Minnesota Pollution Control Agency

July 25, 1995

Ms. Maryanne Hruby, Executive Director
Legislative Commission to Review Administrative Rules
State Office Building, Room 55
100 Constitution Avenue
St. Paul, Minnesota 55155

Dear Ms. Hruby:

RE: Statement of Need and Reasonableness for Proposed Amendments to Rules Governing: (1) Chapter 7005, Definitions; (2) Chapter 7007, Air Emission Permits; (3) Chapter 7009, Air Pollution Episodes; (4) Chapter 7011, Control Equipment Standard, Fugitive Particulate Matter; and (5) Chapter 7017, Performance Tests.

Enclosed, for your review, is a copy of the Statement of Need and Reasonableness for above proposed rule amendments as required by Minn Stat § 14.115, subd 8 (1994). If you have any questions, please call me at 296-7712.

Sincerely,

Norma L. Coleman

Norma L. Coleman
Air Quality Division Rule Coordinator
Program Development Section

NLC:lmg

Enclosure

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STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of Proposed Amendments to Rules Governing: (1) Chapter 7005, Definitions; (2) Chapter 7007, Air Emission Permits; (3) Chapter 7009, Air Pollution Episodes; (4) Chapter 7011, Control Equipment Standard, Fugitive Particulate Matter; and (5) Chapter 7017, Performance Tests

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

This proposed rulemaking will amend Minn. R. chs. 7005, 7007 (Air Permit Rule), 7009 (Ambient Air Quality Standards), 7011 (Standards for Stationary Sources), and 7017 (Monitoring and Testing Requirements). The amendments are the result of comments made on past rulemakings that could not be dealt with in those proceedings. The amendments are also an effort to correct mistakes, clarify requirements, and address comments received on corrections that should be made to recently adopted rules. The comments were received from industry groups, the U.S. Environmental Protection Agency (EPA), and Minnesota Pollution Control Agency (MPCA) staff. Most of the proposed rule changes are minor.

On January 23, 1995, a Notice of Solicitation of Outside Information or Opinion was published in the State Register in preparing to propose amendments to the rules. A draft copy of the revisions, was given to any person that requested it in May 1995.

II. STATEMENT OF THE MPCA'S STATUTORY AUTHORITY

The MPCA's authority to adopt these rules is found in Minn. Stat. § 116.07, subd. 4 (1994), 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, chapter 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.

Minn. Stat. § 116.07, subd. 4a (1994), provides the MPCA's authority to issue permits:

> The pollution control agency may issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the emission of air contaminants, or for the installation or operation of any emission facility, air contaminant treatment facility, treatment facility, potential air contaminant storage facility, or storage facility, or any part thereof, or for the sources or emissions of noise pollution.
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> . . .
>
> The pollution control agency may revoke or modify any permit issued under this subdivision and section 116.081 whenever it is necessary, in the opinion of the agency, to prevent or abate pollution. State law prohibits construction, operation and modification of air emission facilities without a permit from the agency at Minn. Stat. § 116.081. The agency has authority to obtain information and inspect air emission facilities under Minn. Stat. § 116.091.

The MPCA's authority to obtain information concerning emissions of toxic air pollutants is found in Minn. Stat. §§ 116.091 and 116.454 (1994).

Minn. Stat. § 116.091, subd. 1 (1994), provides:

> Any person operating an emission system or facility [for which a permit is required], when requested by the pollution control agency, shall furnish to it any information which that person may have which is relevant to pollution or the rules or provisions of this chapter.

Minn. Stat. § 116.091, subd. 3 (1994), provides:

> Whenever the agency deems it necessary for the purpose of this chapter, the agency or any member, employee, or agent thereof, when authorized by it, may enter upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations.

Minn. Stat. § 116.454 (1994) provides:

> By July 1, 1993, the agency shall establish a statewide monitoring program for, and inventory of probable sources of, releases into the air, ambient concentrations in the air, and deposition from the air of toxic substances.

The MPCA's authority to adopt information reporting rules to implement these authorities is found in Minn. Stat. § 116.07, subd. 4 (1994). This broad rulemaking authority is "without limitation" and includes authority to adopt rules "on any . . . matter relevant to the prevention, abatement, or control of air pollution."

III. STATEMENT OF NEED

Minn. Stat. ch. 14 requires the Minnesota Pollution Control Agency to make an affirmative presentation of the facts establishing the need for and reasonableness of the proposed rule. To the extent that need and reasonableness are separate, "need" means that a problem exists which requires administrative attention. The purpose of this section is to address the need of the proposed amendments.

The proposed rules are needed for three primary reasons: (1) to correct errors from previous rulemakings; (2) to clarify rule provisions; and (3) to address comments made during a previous rulemaking.

Minn. Stat. §§ 14.131, 14.14, subd. 2, 14.23 and 14.26 require the MPCA to make an affirmative presentation of facts establishing the need for and reasonableness of the proposed rule. "Need" means that a problem exists which requires administrative attention, and "reasonableness" means that the solution proposed by the MPCA is appropriate. The need for the proposed rule is discussed below, and the reasonableness of the proposed rule is discussed in the following section.

This rule also includes provisions to increase the list of insignificant activities under Minn. R. 7007.1300. The MPCA staff believes this provision further streamlines the processing of all types of permits by not requiring the calculation of the small level of emissions from the additional insignificant activities.

In summary, the MPCA is proposing to amend its permitting rules and establish a control equipment performance standard through this rulemaking to: (1) correct errors; (2) clarify rule provisions; (3) add to the current list of insignificant activities; and (4) address comments received on past rulemakings.

IV. STATEMENT OF REASONABLENESS

Minn. Stat. ch. 14 requires the MPCA to make an affirmative presentation of the facts establishing the need for and reasonableness of the proposed rule. To the extent that need and reasonableness are separate, "reasonableness" means that there is a rational basis for the proposed rule. The purpose of this section is to address the reasonableness of the proposed amendments.

A. REASONABLENESS AS A WHOLE

Because the nature of the proposed changes are relatively minor the statement of need and reasonableness (SONAR) only contains a section by section description of the reasonableness.

B. REASONABLENESS OF THE RULE BY SECTION

CHAPTER 7005

Minn. R. 7005.0100, DEFINITIONS

Subpart 10a. Emission Factor.

The proposed revisions repeal the term "EPA emission factor" and replace it with "emission factor." The term "EPA emission factor" implied that all emission factors used under that definition were developed by the EPA although the definition itself allowed the MPCA to develop its own factors. The proposed definition reflects the process that the MPCA Commissioner uses to develop an emission factor for an emission unit for purposes of permitting a facility or calculating an emission inventory.

Emission factors are the basis upon which most permitting applicability is determined and emission inventories are calculated. It is very important that the emission factors used for determining applicability and calculating emissions are as accurate as possible. The emission factors used during applicability determinations influence what type of permit (if any) for which the facility must apply. The emission factors also greatly influence the amount of fee paid by the facility as a result of the emission inventory submitted by the facility. The intent of the proposed revisions to this subpart is to allow and encourage the use of the most representative emission factors available.

Item A. This item says that the default emission factor for criteria pollutants shall be those found in "AIRS Facility Subsystem Source Classification Codes and Emission Factor Listing for Criteria Air Pollutants." Another option to citing aerometric information retrieval system (AIRS) was to cite "Compilation of Air Pollutant Emission Factors (AP-42)." Compilation of Air Pollutant Emission Factors (AP-42) contains more recent editions of many of the same emission factors as is found in AIRS. However, AIRS is preferred over AP-42 because

it lists only emission factors without the use of control equipment. To minimize the confusion over which emission factor applies (with regard to the use of control equipment with emission units), it is reasonable to continue to cite AIRS instead of AP-42.

Item B. This item says that the default emission factor for hazardous air pollutants (HAPs) shall be those found in "Factor Information Retrieval (FIRE) Data System." This is the database that the EPA uses to disseminate emission information regarding HAPs. It is the best and most recent data available. However, the FIRE database sometimes has more than one emission factor for the same pollutant for the same emission unit type. This is the result of the newness of the research into HAP emissions. Therefore, the proposed revisions say that when there is conflicting data in the FIRE database, or elsewhere, the MPCA Commissioner shall evaluate and approve a single emission factor. The decision shall be based on best engineering judgment and the considerations in item C, subitem 2. These considerations will be discussed below. There is an incentive for a facility to just pick the lowest emission factor in the database even though another emission factor may be more representative of the actual emissions from that facility. Therefore, it is reasonable for the MPCA Commissioner to decide which factor is most representative when there is conflicting data in the FIRE database.

Item C. Item C of this subpart addresses all types of emission units.

Subitem 1. As with efficiency factors, there is no single publication or even a short list of publications that lists emission factors for all emission units. Therefore, there is no way to precisely say from which documents or publications emission factors will be derived. Subitem 1 of this item describes the types of documents and publications from which credible and acceptable emission information can be derived. The list of sources is meant to allow the use of reliable engineering information from any credible source. Since there is no short list of

sources of publications or documents available that list emission factors for all types emission units, it is reasonable to describe the types of documents and publications from which reliable information can be gleaned.

Subitem 1 also says that the MPCA Commissioner must develop or approve any emission factor. This is meant to ensure that the data used to develop an emission factor is from a credible source and conforms with the requirements in subitem 2 of this item. This is also meant to allow permittees to develop emission factors. It is reasonable to allow permittees to develop emission factors and to require the MPCA Commissioner to approve the factors before the factor can be used for the emission calculations.

Subitem 1 also says that if the MPCA Commissioner determines that a more representative emission factor is published in another source or can be developed, the MPCA Commissioner can develop or approve that emission factor. This is important for criteria pollutants in particular, because as stated above, AP-42 has newer emission factors than AIRS. In many cases, the MPCA would prefer to use the emission factor in AP-42 over that in AIRS because of the age of the data. But, the rules apply to permittees also and the permittees must know where to start looking for emission factors when applying for a permit and completing an emission inventory. AIRS is a better starting point, because of possible confusion over the applicability of emission factors and the use of control equipment that would result from using AP-42 as the default source for criteria pollutants emission factors. In any case, there is a need for flexibility in using and approving emission factors over those that are published in AIRS or the FIRE database if it is determined that there are more representative emission factors available.

Subitem 2. This subitem says what the MPCA Commissioner must consider when developing or evaluating an emission factor. This is necessary because the rule change requires that the MPCA Commissioner approve candidate factors. It is necessary and reasonable to establish criteria by which the factors will be judged. Under the umbrella of best engineering judgment, the MPCA Commissioner shall consider all aspects of the data and data collection methods that may influence the emission factor under development. Each of the considerations are specifically intended to address a specific aspect of data collection and analysis. These considerations are:

Unit/Consideration:	Aspect of data collection or analysis addressed
Unit a. The precision and accuracy of the data.	Data precision addresses the repeatability of the measurement technique. Data accuracy addresses how close the measured value is to the true value of what is being measured. Repeatability and true values are very important considerations.
Unit b. The similarity between the emission unit(s) tested and the emission units to which the emission factor is to be applied.	Many types of emission units and types of pollution control equipment are similar. The commissioner would consider whether the units are similar enough for the results of testing on the first type of unit to apply to the second type.
Unit c. The number of units tested in developing the emission factor under consideration.	The larger the number of units that are tested, the broader the applicability of the emission factor. If only one unit is tested, there is no way of knowing if that unit is performing above average or below average. In the case of a single unit tested, the previous consideration applies (i.e. the similarity of the units). If a large number of units are tested, the resulting data are more representative of what can be expected from a "normal" or "average" unit of that type.
Unit d. The availability of data of equal or greater quality.	Sometimes there is conflicting data. When this occurs, the commissioner must decide which data better represent what can be expected from that type of equipment on average.
Unit e. The emission unit operating conditions under which the tests were conducted.	The operating conditions under which performance tests are conducted can greatly influence the results of the test. This can affect the applicability of test results from one unit to another.
Unit f. The data analysis procedures.	Data analysis procedures can influence the results of performance tests. For example, the emission rate of certain types of pollutants are highly variable. Some data analysis methods can minimize that variability more than others. Therefore, the data analysis methods can influence the results of the test.

Since each of the listed considerations can influence the emission factor developed, it is reasonable to require the MPCA Commissioner to evaluate these considerations.

Subpart 10d. EPA Emission Factor.

This term is replaced with the term "emission factor" discussed above.

CHAPTER 7007

PERMITS AND OFFSETS AIR EMISSION PERMITS

Minn. R. 7007.0100, DEFINITIONS

Subpart 8a. Deviation.

The definition of deviation has been added here, because we needed to make the term "deviation" apply throughout Minn. R. 7007. This definition is reasonable, because the current rule only defines deviation in terms of monitoring control equipment, which is to restrictive.

Subpart 25. Title I condition.

Item D. The proposed revisions add this item to the definition of Title I condition. It references conditions in permits that were included to insure that facilities comply with section 111(d) of the Clean Air Act (CAA).

The definition of "Title I condition" was intended to include those permit conditions that cannot be allowed to expire at the end of a permit term under EPA's interpretation of federal law. It is appropriate to include the reference to section 111(d) conditions, because they, like the conditions in items A-C, are the core enforceable conditions that insure that a facility complies with federal law. In order for our permits to be considered acceptable vehicles (by EPA) to enforce federal law in certain areas, they must be assured that these conditions will not expire at the end of a permit's term.

Section 111(d) of the CAA authorizes EPA to establish performance criteria or guidelines for existing sources in a similar fashion to standards established for new sources under section 111(b) of the CAA. It requires that states submit a plan for implementing these guidelines. To date, only kraft pulping operations and a sulfuric acid plant in Minnesota have been affected. EPA, however, has proposed guidelines which may affect many municipal solid waste incinerators.

Incorporation of section 111(d) conditions into the term "Title I condition" will not change the application of standards to these facilities, but will make the conditions non-expiring, which will allow the MPCA to submit permits as the enforceable documents in plans submitted under section 111(d) of the CAA. This will eliminate the need to issue other non-expiring compliance agreements or administrative orders, and hence should reduce administrative costs for both the MPCA and affected sources. For these reasons, it is reasonable to incorporate section 111(d) conditions into the term "Title I condition."

Minn. R. 7007.0150, PERMIT REQUIRED

Subpart 5. Variance from Federal Requirements.

A sentence was added to clarify this provision at the request of the EPA. EPA staff asked for a specific reference to Minn. R. 7007.0100 to 7007.1850, be added to explicitly state that no variance from federal requirements are allowed. Therefore, this provision is reasonable, because it satisfies the comment by EPA to add a statement to explicitly prohibit a federal variance under chapter 7007.

Minn. R. 7007.0200, SOURCES REQUIRED TO OBTAIN A STATE PERMIT

Subpart 2. Major Sources.

This language was added to clarify the necessary information the permittee needs to include in the permit application in determining if the source is a "Major Source" due to HAPs. This provision is reasonable, because it simply restates and clarifies the information required in application to determine if the source is major.

Minn. R. 7007.0250, SOURCES REQUIRED TO OBTAIN A STATE PERMIT

Subpart 5. Part 70 Permits.

The proposed revisions to this subpart address comments in an August 12, 1993, letter from the EPA requesting rule language to be added to Minn. R. 7007.0250, subp. 5. The language would ensure that a facility can only avoid the requirement to obtain a Part 70 permit by obtaining a federally enforceable state permit, which limits the potential to emit (PTE) pollutants to levels below which a Part 70 permit is not required. This is the basis for synthetic minor permits and a requirement of the federal operating permit program. It is reasonable to clarify this requirement.

Subpart 6. Waste Combustors.

This subpart states that waste combustors shall obtain a state permit unless it is a Class IV waste combustor located at a hospital. An exception to the exemption from permitting for waste combustors at hospitals are those waste combustors that do not comply with the minimum stack height requirement set forth in Minn. R. 7011.1235. Those waste combustors must obtain a permit.

The proposed revisions specify that the permit that the facility obtains is not a registration permit. Hospital waste combustors can be controversial. The SONAR for the waste combustor

rule says that waste combustor units that comply with the stack height requirement do not require a permit, because the rule provides all of the conditions that would be put in a permit. It further says, that waste combustors that do not comply with the stack height requirement must be evaluated on a case-by-case basis. Registration permits were not intended to provide this level of case-by-case evaluation and do not include the opportunity for public input that is included in a state permit. It was the intent of the requirement to obtain a permit for sources that do not comply with the minimum stack height requirement that the public have the opportunity to participate in the permitting process for these individual facilities. For these reasons, it is reasonable to exclude hospitals with waste combustors with a stack that does not comply with the minimum height requirement from opportunity to obtain a registration permit.

Minn. R. 7007.0300, SOURCES NOT REQUIRED TO OBTAIN A PERMIT

Subpart 1. No Permit Required.

Item B, subitem (4). The words "and propane" were added to clarify the fact that in the subpart D new source performance standards the term natural gas by definition includes propane. Therefore, it is reasonable to add propane to clarify what fuels are included and to prevent confusion with the definition of natural gas included in Minn. R. 7007.1120, subpart 4 (Table 1), which does not include propane,.

Minn. R. 7007.0350, EXISTING SOURCE APPLICATION DEADLINES AND SOURCE OPERATION DURING TRANSITION

Subpart 1. Transition Applications Under this Part; Deadline Based on SIC Code.

Item D. The proposed revisions to this subpart provide needed flexibility in deferring the application date for facilities that are newly subject to new standards of performance promulgated by EPA. The EPA is in the process of promulgating new performance standards for

air emission sources under several sections of the CAA. Standards are likely to be promulgated for landfills in the near future. Standards for degreasers have recently been adopted. It is likely that more standards will be proposed in 1995. It often takes six months or more to prepare a complete permit application. In the case where the rules governing a particular source type are due to change near the normally scheduled application date, it is reasonable to defer the application date to allow the source to include the new requirement in the application. This will save the source the cost of submitting a revised application once the new requirement is adopted.

The EPA's Part 70 rules; however, require that all Part 70 permit applications be received by one year after approval of a state's operating permit program. It is likely that Minnesota's program will be approved on about April 1, 1995. Hence it is reasonable to restrict the flexibility for deferring permit applications to no later than April 1, 1996.

It is also reasonable to establish criteria for deferral of scheduled permit application dates. It is reasonable to allow a deferral if a source will soon be subject to new federal requirement, or if it will reduce the administrative burden for processing permit applications, or if other similar circumstances exist.

Subpart 4. Preservation of Enforcement Authority.

The proposed change is to correct an incorrect rule reference from item "G" to item "E." The change is reasonable to reference the correct provision.

Minn. R. 7007.0500, CONTENT OF PERMIT APPLICATION

Subpart 2. Information Included.

Item C, subitem 1. The proposed revisions to this subitem are reasonable, because they reflect the addition of a new subitem 5 to this item and the renumbering all other subitems.

Item C, subitem 3. This subitem was rewritten to more clearly state the information required in the application related to emission rates. An exclusion was also added to clarify recent EPA interpretations to not require emission calculations for pollutants regulated under 112(r) or 602 of the CAA. Therefore, the provisions of this subpart are reasonable, because they clarify emission rate requirements and incorporate recent EPA interpretations.

Item C, subitem 4. The proposed revisions to this subitem relieve facilities from the requirement to submit PTE estimates for certain "regulated air pollutants." Sections 112(r) and 602 of the CAA regulate the unintentional release or the production, use, and consumption of these chemicals, not the quantity of these pollutants emitted to the atmosphere. Therefore, "potential-to-emit" is not a useful measure of the applicability of 112(r) and section 602 requirements. Permit applicants are required to use other criteria, such as the quantity of a particular chemical that is stored at the stationary source, to determine whether the 112(r) and section 602 programs apply. For these reasons, it is reasonable to exempt facilities from the requirement to calculate PTE for these chemicals.

The proposed revisions to this subitem also say that if the applicable requirement contains a standard reference test method, which is to be used to establish compliance, the permit application shall specify the potential emissions in the same units as are used in the test method. There are many different quantity emissions from an emissions unit. To more easily determine the compliance status of the facility, it is reasonable to require facilities that are subject to an applicable requirement to state the PTE in the same units used in the applicable requirement.

Subpart 2 item C, subitem 5. This subitem restates a provision that was stated in the previous subitem. This is reasonable, because the provision was removed from the previous subitem and stated separately for clarity.

Subpart 2 item C, subitem 6. The proposed revisions to this subitem renumber this subitem and reinstate the requirement that newly permitted facilities submit an estimate of actual emission with their permit application. This provision was inadvertently deleted in the last rule revisions in an effort to clarify the period of time over which actual emissions are calculated and are submitted. Since an estimate of actual emissions is needed for the proposed newly permitted facility fee, it is reasonable to reinstate the requirement that facilities submit an estimate of actual emissions of chargeable air pollutants.

Item K, subitem 1. The proposed revisions to this subitem delete the requirement that the permit application contains an operation and maintenance procedure for all air pollution control equipment. These plans can be very large documents that contain a lot more information than is necessary or desired when drafting a permit for a facility. The proposed revisions to the permit content requirements under Minn. R. 7007.0800, subp. 14, allow the MPCA Commissioner to require the facility to keep an operation and maintenance plan on-site. This will ensure proper operation and maintenance of the pollution control equipment better than requiring the application to contain the operation and maintenance procedures. For these reasons, it is reasonable to delete this requirement from the permit application.

Minn. R. 7007.0800, PERMIT CONTENT

Subpart 5. Recordkeeping.

The requirement to keep records of deviations is reasonable, because permittees are "required to keep adequate records;" they are not explicitly informed in the current rule what types of records are required.

Subpart 6. Reporting.

This subpart changes the requirements for reporting deviations from permit conditions. Current Minnesota rules require permits to include provisions that require the permittee to submit reports of deviations to the MPCA Commissioner. The current rule requires the facility to report deviations, which could endanger human health or the environment, to the MPCA Commissioner orally within 24 hours of discovery and submit a written report within five days. Other deviations, which do not endanger human health or the environment, must be reported to the MPCA Commissioner within two working days of discovery of the deviation. This causes a lot of minor or insignificant deviations to be reported with almost equal urgency as those that endanger human health or the environment.

The proposed revisions are necessary to avoid being overwhelmed with numerous notifications of deviations that do not threaten human health or the environment as a result of the greatly increased number of permitted facilities. The MPCA will still receive submittals regarding these deviations, just not as frequently. These deviations will be required to be reported annually, semi-annually, or quarterly, depending on circumstances.

Item A, subitem 1. This subitem establishes the requirements for reporting deviations for facilities that obtain a Part 70 permit. Code of Federal Regulations (CFR), Title 40, Part 70.6(a)(3)(iii)(A), requires facilities to report deviations from permit conditions at least every six months. This subitem incorporates that requirement. It is necessary and reasonable to incorporate this requirement.

Item B. This addition of the subitem reference is reasonable, because the existing reference becomes more precise, which is intended to help the reader more quickly locate the applicable provision. Secondly, the removal of the reference to semi-annual reports was

removed from this item. This is reasonable, because the progress reports are only required when a source is not in compliance and removal of the reference will give the MPCA flexibility to set the appropriate schedule in the permit.

Item E. This provision is reasonable, because it simply adds a cross-reference to Minn. R. 7007.1850, as to when a deviation qualifies as an emergency.

Subpart 10. Emissions Trading.

Item A. The addition of the term "facility-wide" to this provision clarifies confusion that was raised in regard to the applicability of this provision. This change is reasonable, because it more accurately reflects the emissions trading under 40 CFR Part 70.

Subpart 12. Operation in More Than One Location.

Item C. This provision contains develops two notification requirements for sources operating at more than one location. The first notification period for Part 70 sources of 10 days is reasonable, because it is consistent with the Part 70 requirements. The second notification period is a less restrictive 48 hour period, which is reasonable for other state permits, and consistent with the registration permit change of location provision proposed in Minn. R. 7007.1110, subp. 20.

Subpart 14. Operation of Control Equipment.

The proposed revisions to this subpart say that the MPCA Commissioner may require the permittee to keep an operation and maintenance plan on-site. This is a substitute for the requirement to submit an operation and maintenance plan with the permit application being deleted from Minn. R. 7007.0500, subp. 2, item K, subitem 1. The intent of requiring the facility to have an operation and maintenance procedure on-site or in the permit application is to ensure the proper operation and maintenance of the air pollution control equipment. Since the proposed

revisions to Minn. R. 7007.0050, subp. 2, item K, subitem 1, delete the requirement to include the procedures in the application, it is reasonable to allow the MPCA Commissioner to require that one is kept on-site.

Subpart 16. General Conditions.

Item B. This provision was changed as a result of a comment by the EPA. The EPA made this request because EPA staff felt the provision, as currently written, may be interpreted to override EPA authority to take enforcement action in the case where the MPCA has already taken action. Therefore, this provision is reasonable, because it clarifies the language to specifically point out that both the MPCA and the EPA enforcement authority for federally enforceable conditions.

Minn. R. 7007.1110, REGISTRATION PERMIT GENERAL REQUIREMENTS

Subpart 2. Stationary Sources That May Not Obtain a Registration Permit.

Item B. This provision was added because the rule was not written clearly in identifying the interaction between the registration permits and the sources that are subject to a environmental impact statement (EIS) or environmental assessment worksheet (EAW). Some sources that will be eligible for a registration permit will also be subject to the EIS/EAW process. This provision was added so the rule language is clear with this interaction. The provision outlines three conditions in which the source subject to an EIS or EAW would not be allowed to obtain a registration permit. Under the first condition, if air quality specific source conditions or limits, not included in Minn. R. 7007.1110 to 7007.1130, are assumed as a result of an EIS, then the source is not eligible to receive a registration permit. The conditions or limits may be specifically identified in the mitigation measures or they may be assumed as the basis of a health risk or other similar air quality risk assessment. Under the second and third conditions a source

would be excluded from obtaining a registration permit if the source agrees to include source specific air quality conditions or limits, that are not conditions that registration permittees are required to follow under Minn. R. 7007.1110 to 7007.1130, then the source would not be eligible to obtain a registration permit. Excluding a source from obtaining a registration permit under these conditions is reasonable, because the registration permit process provides no opportunity to include site-specific conditions in the permit, and these situations would result in the need for including source specific permit conditions under a very limited number of environmental assessment situations.

Subpart 4. Registration Permit Certifications.

The subpart was changed as the results of comments to clarify the certification requirement. The change is reasonable, because it simply deletes the conflicting words owner or operator, which from the first part of the sentence, and leaves in the words owner or operator used in the second half of the sentence.

Subpart 7. Registration Permit Compliance Requirements.

The additional language in this provision adds a formula for registration permittees to follow, if the source is qualified for a registration permit and the source has less than the 12 months of emissions data needed to determine the 12-month rolling sum limitation. Under certain conditions, the existing rule allows sources to qualify for registration permits, if they have less than the 12 months of emissions data. However, the rule failed to outline a procedure to determine compliance for sources in this category. For sources with less than 12 months emissions data the 12-month rolling sum compliance requirement does not work. The formula proposed in this rule is derived from a procedure currently in use for non-registration permit

sources. Therefore, the provision is reasonable to outline a procedure for qualified sources with less than 12 months emissions data to use in determining compliance.

Subpart 9. Records Retention for Registration Permits.

The words "or at the main office for an unmanned stationary source" were added to this section for the following reason. Some facilities such as emergency generators may require a registration permit, and yet there may be no building or personnel at the site. In such cases it is reasonable to give the owner or operator the flexibility to store records at a main office of the stationary source.

The last sentence was added to give the owner and operator of a stationary source, with a permit, the option to keep records "prior to the current calendar year" at the main office. This is reasonable, because some stationary sources, like a portable source, are not as suited to keep records for the five year period.

Subpart 20. Operation in More Than One Location.

Changing the notification period from 10 days to the less restrictive 48 hours is reasonable, because the registration permit process is generally less restrictive, and the MPCA has determined the 10 day prior notice is not warranted for this type of permit, and the 48 hour period will be consistent with other state permit change in location notifications.

Minn. R. 7007.1120, REGISTRATION PERMIT OPTION B

Subpart 3. Compliance Requirements.

Item C. This sentence was added to explicitly state that the 12-month rolling sum monthly required cannot exceed 2000 gallons. The source cannot qualify for option B, unless the 12-month rolling sum in less than 2000 gallons. Therefore, explicitly stating the 2000 gallons is reasonable as a notice to the permittee the option B compliance section.

Item E. This change is reasonable, because it correct a typographical error.

Minn. R. 7007.1125, REGISTRATION PERMIT OPTION C

Subpart 3. Compliance Requirements.

Item A, subitem (1). The deletion of the words in this paragraph is reasonable, because the requirement was duplicated in subitem (2).

Item H. This change is reasonable, because it correct a typographical error.

Item J. The proposed revisions to this item add coal to the list of fuels for which a facility must keep a record of stack parameters and emission rates for particulate matter less than ten microns (PM_{10}) and sulfur dioxide (SO_2). Coal was inadvertently left off this list when this item was originally promulgated. Facilities are required to keep a record of these parameters for ambient air quality modeling purposes in the event that a facility is required to model ambient air quality under federal permitting requirements, CFR, Title 40, Part 52.21 (Prevention of Significant Deterioration). Coal combustion is a major source of PM_{10} and SO_2 emissions and should have been included in the list in this item. For these reasons, it is reasonable add coal to the list.

Minn. R. 7007.1130, REGISTRATION PERMIT OPTION D

Subpart 2. Application Content.

Item E. This provision was added to streamline the option D process for certain sources with a small amount of volatile organic compound (VOC) emissions. The provision is limited to VOC sources with only VOC HAP emissions. This is due to the fact that sources would potentially have non-VOC HAP emissions that need to be accounted for in the determination that the source was under 5 tons per year (tpy) for any single HAP. The provision is reasonable, because it streamlines the process for qualified sources by excluding them from the need to

document HAP calculations. Furthermore, the MPCA is assured that threshold for any single HAP of 5 tpy would not be exceeded.

Additional combustion sources where the total VOCs are less than 5 tpy were also added to the category of sources are not required to calculate HAPs. Thresholds have been included for combustion sources based on heat input. BTU/hr thresholds for fuel oil were selected, because thresholds keep these units below 25 percent of the de minimus levels for HAPs. Additionally, combustion sources burning natural gas or propane does not have a threshold associated with it, because it would take an 1100 MBTU heat input source before the same HAP threshold would be exceeded. In this case, the NOx threshold of 50 tpy would be the limiting threshold. Therefore, this provision is reasonable, because the amount of HAPs generated by combustion sources of this size would be administratively burdensome to calculate.

Subpart 3. Compliance Requirements.

Items B(2), C(2), H, and J. The changes made to these items are reasonable, because the changes were either typographical, missing words, or wrong word corrections.

Subpart 4. Calculation of Actual Emission.

The current rule requires that option D sources calculate fugitive emissions. This provision was placed into the current rule to insure large sources of fugitive dust emissions (such as: sand and gravel operations or mining companies) calculated the fugitive emissions in determining applicability. The stationery sources the MPCA staff are concerned about is fugitive dust emissions from the same list contained in Minn. R. 7007.0200, subpart 2, item B. This list is contained in the CAA and requires that a stationary source in one of the listed categories calculate fugitive emissions. The change results in a narrowing of the type of sources that would need to calculate fugitive dust emissions under an option D registration permit application.

Before this rule change all sources applying under option D were required to calculate fugitive dust emissions. MPCA staff believes this change is reasonable, because many sources applying for an option D registration permit will not have significant fugitive dust problems. Furthermore, it is reasonable to require sources be listed in Minn. R. 7007.0200, subp. 2, item B, because this list was specifically identified under the CAA as source categories with the potential to create significant fugitive dust emissions.

Item A. The proposed revisions to this subpart reflect the proposed revisions to the definition "emission factor." The proposed revisions delete the definition of "emission factor" referenced in this subpart. Therefore, it is reasonable to delete this reference in this subpart.

Item B. The proposed revisions to this item mirror the proposed revision to the emission inventory rule regarding the use of continuous emissions monitoring (CEM) data for calculating actual emissions. Under this item, eligibility for an option C registration permit is based on the calculation of actual emissions using CEM data just as the emission inventory is based on the calculation of actual emissions using CEM data. For this reason, it is reasonable for this item to mirror the emission inventory rule. The proposed revisions to this subpart clarify the requirements for CEM data when used to calculate actual emissions. This item also says that all of the CEM data available shall be used in calculating the actual emissions. The intent of this language is to keep facilities from picking a few data points that show low emissions and say that these points are representative of all the data points recorded. This could result in an unrepresentative emission inventory. It is reasonable to require the facilities with valid CEM data to use all of the data when calculating actual emissions.

Subitems 1 and 2 of this item say a facility shall use CEM data in its emission inventory, if the data have been collected with a system that has been certified by the MPCA Commissioner

and the data have not been rejected by the MPCA Commissioner due to failure to comply with all applicable Minnesota rules and permit conditions. The applicable rules include requirements for monitoring system specifications, performance evaluations, system operation, system location, monitoring data manipulation, shutdown and breakdown, recordkeeping and reporting. These are the basic requirements for installing and operating a CEM system to produce valid data. It is reasonable to reject data that does not comply with these requirements.

Subitem 4 of this item sets forth the minimum requirements for calculating actual emission using CEM systems. The proposed revisions to this subitem rearrange and clarify the minimum requirements. Additionally, the proposed revisions set forth the requirements for substituting CEM data during periods when the CEM system is not operating or is not recording valid data. The proposed revisions require the facility to substitute valid CEM data that was recorded in the same calendar year for invalid or missing CEM data. The proposed revision reflects the preference for CEM data over emission data based on other methods of calculating emissions (i.e., performance tests, emission factors).

CEM data are the most accurate and precise method of calculating actual emissions from an emission unit. If the CEM is operating 90 or more percent of the time that the emission unit is operating (providing as many as 25,000 or more emission unit specific emission measurements), the data from CEM is of much higher quality than data from a performance test or an emission factor, which may be based on as little as one series of test runs. For this reason, it is reasonable to require the facility to substitute data from the same CEM unit from the same calendar year for missing or invalid CEM data.

Subpart 5. Emission Thresholds.

This change is reasonable, because it is a clarification for applicants that calculations are based on a 12-month rolling sum of actual emissions.

Minn. R. 7007.1150, WHEN A PERMIT AMENDMENT IS REQUIRED

Item C. The change to this part is reasonable, because it edits the last sentence of subitem 3 to read more clearly.

Minn. R. 7007.1200, CALCULATING EMISSION CHANGES FOR PERMIT AMENDMENTS

Subpart 3. Calculation Method for Modifications That Are Not Title I Modifications.

Item B. This subpart establishes the method for calculating emission rate changes due to a modification at the facility. The proposed revisions to this subpart reflect the proposed revisions to the definition for "EPA Emission Factor." Since the term is redefined, it is reasonable to revise this subpart to reflect those changes.

Minn. R. 7007.1250, INSIGNIFICANT MODIFICATIONS

Subpart 1. When an Insignificant Modification Can Be Made.

Item B. The changes to this item are a result of delays in implementing federal rules under 112(g) regulating HAP. The proposed changes delay when the de minus HAP thresholds become effective.

When the regulation first passed implementing the de minimus HAP threshold under this item, MPCA staff was under the understanding that the regulations implementing section 112(g) would go into effect as a result of a Part 70 program approval. EPA has since delayed the implementation of section 112(g) until those regulations are final. Additionally, because there will not be a threshold for lead, the threshold for lead in the rule before the HAP levels were

added was reinserted. Therefore, it is reasonable to delay the effective date of the HAP de minimus thresholds under this item and add the lead threshold back into the rule.

Item B (last paragraph). The change in the reference from subpart 4 to subpart 3 is reasonable, because the current reference is incorrect.

Minn. R. 7007.1300, INSIGNIFICANT ACTIVITIES

Subpart 2. Insignificant Activities Not Required to be Listed.

Item D and subpart 3, item D. The language for these two items was changed to generalize the insignificant activities to the recovery of all types of particulate matter (PM) and particulate matter less than ten microns (PM_{10}). Numerous requests came in to expand the list to other particulate emitting activities. Therefore, the MPCA believes that it is reasonable to change the language rather than try to list all the different types of particulate emitting activities. Furthermore, the MPCA decided the keep the current list in the rule as a parenthetical statement, to give the reader an idea of the type of activities the provision includes.

Item F, subitem (1) through (5). The MPCA changed the title of this category to avoid confusion caused by the term "Wastewater treatment" with the commonly used term wastewater treatment facility. The MPCA added the insignificant activities listed in this item as a result of a May 12, 1994, letter from the Metropolitan Waste Control Commission (MWCC). The MWCC letter requested that the insignificant activities be added to Minn. R. 7007.1300, subp. 2, to lessen the burden on trivial activities at Publicly Owned Waste Water Treatment Facilities. The addition of the insignificant activities is reasonable, because the activities result in trivial emissions and will lessen the regulatory burden on waste water treatment facilities.

Item G and subpart 3, item H, subitem (1). This rule change is to delete the alkaline/phosphate cleaners insignificant activity from Minn. R. 7007.1300, subp. 2 (not required

to be listed in a permit application section), and move the insignificant activity into Minn. R. 7007.1300, subp. 3 (not required to be listed in a permit application section). Calculations by MPCA staff revealed that under certain conditions a alkaline/phosphate cleaner can have a PTE as great as 35 tpy of PM. Therefore, the change is reasonable, moving this activity from the unlisted to the listed, because added to other sources of PM emissions this emission source could make the facility subject to the Part 70 permit requirements. By making a stationary source list this type of activity the permit engineer can when reviewing the application can determine if the alkaline/phosphate cleaners have an impact on the applicability of the Part 70 permit requirements.

Item H, Subitem (3). This subitem, referring to small residential incinerators, was deleted. It is reasonable to delete this subitem, because the recently promulgated waste incinerators rules ban this type of incinerator as of January 30, 1996.

Subpart 3. Insignificant Activities Required to be Listed.

The changes to the opening paragraph of subpart 3 are reasonable, because the references to sections 114 and 112, title are replaced with the broad and inclusive term applicable requirement. The limitation of the term applicable requirement in the definition is also reasonable, because it limits the applicability to federal requirements.

Item B. The reference in this item, referring to small incinerators, was deleted. It is reasonable to delete this subitem, because the recently promulgated waste incinerators rules ban this type of incinerator as of January 30, 1996.

Item D, subitem (2). Refer to subpart 2, item D above.

Item H, subitem (8). Refer to subpart 2, item G above.

Item J. The addition of the words in the first sentence are reasonable to instruct the reader that the fugitive emissions are limited to PM, and that the reader need not consider fugitive particulate emissions from paved roads and parking lots. The deletion of the second sentence is reasonable, the method of handling fugitive emissions under a registration permit option D is now outlined in the language added to the calculation of option D emissions under Minn. R. 7007.1130, subp. 4.

Item I. Adding the term HAP to this provision is reasonable, because unless the unit is subject to an applicable requirement as stated under the opening paragraph of this subpart, the MPCA does not need a detailed calculation of the HAP emissions.

Subpart 4. Insignificant Activities Required to be Listed in a Part 70 Application.

Item C. The change from 25 percent to 50 percent of the HAP threshold is reasonable, because the change will streamline the permit applications. The units will continue to be listed, but the detailed emission calculation would only be required if the unit was subject to an applicable requirement, or if the MPCA requested the information.

Changes in the last paragraph reflect same issue discussed in the opening paragraph of Minn. R. 7007.1300, subp. 3.

Minn. R. 7007.1400, ADMINISTRATIVE AMENDMENTS

Subpart 1. Administrative Amendments Allowed.

Item C. The addition of the term testing is reasonable, a clarification that can be considered a type of monitoring for purposes of this part.

Item H. The sentence excluding the 120 day extension provision from applying to item C is reasonable, because in some cases worst case testing or monitoring can only be done at certain times of the year making the extensions as long as 365 days.

Minn. R. 7007.1450, MINOR AMENDMENTS

Subpart 1. Minor and Moderate Permit Amendments.

Item A. The changes are reasonable, because they were made to clarify that any change to monitoring, recordkeeping, and reporting that does not fall into one of the other permit amendment categories can be made as a minor permit amendment.

Subpart 2. Minor Amendment Applicability.

Item B. The changes to this item are a result of delays in implementing federal rules under section 112(g) regulating HAP. The proposed changes delay when the de minus HAP thresholds become effective.

When the regulation first passed implementing the de minimus HAP threshold under this item, MPCA staff was under the understanding that the regulations implementing section 112(g) would go into effect as a result of a Part 70 program approval. EPA has since delayed the implementation of section 112(g) until those regulations are final. Additionally, because there will not be a threshold for lead, the threshold for lead in the rule before the HAP levels were added was reinserted. Therefore, it is reasonable to delay the effective date of the HAP de minimus thresholds under this item and add the lead threshold back into the rule.

Minn. R. 7007.1500, MAJOR AMENDMENTS

The addition of the word "significant" is reasonable, because it reflects the federal language for this type of major amendment

CHAPTER 7009

AMBIENT AIR QUALITY STANDARDS, AIR POLLUTION EPISODES

Minn. R. 7009.1000, AIR POLLUTION EPISODES

This part establishes the applicability criteria for Minn. R. 7009.1000 to 7009.1110.

The proposed revisions to this part narrow the applicability of Minn. R. 7009.1040, subp. 3, to only those facilities located in areas in which the MPCA Commissioner has declared that air alert levels have been exceeded in the last ten years. The proposed revisions further narrow the applicability of Minn. R. 7009.1040, subp. 3, to those facilities that have allowable emissions of 250 or more tons of the pollutant for which the alert was declared. Minnesota has had very few air emission episodes and even fewer air alerts; the last alert occurred on October 23, 1989, for carbon monoxide (CO) for the Twin Cities. Since there are so few alerts declared in Minnesota, it is reasonable to exclude from the requirement to prepare an emission reduction plan those facilities for which it is very unlikely that the plan would ever have to be implemented.

The proposed revisions to this part also explicitly state that Minn. R. 7009.1000 to 7009.1110, apply to facilities that have allowable emissions of 250 or more tpy of any single pollutant. This is a clarification. There has been some confusion as to whether or not his part meant a single pollutant or all regulated pollutants emitted from a facility. It is reasonable to make this clarification.

Minn. R. 7009.1040, CONTROL ACTIONS

This part establishes the actions to be taken in the event of an air pollution episode.

Subpart 3. Episode Reduction Plan.

The proposed revisions to this subpart reflect the proposed revisions to Minn. R. 7009.1000. The applicability is narrowed to those facilities located in an area for which an alert has been declared in the last ten years and facilities with allowable emission of 250 or more tpy of the pollutant for which the alert was issued.

The proposed revisions also establish the timeline in which a facility must submit an emission reduction plan. The owner or operator shall submit the plan within 90 days of the

designation of the area or by September 1, 1995, whichever is later. The timeline will require any facility within the Twin Cities that has not already submitted an episode emission reduction plan to the MPCA and has allowable CO (it is the only pollutant for which an alert level episode has been declared in the last ten years) emissions of 250 or more tpy to submit a plan by September 1, 1995. In the event that an alert is declared for a different pollutant or in another area, the facilities subject to these requirements will have 90 days to prepare and submit a plan. This is a reasonable amount of time to prepare a plan and submit it to the MPCA.

It is reasonable to require facilities, subject this subpart, to submit a plan only after an air pollution alert has been declared for the following reasons:

- Air pollution episodes rarely occur in Minnesota and relatively few facilities can impact the ambient air quality in the short term and reduce the severity of an air pollution episode.
- The alternative to waiting until an air pollution episode is declared, for requiring facilities to submit an episode emission reduction plan, is to require all facilities to prepare a plan. This would require the preparation and review of a large number of plans at a significant cost to industry and the MPCA.
- If an alert is declared and episode emission reduction plans have not been submitted to the MPCA, the MPCA must follow the episode directives set forth in Minn. R. 7009.1070, 7009.1080, 7009.1090, 7009.1100, and 7009.1110. These directives provide guidance for the MPCA for action to be taken by types of industries to reduce the severity of the air pollution episode.

CHAPTER 7011

Minn. R. 7011.0070, LISTED CONTROL EQUIPMENT AND CONTROL EQUIPMENT EFFICIENCIES

Subpart 1. Listed Control Equipment Efficiencies.

Table A

The change under #058 deleting mat or panel filters, and replacing it with high efficiency particulate air and other wall filters, is reasonable because it makes the reference in this table consistent with the terms used under #058A and #058B in the monitoring requirements table in Minn. R. 7011.0080.

The changes under the VOC control devices, using a hood (#019 and #023), is to address comments raised by EPA. The EPA comments requested that the be slightly more conservative percentage be used. Specifically, the EPA requested the MPCA to use 60 percent of the total enclosure number for these two control devices as opposed to the 80 percent number used in the current rule. Therefore, the change is the percentages from 80 percent to 60 percent of the total enclosure numbers are reasonable to address the comments raised by the EPA.

Table 1

The change to table 1 is reasonable, because it corrects an error in the H/D ratio for medium efficiency cyclones.

Subpart 3. Certification for Hoods.

The proposed revisions to this subpart require the responsible official to certify that the hood was evaluated under his or her supervision by qualified personnel, and conforms with minimum requirements. The MPCA received comments saying the requirement of hood systems must be certified by a registered professional engineer, in contrast to an engineer that is not

registered with the Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture & Interior Design. The MPCA agreed that the person certifying the system should be a registered professional. However, a registered industrial hygienist is also qualified to certify a hood system (the manual to which the system would be certified is an industrial hygienist manual). For this reason, and to simplify the permit application certification procedures, the proposed revisions require the responsible official to certify that the system was evaluated by qualified personnel. The proposed language mirrors the language of the certification submitted with a permit application. The proposed certification also makes it clear that the responsible official is responsible for the content of the entire application including the hood system's evaluation. It is reasonable to make the responsible official responsible for the entire application, and to simplify the permit application certification procedures.

Minn. R. 7011.0080, MONITORING AND RECORD KEEPING FOR LISTED CONTROL EQUIPMENT

The proposed revisions to this subpart reflect the revisions to the hood system certification requirement in Minn. R. 7011.0070. It is reasonable to revise this part to reflect those revisions.

CHAPTER 7017

MONITORING AND TESTING REQUIREMENTS, CONTINUOUS MONITORS

Minn. R. 7017.2040, CERTIFICATION OF PERFORMANCE TEST RESULTS

This part sets forth the certifications that must be included with any performance test results.

Subpart 1. Certification Required.

This subpart states that all performance test reports must include the certifications in subparts 2 to 5 of this part. This subpart also states that the MPCA Commissioner shall reject the test results, if the required certifications are not included. The proposed revisions to this subpart require the MPCA Commissioner to reject the test results, if the MPCA Commissioner determines that one or more of the certification is false. It is reasonable to require that the certifications are true, and to reject the test results if the certifications are false, because if the certification is false then the test results are not reliable.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.155, subd. 2 (1994), 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 rule amendments will affect small business as defined in Minn. Stat. § 14.115 (1994). The rule amendments are proposed with the primary intent of incorporating changes to MPCA's existing air permit rules (Minn. R. ch. 7007) to reduce the administrative impact on small business and the MPCA. In considering changes to the rule, all of the above methods were implemented to some extent.

As stated in the Introduction, these rule amendments accomplish four goals. Three of these four changes are intended to ease administrative burdens for small businesses. The most important of these changes is the establishment of a separate and simplified permit process for small sources of air pollution. This simplified registration permit is intended to substitute for the more complicated state permit for sources that qualify by the nature of the source or the level of

emissions. The registration permit has simplified and clarified application, record keeping, and reporting requirements. The conditions of the permit are spelled out in rule, rather than customized from source to source.

Another important change that will allow more small businesses to qualify for this simplified registration permit is the addition to Minn. R. ch. 7011, of a performance standard for certain common types of pollution control equipment. If a source properly operates listed control equipment, it can take account of the equipment in calculating emissions to determine what type of permit is required. This provision should allow many more sources to qualify for a registration permit.

Other provisions which are intended to ease administrative burdens for small business include: 1) exempting from the requirement to obtain a permit, small sources who require a permit solely because they are subject to three additional new source performance standards (Minn. R. 7007.0300); 2) allowing small sources who require a permit solely because they are subject to certain new source performance standards to obtain registration permits (Minn. R. 7007.1115); 3) adding activities to the insignificant activities list (Minn. R. 7007.1300) for which a permit amendment is not required; and 4) adding a hazardous pollutant threshold, below which no permit amendment is required for insignificant and minor modifications (Minn. R. 7007.1250 and 7007.1450). These changes are discussed in detail in the discussion of the reasonableness of these parts.

Only one change proposed here is likely to increase the reporting requirements for small business, the requirement to report emission rates of hazardous pollutants (Minn. R. 7007.0500, subps. 2 (C), 4, and 5). These revisions require that permit applications from major sources contain information on actual emission rates of the pollutants designated by EPA as HAPs.

Sources which are major toxic sources must report on a unit-by-unit basis, and those that are major for criteria pollutants must report only total emissions. The revisions also extend the reporting of potential emissions of hazardous pollutants from those that are regulated to all EPA designated hazardous pollutants. Although these revisions will impact primarily larger businesses, it is possible that some small businesses will be major sources of hazardous pollutants due to the relatively small size threshold established in the CAA. The threshold is 10 tpy of one hazardous pollutant or an aggregate of 25 tpy.

The MPCA has recently decided not to pursue a separate and much more costly requirement for a comprehensive inventory of even very small sources of air toxic emissions, because of cost. Instead, this application requirement is proposed. The provisions requiring an estimate of actual emissions affect only major sources of air pollution. The provision extending the requirement for estimates of potential emissions of toxic pollutants will apply only to sources that do not obtain registration permits. The requirements are directed at larger businesses, which are more significant sources of toxic pollutants. Toxic emission information will be used to judge applicability of, and compliance with toxic emission standards, and will be used in the future to aid in development of air toxic control strategies both for the individual source and source categories.

Small businesses, which are major sources, are by the CAA Amendments of 1994 required to obtain Part 70 permits (generally this is the most complex type of permit issued under Minn. R. 7007). It was considered reasonable to use this as a threshold for reporting actual toxic emissions, since these are generally large sources that have the PTE large amounts of toxic pollutants, and have the resources and familiarity with pollutant emissions to track and report

emissions. Sources that are not major will not likely emit large amounts of toxic pollutants, and will generally lack the sophistication to develop accurate estimates of emissions.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the MPCA is required by Minn. Stat. § 116.07, subd. 6 (1994), to give due consideration to economic factors. The statute provides:

> In exercising all its powers the MPCA 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.

As stated in the prior section and elsewhere in this document, the primarily purpose of these rule amendments is to streamline the permit process to remove administrative burdens, where appropriate, from smaller sources that emit less pollution. Such sources have fewer resources to devote to developing permit applications, analyzing environmental regulations, and recordkeeping. It was felt that a standardized approach to these smaller sources would benefit both the source and MPCA through reduced cost and improved compliance with regulations.

MPCA did not develop a detailed estimate of the cost of compliance with the streamlining provisions of these amendments, since it is clear that they are cost saving measures, because they provide additional and a very streamlined permit option for qualified sources. If a qualifying source does not choose to obtain a registration permit, a state permit must be obtained. As a point of reference, the SONAR for the air permit rules (Minn. R. ch. 7007, effective October 1993) estimated the annualized cost to obtain a state permit at less than half that of a Part 70 permit, and the cost to obtain a general permit at $154. Although, the state permit is less costly than a Part 70 permit, it is expected to amount to thousands of dollars. The registration

permit option proposed in these amendments should reduce the cost of obtaining a permit to sources qualified for a registration permit to a level comparable with a general permit.

The two provisions which will involve increased cost for major sources of air pollution, are the incorporation of a requirement to submit hazardous pollutants actual emission information with permit applications (proposed Minn. R. 7007.0500, subp 2.C.5), and the extension of the requirement to report potential emissions of hazardous pollutants that are not yet regulated (proposed Minn. R. 7007.0500 subp. 2.C.4). In Exhibit 12, Cost Estimates for Determining Hazardous Pollutant Emission Rates, MPCA has attempted to estimate the cost to industry to quantify both actual and potential emissions. It is estimated that an initial inventory of actual emissions may cost approximately $5,000 for the average major source. Developing emission estimates for subsequent permit applications should be significantly less costly. Permit applicants are currently required to submit potential emission data for toxic pollutants already designated regulated pollutants (existing Minn. R. 7007.0500 subp. 2.C.4). The additional cost to quantify potential emissions of all hazardous pollutants or to quantify actual emissions would be small.

MPCA is proposing this option after considering several options for collection of hazardous emission data. Other options considered would have been more costly for Minnesota businesses without yielding appreciably more extensive or higher quality information. Other options considered involved more frequent submission, more extensive source coverage, larger numbers of pollutants, and environmental monitoring. It was determined that a five year inventory (at application) of the EPA designated hazardous pollutants for major sources is appropriately concentrated on the larger sources that are likely to account for the bulk of

hazardous pollutant emissions from stationary sources, and that emission levels were not likely to change drastically over a five year period.

MPCA staff has determined that it is more appropriate to approach environmental monitoring as an MPCA responsibility, because of the variety and number of toxic sources and the uncertainty as to whether a source specific requirement is the most cost effective way to gather environmental monitoring data. MPCA staff may propose a more frequent inventory of selected highly toxic or persistent emissions at a later date when more information is available on the relative risk and sources of hazardous pollutants.

In considering the economic impacts of these revisions, the MPCA did not consider the economic effect of the revisions on individual industry sectors or on the state as a whole, because the net effect of the revisions, particularly for small sources, is expected to be a benefit.

VII IMPACT ON AGRICULTURAL LANDS AND FARMING OPERATIONS

Minn. Stat. § 14.11, subd. 2 (1994), requires that if the MPCA proposing adoption of a rule determines that the rule may have a direct and substantial adverse impact on agricultural land in the state, the MPCA shall comply with specified additional requirements. Similarly, Minn. Stat. § 14.07, subd. 4 (1994), requires that if a proposed rule affects farming operations the MPCA must provide a copy of the proposed rule to the Commissioner of Agriculture for review and comment. The MPCA believes that the proposed rules will have no impact on agricultural lands or farming operations, because the proposed rules affect only stationary sources of air pollution, not agricultural land or farming operations.

VIII IMPACT ON LOCAL PUBLIC BODIES

Minn. Stat. § 14.11, subd. 1 (1994), provides that if the adoption of a rule by MPCA will require the expenditure of public money by local bodies, the notice published by the MPCA must contain a written statement giving the MPCA'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.

It is anticipated that these rule revisions will result in a cost savings to public bodies already subject to Minnesota's air permit rule (Minn. R. 7007). Municipal utilities and space heating boilers at schools and colleges are the most numerous public facilities subject to the requirement to obtain air permits. These revisions will allow many of these sources to obtain simplified registration permits, and hence save money and effort.

There may be a few large utilities, which will be subject to the new requirement to submit estimates of air toxic emissions. For utilities, it is expected that emission information should be readily calculable from fuel use data using available emission factors. It is not anticipated that this provision will result in the expenditure of more than $100,000 per year by local public bodies in either of the next two years. In conjunction with the streamlining aspects of the revisions, there will be a significant net cost savings.

IX. REVIEW BY COMMISSIONER OF TRANSPORTATION

Minn. Stat. § 174.05 (1994), requires the MPCA to inform the Commissioner of Transportation of all rulemakings that concern transportation, and requires the Commissioner of

Transportation to prepare a written review of the rules. This requirement does not apply, because this rulemaking does not affect transportation.

X. CONCLUSION

Based on the foregoing, the proposed amendments to Minn. R. chs. 7007 and 7011, are both needed and reasonable.

XI. LIST OF WITNESSES AND EXHIBITS

A. Witnesses

In support of the need and reasonableness of the proposed rule amendments, the following witnesses will testify at any hearing that may take place in regard to these proposed rules:

1. Andrew Ronchak: Will testify on the general need for and reasonableness of the proposed rules.

Dated: July 26, 1995

CHARLES W. WILLIAMS
Commissioner

CWW:jmd