STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments to Rules Governing Air Quality Permit Fees, Minn. Rules Part 7002.0100

STATEMENT OF NEED AND REASONABLENESS

I. Introduction

The Minnesota Pollution Control Agency (Agency) was required by the 1985 Minnesota Legislature to adopt rules for the establishment and collection of permit fees to cover the reasonable costs of reviewing and acting upon permit applications and for implementing and enforcing conditions of Agency permits. Pursuant to this mandate, the Agency has adopted Minn. Rules pts. 7002.0010 to 7002.0110, rules relating to air quality permit fees. These rules became effective on January 21, 1986.

Since the adoption of the original rules in 1985, the rules have been revised to reflect the amounts appropriated by the Legislature to be collected as fees and appropriated to the Special Revenue Fund. The 1988-89 biennium appropriation was $831,383 for the Air Quality Division. The 1989 Legislature has appropriated an additional $436,617 (not including salary supplement) to the Special Revenue Fund to be collected as fees to support Division of Air Quality change levels approved for the 1990-1991 biennium. These appropriations reflect legislative recognition of the needs of the Agency for additional personnel and activities. The fees will be used by the Agency to hire additional personnel and conduct activities that will enable the Division of Air Quality to carry out its duties as prescribed by

the Minnesota Legislature. To raise the funds required, the Agency is proposing to amend the permit fee rules. At the same time, the Agency proposes to restructure the permit fee rule to achieve a more equitable distribution of payments.

As a result of the proposed restructuring, fees charged to some permittees and for some activities will increase while others may decrease. The overall result will be an increase in total fees collected.

A part of the administrative requirement involved in adopting these rules is the review and approval of the fee schedule by the Minnesota Commissioner of Finance. Pursuant to Minn. Stat. § 16A.128, subd. 1a (1988), this approval is included as Exhibit 1 to this document.

A technical advisory committee (TAC) was formed in January 1989, to work with Agency staff on the proposed rule amendments. The TAC was made up of representatives of regulated industry, Agency staff, a representative of the municipal league, and a representative of an environmental organization (refer to Exhibit 6). Four TAC meetings were held between January and April of this year. Proposed rule amendments were discussed in detail with the TAC and their input and comments were taken into account in many areas of the proposed rule amendments.

II. STATEMENT OF THE AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority is set forth in Minn. Stat. 116.07, subd 4.d. (1988), which provides:

> The agency may collect permit fees in amounts not greater than those necessary to cover the reasonable costs of

> reviewing and acting on applications for agency permits and implementing and enforcing the conditions of permits pursuant to agency rules. Permit fees shall not include the costs of litigation. The agency shall adopt rules under section 16A.128 establishing the amounts and methods of collection of any permit fees collected under this subdivision. Any money collected under this subdivision shall be deposited in the special revenue fund.

The Agency adopted Minn. Rules pts. 7002.0010 to 7002.0110 in accordance with Minn. Stat. § 16A.128 (1988), as required by the above-quoted statute. Subdivision 1a of that statute requires fees to be reviewed and, if necessary, adjusted. The statute provides, in relevant part:

> These fees must be reviewed each fiscal year. Unless the commissioner determines that the fee must be lower, fees must be set or fee adjustments must be made so the total fees nearly equal the sum of the appropriation for the accounts plus the agency's general support costs, statewide indirect costs, and attorney general costs attributable to the fee function.

Under these statutes the Agency has the necessary statutory authority to adopt the proposed rule amendments.

III. STATEMENT OF NEED

Minn. Stat., §§ 14.131, 14.14, subd. 2, 14.23 and 14.26 (1988) require the Agency to make an affirmative presentation of facts establishing the need for and the reasonableness of the proposed rule amendments. In general terms, this means that the Agency 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 Agency is appropriate. The need for the rules is discussed below.

The 1989 Legislature appropriated $651,100 for the Fiscal Year 1990 and $658,200 for the Fiscal Year 1991 or $1,309,300 for the 1990-1991 Biennium in direct salary, fringe benefit costs, estimated salary supplement and indirect costs from the Special Revenue Fund for Permit Fees to the Agency's Division of Air Quality. Conference Committee Report on H.F. No. 372 Sec. 23, subd. 3. The derivation of these numbers is detailed in the following discussion.

The 1989 Legislature approporiated $608,000 for Fiscal Year 1990 and $604,000 for FY 1991 to the Divison of Air Quality from the Special Revenue fund (Minn. Laws, 1989, chapter 335, article 1, sec. 23, subd. 3). Of this amount $75,000 is paid each year by the Metropolitan Airport Commission for activities related to noise monitoring. This leaves $533,000 for FY90 and $529,000 for FY91, that the Division of Air Quality must collect.

In addition to the appropriation noted above, the Agency was appropriated $573,000 for each of the years for general support (page 2735, ibid.). The appropriation is divided up among the different divisions in the Agency. The Division of Air Quality's share is $103,000 for each year.

Finally, the Legislature does not attempt to anticipate the salary and fringe increases being concurrently negotiated between the State and Collective Bargaining Units. Instead, the Legislature establishes an open appropriation to account for the future salary and fringe benefit increases. Collective

bargaining agreements have only recently been negotiated and are still being executed. Therefore, the actual salary increases were not able to be included in budgeting for these proposed fee amendments. However, the Agency reviewed the past four years of salary increases and determined that the average salary and fringe benefit increases have been slightly over six percent. This amount appears to be consistent with the collective bargaining settlements completed to date. Therefore, the Agency includes a salary supplement of $41,300 for the Division of Air Quality for the 1990-1991 Biennium, based on the authority of the Salary Supplement appropriation, to be funded through the collection made from the Special Revenue Fund for Permit Fees. Based on other budgetary items, this amount is divided into $15,000 for FY90 and $26,000 for FY91.

The table below summarizes the appropriations and permit fee collection requirements:

	FY 1990	FY 1991	BIENNIUM
APPROPRIATION			
Division of Air Quality	$608,000	$604,000	$1,212,000
(less Airport Noise)	($75,000)	($75,000)	($150,000)
Total	$533,000	$529,000	$1,062,000
Agency General Support	$103,000	$103,000	$206,000
Salary Supplement	$15,000	$26,000	$41,300
Revenues needed	$651,100	$658,200	$1,309,300

In FY88, the Divison of Air Quality collected $362,333 in fees, and in FY89, approximately $413,000 was collected. It is clear from these numbers that an increase in fees is necessary to collect the required, appropriated amount.

IV. STATEMENT OF REASONABLENESS

The Agency is required by Minn. Stat. ch. 14 (1988) 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 Agency's proposed action. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole

The Agency proposes to amend Minn. Rules pts. 7002.0010 to 7002.0100, by restructuring the existing fee system in order to distribute fees more fairly among permittees while also increasing total fee collections to that level established by the legislature (see part III). The proposed restructuring of the fee system responds to requests made by the parties which contested the Agency's proposed fee increases in 1987 and the instructions of the hearing officer who conducted the hearings. See reports of the Administrative and Chief Administrative Law Judges, October 27, 1987, October 30, 1987, and February 1, 1988, attached as Exhibits 2, 3, and 4.

The demand for regulatory resources increases with the complexity of each source of air pollution. The complexity of a stationary source is related to amount of pollutants, numbers of pollutants and number of emission points. The proposed rules redistribute fees more equitably among sources of air pollution to reflect the effort required to issue permits and enforce permit conditions. The fees that will be collected after the

proposed rule amendments are detailed in "Air Quality Fee Determination", included in Exhibit 5.

B. Reasonableness of Individual Rules

The following discussion addresses the specific provisions of the proposed rule amendments.

Part 7002.0010 SCOPE

This proposed rule sets forth the scope of applicability of the air quality pemit fee rules. The amendment makes the fee rules applicable to all air emission facilities and indirect sources which require air emission or indirect source permits from the Agency. The amendment is reasonable because it clarifies the scope of the current rule. The current rule applies to the same air pollution sources as the amended rule, but references these sources indirectly by citing exemptions from certain procedural requirements in obtaining a permit, rather than the requirement to obtain a permit.

Part 7002.0020 DEFINITIONS

This proposed rule sets forth the definition of terms used within the rules. Definitions proposed for change or addition in this rulemaking are discussed below.

Subp. 1.a. This new subpart references all other definitions that apply to the fee rules. The addition of this subpart is reasonable because many complex terms are involved in air pollution regulation which have been defined in other air quality rules. It is a duplication of effort to repeat such definitions

in this part. However, this new subpart ensures that all these defined terms are used consistently.

As a result of the inclusion of this subpart, some definitions are proposed to be repealed. These are "Agency", which is defined in Minn. Rules pt. 7005.0100, subp. 2; "Commissioner", which is defined in Minn. Rules pt. 7005.0100, subp. 4.b; "Indirect Source", which is defined in Minn. Rules pt. 7001.1260, subp. 5; and "Non-attainment area", which is defined in Minn. Rules pt. 7005.3030, subp. 10. All of these references are included by reference in the proposed new subpart 1.a.

Subp. 2. Administrative Amendment. This definition is added in order to identify a type of permit amendment which is not for a physical change in equipment or emissions. This includes such actions as changes in ownership, changes in descriptions, and correction of errors pursuant to Minn. Rules pt. 7001.1090, subps. 2 and 3. The fees for this type of change are less than other more substantive amendments because changes soley as to ownership and control, or minor modification (as defined by Minn. Rules pt. 7001.0190, subp. 3) do not require the same amount of effort as other changes. However it is reasonable to identify these activities by defining this type of permit amendment and charge the applicant fees for staff time required to perform such changes.

Subp. 6. Major emitter. "Major emitter" is defined as a stationary source which has the potential to emit greater than 100 tons per year of any single criteria pollutant. The changes

in this definition correspond to changes in nomenclature made in amendments to the air emission permit rules in 1989. The changes also clarify the term with regard to the applicability of certain permit fees.

The previous definition, which defined "major emission facility" created ambiguity in the application of the permit fee rules. The term "emission facility" could apply either to an entire industrial facility or only one set of equipment. To correct this ambiguity, the term "stationary source" (defined in pt. 7005.0100, subp. 42.c.), which refers to the complete industrial facility, was added to the state air pollution control rules in a recent rulemaking process. However, the ambiguous term "emission facility" remained in the fee rules.

The term "emitter" is now proposed for use in the fee rules rather than "stationary source", because the term "major stationary source" has a meaning in state and federal rules that varies depending on type, size and location of the stationary source, and could leave the applicable permit fees confusing and inconsistent. Therefore, it is reasonable to use the term "emitter", not otherwise defined, to avoid confusion.

The definition also has been expanded to apply the term "major" to all criteria pollutants. Previously it applied to only total suspended particulates (TSP) and sulfur dioxide (SO_2). Comments were received in previous rulemaking activities that this was not equitable because it assumed a greater impact due to 2 criteria pollutants over other criteria pollutants defined by Minn. Rules pt. 7005.0100 subp. 8.a., including carbon monoxide

(CO), nitrogen oxides (NO_x), and volatile organic compounds (VOCs) as well as TSP and SO_2. In general, all air emission rules are becoming more strict with respect to all pollutants. It is therefore reasonable to include major emitters of all criteria pollutants in the definition of "major emitters" because permit development and enforcement has become more costly for all major emitters, not just for TSP and SO_2 emitters. Agency staff agree that it is inappropriate to continue this differentation and therefore propose to remove it.

This change in applicability of a "major emitter" to include emitters of all criteria pollutants is one of the amendments which will result in a significant restructuring of fee charges. The number of "major emitters" was previously very limited and is greatly expanded by this change.

Subp. 7. Non-criteria pollutant. This term is added and means any pollutant which is not a criteria pollutant and which may be injurious to human health. Criteria pollutants are defined by 7005.0100, subp. 8a. It is reasonable to define these pollutants because emissions of non-criteria pollutants result in additional permitting requirements and regulatory activities, for which a fee will be assessed.

Subp. 8. Non-major emitter. The term "non-major emitter" is proposed for addition and refers to those stationary sources which are not major emitters. Non-major emitters are small sources of air pollution and as such are required to pay smaller fees than major emitters in this regulation, and are not subject

to as many rules and regulations as major emitters. Therefore it is reasonable to identify these emitters in a definition.

The phrase "other than a major" was used previously throughout the body of the air quality fee rules. This definition is reasonable because it avoids cumbersome language throughout the rule.

Part 7002.0030 FEE DETERMINATION

The amendment clarifies that the Agency does not notify the permittee of the amount and due date of application fees, but only for processing and annual fees, and clarifies that application fees are due when an application is submitted to the Agency. The amendment is reasonable because it prevents confusion about when the permittee is obligated to pay the application fee.

Part 7005.0050 APPLICATION FEE.

The applicability of the application fee is clarified. The language is changed to insure that an application fee is required for any activity that may result in a permit action, including administrative amendments, and modifications to permits. This amendment is reasonable because it establishes the same due date for application fees for modifications and administrative amendments to permits that exists for application fees for permits in the current rule.

Part 7002.0060 PROCESSING AND COMPLIANCE DEMONSTRATION FEES.

Language is modified in this part to reflect changes in the fee structure and to reflect actual billing practices. The fee structure is proposed to be modified in these rule amendments to part 7002.0100 to include compliance demonstration fees as well as processing fees. Compliance demonstration fees are similar to processing fees in that they occur on a one-time basis, as opposed to annual fees which recurr on a known and predictable basis (annually). It is therefore reasonable to expand this part to include them.

Billings for processing and compliance demonstration fees occur on a monthly basis. At the beginning of each month, the Agency generates invoices for those activities that occurred in the previous month. This approach has evolved as Agency staff have instituted the fee program. It is reasonable that the rule be amended so that fees are not due until after invoices are issued because the rule will accurately reflect Agency practice and there will be no doubt about exactly when the permittee is to pay the applicable fee.

The amendment also clarifies the applicability of subpart 2 of this rule, which discusses small businesses, to indirect source permittees. Indirect source permits issued to small businesses will not generally have a term because the permit applies to construction only. Therefore it is reasonable to apply this provision to indirect source permits based on the length of construction unless a term of the permit is stated.

Part 7002.0100 AIR QUALITY PERMIT FEE SCHEDULE

Subp. 2. Application Fee. The original application fee was $50. When the fee rules were amended in 1987/88, they increased all fees proportionally. This resulted in an application fee of $80. With the proposed restructuring of fees, it is possible to return that fee to $50 and still achieve the revenue generation required by the legislature for the 1990-91 biennium. The application fee is largely a mechanism to prevent frivolous applications. A $50 fee is sufficient for this purpose. It is therefore reasonable to reduce the fee to that level.

Subp. 3. Basic processing fees. This existing rule sets out a schedule of fees for processing permit applications including construction/reconstruction, modifications, or reissuance of permits. The current rule identifies seven categories of fees. These categories are maintained. The proposed amendments alter the fees charged for each of the seven activities and add three new activities for which fees will be charged. The existing and proposed fees in this rule amendment are based on the relative difficulty of reviewing, issuing and enforcing permit conditions in combination with the revenue generation requirements of the legislature. The larger and more complex facilities are required to pay a higher fee because the Agency expends more effort regulating them. New sources require higher fees than existing sources because regulation of new sources requires more effort because there is no known information about the source.

The proposed fees are changed in three ways: 1) many are reduced to levels close to those as originally applied in 1985, 2) some changes are made to address inadequacies in that original rule; and 3) some new categories are added.

Some fees can be reduced due to the additional revenue generated by restructuring the fee rules in this amendment. The restructuring results in more stationary sources paying major emitter fees through the expansion of the "major emitter" category to include emitters of all criteria pollutants.

Fees for non-major emitters were too low when compared to the activities the staff is required to perform. The basic effort required in any permitting activity, even if for a non-major emitter, must be reflected in the fee. Therefore in the restructuring of fees, it is reasonable not to significantly reduce fees for non-major emitters. Non-major basic fees are proposed at a level that is approximately 50 percent of major basic fees, which resulted in slight increases in some categories. The proposed amendments do not significantly raise fees for non-major emitters.

The proposed amendments add fees for modification of indirect source permits, administrative amendments, and general permits. Because permittees regularly request these permit activities and because these activities require Agency staff time to perform, it is reasonable to charge fees for them. The fees for adminstrative amendments and general permits are much lower than other basic processing fees, but are added to reflect that Agency staff do expend some effort to process these applications.

The amendment also specifies that if modification of a major or non-major emitter is sought at the same time as reissuance of the permit, the Agency waives the modification fee. This is reasonable because in this situation the modification and reissuance can be handled in one permit activity by Agency staff and therefore the emitter need not be assessed two fees.

Subp. 3a. Basic processing fee surcharges. Provisions of this rule set forth a schedule of additional fees to be paid by major emitters that emit a criteria pollutant in excess of 250 tons per year. A major emitter is any stationary source that emits greater than 100 tons per year. The 100 to 250 ton per year category is not subject to the basic processing fee surcharge. The rule amendments propose a graduated scale for surcharges, above the basic fees, according to the type of permit action and the amount of criteria pollutants emitted. The surcharge is based on the criteria pollutant emitted in the greatest volume. This is reasonable because it clarifies how the classification is made and is equitable to all emitters.

Larger sources have a greater impact on air quality and are more complex (either having more emission points or multiple pollutants) requiring more time for permit reviews and enforcement activities. Therefore, it is reasonable that such sources pay a correspondingly higher fee to account for their share of the activities required. The structure of fee surcharges established here is carried on throughout the proposed rule amendments. This proposed structure was established in

response to concerns of the regulated community that due to the lack of such a structure, small facilities were paying a disproportionately large share of fees. The Agency has therefore established categories which both reflect levels where the Agency's permitting and enforcement efforts increase and reflect a manageable number of categories for Agency fee billing purposes and other administrative purposes.

When such categorization is introduced, facilities will have an incentive to maintain emission levels within certain categories in order to reduce fees. This already occurs with the existing major/non-major cutoff level of 100 tons per year.

Agency staff have estimated the number of facilities that will fall into these various categories as follows:

Category	Tons per year	Approximate Number of facilities
Non-major	<100	220
Major	100 - 250	130
	250 - 500	100
	500 - 1000	80
	1000 - 5000	70
	5000 - 10,000	15
	>10,000	10

Upon advice of the technical advisory committee, the Agency has determined that a cap on increasing fees with the size of a facility was appropriate. This is true because after a certain point, the increase in level of emissions no longer increases to the complexity of permitting a major emitter. The 10,000 ton per year maximum category is therefore reasonable.

Subp. 4. Additional processing fees. This rule provides additional fees for facilities that require additional work due to the applicability of various federal and state regulatory programs. Federal programs include Prevention of Significant Deterioration, New Source Performance Standards, and Nonattainment review. The rule also assesses fees for facilities that require Agency permitting and enforcement for non-criteria pollutant emissions, that require performance of air quality dispersion modeling, and for Indirect Source modifications. This rule is reasonable because these facilities require additional staff time to assure compliance with all applicable regulations.

The proposed revisions maintain the basic set of categories for fees in this area. Changes have been made to update the fees to reflect current effort expanded for each category.

Item A charges fees for permits subject to rules applicable to major construction or modification in non-attainment areas. The language is updated to reflect the 1989 adoption of Minn. Rules pts. 7005.3010 to 7005.3060, which apply to such permits.

Fees for permits subject to non-attainment regulations and Prevention of Significant Deterioration (PSD) regulations are raised significantly to more realistically reflect the amount of time required to complete such a permitting process. Such permits require 6 months to 1 year to complete and can require significant staff time. It is reasonable to raise the fee significantly to reflect the large effort involved in review of permits for these facilities.

The applicability of fees for federal new source performance standards (NSPS) is clarified by applying the fee whenever an individual NSPS is applicable. Federal NSPS are required to be implemented by the Agency through its state permitting and enforcment program. The NSPS regulations are issued on the basis of industry type. Each subpart regulates a different industrial category and has different requirements that must be implemented by the Agency. For instance, a kraft pulp paper mill and an industrial boiler have different NSPS requirements. At this time there are approximately 60 NSPS subparts. Therefore it is reasonable to charge an additional processing fee for each applicable NSPS.

The fee for a best available control technology (BACT) review is removed in the proposed amendments because BACT is required only when PSD review is required. Therefore the PSD fee increase includes the fee to review the BACT analysis.

The fee for evaluation of non-criteria pollutants is not changed, but has been reworded to reflect the definition of non-criteria pollutant added to Minn. Rules pt. 7002.0020.

The fee for dispersion modeling is changed so that it is assessed only when the dispersion modeling is not regularly conducted under another permitting process for which a fee is charged. Dispersion modeling is regularly conducted for non-attainment, PSD, and non-criteria pollutant reviews. A dispersion modeling fee will not be charged if charges for those other reviews already apply and is incorporated into the fee increase for those types of permitting activities. This is

reasonable because it pre[illegible]s a double fee for the same activity.

Fees for performance test reviews have been removed from this section because they are established in new subparts 4b and 4c.

Subp. 4a. Additional processing fee surcharges. This rule identifies fees to be paid for more complex facilities. These are facilities which emit more than one air pollutant subject to additional permit processing requirements or have more than one piece of equipment which must undergo a particular additional permit review. Each pollutant emitted by a facility, or each additional piece of equipment, requires additional review and permitting activities so it is reasonable to request such facilities to pay an additional fee for the increased work required to review the permit and assure compliance with the permit conditions. This is also reasonable because it results in a more equitable fee structure by requiring stationary sources which require more effort from the Agency to pay higher fees, while stationary sources that do not require such additional review are not subject to these fees.

Subp. 4b. Compliance demonstration fees. The current fee rule assesses fees for performance testing. Over time, however, it has become clear to Agency staff that the determination of compliance with applicable rules and regulations through testing and monitoring of air emissions is of increasing importance and requires increasing staff time. The legislature confirmed the

importance of these activities in its last session by providing additional staff resources to be dedicated to the audit and verification program.

Because not every facility is required to conduct such tests, because test complexity varies with the facility, and because staff time is required to review and evaluate the test results, it is reasonable to charge a fee for the costs of this work by the Agency specifically to the facilities undergoing the testing.

Further, during the last four years of implementation of these rules it has become clear that more clarification of what these fees apply to and when they apply is necessary. For example, testing can occur as a result of a permit issuance, which could require testing once every two years or as a result of an inspection, where an inspector notes a potential violation. When a test is required, Agency staff meet with the permittee and independent testing firm to define the test conditions. Agency staff observe tests and review test results.

In some cases compliance is determined through the use of continuous emission monitors. Such monitors must be certified and Agency staff must review and confirm the certification procedures and results.

Therefore, due to the conditions discussed above, it is reasonable to separate and expand the fee rules to include a separate compliance demonstration fee subpart.

The proposed fees are set for basic testing procedures or certification of continuous emission monitors (CEMs) according to

required state and federal procedures. Fees are varied based on the complexity of the activity and number of tests taking place.

The major activity performed by the Agency is review of the test results. This review determines if testing was done properly and what the compliance status is. It is therefore reasonable to charge the fee at the time of completion of the test review by Agency staff.

Following the advice of the technical advisory committee a separate, reduced fee is proposed for a Method 9 visible emission evaluation. This type of test is done by a qualified person observing a plume and determining its opacity of a three hour period. Review of such a test differs significantly from other more complex physical and chemical testing procedures due to the simple observatory nature of the test. Therefore, it is reasonable to charge a smaller fee to reflect the lesser work involved in test review.

Tests, other than visible emissions evaluations, generally involve the physical extraction of exhaust gases from a process exhaust stack. The process of extraction of the exhaust gases is a major component of testing and test review. Therefore, it is reasonable to charge a separate fee for each stack tested.

Similarly, with a continuous emission monitor, each monitor must be individually certified. Therefore it is reasonable to charge a separate fee for each monitor.

Subp. 4c. Compliance demonstration fee surcharges. In conjunction with the compliance testing activities discussed in

subpart 4b, some facilities have more than one piece of equipment involved in the test of a single stack, more than one pollutant being tested, and potentially use several methods for testing. For instance, two dryers can be exhausted through one stack, and the gas may be tested for particulates and sulfur dioxide. This requires review of the operating parameters of both dryers, and requires two testing procedures. Such tests require additional staff time for observation and review which adds to the costs of the work being done by the Agency. Therefore, it is reasonable to charge additional fees for the added costs to conduct this work.

Subp. 5. Annual fees. This rule identifies fees to be paid annually for major emitters, non-major emitters, and indirect sources required to obtain permits. It is reasonable to charge annual fees for the work done each year to assure compliance with the permits and air pollution control regulations. Such fees are required by the existing rule. Activities conducted on an annual or continuous basis include emission inventories, inspections, enforcement activities, development of rules, and air quality monitoring. As these activities occur on a continuous or annual basis, or are applicable to all air emitters in a general sense and not to one specifically, it is reasonable to charge annual fees. Because the level of effort associated with many of these activities increases with the size of the stationary source, it is reasonable to charge different fees based on the size and type of stationary sources.

The proposed revisions result in a significant lowering of these fees for many permittees. This is again the result of the restructuring activities included in these revisions, through the definition of a major emitter, to include all criteria pollutants.

The rule amendments also clarify when the potential to emit of a stationary source will be determined for the purposes of determining the annual fee. The rule proposes to evaluate the potential to emit of the stationary source on January 1 of the year for which the fee is charged. In the past, if a stationary source expanded or decreased its activities it was not clear what effect, if any, this would have on the annual fee. Therefore, it is reasonable to propose this clarification.

In order to avoid confusion, the proposed rule amendments address seasonal facilities specifically. It is possible for a seasonal facility to interpret the January 1 date as implying that seasonal facilities, not actually in operation on January 1, would be exempted from annual fees. This is not true because of the definition of potential to emit is contained in Minn. Rules pt. 7005.0100, subp. 35.a. Under that definition, the potential to emit is an intrinsic characteristic of any equipment that may emit air pollutants. It is not dependent on its actual operation at a point in time. The hours of operation may be considered in determining its annual emissions, but the potential exists at all times, even if the source cannot operate on January 1. Therefore, seasonal facilities are not exempted by the proposed

language and it is reasonable to include language clarifying the point to avoid misinterpretation.

The proposed rule amendments add annual fees for indirect source permits. Indirect sources are subject to permit conditions that must be enforced and monitored in the same way as other facility permits. Therefore it is consistent and reasonable to charge annual fees for indirect source permits. However, since indirect source permits only apply to the construction period, or until compliance is documented as required by the permit, it is reasonable to charge annual fees only for that period of time.

Subp. 5a. Annual fee surcharges. This rule identifies additional fees for sources with a potential to emit more than 250 tons per year of air pollutants. Again, the larger sources require more work to regulate and therefore, it is reasonable that they pay a correspondingly larger fee for the work done by the Agency. The same categorization is used as was discussed under subp. 3.a.

Subp. 6. General Permits. Subpart 3. Item J. of Minn. Rules pt. 7002.0100 requires general permittees to pay a permit processing fee. It is therefore reasonable to amend this subpart (6) to reflect that proposed amendment.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1988) requires the Agency, when proposing rules which may affect small businesses, to consider the following methods for reducing the impact on small businesses:

(a) the establishment of less stringent compliance or reporting requirements for small businesses;

(b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) the consolidation or simplification of compliance or reporting requirements for small businesses;

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

(e) the exemption of small businesses from any or all requirements of the rule.

The proposed rules may affect small businesses as defined Minn. Stat. § 14.115 (1988). As a result, the Agency has considered the above-listed methods for reducing the impact of the rule on small businesses. Permit fees for small businesses were established in the existing rules at a level proportionate to their air emissions. Most small businesses are minor sources of air pollution, and therefore the fees are considerably less than those for the major sources. This differentiation in fees between minor and major sources will remain substantially the same under the proposed fee revisions.

Small business that qualify for general permits are not required to pay annual fees by the current rule. This situation is not changed by the proposed rule. A minimal permit processing fee ($75) is added by this rule for general permits. The fee should not represent a significant burden to small sources.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. § 116.07, subd. 6 (1988) 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, the Agency has given due consideration to available information as to any economic impacts the proposed rules would have. The Agency collects annual fees from approximately 600 air emission facilities each year. Annual fees will amount to approximately 70 percent or $916,500 of the $1,309,300 total special revenue appropriation for the 1990-1991 State Biennium. The remaining $392,800 for the Biennium will come from various other fees associated with approximately 220 permit actions and 170 compliance demonstrations to be conducted over the Biennium. While the Agency has considered the economic impacts of the proposed rules, it does not have the option of

eliminating them in light o the Legislature's requirement to collect additional fees.

VII. CONCLUSION

Based on the foregoing, the proposed amendments to Minn. Rules pts. 7002.0100 to 7002.0100 (1989) are both needed and reasonable.

DATED: August 11, 1989

Barbara Lindsey Lerner
for Gerald L. Willet
Commissioner