

**STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY**

In the Matter of the Proposed
Amendments to the State
Air Pollution Control Rules
to Incorporate Applicable
Federal Rules by Reference.

**STATEMENT OF NEED
AND REASONABLENESS**

I. INTRODUCTION

This rule consists of proposed amendments to the state air pollution control rules to incorporate nationally applicable federal rules by reference. The federal rules adopted by reference are the rules governing permit review under the Prevention of Significant Deterioration of Air Quality (PSD) program, federal requirements for new stationary sources of air pollution, called New Source Performance Standards (NSPS), and the National Emission Standards for Hazardous Air Pollutants (NESHAPS). The purpose of these rule amendments is to bring the state air pollution control rules up to date with current applicable federal regulations that are administered by the state of Minnesota pursuant to its State Implementation Plan (SIP) and its delegations from the United States Environmental Protection Agency (EPA) under the Clean Air Act, 42 U.S.C. § 7401 et seq.

II. STATEMENT OF MPCA'S STATUTORY AUTHORITY

The Minnesota Pollution Control Agency's (MPCA's) statutory authority to adopt these rule amendments is set forth in Minn. Stat. § 116.07, subd. 4 (1990), which provides:

Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1969, ch. 1046, for the prevention, abatement, or control of air pollution. Any such rule

or standard may be of general application throughout the state, or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to sources or emissions of air contamination or air pollution, to the quality or composition of such emissions, or to the quality of or composition of the ambient air or outdoor atmosphere or to any other matter relevant to the prevention, abatement or control of air pollution.

Under this statute, the MPCA has the necessary statutory authority to adopt the proposed rules.

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1990) requires the MPCA to make an affirmative presentation of facts establishing the need for and reasonableness of the rule amendments as proposed. In general terms, this means that the MPCA must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the MPCA is appropriate. The need for the rules is discussed below.

These rule amendments are needed in order to: 1) update Minnesota's state air pollution control rules to enable the MPCA to fully implement the new federal operating permit program required by Title V of the 1990 Clean Air Act Amendments (1990 Amendments), 42 U.S.C. §§ 7661 to 7661f (1992), 2) to reflect in Minnesota rules the current, nationally-applicable PSD, NSPS and NESHAPS standards which the state of Minnesota is delegated to administer within its boundaries, and 3) as part of the MPCA's rulemaking activities designed to update the state air pollution control rules, as

recommended by the Legislative Auditor in its 1991 report on the MPCA. Each of these three reasons for proposing these rule amendments will be discussed below.

First, the 1990 Amendments require states to submit a SIP revision to the EPA that establishes an operating permits program within the state. 42 U.S.C. §§ 7661 to 7661f (1992). Among other things, the state of Minnesota must show that it has adequate authority to "issue permits and assure compliance by all sources required to have a permit under this title with each applicable standard, regulation or requirement under this Act." 42 U.S.C. § 7661a(b)(5)(A) (1992). In its new rules governing state implementation of the federal operating permit program, EPA requires states to demonstrate their ability to issue permits and assure compliance with each "applicable requirement" and to incorporate into permits all "applicable requirements." 40 C.F.R. § 70.4(b)(3)(i), (v). See 57 Fed. Reg. 32250, 32298 (July 21, 1992). "Applicable requirement" is defined to include the requirements of the PSD program, under Title I, part C of the Clean Air Act; NSPS standards, under section 111 of the Clean Air Act; and NESHAPS standards, under section 112 of the Clean Air Act. 40 C.F.R. § 70.2. See 57 Fed. Reg. 32250, 32295 (July 21, 1992).

The PSD program under the Clean Air Act establishes standards for permitting new major stationary sources, or major modifications to major stationary sources, in areas that attain the National Ambient Air Quality Standards (NAAQS). 42 U.S.C. § 7475. A permit may not be granted for a new major stationary source or a major modification to an existing major stationary source in an attainment area, unless emissions do not exceed specified incremental increases over an established baseline for the area, and best available control technology is applied. 42 U.S.C. §§ 7473, 7475, 7479 (1992).

Under the Clean Air Act, EPA promulgates NSPS for categories of stationary sources. Any source that is constructed or modified after the effective date of an applicable NSPS must comply with the NSPS. 42 U.S.C. § 7411 (1992). The NSPS program is therefore designed to assure that new sources of air pollution comply with stringent standards of performance. As older existing sources are taken out of production, newer sources subject to NSPS replace them and emit substantially less air pollution.

The Clean Air Act has also required EPA to promulgate NESHAPS standards regulating the emission of hazardous air pollutants. 42 U.S.C. § 7412 (1992). NESHAPS apply to both new and existing sources of hazardous air pollutants.

In order to meet the requirements of the new federal operating permit program, these rule amendments will simply incorporate by reference established federal requirements for the PSD, NSPS, and NESHAPS programs. In a separate rulemaking that will be commenced shortly, the MPCA will completely revise its permit program rules and procedures in order to meet the numerous other requirements imposed by the new federal operating permit program under the 1990 Amendments.

The requirements imposed on sources of air pollution by the NSPS and NESHAPS programs apply nationally to all sources of air pollution for which an NSPS or NESHAPS has been promulgated. Under both the NSPS and NESHAPS programs, a state is allowed to develop and submit to EPA a procedure for implementing and enforcing the federal standards as they apply to sources located within the state. 42 U.S.C. § 7411(c) and § 7412(l) (1992). The MPCA was delegated authority to implement current NSPS and NESHAPS in the state of Minnesota in 1982, and was first delegated authority to implement all future NSPS and NESHAPS promulgated by EPA

in a delegation in 1984. 49 Fed. Reg. 28708, 28711-13 (July 16, 1984). The delegation was renewed most recently in 1986. Delegation letter from Valdas V. Adamkus, EPA Regional Administrator, to Gerald L. Willet, MPCA Commissioner, dated August 25, 1986, (Exhibit 1). These rule amendments are needed to incorporate into the state air pollution control rules NSPS and NESHAPS standards as a rules maintenance activity designed to keep Minnesota's delegation complete.

EPA has delegated to the MPCA permit review under the PSD program by incorporating into the federal rules governing Minnesota's SIP the current federal regulation governing PSD. 40 C.F.R. § 52.1234 (1991). The rule amendment incorporating the federal PSD rule into Minnesota state rules by reference is needed to update the state air emission permit rules to include the PSD permit review requirements delegated by EPA.

These rule amendments, by incorporating currently applicable PSD, NSPS and NESHAPS federal regulations, are a needed update to Minnesota's state air pollution control rules. In an audit of the MPCA conducted by the state's Office of the Legislative Auditor in 1990 and 1991, the Legislative Auditor identified as a "primary" recommendation for the MPCA's Air Quality Division that it should update Minnesota's air quality rules. Audit of the Pollution Control Agency at 60, January 1991 (Legislative Auditor). By incorporating applicable federal standards by reference, these rule amendments accomplish one part of the MPCA's need to update the state air pollution control rules. After incorporating current federal standards into the state air pollution control rules in this rulemaking, the MPCA plans to review and revise if necessary each of the state's own standards of performance for sources of air pollution. The adoption of applicable federal standards by reference, in combination with future rulemakings

that consider revisions to state-only standards of performance, will ensure that the MPCA's state air pollution control rules are both up to date and comprehensively include the regulatory standards to which air pollution sources in the state of Minnesota will be subject.

IV. STATEMENT OF REASONABLENESS

The MPCA is required by Minn. Stat. ch. 14 to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the MPCA's proposed action. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole.

In these rule amendments, the MPCA is simply incorporating by reference the federal PSD regulation, most NSPS standards, and all NESHAPS standards. The MPCA is not amending these federal requirements, but is simply incorporating them into the state air pollution control rules. This general approach is reasonable, because the incorporation of applicable federal standards into Minnesota rules provides notice to Minnesota's regulated community of applicable federal requirements, without adding several volumes to the Minnesota rules codification. The EPA rules being incorporated by reference in this rulemaking take up almost 700 pages of the Code of Federal Regulations. While it is useful to bring the applicable federal regulations into Minnesota rules, it is not necessary to completely duplicate the text of these rules, since the Code of Federal Regulations is a rules publication as readily available as Minnesota Rules.

The rule amendments incorporate by reference any future amendments that EPA might make to the PSD regulation, NSPS and NESHAPS standards adopted in this rule,

to avoid any inconsistencies that future federal amendments to these standards would cause between federal and state rules. While the rule amendments do incorporate future amendments to the standards that are being brought into Minnesota rules, these rule amendments do not incorporate any additional future NSPS or NESHAPS subparts promulgated by EPA; new NSPS or NESHAPS subparts will be incorporated into Minnesota rules by the MPCA in future rulemakings similar to this rulemaking.

Simple incorporation by reference of applicable federal rules also avoids differences in language between federal and state rules, which can cause interpretive problems for regulated parties and state agency personnel in permitting and enforcement actions.

Finally, this approach saves MPCA staff resources by not requiring MPCA staff time to rewrite already applicable federal standards, and avoids problems that the MPCA has had in the past with EPA not approving differences in language between federal standards and state reformulations of those federal standards. For example, the MPCA promulgated a rule governing permit review of major new stationary sources in areas that are not attaining NAAQS (the "offset" rule) in the early 1980s, and comprehensively revised the offset rule in 1988 with the adoption of the rule that appears in Minn. Rules pts. 7005.3000-.3060 (1991). EPA failed to approve either of Minnesota's offset rules, largely because of minor language differences between the Minnesota rules and EPA's offset rule. In 1992, the MPCA simply adopted by reference applicable portions of EPA's offset interpretive ruling, 40 C.F.R. pt. 51, Appendix S (1991), and is now attempting to get EPA approval of the state offset rule by this means. It is reasonable to simply incorporate federal standards that already apply to sources within the state of Minnesota by reference, to save the MPCA staff time

involved in rewriting already established federal standards, and to save MPCA staff resources involved in attempting to gain EPA approval of such rules.

B. Reasonableness of Individual Rules.

The following discussion addresses the specific provisions of the proposed rules. The discussion will not address individually every rule part proposed in these rule amendments, because each part simply references the Code of Federal Regulations citation for the federal rule being incorporated by reference, and gives the specific title of each federal rule that is being incorporated by reference. The discussion will instead be organized into seven sections: PSD, NSPS, NESHAPS, adoption of NSPS and NESHAPS definitions and general requirements, adoption of NESHAPS and NSPS notice, record keeping and monitoring requirements, the definition of NESHAPS, and the reasons for repealing specific current rules.¹

1. Part 7007.3000 - Prevention of Significant Deterioration of Air Quality.

This part incorporates by reference the federal PSD rule. It is reasonable to incorporate by reference 40 C.F.R. pt. 52.21(b)-(f) and (h)-(w), since this is the federal regulation that EPA promulgated into Minnesota's SIP. 40 C.F.R. pt. 52.1234(b) (1991). It is also reasonable to exclude 40 C.F.R. pt. 52.21(g) from the state rule because EPA has explicitly not delegated the authority to redesignate PSD areas to the state of Minnesota. Delegation letter from Valdas V. Adamkus, EPA Regional Administrator, to Gerald L. Willet, MPCA Commissioner, dated November 3, 1988, at 1. (Exhibit 2). Finally, it is reasonable to direct information required under the PSD program to the

1. The MPCA Air Quality Division has recently worked with the Revisor of Statutes to renumber its rules in order to make them more understandable to the public and in order to allow room for currently under way and anticipated rulemaking activities under the 1990 Amendments. A table showing both the current number and the new number for each air quality rule is attached as Exhibit 3.

MPCA Commissioner, because EPA has so directed in the Minnesota SIP. 40 C.F.R. pt. 52.1234(c) (1991).

In a prior rulemaking in 1992, the MPCA has incorporated by reference the federal permit review requirements governing new major stationary sources located in areas that do not attain the NAAQS, the offset rule. See Minn. Rules pts. 7007.4000-.4030. Incorporation of the federal PSD rule by reference will place into MPCA rules the permit requirements for major stationary sources in areas that do attain the NAAQS. It is reasonable to incorporate the PSD rules into Minnesota rules so that the relevant federal standards for major new stationary sources in both nonattainment and attainment areas are included in Minnesota's rules, since these programs are administered and enforced by the MPCA air emission permits program, and because Minnesota has both attainment and nonattainment areas.²

2. Parts 7011.0555 to .3450 - New Source Performance Standards.

Each of the new parts proposed in these rule amendments adopts an individual NSPS, or a group of NSPS standards applicable to a single category of air pollution sources, by reference. These amendments are intended to incorporate into Minnesota rules all NSPS currently promulgated by EPA and contained in 40 C.F.R. pt. 60 (1992). The only NSPS standards not incorporated by reference in this rulemaking are the NSPS that govern incinerators and municipal solid waste incinerators. See 40 C.F.R. pt. 60, subs. E and Ea (1992). The incinerator NSPS standards are not incorporated

2. The following areas of the state of Minnesota do not attain the NAAQS: 1) for carbon monoxide, the Twin Cities metropolitan area and the city of Duluth, 2) for sulfur dioxide, the Twin Cities metropolitan area and the city of Rochester, 3) for particulate matter, parts of the cities of St. Paul and Rochester, and 4) for lead, part of Dakota County. All areas of the state of Minnesota attain the NAAQS for ozone and nitrogen oxides. See 56 Fed. Reg. 56694, 56780-83 (Nov. 6, 1991) and 40 C.F.R. pt. 81.324 (1991).

by reference in this rulemaking because those standards are being implemented, along with a state-only program for the regulation of incinerators, in a separate rulemaking currently in progress.

Several NSPS, as well as EPA's delegation to the state, identify portions of the federal rule that EPA will not delegate to states. Those parts of the NSPS are incorporated by reference, but the requirement for approval by the EPA Administrator for alternative emission limits, monitoring and testing requirements under the NSPS are maintained. See, e.g., 40 C.F.R. pt. 60.40b(a) (Industrial-Commercial-Institutional Steam Generating Units), 40 C.F.R. pt. 60.117b (Volatile Organic Liquid Storage Vessels) and Exhibit 1, at 3 and Appendix A. It is reasonable to clarify where EPA approval is required in order to avoid confusion for the regulated party and MPCA staff in applying these rules. Also, EPA has stated in its federal rules and its delegation that states cannot be delegated federal authority to make these case-by-case determinations, so the rule should reflect this. The rule parts are incorporated by reference, however, so that once EPA approves alternative requirements for a source, the state can enforce them as a matter of state law.³

3. Parts 7011.9900 to .9990 - Incorporation of NESHAPS by Reference.

These parts incorporate by reference all existing federal NESHAPS promulgated at 40 C.F.R. pt. 61 (1992). It is reasonable to incorporate all existing NESHAPS to update Minnesota rules to current federal standards. Several NESHAPS, as well as EPA's delegation to the state, identify portions of the federal rule that EPA will not delegate to states. Those parts of the NESHAPS are incorporated by reference, but the requirements for approval by the EPA Administrator for alternative emission limits,

3. EPA, of course, can also enforce these requirements under federal law.

monitoring and testing requirements under the NESHAPS are maintained. See, e.g., 40 C.F.R. pt. 61.56 (Mercury), 40 C.F.R. pt. 61.157 (Asbestos) and Exhibit 1 at 3 and Appendix B. It is reasonable to clarify where EPA approval is required in order to avoid confusion for the regulated party and MPCA staff in applying these rules. Also, EPA has stated in its federal rules and its delegation that states cannot be delegated federal authority to make these case-by-case determinations, so the rule should reflect this. The rule parts are incorporated by reference, however, so that once EPA approves alternative requirements for a source, the state can enforce them as a matter of state law.⁴

4. Parts 7011.0050 and 7011.9900 - Incorporation of General Provisions of NSPS and NESHAPS by Reference.

These two parts incorporate by reference, for purposes of proper interpretation, application and enforcement of the NSPS and NESHAPS standards that are incorporated by reference, the general definitions, abbreviations and rules governing applicability of the federal standards. It is reasonable to incorporate these general provisions of the NSPS and NESHAPS programs in order that the MPCA interprets, applies and enforces NSPS and NESHAPS standards consistent with the federal rules.

Part 7011.0050 does not incorporate every general provision of the NSPS federal rule because some parts of the general provisions clearly only apply to EPA activities, or are not delegated to the state. It is reasonable, for example, not to incorporate 40 C.F.R. pt. 60.16, because the prioritized list of source categories affects the EPA's priority for promulgation of new federal NSPS, something only EPA can do.

4. EPA, of course, can also enforce these requirements under federal law.

Parts 7011.0050 and 7011.9900 do not incorporate 40 C.F.R. pts. 60.9 and 61.16, because those parts describe the standards for availability of EPA information to the public under federal law. It is reasonable to exclude these parts, because information in the MPCA's possession is governed by the Minnesota Data Practices Act, Minn. Stat. ch. 13 (1990).

Parts 7011.0050 and 7011.9900 do not incorporate 40 C.F.R. pts. 60.10 and 61.17, because those parts provide, as a matter of federal law, that states may adopt more stringent standards than the federal NSPS and NESHAPS. It is reasonable to not incorporate these parts because they do not affect interpretation of federal NSPS and NESHAPS; any more stringent state standards that Minnesota has promulgated already are contained in Minnesota Rules.

Part 7011.9900 does not incorporate every general provision of the NESHAPS federal rule because many parts of the general provisions clearly only apply to EPA activities, or are not delegated to the state. It is reasonable not to incorporate 40 C.F.R. pt. 61.01, because the listing of hazardous air pollutants is an EPA activity that triggers the need to promulgate a new federal NESHAPS, something only EPA can do. It is reasonable not to incorporate 40 C.F.R. pt. 61.11, because it governs waivers of compliance with NESHAPS and Minnesota's delegation states that "[t]he state of Minnesota will at no time grant a waiver of compliance with NESHAPS." Exhibit 1 at 2.

It is also reasonable to clarify where EPA will make decisions not delegated to the state. 40 C.F.R. pt. 61.12(d) concerns EPA approval of alternative emission limits. The rule clarifies where EPA approval is required in order to avoid confusion for the regulated party and MPCA staff in applying these rules. EPA has stated in its delegation that states cannot make this case-by-case determination, so the rule should

reflect this. The rule part is incorporated by reference, however, so that once EPA approves alternative requirements for a source, the state can enforce them as a matter of state law.

Finally, it is reasonable to direct submittals to the MPCA rather than incorporate 40 C.F.R. pts. 60.4 and 61.04 by reference because the federal rule lists all EPA Regional Offices and all pollution control agency addresses for the fifty states, when all a source in Minnesota needs to know is that submittals should go to the MPCA Commissioner. EPA's delegation of the NSPS and NESHAPS programs to Minnesota states that the requirements of 40 C.F.R. pts. 60.4 and 61.04 for submissions to EPA "are met by sending such submissions to the MPCA." Exhibit 1 at 3.

5. Parts 7017.1010 and 7019.0100 - Incorporation of Federal Notification, Record Keeping and Monitoring Requirements by Reference.

This part incorporates by reference the notification, record keeping and monitoring requirements that are part of the general requirements for sources regulated by an NSPS and/or a NESHAPS. These requirements are essential to the ability of the MPCA to administer, verify compliance with and enforce the NSPS and NESHAPS under its delegations. It is therefore reasonable that the MPCA, along with incorporating the specific standards, incorporates the general notification, record keeping and monitoring requirements that those standards also impose upon sources in the state of Minnesota.

The requirements for performance stack tests under NSPS and NESHAPS, 40 C.F.R. pts. 60.8, 60.11 and 61.13 (1992), will also be incorporated by reference, but not in this rule. The MPCA is currently revising its entire performance stack testing rule, and will incorporate the NSPS and NESHAPS testing requirements by reference into that rule.

6. Part 7005.0100, subp. 25b - Definition of National Emission Standard for Hazardous Air Pollutants.

This part defines NESHAPS to include all NESHAPS promulgated under the Clean Air Act as it existed prior to the 1990 Amendments. The 1990 Amendments established a new program to regulate hazardous air pollutants, and had a savings clause that maintains the existing standards until new ones are promulgated under the new program. The new standards will be promulgated into a different part of the Code of Federal Regulations, title 40 than the part in which the NESHAPS are located. It is reasonable to define the term to limit it to the standards to which it refers, and to utilize the savings clause in the 1990 Amendments to delineate the distinction between the NESHAPS and the standards under the new program. This will ensure that the term is not erroneously applied.

7. Repealer.

The proposed rule amendments repeal the existing state rules for mercury and beryllium and the existing rule governing demolition of buildings containing asbestos. The federal NESHAPS for mercury, beryllium and asbestos are incorporated by reference, making these state rules unnecessary.

The current state rules governing emissions of mercury and beryllium were promulgated in 1975 and 1976, respectively, and reflected the 1976 federal NESHAPS standards. It is reasonable to repeal them because the incorporation of the mercury and beryllium NESHAPS by reference imposes the same standards as the existing state rules, but reflect updates since 1976 in the more detailed federal standards for the stack sampling methods for beryllium and for the stack sampling, sludge sampling and monitoring methods for mercury.

The state asbestos rule governing demolition of buildings containing asbestos is being repealed because that rule, promulgated by the MPCA in 1973, reflected an earlier federal NESHAPS, which was comprehensively reviewed and revised by EPA in 1990. It is therefore reasonable to repeal this rule in favor of incorporating the new federal NESHAPS.

The proposed rule amendments also repeal the state standards of performance for new nitric acid plants, new sulfuric acid plants, new asphalt concrete plants and new portland cement plants, as well as the state standard of performance for secondary lead smelters. With the incorporation of the federal NSPS, these rules become redundant. It is therefore reasonable to repeal them.

Minnesota Rules, pt. 7005.0100, subp. 25a (1991) defines a "new" facility as "an emission facility on which construction, modification, or reconstruction was commenced after the effective date of the applicable New Source Performance Standard or the applicable state air pollution control rule." Similarly, an "existing" facility is "an emission facility at which construction, modification or reconstruction was commenced before the effective date of the applicable New Source Performance Standard or the applicable state air pollution control rule." Minn. Rules pt. 7005.0100, subp. 11a (1991). As a result of these definitions, the effective date of the NSPS or state rule for new facilities, whichever occurs first, delineates new facilities from existing facilities. The state standards of performance then set forth different emission limits for new and existing facilities in several source categories.

The MPCA has five state standards of performance for new sources that impose the same emission limitations as the NSPS and were promulgated after the effective date of the NSPS. For these source categories, the delineation between new and

existing sources is thus the effective date of the NSPS. Incorporation of the NSPS by reference, therefore, does not change the status of these sources as "new" or "existing," and imposes the same emission limitations on the new facilities in these source categories. The state standards for "new facilities" in these source categories can therefore be repealed with no effect on the emission limits applicable to these facilities. This is shown on the table attached as Exhibit 4.⁵

The MPCA reviewed other state standards of performance for "new" sources for repeal, but the remaining standards impose requirements on "new" sources, under state law, that are additional to federal NSPS requirements. The incorporation of the NSPS therefore does not remove the need to have these state rules apply. Further review of the remaining state standards for both new and existing sources will be conducted by the MPCA in future planned rulemaking activities.

The repeal of the state standards for new asphalt plants, new portland cement plants, new nitric acid plants, and new sulfuric acid plants does not affect or change the standards of performance for existing plants in these source categories. Again, the MPCA plans to review the state standards for existing plants and make any rule changes that are needed to them, in the future.

5. While the current state rule for secondary lead smelters was promulgated after the NSPS for secondary lead smelters and is identical to the NSPS, it does not employ the term "new." The state rule was probably intended to apply to only new secondary lead smelters. This intention need not be ascertained, however, since the only secondary lead smelter in the state is a "new" source governed by the NSPS anyway. Repeal of the state rule, even if it is construed to apply to "existing" sources, therefore has no practical effect. Adoption of the NSPS will cover the state's sources.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1990) requires the MPCA, when proposing rules which may affect small businesses, to consider the following methods for reducing the impact 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.

The proposed rules may affect small businesses as defined in Minn. Stat. 14.115 (1990). As a result, the MPCA has considered the above-listed methods for reducing the impact of the rule amendments on small businesses. Since the rules that are being incorporated by reference are already in force and apply to specific air pollution sources in the state of Minnesota as a matter of federal law, however, the MPCA cannot change the applicable federal requirements through this state rulemaking. Additionally, the MPCA must show its ability to administer and enforce the applicable federal standards in order to maintain its delegation to administer these programs from EPA.

As a result, the MPCA is not proposing any of the above-listed types of changes in the federal rules it is incorporating in these rule amendments. To the extent that an NSPS or NESHAPS may apply to an entity that is a small business, that NSPS or NESHAPS applies to small businesses in every state in the nation including Minnesota.

Finally, since the incorporation of the federal standards by reference does not change the federal standards, this rulemaking does not impose any additional requirements on small businesses that are not already present as a matter of federal regulation. The incorporation of these federal rules into Minnesota Rules will make it easier for small businesses to find out what requirements apply to their emission facilities.

VI. 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 the rule amendments to incorporate applicable federal standards by reference, the MPCA has considered any economic impacts the proposed state rule amendments would have. Since the MPCA is incorporating existing federal rules into state rules, for purposes of its SIP and its delegations from EPA, the state rule amendments proposed in this rulemaking do not impose any additional costs on Minnesota businesses that are not already imposed as a matter of federal law upon Minnesota businesses by the federal regulations that are being incorporated by reference. This rule, therefore, does not have any economic impact on its own.

VII. IMPACTS ON AGRICULTURAL LAND.

Minn. Stat. § 14.11, subd. 2 (1990) requires that if the agency proposing the adoption of a rule determines that the rule may have a direct and substantial adverse impact on agricultural land in the state, the agency shall comply with specified additional requirements. The MPCA, in adopting federal PSD, NSPS and NESHAPS requirements by reference, is not proposing a rule which may have a direct and substantial adverse impact on agricultural lands in the state, because these rules apply to stationary sources of air pollution and do not directly impact agricultural lands in the state.

VIII. COSTS TO LOCAL PUBLIC BODIES

Minn. Stat. § 14.11, subd. 1 (1990) requires the agencies to include a statement of the rule's estimated costs to local public bodies in the notice of intent to adopt rules if the rules would have a total cost of over \$100,000 to all local public bodies in the state in either of the two years immediately following adoption of the rule. Since the MPCA is incorporating existing federal rules into state rules, for purposes of its SIP and its delegations from EPA, the state rule amendments proposed in this rulemaking do not impose any additional costs on local public bodies that are not already imposed as a matter of federal law upon local public bodies by the federal regulations that are being incorporated by reference. This rule, therefore, does not impose any costs on local public bodies on its own.

IX. LIST OF WITNESSES AND EXHIBITS

A. Witnesses

In support of the need for and reasonableness of the proposed rule amendments, the following witnesses will testify at the rulemaking hearing:

1. John Seltz, Supervisor of the Program Development Unit of the MPCA's Air Quality Division, will testify on the need to: 1) update the MPCA state air pollution control rules to include current PSD, NSPS, and NESHAPS requirements, 2) include these requirements in Minnesota's SIP, and 3) maintain Minnesota's delegations of federal authority to administer and enforce the NSPS and NESHAPS programs.

2. David Beil, permit engineer in the MPCA's Air Quality Division, will testify on the incorporation of federal NSPS into state standards of performance for stationary sources.

B. Exhibits

In support of the need for and reasonableness of the proposed rule amendments, the following exhibits will be entered into the hearing record by the agency:

1. Delegation letter from Valdas V. Adamkus, EPA Regional Administrator, to Gerald L. Willet, MPCA Commissioner, dated August 25, 1986, (NSPS and NESHAPS).

2. Delegation letter from Valdas V. Adamkus, EPA Regional Administrator, to Gerald L. Willet, MPCA Commissioner, dated November 3, 1988, (PSD).

3. Table showing both the current number and the new number for each air quality rule as a result of the recent reorganization and renumbering of the state air pollution control rules.

4. Table showing comparison of state rules proposed to be repealed and NSPS proposed to be incorporated by reference in their stead.

X. CONCLUSION

Based on the foregoing, the proposed amendments to the state air pollution control rules to incorporate applicable federal rules by reference, attached to this Statement of Need and Reasonableness, are both needed and reasonable.

Dated: February 24, 1993.

for 
CHARLES W. WILLIAMS
Commissioner