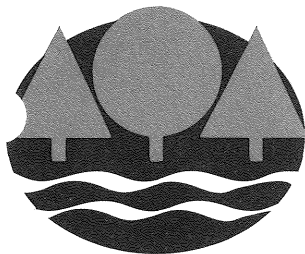


DEC 15 1995



Minnesota Pollution Control Agency

December 14, 1995

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

Re: Statement of Need and Reasonableness for Proposed Amendments to the State Air Pollution Control Rules to Incorporate the Federal Rules for National Emission Standards for Hazardous Air Pollutants for Source Categories by Reference.

Dear Ms. Hruby:

Enclosed for your review is a copy of the Statement of Need and Reasonableness for above proposed rule amendments as required by Minn. Stat. § 14.131 (1994). If you have any questions please call me at (612)296-7712.

Sincerely,

A handwritten signature in cursive script that reads "Norma L. Coleman".

Norma L. Coleman
Administrative Rulemaking Coordinator
Program Development Section
Air Quality Division

NLC:lmg

Enclosure

**STATE OF MINNESOTA
POLLUTION CONTROL AGENCY**

In the Matter of the Proposed
Amendments to the State
Air Pollution Control Rules
to Incorporate the Federal Rules
for National Emission Standards
for Hazardous Air Pollutants for
Source Categories 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 National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Source Categories. Section 112 of the 1990 Clean Air Act (CAA) Amendments mandates that the U.S. Environmental Protection Agency (EPA) develop technology based standards for major industrial sources that emit any of a list of 189 hazardous air pollutants (HAPs). The 1990 CAA Amendments established a new program to control HAPs. Under the new program, Congress requires EPA to set standards for categories and subcategories of sources that emit HAPs. For example, federal NESHAPs have been developed for petroleum refineries, coke oven batteries and dry cleaners. The technology based standards, referred to as maximum achievable control technology (MACT) standards, are embodied in the NESHAPs. The federal rules are being incorporated into state law so that the state can receive delegation from EPA to implement and enforce the NESHAPs in the state of Minnesota.

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 (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 1967, chapter 882, 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 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 (1994) 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.

Title III of the 1990 CAA Amendments established a comprehensive new regulatory program for reducing emissions of HAPs. EPA was required to identify the categories of air pollution sources that emit the 189 HAPs listed in Title III, and then promulgate emission standards that will reduce the emission of HAPs from each source category to a level that implements "maximum achievable control technology." EPA expects to eventually promulgate

97 source category NESHAPs standards by the year 2000, the deadline for completion of these standards set forth in Title III.

Title III standards apply to air pollution sources, called “major sources,” that have the potential to emit 10 tons or more per year of any single HAP, or 25 tons or more per year of any combination of HAPs. Title III standards also apply to “area sources” of HAPs, which are sources that are not major sources. Area sources may be required to comply with MACT, or may be required to comply with “generally available control technologies” (GACT), in EPA’s direction. MACT and GACT requirements are established for each source category in the relevant NESHAPs.

Title III contemplated that states would seek delegation from EPA to implement the new program, and provides for delegation to states to implement and enforce Title III standards. This is consistent with the general approach of the CAA to have EPA establish minimum national air quality requirements and to either require or encourage states to obtain approval to implement those requirements, and any more stringent requirements a state wished to impose on its sources. The CAA therefore requires states to submit state implementation plans to achieve compliance with the National Ambient Air Quality Standards (NAAQS), and has delegation mechanisms in place for most programs, such as new source performance standards (NSPS), prevention of significant deterioration (PSD) of air quality, and the pre-1990 NESHAPs program. Minnesota has obtained delegation to implement all of these programs from EPA, and is now planning to obtain delegation to implement the Title III NESHAPs standards as well.

Major sources of HAPs are required to obtain federal operating permits under Title V of the 1990 CAA Amendments, which established a federal operating permits program that applies

to major sources of air pollution under all CAA programs, including Title III. The permit program is to be administered by the state air pollution control agencies. Minnesota established this required program in 1993 by promulgating a new operating permits rule in Minn. R. ch. 7007, which includes the requirement that major sources under section 112 of the CAA (Title III of the 1990 CAA Amendments) obtain operating permits from the MPCA. Minn. R. 7007.0200, subp. 2(A). On June 16, 1995, EPA granted the MPCA interim approval to implement the Title V permit program in the state.

Area sources are not necessarily required to obtain Title V permits, but are required to comply with the NESHAPs standard for their source category. EPA is providing federal grant funds to states that obtain delegation to implement and enforce NESHAPs requirements for area sources.

These rule amendments are needed in order to reflect in Minnesota rules the current, nationally-applicable federal NESHAPs standards which the state of Minnesota is delegated to administer within its boundaries. The MPCA was delegated interim authority to implement current NESHAPs in the state of Minnesota in June 1995. An interim delegation letter from EPA Chief Air Enforcement Branch to the MPCA Air Quality Division Manager was received on June 1, 1995. The MPCA will be requesting final delegation authority from EPA in November 1995. In order to receive final delegation from EPA, the state must demonstrate its ability to both implement and enforce the NESHAPs; incorporating the NESHAPs by reference into state rules allows the state to fulfill these requirements.

The state will receive federal grant funds from EPA to assist in implementing and enforcing the NESHAPs. Obtaining the delegation allows Minnesota sources to work with

MPCA on NESHAPs implementation, rather than with EPA's Region V office in Chicago. It also allows regulated parties to continue to deal with all air quality issues at the MPCA, since the MPCA has already received over the past 20 years the relevant EPA delegations and approvals to administer and enforce other CAA programs. For example, the MPCA has delegation or approval from EPA to implement and enforce NSPS, NESHAPs adopted before the 1990 CAA Amendments, the PSD of Air Quality program, the operating permits program under Title V of the 1990 CAA Amendments and the acid rain permit program under Title IV of the 1990 CAA Amendments.

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). The MPCA has accomplished significant updating of rule requirements since the Legislative Auditor's Report was issued, including incorporation by reference of federal requirements. The adoption of applicable federal standards by reference will ensure that the MPCA's state air pollution control rules will continue to be 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 (1994) 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 NESHAPs standards that are published in the Federal Register as of September 19, 1995. 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 the same language to the Minnesota rules codification. While it is useful to bring applicable federal regulations into Minnesota rules, it is not necessary to completely duplicate the text of these rules, since the Code of Federal Regulations (C.F.R.) is a rules publication as readily available as Minnesota rules.

The incorporations also indicate, where EPA has so provided in a NESHAP standard, which parts of a NESHAP are not delegated to the state. EPA has indicated in some NESHAPs standards that one or more parts of the standards will not be delegated to states. The rules identify these parts so that regulated parties know which decisions will be made by the MPCA and which by EPA under the standards. For many standards, no such limitations apply. It is reasonable to identify in the rule when EPA has not delegated certain decisions, so that regulated parties can easily ascertain who will make which decisions under a standard.

The rule amendments incorporate by reference any future amendments that EPA might make to 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 NESHAPs

subparts promulgated by EPA. New NESHAPs 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 resources by not requiring MPCA staff 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 the NAAQS (the “offset” rule) in the early 1980s, and comprehensively revised the offset rule in 1988. 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 (at Minn. R. 7007.4000-7007.4030), and subsequently obtained EPA’s approval of its offset rule. Based on past history, it is reasonable for the MPCA to simply incorporate federal standards that already apply to sources within the state of Minnesota by reference.

B. Reasonableness of Individual Rules

1. Parts 7005.0100, subpart 25a 7011.7000, 7017.1010, 7017.2010, 7017.2015, and 7019.0100-General Provisions Governing NESHAPs for Source Categories

These parts incorporate by reference the various parts of the General Provisions Governing NESHAPs for Source Categories promulgated at 40 C.F.R. 63, subpart A (1994).

These parts incorporate by reference, for purposes of proper interpretation, application and enforcement of the NESHAPs standards that are incorporated by reference, the general definitions, abbreviations, monitoring, testing, recordkeeping, reporting and applicability requirements of the federal standards. It is reasonable to incorporate these general provisions of the NESHAP programs in order that the MPCA interprets, applies and enforces NESHAPs standards consistent with federal rules.

The amendment to part 7005.0100, subpart 25a expands the definition of NESHAPs to include the standards being incorporated in this rulemaking. EPA refers all standards it promulgates under section 112 (42 U.S.C. 7412) of the CAA as NESHAPs. Until this rulemaking, the MPCA has only incorporated by reference the NESHAPs EPA promulgated before section 112 was rewritten by the 1990 CAA Amendments. The current rule definition therefore referred only to the pre-1990 standards, which were continued in effect under the savings clause in the 1990 CAA Amendments referenced in the current definition. The changes to the definition are reasonable because they expand the term's applicability to all NESHAPs, whether promulgated under EPA's pre-1990 program or under the 1990 CAA Amendments, and assure that the term is used to refer to the same set of standards on both the federal and state levels.

Parts 7017.1010, 7017.2010, 7017.2015 and 7019.0100 incorporate by reference the parts of the NESHAPs General Provisions that are analogous to the other federal rules incorporated in those parts. Thus, part 7017.1010 is amended to include the NESHAPs monitoring requirements part, since it already includes the monitoring requirements of other delegated federal programs. The same is true for part 7017.2010 with regard to performance test methods, part 7017.2015

with regard to testing requirements, and part 7019.0100 with regard to notification, recordkeeping and reporting requirements. These parts of the General Provisions are incorporated so that they are located in the same place as the relevant state rules for these topics (chapter 7017 deals with monitoring and testing and chapter 7019 deals with notifications, recordkeeping and reporting). It is reasonable to incorporate the parts of the General Provisions with the related state rules.

Part 7011.7000 incorporates the remaining parts of the NESHAPs General Provisions in a part that precedes the incorporation of the individual federal NESHAPs standards. As explained above, it is reasonable to incorporate the general requirements because they apply to all NESHAPs standards (dealing with such vital topics as when the standards become applicable, for example) and their incorporation will assist in proper implementation, interpretation and enforcement of the NESHAPs requirements. Part 7011.7000 incorporates all parts of the general provisions not included in chapters 7017 and 7019, except for three parts that are not necessary in state rules: 63.12, 63.13, and 63.15. It is not necessary to incorporate part 63.13 because it lists addresses of EPA regional offices, which need not be part of state rules. It is not appropriate to incorporate part 63.15 because that part outlines governing federal law for dealing with availability of information and is not applicable to state law, which is governed by the Minnesota Data Practices Act, Minn. Stat. ch. 13. Finally, part 63.12 is appropriately excluded because it deals with state authority and delegation from EPA, which articulates, for federal purposes, that the federal law does not affect other state requirements and outlines the effect of EPA delegation.

2. **Parts 7011.7040 and 7011.7060-NESHAP for Organic HAPs from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks**

These parts incorporate by reference the NESHAP for Organic HAP from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks promulgated at 40 C.F.R. 63, Subparts F-I (1994). It is reasonable to incorporate this NESHAP to update Minnesota rules to current federal standards. This standard applies at both new and existing synthetic organic chemical manufacturing industry facilities and from equipment leaks at sources in certain polymer and resin production processes, certain pesticide production processes, and certain miscellaneous processes as described in the Source Category Schedule for Standards (58 FR 63941). Under this standard, EPA estimates that nationwide emissions of HAPs will be reduced by 510,000 tons/yr and the emissions of volatile organic compounds will be reduced by 1,000,000 tons/yr. There are currently no facilities in Minnesota affected by this NESHAP, but it is likely that one facility in Minnesota will soon become subject to this rule.

3. **Part 7011.7080-NESHAP for Coke Oven Batteries**

This part incorporates by reference the NESHAP for Coke Oven Batteries promulgated at 40 C.F.R. 63, Subpart L (1993). It is reasonable to incorporate this NESHAP to update Minnesota rules to current federal standards. This standard applies to all existing coke oven batteries, including by-product and nonrecovery coke oven batteries, and to all new coke oven batteries constructed on or after December 4, 1992. A "by-product coke oven battery" is defined as a source consisting of a group of ovens connected by common walls, where coal

undergoes destructive distillation under positive pressure to produce coke and coke oven gas from which by-products are recovered. In a “nonrecovery coke oven battery,” the coal undergoes destructive distillation under negative pressure to produce coke; the coke oven gas is combusted and by-products are not recovered. Implementation of the standard is expected to reduce nationwide coke emissions by 94 percent. There are currently no facilities in Minnesota affected by this NESHAP. Although there are no facilities in Minnesota currently regulated by this rule, it is reasonable to incorporate this rule so that if any facilities are constructed in the state in the future, Minnesota rules will be consistent with federal standards.

4. Part 7011.7100-NESHAP for Perchloroethylene Dry Cleaning Facilities

This part incorporates by reference the NESHAP for Perchloroethylene Dry Cleaning Facilities promulgated at 40 C.F.R. 63, Subpart M (1994). It is reasonable to incorporate this NESHAP to update Minnesota rules to current federal standards. This standard applies to new and existing dry cleaning facilities that use perchloroethylene. The standards are based on EPA’s determination that perchloroethylene is a HAP and that emissions, ambient concentrations, bioaccumulation, or deposition of perchloroethylene are known to cause adverse effects to human health or the environment. In 1996, compliance with the NESHAP is expected to reduce nationwide emissions of perchloroethylene from new and existing dry cleaning facilities by a maximum of approximately 67,200 tons from process vent controls and some 28,400 tons from leak detection and repair. There are currently 276 facilities in Minnesota affected by this NESHAP.

5. **Part 7011.7120-NESHAP for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks**

This part incorporates by reference the NESHAP for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks promulgated at 40 C.F.R. 63, Subpart N (1995). It is reasonable to incorporate this NESHAP to update Minnesota rules to current federal standards. This standard limits the discharge of chromium compound air emissions from existing and new hard chromium electroplating, decorative chromium electroplating and chromium anodizing tanks at major and area sources. The chromium emissions of concern are hexavalent chromium and trivalent chromium. Strong scientific evidence exists to suggest that hexavalent chromium causes lung cancer. Though less toxic, trivalent chromium can accumulate in the lungs which could result in decreased lung function after extended exposure. EPA estimates these standards will reduce chromium emissions from electroplaters and anodizers by about 99 percent. There are approximately 37 facilities in Minnesota affected by this NESHAP.

6. **Part 7011.7140-NESHAP for Ethylene Oxide Commercial Sterilization and Fumigation Operations**

This part incorporates by reference the NESHAP for Ethylene Oxide Commercial Sterilization and Fumigation Operations promulgated at 40 C.F.R. 63, Subpart O (1994). It is reasonable to incorporate this NESHAP to update Minnesota rules to current federal standards. This standard applies to sterilization facilities using ethylene oxide in sterilization or fumigation operations. Facilities using one ton or greater of ethylene oxide are subject to emissions standards. Facilities using less than one ton need only comply with the NESHAP's

recordkeeping requirements. EPA estimates these standards will reduce nationwide emissions of HAP's from ethylene oxide commercial sterilization and fumigation operations by 1,140 tons, or 96 percent, in 1997 compared to the emissions that would result in the absence of the standards.

There are currently five facilities in Minnesota affected by this NESHAP.

7. Part 7011.7160-NESHAP for Industrial Process Cooling Towers

This part incorporates by reference the NESHAP for Industrial Process Cooling Towers promulgated at 40 C.F.R. 63, Subpart Q (1994). It is reasonable to incorporate this NESHAP to update Minnesota rules to current federal standards. This standard applies to new and existing industrial process cooling towers in which chromium-based water treatment chemicals are used on or after September 8, 1994, and which are major sources or are integral parts of major sources as defined in Section 112(a)(1) of the CAA. The purpose of this rule is to effectively eliminate chromium compounds air emissions from industrial process cooling towers through the prohibition of chromium-based water treatment chemicals in affected new and existing industrial process cooling towers. Water treatment chemicals containing hexavalent chromium are added to cooling towers to protect process equipment from corrosion. Hexavalent chromium is a known potent human carcinogen and chromium compounds are among the 189 HAPs listed for regulation under Section 112 of the CAA. Information is not available to calculate the number of facilities in Minnesota affected by this NESHAP. The MPCA has received notification forms from two facilities who may be subject to this standard.

8. Part 7011.7180-NESHAP for Gasoline Distribution

This part incorporates by reference the NESHAP for Gasoline Distribution promulgated at 40 C.F.R. 63, Subpart R (1994). It is reasonable to incorporate this NESHAP to

update Minnesota rules to current federal standards. This standard applies to new and existing gasoline bulk terminals and pipeline breakout stations that are major sources of HAPs or are located at a major HAPs facility. Emission points affected under the final standards at bulk gasoline terminals are storage vessels that contain or have the potential to contain gasoline, leaks from the piping system and equipment that handle gasoline or gasoline vapors, loading racks that load gasoline into cargo tanks (tank trucks or railcars), and gasoline vapor leakage from sealed cargo tanks during loading. Emission points affected under the final standards at pipeline breakout stations are individual storage vessels that contain or have the potential to contain gasoline, and equipment leaks from the entire breakout station piping system that handles gasoline. There are approximately 20 potential sources in Minnesota affected by this NESHAP.

9. Part 7011.7200-NESHAP for Halogenated Solvent Cleaning

This part incorporates by reference the NESHAP for Halogenated Solvent Cleaning promulgated at 40 C.F.R. 63, Subpart T (1993). It is reasonable to incorporate this NESHAP to update Minnesota rules to current federal standards. This standard applies to new and existing facilities using halogenated solvent cleaning equipment with one of the following halogenated solvents: methylene chloride, perchloroethylene, trichloroethylene, 1,1,1 trichloroethane, carbon tetrachloride and chloroform. These standards will reduce nationwide emissions of HAPs from halogenated solvent cleaning machines by 85,300 tons/yr, or 63 percent by 1997 compared to the emissions that would result in the absence of the standards. There are approximately 100 facilities in Minnesota affected by this NESHAP.

10. Part 7011.7220-NESHAP for Epoxy Resins Production and Non-nylon

Polyamides Production

This part incorporates by reference the NESHAP for Epoxy Resins Production and Non-nylon Polyamides Production promulgated at 40 C.F.R. 63, Subpart W (1995). It is reasonable to incorporate this NESHAP to update Minnesota rules to current federal standards. This standard applies to new and existing epoxy resins and non-nylon polyamides production operations that are located at major sources. The polymers and resins covered by this standard use epichlorohydrin as a feedstock. Epichlorohydrin is considered a probable human carcinogen when inhaled and causes additional toxic effects. The standard is estimated by EPA to reduce emissions of HAP, mainly epichlorohydrin, by approximately 105 tons/yr nationwide. There are currently no facilities in Minnesota affected by this NESHAP. Although there are no facilities in Minnesota currently regulated by this rule, it is reasonable to incorporate this rule so that if any facilities are constructed in the state in the future, Minnesota rules will be consistent with federal standards.

11. Part 7011.7240-NESHAP for Secondary Lead Smelting

This part incorporates by reference the NESHAP for Secondary Lead Smelting promulgated at 40 C.F.R. 63, Subpart X (1995). It is reasonable to incorporate this NESHAP to update Minnesota rules to current federal standards. This standard applies to new and existing secondary lead smelters using blast, reverberatory, rotary, or electric smelting furnaces to recover lead from scrap lead, primarily from used lead-acid car batteries. Secondary lead smelters have been identified by EPA as significant emitters of several chemicals identified in the CAA as HAPs including but limited to lead compounds, arsenic compounds and 1,3-butadiene. The

purpose of this rule is to reduce HAP emissions from secondary lead smelting. This rule is estimated to reduce HAP emissions, including metal HAPs and organic HAPs by about 1,400 tons/yr nation-wide. There is currently one facility in Minnesota affected by this NESHAP.

12. Part 7011.7260-NESHAP for Marine Tank Vessel Loading and Unloading

Operations

This part incorporates by reference the NESHAP for Marine Tank Vessel Loading and Unloading Operations promulgated at 40 C.F.R. 63, Subpart Y (1995). It is reasonable to incorporate this NESHAP to update Minnesota rules to current federal standards. This standard applies to new and existing marine tank vessel loading operations. EPA estimates the rule will reduce nationwide emissions of HAPs from marine tank vessel loading operations by approximately 4,565 tons after 1999 compared to the emissions that would result in the absence of the standards. These standards will reduce emissions of volatile organic compounds from marine tank vessel loading operations by 42,900 tons after 1999 compared to the emissions that would result in the absence of the standards. There are currently no facilities in Minnesota affected by this NESHAP. Although there are no facilities in Minnesota currently regulated by this rule, it is reasonable to incorporate this rule so that if any facilities are constructed in the state in the future, Minnesota rules will be consistent with federal standards.

13. Part 7011.7280-NESHAP for Petroleum Refineries

This part incorporates by reference the NESHAP for Petroleum Refineries promulgated at 40 C.F.R. 63, Subpart CC (1995). It is reasonable to incorporate this NESHAP to update Minnesota rules to current federal standards. This standard applies to petroleum refinery process units, marine tank vessel loading operations, and gasoline loading rack

operations classified under Standard Industrial Classification (SIC) code 2911 emission points located at petroleum refineries. Petroleum refineries are major sources of HAP emissions. Individual refineries emit over 25 tons/yr of organic HAPs including benzene, toluene, ethyl benzene, and other HAPs. EPA estimates that this standard will reduce HAP emissions from petroleum refineries by 59 percent. There are currently two facilities in Minnesota affected by this NESHAP.

14. Part 7011.7300-NESHAP for Magnetic Tape Manufacturing Operations

This part incorporates by reference the NESHAP for Magnetic Tape Manufacturing Operations promulgated at 40 C.F.R. 63, Subpart EE (1994). It is reasonable to incorporate this NESHAP to update Minnesota rules to current federal standards. This standard applies to:

1) Each new and existing magnetic tape manufacturing operation located at a major source of HAP emissions; and 2) A magnetic tape manufacturing operation for which the owner or operator chooses to use the provisions of part 63.703(b) and (h) to obtain a federally enforceable limit on its potential to emit HAPs. The standard does not apply to research or laboratory facilities and to coating operations whose production of magnetic tape in any 12 month period is less than one percent of the total amount of tape produced. EPA estimates the rule will reduce emissions of air toxics nationwide by 2,300 tons/yr. There is currently one facility in Minnesota affected by this NESHAP.

15. Part 7011.7320-NESHAP for Aerospace Manufacturing and Rework Facilities

This part incorporates by reference the NESHAP for Aerospace Manufacturing and Rework Facilities promulgated at 40 C.F.R. 63, Subpart GG (1995). It is reasonable to incorporate this NESHAP to update Minnesota rules to current federal standards. This standard

applies to owners and operators of all commercial, civil, or military aerospace original equipment manufacturing and rework operations. Aerospace facilities are major sources of HAP emissions. The HAPs emitted by aerospace facilities that are covered by this rule include, chromium, cadmium, methylene chloride, toluene, xylene, methyl ethyl ketone, ethylene glycol and glycol ethers. All of these pollutants can cause reversible or irreversible toxic effect following exposure. EPA estimates these standards will reduce nationwide emissions of HAPs by approximately 123,700 tons/yr. There are approximately ten facilities in Minnesota affected by this standard.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 114.115, 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 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 (1994). As a result, the MPCA has considered the above-listed methods for reducing the impact of the rule amendments on small businesses. However, 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, 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 NESHAPs it is incorporating in these rule amendments. To the extent that a NESHAP may apply to small businesses in Minnesota, it also 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 (1994) 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 the federal NESHAPs 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 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 AND FARMING OPERATIONS

Minn. Stat. § 14.11, subd. 2 (1994) 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 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.

Minn. Stat. § 116.07, subd. 4 (1994), requires that if a proposed rule affects farming operations, the MPCA must provide a copy of the proposed rule and a statement of the effect of the proposed rule on farming operations to the Commissioner of Agriculture for review and comment. The MPCA, in proposing to incorporate the federal NESHAP requirements by reference, is not proposing a rule which would affect farming operations.

VIII. COSTS TO LOCAL PUBLIC BODIES

Minn. Stat. § 14.11, subd. 1 (1994) requires 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 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. REVIEW BY COMMISSION 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 written review of the rules. The adoption of the federal NESHAPs for Source Categories into Minnesota rules do not concern transportation. The requirements of Minn. Stat. § 174.05 are therefore not applicable.

X. CONCLUSION

Based on the foregoing, the proposed amendments to the state air pollution control rules to incorporate federal NESHAPs rules by reference are both needed and reasonable.

Dated: 12-8-95

Kristen Applegate
for CHARLES W. WILLIAMS
Commissioner