner or operator from the requirements of this part in accordance with part 9220.0680.

Subp. 11. **Limitation on liability.** The surety is not liable for deficiencies in the owner's or operator's performance of closure after the chair releases the owner or operator from the requirements of this part in accordance with part 9220.0670.

9220.0650 USE OF MULTIPLE FINANCIAL ASSURANCE MECHANISMS.

An owner or operator may satisfy the requirements of part 9220.0560 by establishing more than one financial assurance mechanism per waste tire facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, and letters of credit. The mechanisms must be established as specified in parts 9220.0610, 9220.0620, and 9220.0630, except that it is the combination of mechanisms, rather than a single mechanism, that must provide financial assurance at least equal to the sum of the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be

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established for two or more mechanisms. The chair may use any or all of the financial assurance mechanisms to provide for closure of the facility.

9220.0660 USE OF FINANCIAL ASSURANCE MECHANISMS FOR MULTIPLE WASTE TIRE FACILITIES.

An owner or operator may use a financial assurance mechanism specified in parts 9220.0610 to 9220.0640 to meet the requirements of part 9220.0560 for more than one waste tire facility. Evidence of financial assurance submitted to the chair must include a list showing, for each facility, the name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. When directing disbursement of funds for closure at any of the facilities covered by the mechanism, the chair shall direct that only the amount of funds designated for that facility be disbursed unless otherwise agreed to by the owner or operator.

9220.0670 RELEASE OF OWNER OR OPERATOR FROM FINANCIAL ASSURANCE REQUIREMENTS.

When an owner or operator has completed, to the satisfaction of the chair, all closure requirements in accordance with the closure plan or other closure requirements, the chair shall notify the owner or operator in writing that financial assurance for closure of the waste tire facility is no longer required.

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

Subpart 1. **Notification of bankruptcy.** An owner or operator shall notify the chair by certified mail of the commencement of a voluntary or involuntary proceeding under United States Code, title II, Bankruptcy, naming the owner or operator as a debtor, within ten days after commencement of the proceeding.

Subp. 2. **Incapacity of financial institution.** An owner or operator who fulfills the requirements of part 9220.0560 by obtaining a trust fund, surety bond, or letter of credit will be considered to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution; or in the event that the authority of the trustee to act as trustee is revoked or suspended; or in the event that the institution's authority to issue the surety bond or letter of credit is revoked or suspended. The owner or operator shall establish other financial assurance within 60 days after such an event.

REPEALER. Minnesota Rules, parts 7001.4000; 7001.4010; 7001.4020; 7001.4030; 7001.4035; 7001.4040; 7001.4050; 7001.4060; 7001.4070; 7001.4080; 7001.4090; 7001.4100; 7001.4110; 7001.4120; 7001.4130; 7001.4140; 7001.4150; 7035.8200; 7035.8205; 7035.8210; 7035.8220; 7035.8230; 7035.8240; 7035.8250; 7035.8260; 7035.8270; 7035.8280; 7035.8290; 7035.8300; 7035.8400; 7035.8410; 7035.8420; 7035.8430; 7035.8440; 7035.8450; 7035.8460; 7035.8470; 7035.8480; 7035.8490; 7035.8500; 7035.8510; 7035.8520; 7035.8530; 7035.8540; 7035.8550; 7035.8560; 7035.8570; 7035.8580; 7035.8590; 7035.8700; and 7035.8710, are repealed.

Adopted Rules

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

Department of Health

Adopted Permanent Rules Relating to Family Planning Special Project Grants

The rules proposed and published at *State Register*, Volume 12, Number 12, pages 497-502, September 21, 1987 (12 S.R. 497) are adopted with the following modifications:

WMB - 044-

STATE OF MINNESOTA
WASTE MANAGEMENT BOARD

In the Matter of Rules of
the Waste Management Board
Governing the Waste Tire
Permitting Program

CERTIFICATE OF THE WASTE MANAGEMENT BOARD'S AUTHORIZING RESOLUTION

I, Joseph M. Pavelich, do hereby certify that I am a member and the Chairperson of the Waste Management Board, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Waste Management Board duly and properly called and held on the 17th day of December 1988, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

BE IT RESOLVED, that the Chair of the Waste Management Board (Board) is hereby granted the authority to sign and give notice of the Board's intent to adopt, without a public hearing, the attached rules governing the Waste Tire Permitting Program to all persons who have registered their names with the Board for that purpose and publish the notice and the rules in the State Register, and to perform any acts incidental there to, including making any form changes in the rules that the Revisor of Statutes required the Board to make in order to obtain the Revisor's certification as required by Minn. Stat. § 14.07, subd. 2 (1986).

BE IT FURTHER RESOLVED, that in the event a public hearing becomes necessary, the Chair is hereby granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as to perform any and all acts incidental thereto, including but not limited to signing an order for and Notice of hearing, as well as acting as the Board's representative at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed by name this 24th day of March 1988.

Joseph M. Pavelich, Chair
Waste Management Board

Attested by Board Member

WP/SW/TL/DB:dc

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

RESOLUTION WMB- 13 -88

BE IT RESOLVED, that the Minnesota Waste Management Board (Board) hereby approves and adopts the attached rules governing the Management of Waste Tires and the Permitting of Waste Tire Facilities, as amended, and pursuant to the authority vested in the Board by Minn. Stat. § 115.914 and Reorganization Order No. 144 (Dept. of Admin. 1987).

BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Chair is authorized to make any form changes in the rules that the Revisor of Statutes requires the Board to make in order to obtain the Revisor's Certificate as required by Minn. Stat. § 14.28 (1986).

BE IT FURTHER RESOLVED, that the Board adopts the attached Findings of Fact, Conclusions, and Order Adopting Rules and that the Chair is hereby authorized to sign the above-mentioned document on behalf of the Board and to perform the acts necessary to provide that the rule shall have the force and effect of law.

Joseph M. Pavelich, Chair
Waste Management Board

Date: 3/30/88

STATE OF MINNESOTA
WASTE MANAGEMENT BOARD
RESOLUTION WMB -044-87

BE IT RESOLVED, that the Chair of the Minnesota Waste Management Board (Board) is hereby authorized and directed to sign and to give notice of the Board's intent to repeal, without a public hearing, a part or subpart(s) of Minn. Rules Parts 7001.0020, 7001.0040, 7001.0050, 7001.0190, 7001.4000 - 7001.4150, 7035.8200 - 7035.8300, 7035.8400 - 7035.8590, 7035.8700 and 7035.8710 as attached, and adopt without a public hearing, the attached rules, Minn. Rules Parts 9220.0200 - 9220.0680 to all persons who have registered their names with the Board for that purpose and publish the notice and the rules in the State Register, and to perform any acts incidental thereto, including making any form changes in the rules that the Revisor of Statutes requires the Board to make in order to obtain the Revisor's certification as required by Minn. Stat. § 14.07, subd. 2 (1986).

BE IT FURTHER RESOLVED, that in the event a public hearing becomes necessary, the Chair is hereby granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as to perform any and all acts incidental thereto, including but not limited to signing an Order for and Notice of Hearing, as well as acting as the Board's representative at all hearings.

Dated: 12/22/87.

JOSEPH M. PAVELICH, CHAIRMAN
Waste Management Board

JMP/BT/mlr
005/31

CERTIFICATE OF RESOLUTION ADOPTING RULES

I, Joseph M. Pavelich, do hereby certify that I am the Chair of the Minnesota Waste Management Board, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Waste Management Board duly and properly called and held on the 24th day of March, 1988, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

BE IT RESOLVED, that the Minnesota Waste Management Board (Board) hereby approves and adopts the attached rules governing the Management of Waste Tires and the Permitting of Waste Tire Facilities, as amended, pursuant to the authority vested in the Board by Minn. Stat. § 115.914 and Reorganization Order No. 144 (Dept. of Admin. 1987)

BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Chair is authorized to make any form changes in the rules that the Revisor of Statutes requires the Board to make in order to obtain the Revisor's Certificate as required by Minn. Stat. § 14.28 (1986).

BE IT FURTHER RESOLVED, that the Board adopts the attached Findings of Fact, Conclusions, and Order Adopting Rules and that the Chair is hereby authorized to sign the above-mentioned document on behalf of the Board and to perform the acts necessary to provide that the rule shall have the force and effect of law.

IN WITNESS WHEREOF, I have here unto subscribed my name this 29 day of MARCH, 1988.

Joseph M. Pavelich, Chair
Minnesota Waste Management Board

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Rules Governing the Management of Waste Tires and the Permitting of Waste Tire Facilities, Minn. Rules pts. 9220.0200 -.0680.	FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came on for decision before the Minnesota Waste Management Board (Board) on the 24th day of March, 1988. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the Board, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering all of the evidence adduced upon the records, files and proceedings herein, the Board, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions, and Order:

FINDINGS OF FACT

1. Notice of the Board's intent to adopt the above-entitled rules without a public hearing was published in the State Register on January 25, 1988, and was sent by mail to all persons on the list maintained by the Board pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 (1986) on January 18, 1988.

2. The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public.

3. All persons were given the opportunity to submit comments on the rule for 30 days after the proposed rule making. The 30 day comment period, as set out in the notice, expired on Wednesday February 24, 1988.

4. No requests for public hearing were received during the comment period.

5. No requests for notice of submission to the Attorney General were received.

6. During the comment period the Board received written comments from staff, Mr. Robert M. Hutchison of Anoka County Environmental Services, Mr. John Levine of Environmental Security of California, Mr. Lester Wilsey Jr. of Indianhead Trucking Incorporated, and Mr. Charles B. Hoffman of Pickands Mather and Company. The Board finds that four changes to the rules as proposed are justified by the record in this proceeding. Two changes are proposed to correct drafting errors.

Change 1. Mr. Robert M. Hutchison suggested that part 9220.0340 be modified to provide for notification to the county solid waste officer of the county where the facility is located or proposing to locate, upon receipt of an application for permit. The Board finds that the proposed change is reasonable, and would incorporate the change as follows:

Subpart 4. Distribution of public notice. The Chair shall distribute the public notice in the following manner:

A. A copy of the public notice must be available at the board office.

B. A copy must be mailed to the applicant.

C. A copy must be mailed to the county where the facility is located or is proposed to be located.

~~C.~~ D. Copies must be circulated in the geographic area within a 45-mile radius of the planned or existing facility...

This change is reasonable because counties have a special interest in Board actions on facility permits. Because counties are charged with licensing and regulating permitted waste tire facilities, it is reasonable that counties be given direct notice of state actions affecting facilities located within their boundaries so that they will be better able to participate in Board decisions. This is not a substantial change as under the rule as proposed county officials would have had indirect access to this information.

Change 2. Mr. Hutchison suggested that each county solid waste officer be notified of pending Board applications for permits for facilities located in the county, or proposed to be located in the county. The Board finds that this proposed change is reasonable, and would incorporate the change in part 9220.0260 Written Application, as follows:

> Subpart 2. Submittal. Applicants for a waste tire facility permit shall submit a completed permit application to the chair, and to the county where the facility is located or is proposed to be located, and shall retain a copy for their records.

Providing the county with a copy of the permit application is reasonable as it would aid county officials in addressing county licensing and permitting requirements concurrent with the Board's review and action. This is not a substantial change as under the rule as proposed county officials would have had indirect access to this information.

Change 3. Mr. Hutchison suggested that in part 9220.0390, subpart 3, item F, the word "reasonable" should be replaced by the word "necessary". The Board finds that this proposed change is reasonable and would incorporate the change as follows:

"..."F. If the permittee discovers, through any means, including notification by the board, that noncompliance with a condition of the permit has occured, the permittee shall take all ~~reasonable~~ necessary steps to minimize the adverse impacts on human health, welfare, or the environment.

This change is needed to clarify the kind of action to be taken by the permittee to regain compliance status. It is reasonable to change "reasonable" to "necessary" because "reasonable" would seem to relieve the permittee from the absolute duty to correct a noncompliance situation. The use of the word "necessary" indicates that anyone operating a facility must operate it in a fashion that would minimize all adverse impacts on human health, welfare, and the environment. No argument should be permitted as to whether a step is "reasonable" if it is "necessary" to protect human health, welfare, and the environment. This change is not substantial because it clarifies the kind of steps that would be needed to regain compliance status.

Change 4. The Change recommended for part 9220.0530 results from the Waste Management Board Staff contact with the Minnesota Department of Transportation and tire transporters. The Minnesota Department of Transportation (MNDOT) regulates all transporters to petition for proper authority to transport goods for hire over public roadways. Waste tire transporters must comply with the applicable MNDOT requirements, and receiving a Waste Management Board waste tire transporter identification number does not remove this requirement. To eliminate any possible confusion and to aid MNDOT in enforcing applicable regulations, the Board recommends this change as follows:

Part 9220.0530, subpart 3. Board identification number required.

Except as exempted by subpart 2, a person who transports waste tires must obtain and display a waste tire transporter identification number when transporting waste tires. The information that must be submitted to the chair to obtain a board identification number is specified in part 9220.0540. The board's issuance of a waste tire transporter identification number does not release the transporter from any liability, penalty, or duty imposed by Minnesota or federal statutes or rules or local ordinances, except the obligation to obtain the waste tire transporter identification number.

Alerting the applicant to additional requirements of transporting waste tires is reasonable as it would direct them to the proper offices to obtain all required permits in order to operate, not just state permits. This is not a substantial change as the rule was proposed. The rule as proposed stated that compliance with other laws was required.

Change 5. The Board received comment from the staff indicating two errors in the form of single word omissions from the proposed rules. The omission of the word "permit" in part 9220.0260, subpart 2., and the omission of the word "who" in part 9220.0530, subpart 2, item A. The Board finds that these proposed changes are reasonable and would incorporate them as follows:

Part 9220.0260, subpart 2. Submittal. Applicants for a waste tire facility permit shall submit a completed permit application to the ...

Part 9220.0530, subpart 2, item A. a person transporting household quantities of waste tires incidental to municipal waste collection, and who delivers those waste tires to a permitted solid...

These changes of word omissions are simple and do not constitute a substantial change. The new language will not alter the effect of the rule as proposed, therefore, the changes are justified and not substantial.

7. The Board adopts the Statement of Need and Resonableness, in its entirety, as the factual basis for the proposed rules, except as amended in finding 6 above. The Board hereby incorporates the Statement of Need and Reasonableness into these findings.

8. The above-captioned rule is needed and reasonable.

CONCLUSIONS

1. The Board duly acquired and has jurisdiction over this proceeding.

2. The Board published and served due, timely, and adequate notice of the intent to adopt the rules without a public hearing.

3. All relevant and procedural requirements of the statute and rule have been complied with.

4. The modifications to the proposed rule are supported by the record and do not result in a substantial change in the proposed rules.

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached Minn. Rules pts. 9220.0200-.0680 governing the Management of Waste Tires and the Permitting of Waste Tire Facilities are adopted pursuant to the authority vested in the Board by Minn. Stat. § 115A.914 and Reorganization Order No. 144 (Dept. of Admin. 1987).

MINNESOTA WASTE MANAGEMENT BOARD

Dated March 24, 1988

Joseph M. Pavelich, Chair

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Rules Governing the Management of Waste Tires and the Permitting of Waste Tire Facilities, Minn. Rules pts. 9220.0200 -.0680.	FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came on for decision before the Minnesota Waste Management Board (Board) on the 24th day of March, 1988. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the Board, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering all of the evidence adduced upon the records, files and proceedings herein, the Board, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions, and Order:

FINDINGS OF FACT

1. Notice of the Board's intent to adopt the above-entitled rules without a public hearing was published in the State Register on January 25, 1988, and was sent by mail to all persons on the list maintained by the Board pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 (1986) on January 18, 1988.

2. The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public.

3. All persons were given the opportunity to submit comments on the rule for 30 days after the proposed rule making. The 30 day comment period, as set out in the notice, expired on Wednesday February 24, 1988.

4. No requests for public hearing were received during the comment period.

5. No requests for notice of submission to the Attorney General were received.

6. During the comment period the Board received written comments from staff, Mr. Robert M. Hutchison of Anoka County Environmental Services, Mr. John Levine of Environmental Security of California, Mr. Lester Wilsey Jr. of Indianhead Trucking Incorporated, and Mr. Charles B. Hoffman of Pickands Mather and Company. The Board finds that four changes to the rules as proposed are justified by the record in this proceeding. Two changes are proposed to correct drafting errors.

Change 1. Mr. Robert M. Hutchison suggested that part 9220.0340 be modified to provide for notification to the county solid waste officer of the county where the facility is located or proposing to locate, upon receipt of an application for permit. The Board finds that the proposed change is reasonable, and would incorporate the change as follows:

Subpart 4. Distribution of public notice. The Chair shall distribute the public notice in the following manner:

A. A copy of the public notice must be available at the board office.

B. A copy must be mailed to the applicant.

C. A copy must be mailed to the county where the facility is located or is proposed to be located.

~~C.~~ D. Copies must be circulated in the geographic area within a 45-mile radius of the planned or existing facility...

This change is reasonable because counties have a special interest in Board actions on facility permits. Because counties are charged with licensing and regulating permitted waste tire facilities, it is reasonable that counties be given direct notice of state actions affecting facilities located within their boundaries so that they will be better able to participate in Board decisions. This is not a substantial change as under the rule as proposed county officials would have had indirect access to this information.

Change 2. Mr. Hutchison suggested that each county solid waste officer be notified of pending Board applications for permits for facilities located in the county, or proposed to be located in the county. The Board finds that this proposed change is reasonable, and would incorporate the change in part 9220.0260 Written Application, as follows:

> Subpart 2. Submittal. Applicants for a waste tire facility permit shall submit a completed permit application to the chair, and to the county where the facility is located or is proposed to be located, and shall retain a copy for their records.

Providing the county with a copy of the permit application is reasonable as it would aid county officials in addressing county licensing and permitting requirements concurrent with the Board's review and action. This is not a substantial change as under the rule as proposed county officials would have had indirect access to this information.

Change 3. Mr. Hutchison suggested that in part 9220.0390, subpart 3, item F, the word "reasonable" should be replaced by the word "necessary". The Board finds that this proposed change is reasonable and would incorporate the change as follows:

"..."F. If the permittee discovers, through any means, including notification by the board, that noncompliance with a condition of the permit has occured, the permittee shall take all ~~reasonable~~ necessary steps to minimize the adverse impacts on human health, welfare, or the environment.

This change is needed to clarify the kind of action to be taken by the permittee to regain compliance status. It is reasonable to change "reasonable" to "necessary" because "reasonable" would seem to relieve the permittee from the absolute duty to correct a noncompliance situation. The use of the word "necessary" indicates that anyone operating a facility must operate it in a fashion that would minimize all adverse impacts on human health, welfare, and the environment. No argument should be permitted as to whether a step is "reasonable" if it is "necessary" to protect human health, welfare, and the environment. This change is not substantial because it clarifies the kind of steps that would be needed to regain compliance status.

Change 4. The Change recommended for part 9220.0530 results from the Waste Management Board Staff contact with the Minnesota Department of Transportation and tire transporters. The Minnesota Department of Transportation (MNDOT) regulates all transporters to petition for proper authority to transport goods for hire over public roadways. Waste tire transporters must comply with the applicable MNDOT requirements, and receiving a Waste Management Board waste tire transporter identification number does not remove this requirement. To eliminate any possible confusion and to aid MNDOT in enforcing applicable regulations, the Board recommends this change as follows:

Part 9220.0530, subpart 3. Board identification number required.

Except as exempted by subpart 2, a person who transports waste tires must obtain and display a waste tire transporter identification number when transporting waste tires. The information that must be submitted to the chair to obtain a board identification number is specified in part 9220.0540. The board's issuance of a waste tire transporter identification number does not release the transporter from any liability, penalty, or duty imposed by Minnesota or federal statutes or rules or local ordinances, except the obligation to obtain the waste tire transporter identification number.

Alerting the applicant to additional requirements of transporting waste tires is reasonable as it would direct them to the proper offices to obtain all required permits in order to operate, not just state permits. This is not a substantial change as the rule was proposed. The rule as proposed stated that compliance with other laws was required.

Change 5. The Board received comment from the staff indicating two errors in the form of single word omissions from the proposed rules. The omission of the word "permit" in part 9220.0260, subpart 2., and the omission of the word "who" in part 9220.0530, subpart 2, item A. The Board finds that these proposed changes are reasonable and would incorporate them as follows:

Part 9220.0260, subpart 2. Submittal. Applicants for a waste tire facility permit shall submit a completed permit application to the ...

Part 9220.0530, subpart 2, item A. a person transporting household quantities of waste tires incidental to municipal waste collection, and who delivers those waste tires to a permitted solid...

These changes of word omissions are simple and do not constitute a substantial change. The new language will not alter the effect of the rule as proposed, therefore, the changes are justified and not substantial.

7. The Board adopts the Statement of Need and Resonableness, in its entirety, as the factual basis for the proposed rules, except as amended in finding 6 above. The Board hereby incorporates the Statement of Need and Reasonableness into these findings.

8. The above-captioned rule is needed and reasonable.

CONCLUSIONS

1. The Board duly acquired and has jurisdiction over this proceeding.

2. The Board published and served due, timely, and adequate notice of the intent to adopt the rules without a public hearing.

3. All relevant and procedural requirements of the statute and rule have been complied with.

4. The modifications to the proposed rule are supported by the record and do not result in a substantial change in the proposed rules.

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached Minn. Rules pts. 9220.0200-.0680 governing the Management of Waste Tires and the Permitting of Waste Tire Facilities are adopted pursuant to the authority vested in the Board by Minn. Stat. § 115A.914 and Reorganization Order No. 144 (Dept. of Admin. 1987).

MINNESOTA WASTE MANAGEMENT BOARD

Dated March 24, 1988

Joseph M. Pavelich, Chair

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the matter of the Proposed Rules
Governing Waste Tire Permits,
Minn. Rules Parts 9220.0200-.0680

DECLARATION OF COUNSEL

I, Ann E. Cohen, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rules and the supporting rulemaking record, and that based on my examination, the Administrative Procedure Act and Minnesota Rules ch. 2010 have been followed. For Attorney General billing purposes, the four-digit docket client code is 0838.

Ann E. Cohen
Special Assistant
Attorney General

Waste Management Board

Proposed Permanent Rules Relating to Waste Tire Permits

Rules as Proposed

7001.0020 SCOPE.

Except as otherwise specifically provided, parts 7001.0010 to 7001.0210 apply to the following:

A. to K. [Unchanged.]

~~L.--An-agency-permit-required-for-the-collection,-deposit,-storage,-or-processing-of-waste-tires-and-tire-derived products.~~

7001.0040 APPLICATION DEADLINES.

Subpart 1. **Application for new permit.** Except as otherwise required by parts 7001.0530 and, 7001.1050, ~~and 7001.4060,~~ a permit application for a new facility or activity may be submitted at any time. However, it is recommended that the permit application be submitted at least 180 days before the planned date of the commencement of facility construction or of the activity.

Subp. 2. and 3. [Unchanged.]

7001.0050 WRITTEN APPLICATION.

A person who requests the issuance, modification, revocation and reissuance, or reissuance of a permit shall complete, sign, and submit to the director a written application. The person shall submit the written application in a form prescribed by the director. The application shall contain the items listed in items A to I unless the director has issued a written exemption from one or more of the data requirements. After receiving a written request for an exemption from a data requirement, the director shall issue the exemption if the director finds that the data is unnecessary to determine whether the permit should be issued or denied. The application must contain:

Approved by Revisor

A. to H. [Unchanged.]

I. other information relevant to the application as required by parts 7001.0550 to 7001.0640, 7001.1050, 7001.1215, 7001.1290, ~~7001.4000 to 7001.4150~~, or 7040.0500 and 7040.0600.

7001.0190 PROCEDURE FOR MODIFICATION; REVOCATION AND REISSUANCE; AND REVOCATION WITHOUT REISSUANCE OF PERMITS.

Subpart 1. [Unchanged.]

Subp. 2. **Modification solely as to ownership or control.** Upon obtaining the consent of the permittee, the agency shall consider a request to modify a permit as to the ownership or control of a permitted facility or activity without following the procedures in parts 7001.0100 to 7001.0130 if the agency finds that no other change in the permit is necessary. If the permit is a permit described in part 7001.0020, item A or, B, ~~or~~ ~~b~~, the agency shall also find that the agency has received a binding written agreement between the permittee and the proposed transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities between the permittee and the proposed transferee. Within 60 days of receipt of a complete written application for modification as to ownership and control, the director shall place the matter on the agenda for consideration by the agency. The agency shall not unreasonably withhold or unreasonably delay approval of the proposed permit modification.

Subp. 3. **Minor modification.** Upon obtaining the consent of the permittee, the director may modify a permit to make the following corrections or allowances without following the procedures in parts 7001.0100 to 7001.0130:

A. and B. [Unchanged.]

C. to change a provision in the permit that will not result in allowing an actual or potential increase in the emission or discharge of a pollutant into the environment, or that will not result in a reduction of the agency's ability to monitor the permittee's compliance with applicable statutes and rules; and

Approved by Revisor _____

D. if applicable, to make a change as provided in parts 7001.0730, subpart 3 and 7001.1350~~;-and~~

~~E.--if-applicable,-to-make-a-change-as-provided-in part-7001.4130,-subpart-2.~~

Subp. 4. [Unchanged.]

Rules as Proposed (all new material)

9220.0200 SCOPE.

This chapter applies to owners and operators of facilities that store, transport, or process waste tires. This chapter governs the requirement for waste tire facility permits and establishes standards and requirements for the operation of waste tire facilities.

9220.0210 DEFINITIONS.

Subpart 1. **Scope.** The terms defined in this part apply to this chapter.

Subp. 2. **Agricultural purposes.** "Agricultural purposes" means the use of waste tires as bumpers on agricultural equipment or as a ballast to maintain covers or structures on the agricultural site.

Subp. 3. **Board.** "Board" means the Minnesota Waste Management Board.

Subp. 4. **Chair.** "Chair" means the chair of the Minnesota Waste Management Board.

Subp. 5. **Closure.** "Closure" means the removal of all stockpiles of waste tires and other materials from the waste tire facility in compliance with procedures established by statute, rule, order, or permit.

Subp. 6. **Closure plan.** "Closure plan" means the plan for closure required in part 9220.0490, subpart 3, and the applicable requirements of parts 9220.0490 and 9220.0500.

Subp. 7. **Current closure cost estimate.** "Current closure cost estimate" means the most recent of the estimates prepared under part 9220.0570.

Subp. 8. **Existing waste tire facility.** "Existing waste

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by Revisor _____

tire facility" means a facility that is receiving waste tires on the effective date of this chapter.

Subp. 9. **Floodway.** "Floodway" has the meaning given in Minnesota Statutes, section 104.02, subdivision 4.

Subp. 10. **Operator.** "Operator" means the person responsible for the overall operation of the waste tire facility. An operator is a tire collector or tire processor as defined in Minnesota Statutes, section 115A.90, subdivisions 8 and 10.

Subp. 11. **Owner.** "Owner" means a person who owns, in whole or in part, a waste tire facility, the waste tires located at a facility, or the land on which the facility is located.

Subp. 12. **Permit.** "Permit" means an authorization from the board to operate or construct a waste tire facility.

Subp. 13. **Person.** "Person" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 5.

Subp. 14. **Processing.** "Processing" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 6.

Subp. 15. **Ravine.** "Ravine" means a deep, narrow cleft or gorge in the earth's surface. A ravine cannot be smoothed out by ordinary tillage.

Subp. 16. **Residuals from processing.** "Residuals from processing" means the unusable materials resulting from chemical or physical processing of waste tires.

Subp. 17. **Shoreland.** "Shoreland" means land located within 1,000 feet from the normal high water mark of a lake, pond, or flowage, or land within 300 feet of a river or stream, or a floodplain as established by ordinance.

Subp. 18. **Sinkhole.** "Sinkhole" means a closed depression formed by subsidence of the underlying bedrock.

Subp. 19. **Tire.** "Tire" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 7.

Subp. 20. **Tire collector.** "Tire collector" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 8.

Subp. 21. **Tire-derived products.** "Tire-derived products"

Approved
by Revisor _____

means the usable materials produced from the chemical or physical processing of a waste tire.

Subp. 22. **Tire dump.** "Tire dump" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 9.

Subp. 23. **Tire processor.** "Tire processor" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 10.

Subp. 24. **Transporter.** "Transporter" means a person who removes waste tires from a source of generation, a tire dump, or a waste tire facility.

Subp. 25. **Waste tire.** "Waste tire" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 11.

Subp. 26. **Waste tire facility or facility.** "Waste tire facility" or "facility" means an area where more than 50 waste tires or an equivalent amount of tire-derived products are collected, deposited, stored, or processed. The incidental storage of tire-derived products at the site of final use does not make the site a waste tire facility.

Subp. 27. **Waste tire processing facility.** "Waste tire processing facility" means an area where waste tires or tire-derived products are processed. A waste tire processing facility must meet the qualifications in part 9220.0470.

Subp. 28. **Waste tire storage facility.** "Waste tire storage facility" means an area where waste tires, or tire-derived products, are collected, deposited, or stored. A waste tire storage facility is a facility that does not meet the qualifications for regulation as a waste tire transfer facility or a waste tire processing facility.

Subp. 29. **Waste tire transfer facility.** "Waste tire transfer facility" means an area where waste tires are concentrated for transport to waste tire processing facilities. A waste tire transfer facility must meet the qualifications in part 9220.0460.

Subp. 30. **Wetland.** "Wetland" means an area that is covered by standing water during any portion of a year. Wetland includes but is not limited to wetlands as defined in

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by Revisor _____

Classification of Wetlands and Deep Water Habitats of the United States, 1979. This publication is available at the Minnesota State Law Library, Ford Building, 117 University Avenue, Saint Paul, Minnesota 55155. This publication is incorporated into this definition by reference and is not subject to frequent change.

9220.0220 LAND DISPOSAL PROHIBITED.

Disposal of waste tires and tire-derived products in the land is prohibited.

9220.0230 PERMIT REQUIRED.

Subpart 1. **Permit required.** Except as provided in subpart 2, no person may do any of the following without obtaining a waste tire facility permit from the board:

A. store, process, or dispose of waste tires or tire-derived products; or

B. establish, construct, modify, own, or operate a waste tire facility.

Subp. 2. **Exclusions.** The following persons are not required to obtain a waste tire facility permit:

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

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

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

D. a permitted landfill operator with less than 10,000 waste tires stored above ground at the permitted site;

E. a person using waste tires for agricultural purposes if the waste tires are kept on the site of use; or

F. a person conducting abatement activities under an abatement order or stipulation agreement entered into under part

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7035.8020. This exemption does not exempt the person from the duty to obtain a waste tire facility permit for activities other than the abatement action.

Subp. 3. **Closure of facilities.** The owner or operator of a waste tire facility who does not seek a waste tire facility permit or who does not qualify for permit by rule status shall within 90 days after the effective date of this chapter close the facility in compliance with part 9220.0500.

9220.0240 PERMIT BY RULE.

Subpart 1. **Facilities eligible.** The owners and operators of the following waste tire facilities are considered to have obtained a waste tire facility permit without submitting the application described in part 9220.0270 if the chair has received the notification described in subpart 3:

A. a waste tire facility used for the storage of no more than 500 waste tires at any one time if the owner or operator, at least once a year, removes all the waste tires, and the facility is in compliance with the location requirements of part 9220.0450, subpart 2; and

B. a waste tire facility used for processing not more than 500 waste tires during any 30 days if the facility is in compliance with the location requirements of part 9220.0450, subpart 2.

Subp. 2. **Eligibility for owners and operators of mobile equipment.** The owners or operators of mobile shredding or baling equipment are considered to have obtained a waste tire facility permit if they submit the notice required under subpart 3 and if they comply with the following conditions:

A. the shredding or baling equipment is located at the tire dump or waste tire facility for less than 90 days; and

B. all bales or tire shreds and residuals are removed from the site 30 days after the completion of the shredding or baling operation.

Subp. 3. **Written notification.** To obtain permit by rule status, the owners and operators of a qualifying waste tire

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facility or mobile shredding or baling equipment shall submit the following information to the chair. For an existing facility, the notification must be submitted within 90 days of the effective date of part 9220.0200. For a new facility and for each new shredding or baling site, the notification must be submitted 15 days before the operation begins. The notification must contain:

A. the name, address, and telephone number of the owner and operator of the facility or equipment, and the name, address, and telephone number of the facility;

B. a description of the general operation of the facility or equipment, including quantities of waste tires accumulated or processed per month;

C. a description of arrangements made to acquire fire protection services for the facility;

D. the township, range, and section numbers of the facility; and

E. a description of how the waste tires, tire-derived products, and residuals from processing will be disposed.

Subp. 4. **Termination of eligibility for permit by rule.** The board shall terminate the eligibility of owners and operators of a facility for permit by rule status after notice and opportunity for a contested case hearing if the board finds that the facility does not qualify for permit by rule status or that the facility should be permitted to protect human health or the environment. When eligibility to be permitted under this part has been terminated, the owner and operator of the facility must apply within 60 days for a waste tire facility permit or close the facility in compliance with part 9220.0490 and the applicable requirements of part 9220.0500.

9220.0250 DESIGNATION OF PERMITTEE.

The board shall designate all owners and operators of the waste tire facility as co-permittees when issuing a waste tire facility permit.

9220.0260 WASTE TIRE FACILITY PERMIT APPLICATION PROCEDURES.

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Subpart 1. **Form.** The application for a waste tire facility permit consists of a general application that includes the appropriate supporting documents, map, and additional application information specific to the facility that is the subject of the application. The content requirements of the general permit application are set forth in part 9220.0270. The additional application information requirements specific to the facility type are set forth in parts 9220.0280 to 9220.0310, and must be submitted with the permit application.

Subp. 2. **Submittal.** Applicants for a waste tire facility shall submit a completed permit application to the chair, and shall retain a copy for their records.

Subp. 3. **Time of submittal.** A person shall submit a permit application in accordance with items A and B.

A. For a waste tire processing or storage facility, a person shall submit a permit application at least 180 days before the planned date of facility construction for a new facility or for an existing facility no later than 90 days after the effective date of this chapter.

B. For a waste tire transfer facility, a person shall submit a permit application at least 90 days before the planned date of facility construction for a new facility or for an existing facility no later than 90 days after the effective date of this chapter.

Subp. 4. **Renewal of existing permit.** A written application for renewal of an existing permit must be submitted 90 days before the expiration date of the existing permit.

9220.0270 WRITTEN APPLICATION.

Subpart 1. **Scope.** A person who requests the issuance or renewal of a permit shall complete, sign, and submit to the chair a written application in a form prescribed by the chair. The application must contain the information in subparts 2 to 10. If a provision does not apply to the particular facility, the applicant shall explain why the provision does not apply.

Subp. 2. **General facility information.** The application

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must include the following:

A. the name, address, and telephone number of all owners and operators of the facility for which the application is submitted and identification of each applicant as an individual, business, partnership, public entity, or other entity;

B. the name, address, and telephone number of the person who prepared the application; and

C. an indication of whether the facility to be permitted is new or existing.

Subp. 3. **Description of facility operation.** The application must include a description of the following:

A. the type of facility operation, the manner in which waste tires will be collected at the facility, and how those waste tires will be stored, processed, or used;

B. the quantity and type of waste tires stored at the facility currently and the maximum quantity and type of waste tires to be stored at the facility at any time;

C. the facility's ability to meet the technical standards that apply to waste tire storage of part 9220.0450, subpart 3, items D to G;

D. the present use of the land at the site of the facility and of the land within a one-quarter mile radius of the facility, identifying the landowners and their addresses, and zoning designation;

E. weight and use restrictions on the access roads that lead to the site;

F. the location of the facility and whether that location complies with the restrictions established in part 9220.0450, subpart 2;

G. the types, sizes, conditions, and availability of equipment needed for operation and emergency response at the facility, and the functions of each piece of equipment described;

H. the security procedures and the location of fences, gates, and other access control measures;

I. the relationship of the facility to the applicable

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county solid waste management plan, and the area to be served by the facility; and

J. the expected operating life of the facility and how this number was calculated.

Subp. 4. **Map required.** The application must include a topographic or section map using a scale of no less than one inch equals 200 feet. This map must show the waste tire facility and surrounding area for one quarter mile in detail. At a minimum, the map must show the following:

A. the map scale and directions;

B. wetlands, floodways, shorelands, and surface waters, including intermittent streams;

C. legal boundaries and land ownership, including county, township, and municipal boundaries; township, range, and section numbers; and easements and rights-of-way;

D. the locations of wells, both operating and abandoned;

E. occupied dwellings;

F. the facility design and the location of all waste tire storage areas and fire lanes;

G. all structures and buildings that are or will be constructed at the facility, including those used in collection, storage, or processing operations;

H. loading and unloading areas;

I. access and internal roads;

J. run-off control measures, ditches, and dikes; and

K. the location of the area used for collection, storage, or processing of waste tires, tire-derived products, and residuals from processing; and the total land area in square feet used for storage of waste tires, tire-derived products, and residuals from processing.

Subp. 5. **Closure plan.** The application must include a plan for closing the facility in compliance with part 9220.0500.

Subp. 6. **Closure cost estimate.** The application must include a closure cost estimate prepared following the procedures in part 9220.0570.

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Subp. 7. **Copy of financial assurance mechanism.** The application must include a copy of the financial assurance mechanism required by part 9220.0560.

Subp. 8. **Other information.** The applicant shall submit other information relevant to the application as requested by the chair or as required by parts 9220.0280 to 9220.0310.

9220.0280 ADDITIONAL APPLICATION INFORMATION REQUIRED FOR WASTE TIRE TRANSFER FACILITIES.

The application for a waste tire transfer facility must include the following information in addition to the information required by part 9220.0270:

A. a description of the types of vehicles that the facility will service;

B. information on how the accumulation of waste tires at the transfer facility will be controlled so that no more than 10,000 passenger tires or the equivalent weight of other waste tires will be present at the transfer facility at any time; and

C. information on the type, size, and capacity of storage that will be present at the facility, designating drop boxes, containers, trailers, or stockpiles.

9220.0290 ADDITIONAL APPLICATION INFORMATION REQUIRED FOR WASTE TIRE PROCESSING FACILITIES.

The application for a waste tire processing facility must include the following information in addition to the information required by part 9220.0270;

A. the maximum quantity and type of tire-derived products and residuals from processing to be stored on the site at any time, specifying the quantity and type of tire-derived products and residuals from processing stored on the site currently and how they are being stored;

B. a description of the processes and procedures used at the facility for processing waste tires;

C. the processing capacity of the facility, and the number of tons of waste tires currently being processed;

D. a description of how the facility will comply with

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the 75 percent annual processing requirement of part 9220.0470, subpart 2;

E. a description of how residuals from processing will be disposed of;

F. the existing and proposed markets for the facility's tire-derived products; and

G. a copy of the emergency preparedness manual required by part 9220.0470, subpart 4.

9220.0300 ADDITIONAL APPLICATION INFORMATION REQUIRED FOR WASTE TIRE STORAGE FACILITIES.

The application for a waste tire storage facility must include the following information in addition to the information required by part 9220.0270:

A. the procedures that will be used at the facility to minimize or prevent mosquito and rodent breeding in the waste tire stockpiles;

B. a copy of the emergency preparedness manual required by part 9220.0270, subpart 4; and

C. information on how the accumulation of waste tires at the waste tire storage facility will be controlled so that no more than 500,000 passenger tires or the equivalent weight of other waste tires are ever stored at the facility.

9220.0310 SIGNATURES.

A permit application must be signed by all owners and operators. If an owner or operator is a corporation, the president or executive office of the corporation shall sign. If an owner or operator is a partnership, two partners shall sign. If an owner or operator is a governmental unit, a certification of the signer's authority must be included.

9220.0320 PROVISIONAL STATUS.

Subpart 1. **Scope.** When the owner of a waste tire facility submits a permit application, the facility is considered provisionally permitted. Provisionally permitted facilities must conform to the requirements and standards described in part

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9220.0450, except that the annual report required by part 9220.0450, subpart 4, is not required while the waste tire facility has provisional status.

Subp. 2. **Termination of provisional status by permitting, closure, or denial of permit.** Provisional status terminates when a permit is issued, when the chair verifies that closure is complete, or when the board denies a permit.

9220.0330 REVIEW OF PERMIT APPLICATIONS.

The chair shall review all permit applications for completeness. If the chair finds that the application is incomplete or otherwise deficient, the chair shall promptly advise the applicant in writing and suspend further processing of the portion of the application affected by the deficiency until the applicant has supplied the necessary information or otherwise corrected the deficiency.

9220.0340 PUBLIC NOTICE.

Subpart 1. **Scope.** Before the board acts to issue, renew, modify, revoke, or deny a permit, the chair shall seek public comment on the action, unless specifically exempted from this requirement under part 9220.0410.

Subp. 2. **Public notice contents.** The chair shall prepare and issue a public notice of an intended board action. The public notice must include, at a minimum:

A. the address and telephone number of the board office and a statement that additional information may be obtained at this office;

B. the names and addresses of all applicants or permittees, and of the facility that is the subject of the action;

C. a concise description of the facility that is the subject of the action;

D. a statement of the action the chair intends to request the board to take;

E. for action involving the issuance or renewal of permits, the duration of the permit that the chair intends to

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request the board to issue or renew;

F. a brief description of the procedures and standards for public comments, and the dates on which the public comment period begins and ends; and

G. a brief description of the procedures the board will follow in reaching a decision on the chair's intended action, and the procedures to be followed for requesting a public information meeting or contested case hearing.

Subp. 3. **Duration of notice period.** Unless extended by the chair, the public notice period is 30 days.

Subp. 4. **Distribution of public notice.** The chair shall distribute the public notice in the following manner:

A. A copy of the public notice must be available at the board office.

B. A copy must be mailed to the applicant.

C. Copies must be circulated in the geographic area within a 45-mile radius of the planned or existing facility. The chair shall circulate the public notice in one or more of the following ways:

(1) by posting the notice in the post office, public library, or other buildings used by the general public;

(2) by posting the notice at or near the entrance of the applicant's premises, if located near the facility that is the subject of the permit application; or

(3) by publishing the notice in one or more newspapers or periodicals of general circulation in the designated geographical area.

9220.0350 PUBLIC COMMENTS.

Subpart 1. **Written comments.** During the public comment period established in the public notice, any interested person may submit written comments on the action before the board. To be considered by the board in taking the action, comments must be in writing and must include the following:

A. a statement of the person's interest in the action;

B. a statement of the action the person wishes the

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board to take; and

C. the reasons why the person wants the board to take the action.

Subp. 2. **Public information meeting or contested case hearing request.** During the public comment period and at the board meeting where the action is proposed to be taken, a person may request a public informational meeting or contested case hearing.

Subp. 3. **Extension of comment period.** The public comment period may be extended if the chair finds an extension of time is necessary to facilitate additional public comment. Notice of the extension of the comment period must be given in the same manner as the original notice.

9220.0360 PUBLIC INFORMATION MEETING.

Subpart 1. **Determination of need.** If the chair or the board determines that a public information meeting would help clarify and resolve issues regarding action on a permit, the chair shall hold a public information meeting.

Subp. 2. **Location.** The public information meeting must be held in the geographical area of the facility that is the subject of the action or at a place selected by the chair that is generally convenient to persons expected to attend the meeting.

Subp. 3. **Content of notice.** The chair shall publish a notice of the public information meeting. The notice must contain a reference to the action and the date, time, and location of the public information meeting and the issues to be discussed.

Subp. 4. **Distribution of notice.** The chair shall publish the notice in a newspaper of general circulation in the geographical area of the facility or activity that is the subject of the action, and shall mail a copy of the notice to the affected persons, the appropriate city and county officials, and all other persons who have indicated an interest in the permit application.

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9220.0370 CONTESTED CASE HEARING.

Subpart 1. **Hearing required.** The board shall hold a contested case hearing if it finds all of the following:

A. that a person requesting the contested case hearing has raised a material issue of fact or of the application of facts to law related to the chair's proposed action;

B. that the board has jurisdiction to make determinations on the issues of fact or of the application of facts to law raised by the persons requesting the contested case hearing;

C. that the record before the board is not adequate to allow the board to resolve a material issue of fact or of the application of fact to law raised by the person requesting the hearing, and that a contested case hearing would result in the creation of a record that would allow the board to resolve the issues raised; and

D. that the person requesting the contested case hearing would be affected by the board's action.

Subp. 2. **Hearing notice and order.** If the board decides to hold a contested case hearing, the chair shall prepare a notice of and order for hearing. The notice of and order for hearing must contain:

A. the information required by part 1400.5600 to the Office of Administrative Hearings;

B. a reference to the public notice of the board action and the date of issuance of the public notice;

C. identification of the affected parties and a concise description of the issues that have been raised by any party; and

D. the address of the board office where interested persons may inspect or obtain copies of the public notice of the board action, and other information relevant to the board action.

9220.0380 FINAL DETERMINATION.

Subpart 1. **Board action.** The board shall issue, renew, or

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modify a permit if it determines that the proposed permittees will comply with all permit conditions and applicable state or federal statutes and rules, or will undertake a schedule of compliance that will result in the facility being operated in compliance with state or federal statutes and rules.

Subp. 2. **Denial of permit.** The board shall refuse to issue a new permit or to modify or renew an existing permit if it finds:

A. that the proposed facility or permittee will not comply with all applicable state and federal statutes and rules or conditions of the permit;

B. that there exists at the facility unresolved noncompliance with applicable state or federal statutes and rules or conditions of the permit and that the permittee will not undertake a schedule of compliance to resolve the noncompliance;

C. that the permittee has failed to disclose fully all facts relevant to the facility to be permitted, or that the permittee has submitted false or misleading information to the board or to the chair;

D. that the permitted facility endangers human health or the environment and that the danger cannot be removed by a modification of the conditions of the permit; or

E. that applicable requirements of Minnesota Statutes, chapter 116D, and the rules adopted under Minnesota Statutes, chapter 116D, have not been fulfilled.

9220.0390 TERMS AND CONDITIONS OF PERMITS.

Subpart 1. **Term of permit.** A waste tire facility permit must be issued for up to five years.

Subp. 2. **Special conditions.** Each permit must require the facility to be operated consistent with the application for the facility permit, conditions placed by the board on permit approval, and all applicable state and federal statutes and rules. If the facility receiving the permit is not in compliance with any applicable state or federal statute or rule

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at the time of issuance, the permit must require the permittees to achieve compliance with the statute or rule within a reasonable period of time.

Subp. 3. **General conditions.** Unless specifically exempted by statute or rule, each permit must include the following general conditions, and the board shall incorporate these conditions into all permits either expressly or by specific reference to this part:

A. The board's issuance of a permit does not release the permittee from any liability, penalty, or duty imposed by Minnesota or federal statutes or rules or local ordinances, except the obligation to obtain the permit.

B. The board's issuance of a permit does not prevent the future adoption by the board of rules or orders more stringent than those in existence at the time the permit is issued and does not prevent the enforcement of these rules or orders against the permittee.

C. The permit does not convey a property right or an exclusive privilege.

D. The permittee may not knowingly make a false or misleading statement, representation or certification in a record, report, plan, or other document required to be submitted to the board or to the chair by the permit. The permittee shall immediately upon discovery report to the chair an error or omission in these records, reports, plans, or other documents.

E. Upon presentation of proper credentials, the board or an authorized employee or agent of the board, shall be allowed by the permittee to enter the permitted facility at reasonable times to examine and copy books, papers, records, or memoranda pertaining to the facility, and to conduct surveys and investigations pertaining to the facility.

F. If the permittee discovers, through any means, including notification by the board, that noncompliance with a condition of the permit has occurred, the permittee shall take all reasonable steps to minimize the adverse impacts on human health, welfare, or the environment.

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G. If the permittee discovers that noncompliance with a condition of the permit has occurred that could endanger human health, welfare, or the environment, the permittee shall immediately notify the chair.

H. The permit is not transferable to any person except as provided in part 9220.0410, subpart 2.

I. The permit authorizes the permittee to perform the activities described in the permit under the conditions of the permit. In issuing the permit, the state and board assume no responsibility for damage to person, property, or the environment caused by the activities of the permittee in the conduct of its actions, including those authorized, directed, or undertaken under the permit. To the extent the state and board may be liable for the activities of its employees, that liability is explicitly limited to that provided in the Tort Claims Act, Minnesota Statutes, section 3.736.

9220.0400 CONTINUATION OF EXPIRED PERMIT.

A person who holds an expired permit and who submits a timely and complete application for renewal may continue to conduct the permitted activity until the board takes final action on the application if the chair determines that both of the following are true:

A. the permittee is in compliance with the terms and conditions of the expired permit; and

B. the chair, through no fault of the permittee, has not taken final action on the application on or before the expiration date of the permit.

9220.0410 MODIFICATION OR TRANSFER OF PERMIT.

Subpart 1. **Modification.** The chair shall modify a permit if the modification is needed to reflect changed state or federal statutes or rules applicable to the facility, to incorporate changes in a facility closure plan or emergency response manual, or to make other modifications consented to by the permittees. The procedures for giving public notice established in part 9220.0340 do not apply to permits modified

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by the chair under this subpart if the chair finds that the modification would not result in a significant change in facility operation. For all other modifications, the chair shall follow the public notice procedures of part 9220.0340, and the board shall determine whether the permit should be modified.

Subp. 2. **Change in facility ownership or operation.** The following conditions apply to the change in facility ownership or operation.

A. Before any change in facility ownership or operation, a written request for transfer of the permit must be submitted to and approved by the board. The request for transfer must indicate the reason the permit transfer is being requested, must be signed by all existing permittees and all persons seeking to become permittees, and must contain all information required in part 9220.0270, subpart 2.

B. If the chair finds that the proposed transfer of the permit would not affect present or future compliance with the permit, the chair shall give the public notice of the chair's intent to transfer the permit following the procedures in parts 9220.0340 to 9220.0370.

C. The board shall approve the transfer of the permit if it determines that the new permittee or permittees will comply with all permit conditions and all applicable laws and rules. After approval, permit transfer occurs when the change in facility ownership or operation becomes effective. In the event that the expected change in facility ownership or operation does not occur, the owners and operators remain fully responsible under the terms of the permit.

9220.0420 REVOCATION OF PERMIT.

Subpart 1. **Justification for revocation.** The following constitute justification for the chair to begin proceedings to revoke a permit:

A. existence at the facility of unresolved noncompliance with the permit or applicable state and federal statutes and rules, and the permittee is unwilling or unable to

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resolve the noncompliance;

B. the operation of the facility has terminated; or

C. the chair finds that the facility endangers human health or the environment and that the danger cannot be removed by a modification of the permit.

Subp. 2. **Procedure for revocation.** The chair shall give notice of the chair's intent to revoke a permit by following the procedures in part 9220.0340. This notice must state that the permittee may request that a contested case hearing be held on the proposed action. If the board grants a contested case hearing, the board shall hold the hearing in accordance with the rules of the Office of Administrative Hearings, parts 1400.5100 to 1400.8500.

9220.0430 INTERACTION OF PERMIT AND ABATEMENT RULES.

If a tire collector wishes to obtain a board permit for a site that is the subject of an abatement action, the tire collector shall notify the chair of this intent within 90 days of the effective date of part 9220.0200 or at the time the abatement plan is submitted and agree to develop a plan for bringing the site into compliance with the technical rules for waste tire transfer, processing, or storage facilities. Notification and agreement under this part does not exempt the owner or operator of a facility that is the subject of an abatement action from the duty to obtain a permit by following the procedures in parts 9220.0260 to 9220.0310 for activities other than the abatement action.

WASTE TIRE FACILITY STANDARDS

9220.0440 RULE CONFLICTS.

Nothing in parts 9220.0440 to 9220.0680 relieves any person from obligations or duties imposed by other laws, statutes, rules, standards, or ordinances of the federal, state, or local governments or any agency thereof now in effect or that become effective in the future. In the event parts 9220.0440 to 9220.0680 conflict with any of those laws, statutes, rules, standards, or ordinances, the more stringent provisions apply.

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9220.0450 GENERAL STANDARDS FOR PERMITTED FACILITIES.

Subpart 1. **Scope.** All permitted waste tire facilities must comply with the technical and operational standards in this part. In addition, each permitted facility must comply with requirements specific to the operation conducted at the facility and any special conditions as specified in parts 9220.0460 to 9220.0480 established in a permit.

Subp. 2. **Location of facility.** A waste tire facility must not be constructed or operated in a wetland, sinkhole, shoreland, ravine, floodway, or any area where it may be subjected to immersion in water.

Subp. 3. **Operation.** A waste tire facility must be operated in compliance with the following standards:

A. No operations involving the use of open flames, blow torches, or highly flammable substances must be conducted within 50 feet of a waste tire pile.

B. An approach and access road to the waste tire facility must be maintained passable for any vehicle at all times. Access to the facility must be strictly controlled through the use of fences, gates, or other means of controlling access.

C. An attendant shall be present at all times the waste tire facility is open for business.

D. A waste tire storage area must be designated. Only waste tires and tire-derived products may be stored in the designated waste tire storage area. This area must be maintained free of vegetation.

E. Waste tires stored indoors must be stored under conditions that meet or exceed those in the current edition of The Standard for Storage of Rubber Tires, National Fire Protection Association (NFPA) 231D, written by the NFPA Committee on Standards for Rubber Tires, published by the NFPA Standards Council. This publication is available at the Minnesota State Law Library, Ford Building, 117 University Avenue, Saint Paul, Minnesota; the Office of Public Safety, Fire

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Marshal Division; or any local fire department. This publication is incorporated by reference and is not subject to frequent change.

F. No waste tire pile must have an area greater than 10,000 square feet or a vertical height greater than 20 feet.

G. A 50-foot fire lane must be placed around the perimeter of each waste tire pile. Access to the fire lane for emergency vehicles must be unobstructed at all times. The fire lane must be maintained free of rubbish and vegetation at all times.

H. All tire piles must be maintained free of mosquitoes and rodents.

I. Surface water drainage must be diverted around and away from the waste tire storage area.

Subp. 4. **Annual report.** A permittee of a waste tire facility shall submit a report containing the following information to the chair annually, on March 1 of each year:

A. the facility name, address, and permit number;

B. the year covered by the report;

C. the total quantity and type of waste tires or weight of tire-derived products received at the facility during the year covered by the report;

D. the total quantity and type of waste tires or weight of tire-derived products shipped from the facility during the year covered by the report;

E. the total quantity and type of waste tires and weight of tire-derived products located at the facility on the date of reporting;

F. for all waste tires and tire-derived products shipped from the facility, the name and waste tire transporter identification number of the transporter who accepted the waste tires or tire-derived products for transport, and the quantity of waste tires or volume of tire-derived products shipped with that transporter; and if the waste tires were shipped with a person who is not a waste tire transporter, the number of tires shipped, the person's name and telephone number, and the place

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where the tires were deposited;

G. for all waste tires and tire-derived products received at the facility, the name and waste tire transporter identification number of the transporter who delivered the waste tires or tire-derived products to the facility, and the quantity of waste tires or volume of tire-derived products received from that transporter; and if the waste tires were delivered by a person who is not a waste tire transporter, the number of tires delivered and the person's name and telephone number;

H. for all waste tires removed for recapping, the quantity and type removed, and the name and location of the recapping facility receiving the tires; and

I. the most recent closure cost estimate prepared using the criteria in part 9220.0570.

9220.0460 WASTE TIRE TRANSFER FACILITY STORAGE LIMITATION.

Waste tires stored at the waste tire transfer facility must be limited to 10,000 passenger car tires or the equivalent weight of other waste tires. In addition, all waste tires received at the facility must be transported to a permitted waste tire processing facility at least twice annually or unless otherwise provided in the facility's permit.

9220.0470 ADDITIONAL STANDARDS FOR WASTE TIRE PROCESSING FACILITIES.

Subpart 1. **Scope.** This part sets out the additional standards that apply to the operation of a permitted waste tire processing facility in addition to the general standards in part 9220.0450. To qualify for regulation as a waste tire processing facility, the standards in part 9220.0450 must be met.

Subp. 2. **Storage limitation.** A waste tire processing facility must not store more than 70,000 passenger car tires or the equivalent weight of other tires or tire-derived products at any time. Waste tires stored must be limited to one pile of waste tires and one pile of tire-derived product meeting the limits in part 9220.0450, subpart 3, item F, of the general facility standards. In addition, at least 75 percent of the

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waste tires and tire-derived products that are delivered to or are contained on the site of the waste tire processing facility at the beginning of each year must be processed and removed from the facility during the year.

Subp. 3. **Emergency equipment.** Equipment for communications and the control of fires must be provided and maintained at the waste tire processing facility at all times.

Subp. 4. **Emergency preparedness manual.** The operator of the waste tire processing facility shall maintain an emergency preparedness manual at the facility. This manual must be submitted to the chair with the permit application. Once approved, the manual becomes part of the permit. This manual must be updated if a change in the operations of the waste tire processing facility occurs, or if the chair requests an update. This emergency preparedness manual must, at a minimum, contain:

A. a list of names and telephone numbers of persons to be contacted in the event of a fire, flood, or other emergency involving the waste tire processing facility;

B. a list of the emergency response equipment present at the waste tire processing facility or available for use at the facility, the location of the equipment, and how it should be used in the event of a fire or other emergency;

C. the procedures to be followed by facility personnel from discovery of an emergency until the situation is corrected, including the measures that will be taken to minimize the occurrence, recurrence, or spread of fires, explosions, and releases;

D. the locations of known water supplies, fire hydrants, dry-chemical extinguishers, or other materials that may be used for firefighting purposes; and

E. additional relevant information.

No emergency preparedness manual shall be approved unless the permittee demonstrates that arrangements to acquire police and fire protection services for the waste tire processing facility have been made.

Subp. 5. **Emergency procedures.** The operator of the waste

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tire processing facility shall implement the emergency procedures of subpart 4, item C, in the event of a fire or other emergency.

Subp. 6. **Emergency notification and reports.** The operator of the waste tire processing facility shall immediately notify the chair in the event of a fire or other emergency with potential off-site impacts. Within one week of correcting an emergency situation at the waste tire processing facility, the permittee of the facility shall submit to the chair a report on the emergency. This report must set out the type of emergency, the date and time of the emergency, the origins of the emergency, the actions that were taken to respond to the emergency, the results of the actions that were taken, and an analysis of the success or failure of the actions.

9220.0480 ADDITIONAL STANDARDS FOR WASTE TIRE STORAGE FACILITIES.

Subpart 1. **Scope.** This part sets out the standards that apply to the operation of a permitted waste tire storage facility in addition to the general standards in part 9220.0450. A waste tire facility that cannot qualify for regulation as a waste tire transfer facility or as a waste tire processing facility must comply with the standards in this part.

Subp. 2. **Emergency preparedness standards.** Waste tire storage facilities must comply with the emergency preparedness standards for waste tire processing facilities in part 9220.0470, subparts 3 to 6.

Subp. 3. **Storage limitation.** No waste tire storage facility shall store more than 500,000 passenger car tires or the equivalent weight of other waste tires or tire-derived products at any time.

Subp. 4. **Additional information.** In addition to the information required to be submitted in the annual report required under the general facility standards of part 9220.0450, subpart 4, the operator of the waste tire storage facility shall submit information on the procedures used at the facility to minimize or prevent mosquito breeding and rodent infestation,

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including the dates when mosquito or rodent control operations were conducted.

Subp. 5. **Removal of soil contaminated with pyrolitic oil.** If pyrolitic oil is released at the waste tire facility, the permittee shall remove contaminated soil in accordance with any applicable rules governing the removal, transportation, and disposal of the material.

9220.0490 CLOSURE.

Subpart 1. **Closure required.** The owner or operator of a waste tire facility shall cease to accept waste tires and immediately close the facility in compliance with any special closure conditions established in the permit, this part, and part 9220.0500, if:

A. the owner or operator declares the facility closed;

B. the owner or operator fails to maintain adequate financial assurance;

C. the board permit for a facility expires and renewal of the permit is not applied for, or is applied for and denied;

D. the board permit for the facility is revoked;

E. a board order to cease operations is issued;

F. a board stipulation agreement specifies closure is to begin; or

G. the owner or operator of a permitted facility has failed to receive and ship waste tires for a continuous six-month period.

Subp. 2. **Submittal of closure plan.** The owner or operator of a waste tire facility shall submit to the chair a closure plan with the permit application, or as required by an order or stipulation agreement. The chair shall approve the closure plan as part of the permit issuance procedure or as part of a submittal required by a stipulation agreement or order. Compliance with the approved closure plan must be made a condition of any permit, order, or stipulation agreement. No closure plan shall be approved unless the closure plan is

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consistent with this part and the applicable closure requirements of part 9220.0500.

Subp. 3. **Contents of closure plan.** The closure plan must include:

A. a description of the facility's operation, including the maximum inventory of waste tires and tire-derived products that will be collected at the facility at any time during the operating life of the facility;

B. when or under what circumstances the facility will close;

C. how all waste tires and tire-derived products will be removed from the facility upon closure, and what end-use is planned for the waste tires and tire-derived products; and

D. a schedule for the applicable closure procedures of part 9220.0500, including the time period for completing the closure procedures.

Subp. 4. **Amendment of the plan.** The permittee may amend the closure plan at any time during the life of the facility. Any amendments to the closure plan must be submitted to and approved by the chair before they become effective. The permittee shall amend the closure plan and submit the amended plan to the chair for approval whenever changes in the operating plan or facility design affect the closure procedures required, or whenever the expected year of closure changes.

9220.0500 CLOSURE PROCEDURES.

Subpart 1. **Time for completion of closure.** Unless otherwise approved in a waste tire facility closure plan, the owner or operator shall within 90 days complete the closure procedures of subpart 2.

Subp. 2. **Closure procedures.** If the conditions of part 9220.0490, subpart 1, exist, the owner or operator shall:

A. close public access to the facility;

B. post a gate notice indicating to the public that the facility is closed and indicating the nearest facility where waste tires can be deposited;

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C. notify the board, local units of government, local land use authorities, and fire and health authorities of the closing of the facility;

D. remove all solid waste to a permitted solid waste facility;

E. remove all waste tires to a waste tire processing facility that has a permit or provisional status;

F. remove all tire-derived products to a market; and

G. notify the chair when the closure activities are completed.

Subp. 3. **Acceptance of removed tires.** If a waste tire processing facility is not available to accept the waste tires removed under subpart 2, item E, the chair shall approve shipment of the waste tires to a waste tire storage or transfer facility willing and able to accept the waste tires.

Subp. 4. **Certification of closure.** After receiving certification from the owner or operator of the facility that the closure procedures have been completed in accordance with subpart 2, the chair shall inspect the facility site. If all procedures have been correctly completed, the chair shall verify that the facility has been closed in compliance with parts 9220.0440 to 9220.0500, and that all duties established by parts 9220.0440 to 9220.0500, and by the facility permit, have been discharged.

9220.0510 PETITION PROCEDURES.

Subpart 1. **Scope.** This part sets out the procedures for submitting a petition for an exemption from the 75 percent annual processing requirement in part 9220.0470, subpart 2.

Subp. 2. **Submission of the petition.** The permittee of a waste tire processing facility may petition the chair for an exemption from the 75 percent annual processing requirement by submitting a petition containing the information described in subpart 3, as soon as the permittee becomes aware that compliance with the 75 percent annual processing requirement cannot be achieved.

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Subp. 3. **Information required.** The petition for an exemption from the 75 percent annual processing requirement must contain information sufficient to allow the chair to find:

A. that the 75 percent annual processing requirement will be met in the year following the year for which the exemption is obtained;

B. that an exemption from the 75 percent annual processing requirement will not cause the facility to be out of compliance with any other standard applicable to the facility; and

C. that an exemption from the 75 percent annual processing requirement will not cause the facility to become a hazard to human health, natural resources, or the environment.

Subp. 4. **Determination by the chair.** If the chair, upon evaluation of the information submitted as part of the petition, makes the findings listed under subpart 3, the chair shall grant the petition. The chair shall determine whether the petition shall be granted within 60 days of receiving a petition containing information sufficient for the chair to make the required findings. An exemption granted under this part is valid for one year. The chair shall not grant the permittee of a waste tire processing facility an exemption from the 75 percent annual processing requirement for any two consecutive years.

GENERATION AND TRANSPORTATION

9220.0520 WASTE TIRE DISPOSAL.

Subpart 1. **Scope.** The requirements of subpart 2 apply to all persons who dispose of waste tires. The requirements of subpart 3 apply only to persons who dispose of more than 100 waste tires in a calendar year.

Subp. 2. **Waste tire disposal.** On and after 90 days from the effective date of this chapter, any person who disposes of waste tires, and who contracts or arranges with a person for their disposal, shall only contract or arrange for disposal of waste tires with a person displaying a waste tire transporter

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identification number, or a person exempt under part 9220.0530, subpart 3.

Subp. 3. **Record keeping.** All persons who dispose of more than 100 waste tires in a calendar year shall maintain a record of the quantity and type of waste tires sent for disposal. For shipments made under subpart 2, this record must also note the name of the person transporting the waste tires, the identification number of the waste tire transporter, if applicable, and the date of the transaction. For persons who transport their own waste tires for disposal, this record must also note the date of shipment and the name of the waste tire facility where the waste tires were delivered. When requested by the chair, the record must be made available for inspection. The record must be retained for three years from the date of the transaction.

9220.0530 WASTE TIRE TRANSPORTATION.

Subpart 1. **Scope.** This part sets out the requirements that apply to persons who are in the business of transporting waste tires.

Subp. 2. **Exempt persons.** The requirements of this part do not apply to:

A. a person transporting household quantities of waste tires incidental to municipal waste collection, and delivers those waste tires to a permitted solid waste facility, a waste tire facility with a permit or provisional status, or a waste tire facility that is exempt from the requirement to obtain a waste tire permit;

B. a person receiving waste tires incidental to the collection of recyclable materials and who delivers those waste tires to a permitted solid waste facility, a waste tire facility with a permit or provisional status, or a waste tire facility that is exempt from the requirement to obtain a waste tire facility permit;

C. a person transporting no more than ten waste tires to a permitted solid waste facility, a waste tire facility with

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a permit or provisional status, or a waste tire facility that is exempt from the requirement to obtain a waste tire facility permit;

D. a person transporting waste tires that will only be used for agricultural purposes;

E. a person transporting tire-derived products to a market; and

F. a business delivering its own waste tires to a waste tire facility that has obtained provisional status or a permit or is exempt under part 9220.0230, subpart 2, to obtain a waste tire facility permit.

Subp. 3. **Board identification number required.** Except as exempted by subpart 2, a person who transports waste tires must obtain and display a waste tire transporter identification number when transporting waste tires. The information that must be submitted to the chair to obtain a board identification number is specified in part 9220.0540.

Subp. 4. **Waste tire transportation.** A transporter who collects waste tires from a person who disposes waste tires shall deliver the waste tires to a waste tire facility with a permit or provisional status, or a waste tire facility that is exempt from the requirement to obtain a waste tire permit.

Subp. 5. **Record keeping.** Transporters shall record and maintain the following information regarding their activities for each month of operation:

A. the type and quantity of waste tires collected;

B. where the waste tires collected were deposited, specifying the number and type deposited at each location; and

C. where or from whom the waste tires were collected.

Subp. 6. **Submittal of operating record.** Transporters shall submit to the chair an operating record that identifies the transporter by name and identification number, and that summarizes the information accumulated under subpart 5 for the three months preceding the month the record is to be submitted. This record must be submitted April 10, July 10, October 10, and January 10 of each year.

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9220.0540 TRANSPORTER APPLICATION REQUIREMENTS.

Subpart 1. **Scope.** A person required to obtain a waste tire transporter identification number under part 9220.0530, subpart 3, shall follow the procedures established in subpart 2.

Subp. 2. **Application.** To obtain a waste tire transporter identification number and approval to transport waste tires, a transporter shall submit a written application to the chair. For a transporter currently transporting waste tires, the application must be submitted not more than 60 days after the effective date of this chapter. For a new transporter, the application must be submitted 15 days before the transporter begins transporting waste tires. The application must contain the following information:

A. the name, address, and telephone number of the person who will be transporting waste tires; and if a company will be transporting waste tires, the name, address, and telephone number of the officers of the company, along with an identification of the number of drivers that will be transporting tires for the company;

B. the geographical area that will be served;

C. the type of vehicle or trailer or both vehicle and trailer that will be used, the license number, and registered vehicle owner;

D. where the waste tires will be collected, and where delivered or deposited; and

E. an estimate of the quantity and type of waste tires that will be collected quarterly.

WASTE TIRE FACILITY FINANCIAL ASSURANCE REQUIREMENTS

9220.0550 SCOPE.

Parts 9220.0550 to 9220.0680 apply to owners and operators of waste tire facilities, except those who are exempt from the requirement to obtain a waste tire facility permit under part 9220.0230, subpart 2, or are permitted by rule under part 9220.0240.

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9220.0560 FINANCIAL ASSURANCE REQUIRED.

The owner or operator of a waste tire facility shall establish financial assurance for closure of the facility within the time periods established in part 9220.0580, by obtaining one or more of the financial assurance mechanisms approved by the chair, or by obtaining a county-held financial assurance mechanism that has been approved by the chair.

9220.0570 COST ESTIMATE FOR CLOSURE.

Subpart 1. **Average cost of closure estimate.** The chair shall calculate the average cost of closure of a waste tire facility by examining the cost of transportation of waste tires to processing facilities and the average cost of processing waste tires in the state. The chair shall express the average cost of closure through use of a per tire average cost figure.

Subp. 2. **Amount.** The amount of financial assurance to be provided by the owner or operator of a waste tire facility must be greater than or equal to the closure cost estimate derived by multiplying the chair's estimate of the per tire statewide average cost of closure by the maximum number of tires that will be maintained at the facility as stated in the permit application part 9220.0270, subpart 3, item B.

9220.0580 SCHEDULE FOR ESTABLISHING FINANCIAL ASSURANCE.

Subpart 1. **Surety bond or letter of credit.** The owner or operator of a waste tire facility shall submit evidence to the chair with the permit application that a bond or a letter of credit has been obtained.

Subp. 2. **Closure trust fund.** Waste tire facilities shall make annual payments into a closure trust fund. The first payment must be made six months after the date the waste tire facility permit is issued by the board. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The minimum amount of each payment must be determined by the formula in part 9220.0610, subpart 5. Evidence of the establishment of a closure trust fund must be

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submitted with the permit application.

9220.0590 ADJUSTMENTS TO FINANCIAL ASSURANCE LEVEL.

Subpart 1. **Annual recalculation.** The chair shall recalculate annually the per tire statewide average cost of closure. If a change is made in the statewide average, the chair will notify all permittees by mail.

Subp. 2. **Change in closure cost estimate.** If the closure cost estimate for a permitted waste tire facility increases, the permittee shall adjust the level of financial assurance as specified in parts 9220.0610 to 9220.0640.

9220.0600 COUNTY-HELD FINANCIAL ASSURANCE MECHANISM.

Subpart 1. **Scope.** An owner or operator of a waste tire facility may use a county-held financial assurance mechanism to satisfy the requirements of part 9220.0540.

Subp. 2. **Action by county.** A county controlling financial assurance for a waste tire facility shall take all actions needed to gain access to the funds available through the financial assurance mechanism when the owner or operator of the waste tire facility has failed to:

A. begin or complete closure as required by the permit or part 9220.0500;

B. provide alternate financial assurance and obtain written approval of the financial assurance from the chair and the county within the time period required by part 9220.0580; or

C. fund the standby trust fund within the specified time period as required by part 9220.0620.

Subp. 3. **Action by chair.** In the event that the county has failed to gain access to the funds available through the financial assurance mechanism within 30 days of the owner's or operator's failure to perform as specified in subpart 2, or if the county has failed to use any funds obtained under subpart 2 to close the facility in compliance with the closure plan or part 9220.0490, the chair shall be given access to the funds. The county shall take no action that interferes with the chair's access to the funds, and shall cooperate with the chair if

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necessary to allow the chair to gain access to the funds.

Subp. 4. **Notice.** In the event that the chair takes action under subpart 3, the chair shall give notice of this action to the county and all other involved parties, including the owner or operator of the waste tire facility, and any trustee, surety, or letter of credit institution. Failure by the chair to give notice does not invalidate the chair's actions under subpart 3.

9220.0610 CLOSURE TRUST FUND.

Subpart 1. **Scope.** Subparts 2 to 13 apply to closure trust funds. For trust funds held by a county under part 9220.0600, provisions in this part that refer to the chair apply to both the chair and the county.

Subp. 2. **Establishment of trust fund.** An owner or operator of a waste tire facility may satisfy the requirements of part 9220.0560 by establishing a closure trust fund that conforms to the requirements of subparts 2 to 13 and by submitting an originally-signed duplicate of the trust agreement to the chair with the permit application. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

Subp. 3. **Wording of trust agreement.** The chair shall approve the form of a trust agreement instrument that contains terms adequate to ensure that financial assurance is provided. The chair shall provide a copy of the approved trust agreement instrument with the permit application forms. The owner or operator of the waste tire facility shall use the form provided by the chair when establishing a trust fund financial assurance mechanism.

Subp. 4. **Pay-in period.** The owner or operator shall make annual payments into the trust fund over the period for which the financial assurance is required, hereinafter called the pay-in period. The pay-in period must equal five years or the expected operating life of the facility, whichever is shorter.

Subp. 5. **Payments.** The first payment must be made and a

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receipt submitted to the chair six months after the date the waste tire facility permit is issued. The first payment must at least be equal to the applicable current closure cost estimate, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The minimum amount of each subsequent payment must be determined by this formula:

$$\text{next payment} = \frac{CE - CV}{Y}$$

where CE is the current closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

Subp. 6. **Establishment of trust fund as an alternate financial assurance mechanism.** If the owner or operator chooses to establish a closure trust fund after having used one or more alternate financial assurance mechanisms in part 9220.0550, the first payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this part as applicable.

Subp. 7. **Additional payments.** If, after the pay-in period is completed, the sum of the current closure cost estimate changes, the owner or operator shall within 60 days deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate. The owner or operator shall submit a receipt from the trustee for this payment to the chair. Alternately, the owner or operator may establish other financial assurance mechanisms as specified in parts 9220.0610 to 9220.0640 to cover the difference.

Subp. 8. **Request for release of excess funds.** During the operating life of the facility, if the value of the trust fund is greater than the sum of the current closure cost estimate, the owner or operator may submit to the chair a written request for release of the amount in excess of the current closure cost estimate covered by the trust fund.

Subp. 9. **Substitution of alternate financial assurance**

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mechanisms. If an owner or operator substitutes other financial assurance mechanisms as specified in parts 9220.0610 to 9220.0640 in place of all or part of the trust fund, the owner or operator may submit a written request to the chair for release of the amount in excess of the current closure cost estimate covered by the trust fund.

Subp. 10. **Release of funds.** Within 60 days after receiving a request from the owner or operator for release of funds specified in subpart 8 or 9, the chair shall instruct the trustee to release to the owner or operator any funds in excess of the latest closure cost estimate covered by the trust fund.

Subp. 11. **Notification.** The trust fund instrument must require the trustee to notify the owner or operator and the chair by certified mail within ten days following the expiration of the 30-day period after the anniversary of the establishment of the trust if no payment is received from the owner or operator during the period. Within 60 days after receipt by the chair of a notice of nonpayment of any payment required by this part, the owner or operator shall:

A. make the required payment;

B. provide alternate financial assurance as specified in this part and obtain the chair's written approval of the assurance provided; or

C. stop accepting waste tires and begin closure of the facility.

Subp. 12. **Reimbursement.** After beginning closure of the waste tire facility, an owner, operator, or other person authorized to perform closure may request reimbursement from the trust fund for completed closure expenditures by submitting itemized bills to the chair. Within 60 days after receiving bills for completed closure activities, the chair shall determine whether the closure activities were in accordance with the closure plan or otherwise needed to ensure proper closure, and if so, the chair shall instruct the trustee to make reimbursement in the amount the chair specifies in writing. If the chair has reason to believe that the cost of closure will be

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significantly greater than the value of the trust fund, the chair may withhold reimbursement until it is determined, under part 9220.0670, that the owner or operator is no longer required to maintain financial assurance for closure.

Subp. 13. **Termination of trust fund.** The chair shall agree to termination of the trust if:

A. an owner or operator substitutes alternate financial assurance as specified in parts 9220.0610 to 9220.0670; or

B. the chair releases the owner or operator from the requirements of this part under part 9220.0670.

9220.0620 SURETY BOND GUARANTEEING PAYMENT INTO A STANDBY TRUST FUND.

Subpart 1. **Scope.** Subparts 2 to 10 apply to surety bonds that guarantee payment into a standby trust fund. For surety bonds held by a county under part 9220.0600, provisions in this part that refer to the chair apply to both the chair and the county.

Subp. 2. **Surety bond requirements.** An owner or operator may satisfy the requirements of part 9220.0560 by obtaining a surety bond that conforms to the requirements of subparts 2 to 10 and by submitting the bond to the chair. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in Circular 570, issued by the United States Department of the Treasury, as published annually in the Federal Register on July 1.

Subp. 3. **Wording of surety bond.** The chair shall approve the form of a surety bond that contains terms adequate to ensure that financial assurance is provided. The chair shall provide a copy of the approved surety bond instrument with the permit application forms. The owner or operator of the waste tire facility must use the form provided by the chair when establishing a surety bond financial assurance mechanism.

Subp. 4. **Establishment of standby trust fund.** The owner or operator who uses a surety bond to satisfy the requirements

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of part 9220.0560 shall also establish a standby trust fund. The bond shall require the surety to deposit all payments made under the bond directly into the standby trust fund in accordance with instructions from the chair. An originally-signed duplicate of the trust agreement must be submitted to the chair with the surety bond. The standby trust fund must meet the requirements of part 9220.0580, except that compliance with the requirements in items A to D is not required until the standby trust fund is funded under this part:

A. payments into the trust fund as specified in part 9220.0610;

B. updating of the trust agreement to show current closure cost estimates;

C. annual valuations as required by the trust agreement; and

D. notices of nonpayment as required by the trust agreement.

Subp. 5. **Performance guarantee.** The bond must guarantee that the owner or operator will:

A. pay into the standby trust fund an amount equal to the penal sum of the bond before the beginning of closure of the facility;

B. pay into the standby trust fund an amount equal to the penal sum within 15 days after an order to close the facility is issued by the chair, the board, or court of competent jurisdiction; or

C. provide alternate financial assurance as specified in parts 9220.0610 to 9220.0640 and obtain the chair's written approval of the assurance provided, within 90 days after receipt by the chair of a notice of cancellation of the bond from the surety.

Subp. 6. **Failure to perform.** Under the terms of the bond, the surety must become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

Subp. 7. **Penal sum.** The penal sum of the bond must be at least equal to the sum of the applicable current closure cost

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estimate.

Subp. 8. **Changes to penal sum.** Within 60 days of an increase in the sum of the current closure cost estimate to an amount greater than the penal sum, the owner or operator shall either cause the penal sum to be increased to an amount at least equal to the sum of the current closure cost estimate and submit evidence of the increase to the chair, or obtain other financial assurance as specified in parts 9220.0610 to 9220.0640 to cover the increase. Whenever the sum of the current closure cost estimate decreases, the penal sum may be reduced to the sum of the current closure cost estimate following written approval by the chair.

Subp. 9. **Notification.** The bond must provide that the surety may cancel the bond only by sending notice of cancellation by certified mail to the owner or operator and the chair. The bond must also provide that cancellation is not effective until 120 days after the chair has received the notice of cancellation, as evidenced by the return receipt. For a surety bond held by a county under part 9220.0600, the bond must provide a 150-day cancellation period rather than a 120-day period.

Subp. 10. **Cancellation of surety bond.** The owner or operator may cancel the bond if the chair has given prior written consent. The chair shall provide written consent if:

A. an owner or operator substitutes alternate financial assurance as specified in parts 9220.0610 to 9220.0640; or

B. the chair releases the owner or operator from the requirements of this part in accordance with part 9220.0670.

9220.0630 LETTER OF CREDIT.

Subpart 1. **Scope.** Subparts 2 to 11 apply to letters of credit. For letters of credit held by a county under part 9220.0600, provisions in this part that refer to the chair apply to both the chair and the county.

Subp. 2. **Letter of credit requirements.** An owner or

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operator may satisfy the requirements of part 9220.0560 by obtaining an irrevocable letter of credit that conforms to the requirements of subparts 2 to 11, and by submitting the letter to the chair. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency. An owner or operator of a waste tire facility shall submit the letter of credit to the chair with the facility permit application.

Subp. 3. **Wording of letter of credit.** The chair shall approve the form of a letter of credit that contains terms adequate to ensure that financial assurance is provided. The chair shall provide a copy of the approved letter of credit instrument with the permit application. The owner or operator of the waste tire facility shall use the form provided by the chair when establishing a letter of credit financial assurance mechanism.

Subp. 4. **Establishment of standby trust fund.** An owner or operator who uses a letter of credit to satisfy the requirements of part 9220.0560 shall also establish a standby trust fund. Under the terms of the letter of credit, the issuing institution shall deposit all amounts paid directly into the standby trust fund in accordance with instructions from the chair. An originally-signed duplicate of the standby trust fund agreement must be submitted to the chair with the letter of credit. The standby trust fund agreement must meet the requirements in part 9220.0610, except that compliance with the following is not required until the standby trust fund is funded under this part:

A. payments into the trust fund as specified in part 9220.0610;

B. updating of Schedule A of the trust agreement to show current closure cost estimates;

C. annual valuations as required by the trust agreement; and

D. notices of nonpayment as required by the trust agreement.

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Subp. 5. **Notification.** The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be extended automatically for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the chair by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days must begin on the date when the chair received the notice, as evidenced by the return receipt. For a letter of credit held by a county under part 9220.0600, the letter of credit must provide a 150-day expiration period rather than a 120-day period.

Subp. 6. **Amount of credit.** The letter of credit must be issued in an amount at least equal to the applicable current closure cost estimate.

Subp. 7. **Changes to amount of credit.** Within 60 days of an increase in the current closure cost estimate to an amount greater than the amount of the credit, the owner or operator shall either cause the amount of the credit to be increased to an amount at least equal to the sum of the current closure cost estimate and submit evidence of the increase to the chair, or obtain other financial assurance as specified in parts 9220.0610 to 9220.0640 to cover the increase. Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the sum of the current closure cost estimate following written approval by the chair.

Subp. 8. **Failure to perform.** The letter of credit must provide that the chair may draw on the letter of credit, when the chair has determined that the owner or operator has failed to perform closure when required to do so in accordance with the closure plan or part 9220.0500.

Subp. 9. **Failure to establish alternate financial assurance.** The chair shall draw on the letter of credit if the owner or operator does not establish alternate financial assurance as specified in parts 9220.0610 to 9220.0640 and

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obtain written approval of the alternate assurance from the chair within 90 days after the chair receives notice that the issuing institution has decided not to extend the letter of credit beyond the current expiration date. The chair may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any extension, the chair shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in parts 9220.0610 to 9220.0640 and obtain written approval of the assurance from the chair.

Subp. 10. **Termination of letter of credit.** The chair shall return the letter of credit to the issuing institution for termination if:

A. an owner or operator substitutes alternate financial assurance as specified in parts 9220.0610 to 9220.0640; or

B. the chair releases the owner or operator from the requirements of this part in accordance with part 9220.0670.

9220.0640 SURETY BOND GUARANTEEING PERFORMANCE OF CLOSURE FOR PERMITTED FACILITIES.

Subpart 1. **Scope.** Subparts 2 to 11 apply to surety bonds that guarantee performance of closure. Surety bonds that guarantee performance of closure can only be used for permitted facilities with approved closure plans. For surety bonds held by a county under part 9220.0600, provisions in this part that refer to the chair apply to both the chair and the county.

Subp. 2. **Surety bond requirements.** An owner or operator may satisfy the requirements of part 9220.0560 by obtaining a surety bond that conforms to the requirements of subparts 2 to 11 and by submitting the bond to the chair. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in Circular 570, issued by the United States Department of the Treasury, as published annually in the Federal Register on July 1. The owner or operator of a waste tire facility shall submit the bond to the chair with the permit

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application.

Subp. 3. **Wording of performance bond.** The chair shall approve the form of a surety bond guaranteeing performance of closure that contains terms adequate to ensure that financial assurance is provided. The chair shall provide a copy of the approved performance bond instrument with the permit application forms. The owner or operator of the waste tire facility shall use the form provided by the chair when establishing a surety bond guaranteeing performance of closure financial assurance mechanism.

Subp. 4. **Establishment of standby trust fund.** The owner or operator who uses a surety bond to satisfy the requirements of part 9220.0560 shall also establish a standby trust fund. The bond must require the surety to deposit all payments made under the bond directly into the standby trust fund in accordance with instructions from the chair. An originally-signed duplicate of the standby trust fund agreement must be submitted to the chair with the surety bond. The standby trust fund must meet the requirements of part 9220.0610, except that compliance with the following requirements is not required until the standby trust fund is funded under this part:

A. payments into the trust fund as specified in part 9220.0610;

B. updating of the trust agreement to show current closure cost estimates;

C. annual valuations as required by the trust agreement; and

D. notices of nonpayment as required by the trust agreement.

Subp. 5. **Performance guarantee.** The bond must guarantee that the owner or operator will:

A. perform closure in accordance with the closure plan, and other requirements of the permit for the facility whenever required to do so; or

B. provide alternate financial assurance as specified in parts 9220.0610 to 9220.0640 and obtain the chair's written

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approval of the assurance provided, within 90 days after receipt by the chair of a notice of cancellation of the bond from the surety.

Subp. 6. **Failure to perform.** Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond as determined by the chair.

Subp. 7. **Penal sum.** The penal sum of the bond must be at least equal to the applicable current closure cost estimate.

Subp. 8. **Changes to penal sum.** Within 60 days of an increase in the sum of the current closure cost estimate to an amount greater than the penal sum, the owner or operator shall either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of the increase to the chair, or obtain other financial assurance specified in parts 9220.0610 to 9220.0640. Whenever the sum of the current closure cost estimate decreases, the penal sum may be reduced to the current closure cost estimate following written approval of the chair.

Subp. 9. **Notification.** The bond must provide that the surety may cancel the bond only by sending notice of cancellation by certified mail to the owner or operator and to the chair. The bond must also provide that cancellation shall not be effective until 120 days after the chair has received the notice of cancellation as evidenced by the return receipt. For a surety bond held by a county under part 9220.0600, the bond must provide a 150-day cancellation period rather than a 120-day period.

Subp. 10. **Cancellation of surety bond.** The owner or operator may cancel the bond if the chair has given prior written consent. The chair shall provide written consent if:

A. an owner or operator substitutes alternate financial assurance as specified in parts 9220.0610 to 9220.0640; or

B. the chair releases the owner or operator from the requirements of this part in accordance with part 9220.0680.

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Subp. 11. **Limitation on liability.** The surety is not liable for deficiencies in the owner's or operator's performance of closure after the chair releases the owner or operator from the requirements of this part in accordance with part 9220.0670.

9220.0650 USE OF MULTIPLE FINANCIAL ASSURANCE MECHANISMS.

An owner or operator may satisfy the requirements of part 9220.0560 by establishing more than one financial assurance mechanism per waste tire facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, and letters of credit. The mechanisms must be established as specified in parts 9220.0610, 9220.0620, and 9220.0630, except that it is the combination of mechanisms, rather than a single mechanism, that must provide financial assurance at least equal to the sum of the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The chair may use any or all of the financial assurance mechanisms to provide for closure of the facility.

9220.0660 USE OF FINANCIAL ASSURANCE MECHANISMS FOR MULTIPLE WASTE TIRE FACILITIES.

An owner or operator may use a financial assurance mechanism specified in parts 9220.0610 to 9220.0640 to meet the requirements of part 9220.0560 for more than one waste tire facility. Evidence of financial assurance submitted to the chair must include a list showing, for each facility, the name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. When directing disbursement of funds for closure at any of the facilities covered by the mechanism, the chair shall direct that only the amount of funds designated for that facility be disbursed unless otherwise agreed to by the owner or

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operator.

9220.0670 RELEASE OF OWNER OR OPERATOR FROM FINANCIAL ASSURANCE REQUIREMENTS.

When an owner or operator has completed, to the satisfaction of the chair, all closure requirements in accordance with the closure plan or other closure requirements, the chair shall notify the owner or operator in writing that financial assurance for closure of the waste tire facility is no longer required.

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

Subpart 1. **Notification of bankruptcy.** An owner or operator shall notify the chair by certified mail of the commencement of a voluntary or involuntary proceeding under United States Code, title II, Bankruptcy, naming the owner or operator as a debtor, within ten days after commencement of the proceeding.

Subp. 2. **Incapacity of financial institution.** An owner or operator who fulfills the requirements of part 9220.0560 by obtaining a trust fund, surety bond, or letter of credit will be considered to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution; or in the event that the authority of the trustee to act as trustee is revoked or suspended; or in the event that the institution's authority to issue the surety bond or letter of credit is revoked or suspended. The owner or operator shall establish other financial assurance within 60 days after such an event.

REPEALER. Minnesota Rules, parts 7001.4000; 7001.4010; 7001.4020; 7001.4030; 7001.4035; 7001.4040; 7001.4050; 7001.4060; 7001.4070; 7001.4080; 7001.4090; 7001.4100; 7001.4110; 7001.4120; 7001.4130; 7001.4140; 7001.4150; 7035.8200; 7035.8205; 7035.8210; 7035.8220; 7035.8230; 7035.8240; 7035.8250; 7035.8260; 7035.8270; 7035.8280; 7035.8290; 7035.8300; 7035.8400; 7035.8410; 7035.8420; 7035.8430;

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7035.8440; 7035.8450; 7035.8460; 7035.8470; 7035.8480; 7035.8490; 7035.8500; 7035.8510; 7035.8520; 7035.8530; 7035.8540; 7035.8550; 7035.8560; 7035.8570; 7035.8580; 7035.8590; 7035.8700; and 7035.8710, are repealed.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Waste Tire Permits

AGENCY: Waste Management Board

MINNESOTA RULES: Chapter 9220

INCORPORATIONS BY REFERENCE:

9220.0210, subpart 30 - Classification of Wetlands and Deep Water Habitats of the United States, 1979

9220.0450, subpart 3 - The Standard for Storage of Rubber Tires, National Fire Protection Association (NFPA) 231D

The attached rules are approved for publication in the State Register

David S. Niss
Assistant Revisor