

STATE OF MINNESOTA  
POLLUTION CONTROL AGENCY

In the Matter of the Proposed  
Emergency Rules Governing Air  
Emission Fees, Minn. Rules  
Parts 7002.0400 to 7002.0450

**INFORMATIONAL STATEMENT**

**I. INTRODUCTION**

The Minnesota Pollution Control Agency (MPCA) was first required to adopt rules to collect fees from regulated parties in 1985. The first air quality fee rules were designed to collect an amount appropriated by the legislature to cover the costs of reviewing and acting on permit applications, and to implement and enforce the conditions of air quality permits. These fee rules were first adopted in 1986, and were amended in 1988 and 1990 to collect additional amounts that the legislature appropriated to the MPCA to be collected as fees in those fiscal years. The fee rules are currently codified as Minn. Rules pts. 7002.0010 to 7002.0110 (1991).

On November 15, 1990, President Bush signed into law the Clean Air Act Amendments of 1990, Public Law No. 101-549 (1990 Amendments). Title V of the 1990 Amendments requires states to develop a permit program to implement the requirements of the Clean Air Act. Title V also requires states to establish emission fees, assessed based on the tons of each regulated air

pollutant emitted, to fund the state programs and provide the resources to accomplish the requirements of the 1990 Amendments. The emission fees are to be assessed annually, and are to fund all direct and indirect reasonable costs of the permit program, including review of permit applications; implementing and enforcing air quality statutes, rules and permits; air monitoring; rulemaking; responding to federal guidance; modeling; emissions inventories; and providing public information about air programs. The fees are required to be used solely for air quality programs. As a result, the portion of the air program to be funded by fee revenues increased substantially.

The 1991 legislature amended the MPCA's statutory fee authority to allow fees to be used not only for the items listed in the 1990 Amendments (listed above), but also for all other aspects of the MPCA air quality program, such as the noise program and the state acid deposition monitoring program. 1991 Minn. Laws ch. 254, art. 2, §37. The 1991 legislature substantially reduced general fund monies for the air quality program for fiscal year 1992 and eliminated all general fund monies for the air quality program for fiscal year 1993. The 1991 legislature appropriated \$3,317,000 to the air quality program for fiscal year 1992 to be collected as fees. Since \$74,000 will be paid to the MPCA by the Metropolitan Airport Commission for noise monitoring, since \$156,000 must also be collected to cover indirect costs, and since the MPCA has had a collection efficiency of 95% (5% of permit fees due are not

paid), the fee assessed by these emergency rules is designed to collect \$3,567,368 during fiscal year 1992.

## II. STATUTORY AUTHORITY

The 1991 legislature amended Minn. Stat. §116.07, subd. 4d to require the MPCA's air quality program to collect fees to cover the majority of the costs of the air quality program. The fees are to be assessed annually to all air emission sources subject to the requirement to obtain a permit under the federal Clean Air Act or Minn. Stat. §116.081 (1990). The MPCA's statutory authority to adopt this fee rule is set forth in 1991 Minn. Laws ch. 254, art. 2, §37 (to be codified as Minn. Stat. §116.07, subd. 4d(c) and (f)).

The statute requires the MPCA to adopt fee rules to implement the fee by September 1, 1991. Minn. Stat. §14.29, subd. 1 (1990) provides that "when an agency is directed by statute, federal law or court order to adopt, amend, suspend or repeal a rule in a manner that does not allow for compliance with sections 14.14 to 14.28...the agency shall adopt emergency rules in accordance with sections 14.29 to 14.36." The legislature required in the fee statute that the MPCA adopt rules by September 1, 1991, and made the MPCA's air quality program largely fee-funded in fiscal year 1992, which commences on July 1, 1991. The MPCA cannot comply with this statutory requirement without promulgating emergency rules to establish the fee for fiscal year 1992 by September 1, 1991, and then promulgating

permanent rules for fiscal years 1993 and thereafter. Therefore, by the terms of Minn. Stat. §14.29, subd. 1 (1990), the MPCA has authority to promulgate this emergency rule.

### III. EXPLANATION OF PROPOSED RULE

#### Part 7002.0400, Applicability.

This part lists the air emission sources subject to the emission fee assessed in this rule. The MPCA decided to impose the fee for fiscal year 1992 based upon the latest completed emissions inventory data available to the Air Quality Division. The emissions inventories are calculated using EPA-approved emission factors. The 1990 emissions inventory has not been completed, and will not be available in final form to utilize as the basis of the fees assessed to each emission facility in the time frame necessary for promulgation and implementation of this emergency fee rule. The MPCA therefore utilized the 1988 emissions inventory as the basis for the fees assessed under this proposed emergency rule. This part provides that emission facilities which were subject to the emissions inventory reporting requirement in 1988 must pay the emission fees assessed by this fee rule.

An "indirect source" is a particular type of emission facility defined in MPCA air quality rules which will have a different fee than other emission facilities and is therefore

listed separately in this proposed rule. As part 7002.0420 reflects, these sources will be assessed in this emergency rule the annual fee which applies to them under the current permanent fee rules.

This proposed part also provides that during the time this proposed emergency rule is effective, the current air quality permit fee rule is not in effect. The emergency rule cannot permanently repeal the existing air quality fee rule because the emergency rule is not itself permanent, and will not be effective for more than a year. The emergency rule is, however, designed to replace the fees currently in place in parts 7002.0010 to 7002.0110 and to wholly collect the fiscal year 1992 fee appropriation for the MPCA air quality program. Therefore, while it is legally effective, the emergency rule will supercede the existing fee rule. The existing fee rule will then be either heavily amended or wholly repealed by the permanent fee rule that the MPCA will promulgate to implement the new fee statute in fiscal years 1993 and thereafter.

#### Part 7002.0410, Definitions.

This part defines the terms that are used in the proposed emergency rule. Subpart 1 establishes that the terms defined in this part apply only to the emergency fee rule.



Subpart 2 defines "division chief" as the Division Chief of the MPCA Air Quality Division, the person to whom fees will be paid.

Subpart 3 defines "emission facility" exactly as it is defined in Minn. Stat. §116.06, giving the term the same meaning it has in the new fee statute. This definition is also used in Minn. Rules pt. 7005.0100, subp. 10 (1991), and is identical to the definition of emission facility that is used in the air quality rules to describe which sources are subject to the emissions inventory reporting requirement.

Subpart 4 defines "indirect source" as it is defined in the MPCA's air quality rules, because there is no statutory definition of this term. An "indirect source" is an "emission facility" as defined in Minn. Stat. §116.06, but will be charged a separate, and lower, fee than other emission sources in this rule. Therefore, the term had to be separately defined.

Subpart 5 defines "PM-10" in the way it is defined in the federal Clean Air Act, section 302(t), 42 U.S.C. §7602(t). This definition describes the particulate matter emissions calculated in the 1988 emissions inventory, which is being used in this emergency rule as the basis for the fee.

Subpart 6 defines "volatile organic compounds" consistent with the way that this term is defined in the MPCA air quality

offset rule, Part 7005.3030, subp. 20. This definition is consistent with the volatile organic compound emissions calculated in the 1988 emissions inventory, which is being used in this emergency rule as the basis for the fee.

Part 7002.0420, Emissions Fee.

This part establishes how each source's fee will be calculated in fiscal year 1992. The part first requires all emission facilities which were subject in 1988 to the emissions inventory reporting requirements of part 7005.1870, subpart 4 to pay an annual fee of \$7.59 per ton of sulfur dioxide, nitrogen oxides, particulate matter with an aerodynamic diameter of less than ten microns (PM-10) and volatile organic compounds emitted by each source, except that the fee shall not include an assessment for each of these pollutants for which the emission facility did not emit 25 tons or more. The tons of these pollutants emitted will be calculated, for fiscal year 1992, according to the MPCA's emissions inventory data for 1988, the most recent completed MPCA inventory. The January 1, 1991 cut-off date for information submissions is in place so that 1988 emissions inventory data are not reopened. Indirect sources pay the same annual fee they paid under Part 7002.0100, subp. 5, the currently effective fee rule.

Because the MPCA had such limited time in which to write and commence emergency rulemaking to collect fees for fiscal year

1992, the MPCA chose to calculate the fee in a simple manner with the same per ton charge for all pollutants. The four pollutants were chosen because they are pollutants inventoried in the 1988 emissions inventory. The 1988 emissions inventory was chosen as the data source because it has been completed, and because the tons of emissions of each pollutant from each source in the inventory are known, making the fee simple to calculate and administer. The simplicity of the fee assessed in the emergency rule is necessary given the time frame under which it had to be developed.

The following three examples will illustrate the operation of the fee assessment. Source A in 1988 emitted 100 tons of sulfur dioxide (SO<sub>2</sub>), 50 tons of nitrogen oxides (NO<sub>x</sub>), 25 tons of volatile organic compounds (VOCs), and 10 tons of PM-10. Source A's emission fee under this emergency rule is:

SO <sub>2</sub>	100 tons	x	\$7.59	=	\$ 759.00
NO <sub>x</sub>	50 tons	x	\$7.59	=	\$ 379.50
VOC	25 tons	x	\$7.59	=	\$ 189.75
PM-10	10 tons	x	\$0.00	=	\$ 0.00
TOTAL FEE:					\$1328.25

Source A is assessed a fee of \$7.59 per ton for those pollutants which Source A emits in a quantity of 25 tons or more. If Source A emits one or more of the pollutants in a quantity of less than 25 tons, then Source A is not assessed a fee for that pollutant category only. Therefore, Source A is not assessed a fee for emissions of PM-10 in this example, but is assessed a per ton fee for all tons emitted of SO<sub>2</sub>, NO<sub>x</sub> and VOCs. Many different air



pollutants are VOCs, but VOCs are treated as one category in the emissions inventory and therefore in this emergency fee rule.

Source B in 1988 emitted 250 tons of SO2, 200 tons of NOX, 100 tons of VOCs, and 50 tons of PM-10. Source B's emission fee under this emergency rule is:

SO2	250 tons	x	\$7.59	=	\$1897.50
NOX	200 tons	x	\$7.59	=	\$1518.00
VOC	100 tons	x	\$7.59	=	\$ 759.00
PM-10	50 tons	x	\$7.59	=	<u>\$ 379.50</u>
TOTAL FEE:					\$4554.00

Source B emitted 25 tons or more of all pollutants for which an emission fee is being assessed, and therefore is assessed a per ton fee for all tons emitted of SO2, NOX, VOCs, and PM-10.

Source C in 1988 emitted 20 tons of SO2, 15 tons of NOX, 10 tons of VOCs, and 5 tons of PM-10. Source C's emission fee under this emergency rule is:

SO2	20 tons	x	\$0.00	=	\$ 0.00
NOX	15 tons	x	\$0.00	=	\$ 0.00
VOC	10 tons	x	\$0.00	=	\$ 0.00
PM-10	5 tons	x	\$0.00	=	<u>\$ 0.00</u>
TOTAL FEE:					\$ 0.00

Source C is not assessed a fee under this emergency rule because it did not emit in 1988 enough of any pollutant to be required to report emissions to the emissions inventory under Minn. Rules part 7005.1870, subpart 4.

The MPCA will not necessarily use the same fee for all pollutants in the permanent rulemaking which will commence after this emergency rule is adopted. The number of pollutants for which a fee will be assessed will increase in accordance with the new fee statute to include regulated air pollutants as listed in the new fee statute, and the amount assessed for each pollutant will be determined in the permanent fee rulemaking which will follow this emergency rulemaking and establish the fees for fiscal year 1993 and thereafter.

Part 7002.0430, Payment of Fee.

This part states that the fee shall be paid to the Division Chief of the Air Quality Division, and that the fee shall be paid within 30 days of receipt of an invoice from the MPCA. This language duplicates the current requirements of Parts 7002.0040 and 7002.0070. This part also states that invoices shall not be sent earlier than October 1, 1991. This language was intended to alert the regulated community that the MPCA will assess fees starting in October of this year, rather than January of 1992. In the past, annual fees were assessed to sources in January. The fees must be moved up to be closer to the start of the fiscal year on July 1, 1991, because fees are now a much more significant funding source of the MPCA air quality program. As a result, fees must come in during the first half of the fiscal year, not the last half as in the past.

Part 7002.0440, Late Payment.

This part provides that a source which does not pay its fee within 30 days of its due date must pay an additional 20 percent because of late payment. If the late payment persists for additional months, another 10 percent is added each month. This part is identical to the late payment provision in current Part 7002.0090. It is needed to cover the contingency that some sources will not pay their fees on time, and to encourage prompt payment of fees.

Part 7002.0450, Notification of Error.

This part provides that a person who thinks that the fee was calculated erroneously must pay the fee, but can provide a written explanation of that person's position to the division chief. If the division chief finds that the fee was in error, the division chief can either refund the excess amount or credit the person's fee account with the MPCA. This part is identical to the notification of error provision in current Part 7002.0080. It establishes a procedure whereby sources can claim that their fee was calculated erroneously.

**IV. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING**

Minn. Stat. §14.115 (1990), which outlines factors the MPCA must consider in proposing rules which may affect small

businesses, does not apply to the promulgation of emergency rules. Minn. Stat. §14.115, subd. 7(1) (1990). Due to the legislative deadline of September 1, 1991 for promulgation of rules to implement the fees to collect its appropriation for fiscal year 1992, the MPCA has decided that, for purposes of these emergency rules, it will impose a fee that is the same for all pollutants and which does not differentiate between smaller and larger sources. The selection of sources required to submit an emissions inventory as the sources subject to the fee in fiscal year 1992 eliminates many small sources which do not emit 25 tons per year of any of the inventoried pollutants, lessening the financial impact of the emergency fee rule on many small businesses.

The MPCA also notes that some large sources have urged that a maximum cap be placed on the fee assessed. Were such a fee cap put in place, the revenue shortfall that would result would force an increase in the fee assessed per ton for all sources, large and small. The MPCA did not propose to impose such a cap in these emergency rules, which reduced the per ton fee amount that would have otherwise needed to be assessed to small sources. The MPCA will fully consider whether such a cap should be placed in the permanent fee rules, but does not propose such a cap in these emergency fee rules.

The MPCA will consider ways to lessen the economic impact of air emission fees on small businesses during the rulemaking to

adopt the permanent fee rules which will be in place for fiscal year 1993 and thereafter. In this emergency rule, the MPCA has assisted all businesses, including small businesses, by establishing a fee that is simple to compute and administer. A business can compute the fee charged under these rules by multiplying the tons emitted as recorded in the 1988 emissions inventory by the per ton dollar amount.

#### **V. CONSIDERATION OF ECONOMIC FACTORS**

In exercising its powers, the MPCA is required by Minn. Stat. §116.07, subd. 6 (1990) to give due consideration to economic factors. The statute provides:

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

In proposing these emergency rules to establish air emission fees for fiscal year 1992, the MPCA has given due consideration to available information as to any economic impacts the proposed rules would have. The 1991 legislature changed the basis of the MPCA's air quality program budget from general funding and fee funding to a program that will be largely funded by the air emission fees, and not funded from the general fund.

A large part of the air quality program will now be funded by the fees assessed to sources under this emergency rule and the permanent fee rule which will be promulgated for fiscal years 1993 and thereafter. The fee must therefore be set to collect the amount appropriated by the legislature to the MPCA for air quality program fees. In fiscal year 1992, the year to which this emergency rule will apply, the MPCA must collect \$3,567,368 from its air emission fees. The MPCA has set the fee to collect this amount. While the MPCA has considered the economic impacts of the proposed emergency rules, it does not have the option of eliminating them in light of the 1991 legislature's requirement to collect this amount in fees.

#### **VI. EXPENDITURES BY LOCAL PUBLIC BODIES**

Minn. Stat. §14.11, subd. 1 provides that if the adoption of a rule by an agency will require the expenditure of public money by local bodies, the notice published by the agency must contain a written statement giving the agency's reasonable estimate of the total cost to all local public bodies in the state to implement the rule for the two years immediately following adoption of the rule if the estimated cost exceeds \$100,000 in either of the two years. "Local public bodies" means officers and governing bodies of political subdivisions of the state and other officers and governing bodies of less than statewide jurisdiction which have the authority to levy taxes.



The MPCA first notes that this emergency rule is allowed by law to only apply for up to a year after its promulgation. Minn. Stat. §14.35 (1990). This rule will therefore not apply after fiscal year 1992. Total fees which will be assessed to local public bodies by this emergency rule are relatively easy to estimate, because the fee is based upon four pollutants and the data already in possession of the MPCA in the 1988 emissions inventory. The MPCA estimates that the total fee imposed upon local public bodies by this emergency rule in fiscal year 1992 is \$108,985.

#### **VII. IMPACT ON AGRICULTURAL LANDS**

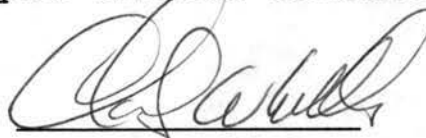
Minn. Stat. §14.11, subd. 2 (1990) imposes additional statutory requirements on agencies when proposed rules have a "direct and substantial adverse impact on agricultural land in the state." The additional statutory requirements are codified at Minn. Stat. §§17.80 to 17.84. This proposed emergency rule imposes fees on emission facilities and stationary sources of air emissions, and does not have an impact on agricultural lands.

#### **VIII. CONCLUSION**

Although the MPCA is not required to produce a statement of need and reasonableness when it is promulgating emergency rules under Minn. Stat. §§14.29 to 14.36 (1990), the MPCA thought that it would assist the regulated community to have an

explanation of the provisions of and background to this proposed emergency rule. The MPCA is proposing a straightforward rule to collect the required fee in the time required by the legislature for fiscal year 1992, but does not know at this time how it will propose to structure the air emission fees in the permanent rules that will be promulgated for fiscal year 1993 and thereafter.

Dated: June 28, 1991

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

Charles W. Williams

Commissioner