5/4/92

Minnesota Pollution Control Agency
520 Lafayette Road, Saint Paul, Minnesota 55155-3898
Telephone (612) 296-6300

April 2 , 1992

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:

Subject: Statement of Need and Reasonableness for Proposed Amended Rules Governing; Permits, Minn. Rules Parts 7001.0140 and 7001.0180; Air Emission Fees, Minn. Rules Parts 7002.0005 to 7002.0095; Air Quality Report Rule, Minn. Rules Part 7005.1870; Air Quality General Definitions, Minn. Rules Part 7005.0100; Emission Inventory, Minn. Rules Part 7005.1875 and Calculation of Actual Emissions for the Emission Inventory, Minn. Rules Part 7005.1876.

Enclosed for your review is a copy of the Statement of Need and Reasonableness for proposed rule revisions as required by Minnesota Statutes, section 14.115 subd. 8. If you have any questions please call me at (612) 296-7712.

Sincerely,

Norma L. Florell

Norma L. Florell
Planning and Rule Coordinator
Air Quality Division

NLF:jmd

Enclosure

STATE OF MINNESOTA

POLLUTION CONTROL AGENCY

In the Matter of Proposed Rules Governing; Permits, Minn. Rules Parts 7001.0140 and 7001.0180; Air Emission Fees, Minn. Rules Parts 7002.0005 to 7002.0095; Air Quality Report Rule, Minn. Rules Part 7005.1870; Air Quality General Definitions, Minn. Rules Part 7005.0100; Emission Inventory, Minn. Rules Part 7005.1875 and Calculation of Actual Emissions for The Emission Inventory, Minn. Rules Part 7005.1876.

STATEMENT OF NEED

AND REASONABLENESS

I. INTRODUCTION

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

On November 15, 1990, President Bush signed into law the Clean Air Act Amendments of 1990, Public Law No. 101-549, amending 42 U.S.C. §§ 7401-7671q (1990 Amendments). Title V of the 1990 Amendments (Exhibit 1) requires each state to develop a permit program to implement the requirements of the Clean Air Act. Title V also requires states to establish fees to fund this permit program, with the total amount of the fees to be linked to the total amount of air pollutant emissions reported in the state. The fees are to be assessed annually, and are to fund all direct and indirect reasonable costs of the permit program, including review of permit applications; implementing and

enforcing air quality statutes, rules and permits; air monitoring; rulemaking; modeling; and emissions inventories. As a result, the portion of the air program to be funded by fee revenues has increased substantially.

The 1991 Minnesota legislature amended the MPCA's statutory fee authority to allow fees to be used not only for the items listed in the 1990 Amendments (listed above), but also for most other aspects of the MPCA air quality program, such as the noise program and the state acid deposition program. 1991 Minn. Laws ch. 254, Article 2, § 37, amending Minn. Stat. § 116.07, subd. 4d (Exhibit 2). The 1991 legislature substantially reduced general fund money for the air quality program for fiscal year 1992, and eliminated all general fund money for the air quality program for fiscal year 1993. It appropriated over $3,000,000 to be collected in air quality fees in fiscal year 1992, and over $5,000,000 to be collected in fiscal year 1993.

An emergency fee rule was passed by the the MPCA Citizen's Board on August 27, 1991, and became effective September 25, 1991. The 1991 legislature had required a rule to be in place by September 1, 1991, leaving insufficient time for the full rulemaking process. Minn. Stat. § 14.29, subd. 1 (1990) provides that "when an agency is directed by statute, federal law or court order to adopt, amend, suspend or repeal a rule in a manner that does not allow for compliance with sections 14.14 to 14.28...the agency shall adopt emergency rules in accordance with sections 14.29 to 14.36." This emergency fee rule will ensure the collection of the appropriated fee amount for fiscal year 1992 only. The rule assesses fees based on the actual emissions reported in the 1990 emissions inventory.

The proposed permanent fee rule again bases fees on actual emissions for stationary sources; it contains a formula which may be used to calculate the dollar per ton figure each year, given the total fee appropriation and the

total number of tons in the inventory. The rule also includes a fee structure for indirect source permit fees. Changes to the emission inventory section of the rules (repeal Minn. Rules part 7005.1870, subp. 4, and add new parts 7005.1875 and 7005.1876) have been proposed to make the requirement to obtain an air emission permit from the state of Minnesota and the requirement to submit an emission inventory applicable to the same group of emission facilities, and also to explain alternatives for submitting emission inventory data. In addition four definitions have been added to part 7005.0100 that relate to the fee rule or the emission inventory.

A technical advisory committee was assembled to assist the MPCA staff in developing the proposed rule. The committee consisted of representatives of regulated industry, MPCA staff members, and representatives from the Minnesota Department of Commerce, the Minnesota Resource Recovery Association, the Association of Minnesota Counties, the Minnesota Office of Waste Management, and Project Environment Foundation. Four meetings were held between October and January of 1991 in which the proposed rule was discussed in detail. The input and comments of the committee were very helpful in the development of this rule.

II. STATEMENT OF THE MPCA'S STATUTORY AUTHORITY

The 1991 legislature amended Minn. Stat. § 116.07, subd. 4d, to require the MPCA's air quality program to collect annual fees to cover the majority of the costs of the air quality program. These fees are to be collected annually from all stationary air emission sources subject to the requirement to obtain a permit under Title V of the 1990 Amendments or under Minn. Stat. § 116.081 (1990). The MPCA's statutory authority to adopt this fee rule, except the indirect source permit provisions, is explicitly set forth in 1991 Minn. Laws ch. 254, art. 2, § 37 (to be codified as Minn. Stat. § 116.07, subd. 4d(c) and

(f)) (Exhibit 2) (hereinafter, the reader will be referred directly to the Minnesota Statutes section where these 1991 amendments will be codified).

The new fee authority provided in the 1991 legislation does not apply to fees imposed for Indirect Source Permits (ISP) (discussed further at Part IV, Statement of Reasonableness, "Part 7002.0055, Indirect Source Permit Fee"). In imposing the proposed service-based fees on ISP applicants, the MPCA is relying on its pre-existing authority found at what is now part (a) of Minn. Stat. § 116.07, subd. 4d (1990). This authority allows the MPCA to collect permit fees in amounts not greater than those necessary to cover the reasonable costs of reviewing and acting upon applications for MPCA permits and implementing and enforcing the conditions of the permits pursuant to MPCA rules. The MPCA's expansion of the emissions inventory requirements in parts 7005.1875 and 7005.1876 is founded upon the MPCA's authority to require air emitters to maintain records and make reports, set forth at Minn. Stat. § 116.07, subd. 9(b) (1990).

This rule also imposes a fixed fee on new facilities at part 7002.0025, subp. 2. The MPCA's authority to impose this new facility fee is found in both the new and the old fee authority, at Minn. Stat. § 116.07, and the old fee authority, at Minn. Stat. § 116.07, subd. 4d(a) and (c). This fee falls within the fee authority of subdivision 4d(a) because it is designed to cover the reasonable costs of reviewing and acting upon applications for MPCA permits and implementing and enforcing the conditions of the permits, as required by that section. It also falls within the fee authority of the new subdivision 4d(c) because it can be seen, in the case of new facilities, as the first of the annual fees required by the 1991 legislation.

III. STATEMENT OF NEED

Minn. Stat. §§ 14.131, 14.14, subd. 2, 14.23 and 14.26 (1990) 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 new fee rule is discussed below, and the reasonableness of the proposed rule is discussed in the following section.

The need for a rule of this type, imposing an annual fee on certain air pollution emitters, has already been determined by Congress, in its passage of the 1990 Clean Air Act Amendments, and by the Minnesota legislature, in its 1991 passage of amendments to Minn. Stat. § 116.07, subd. 4d. This part provides additional background information regarding the passage of those laws, their effect on the MPCA, and the extent to which the proposed rule is shaped by them.

Title V of the 1990 Clean Air Act Amendments requires each state to develop and submit to the U.S. Environmental Protection Agency (EPA) a new permit program by November 15, 1993. Public Law No. 101-549, amending 42 U.S.C. § 7661a(b) and (d) (Exhibit 1) (hereinafter, the reader will be referred directly to the provisions of the United States Code where the 1990 Amendments will be codified). To obtain federal approval, Minnesota will be required in its new permit program to take on new regulatory tasks, such as permitting additional categories of sources, regulating and inventorying many additional pollutants, responding more quickly to permit applications, making additional reports to EPA, and instituting a new small business assistance program. Title V specifies that the costs associated with the new permit program and related programs shall be recovered through annual fees assessed to the regulated

facilities. 42 U.S.C. § 7661a(b)(3)(A). In addition, Title V requires that the fees result in the collection of an aggregate amount of not less than $25 per ton of regulated pollutants emitted from regulated sources within the state (not including tons of pollutants in excess of 4000 emitted from a single source). 42 U.S.C. § 7661a(b)(3)(B)(i).

To facilitate Minnesota's development of the federally-required permit program and fees, and to reduce MPCA reliance on general fund appropriations, the 1991 Minnesota legislature adopted its amendments to Minn. Stat § 116.07, subd. 4d. At the same time, the legislature passed an appropriations bill that has the effect of systematically eliminating the state general fund appropriation to the Air Quality Division over the next two years. 1991 Minn. Laws, ch. 254, art. 2, § 2, subd. 3. The state general fund appropriation accounted for approximately 43 percent of the total Air Quality Division operating budget in fiscal year 1991, will account for approximately eight percent in fiscal year 1992, and will be entirely eliminated in fiscal year 1993. The 1991 legislation requires the MPCA to make up the lost funding through fee collections. Minn. Stat. § 116.07, subd. 4d(b). In particular, the state statute requires the MPCA to collect an annual fee from air emission sources which are required to obtain permits under state or federal law, and to apply the fee to the MPCA's air quality program costs. Minn. Stat. § 116.07, subd. 4d(b).

The state statute also requires that the fee result in the collection in the aggregate of certain minimum amounts. For fiscal years 1992 and 1993, the fee must collect the amounts appropriated by the legislature for the MPCA's air quality program. For fiscal year 1994 and thereafter, the statute parallels federal requirements by mandating that the MPCA's fee collect an aggregate amount of $25 per ton of regulated pollutant emitted by regulated sources in

the state, excluding tons of each pollutant over 4000 at a single source. Minn. Stat. § 116.07, subd. 4d(c).

In order to comply with the explicit requirements of both state and federal legislation, and to provide a substitute source of funding to replace the Air Quality Division's reduced general funding, MPCA needs to change its rules to collect an increased amount of money through annual fees.

IV. STATEMENT OF REASONABLENESS

The MPCA is required by Minn. Stat. ch. 14 (1990) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. "Reasonableness" means that there is a rational basis for the MPCA's proposed action. The reasonableness of the proposed rule is discussed below.

A. Reasonableness of the Rules as a Whole

The MPCA proposes to replace existing Minn. Rules parts 7002.0010 to 7002.0110 with Minn. Rules parts 7002.0005 to 7002.0085, and also to repeal Minn. Rules part 7005.1870, subp. 4, and add new sections 7005.1875 and 7005.1876. The new fee rule will serve the purpose of raising additional revenue, and also (with the exception of indirect source permit fees) restructuring the system so that fees are paid based on air pollutant emissions, and not based on services from the MPCA as they have been in the past.

The MPCA assembled a Technical Advisory Committee (TAC) to assist it in the development of this rule. The committee was made up of representatives from industry, an environmental group, and other government agencies. Meetings were held on October 10, October 24, November 7, and January 9. The committee members reviewed various drafts of the rule as it evolved. All aspects of the rule were discussed, and many decisions were made based on the discussions in these meetings.

The issues of primary concern to the members of the TAC were the following: (1) whether a "cap" should be imposed on the emissions fee, so that a fee would not be charged for emissions over a certain amount, or a lesser fee would be charged; (2) whether the fee should be weighted based on the toxicity of the pollutant being emitted; (3) whether fees should be based on actual or potential emissions; (4) what means should be acceptable for measuring emissions to be reported in the emissions inventory; (5) whether a quarterly payment option should be available; and (6) what procedures there should be for resolving disputes with the MPCA over emissions or fees. Each of these issues, and the related considerations that shaped the MPCA's proposed rule, will be discussed in more detail in the policy discussion and section by section analysis below.

The "polluter pays" concept is central to the fee collection system in the 1991 amendments to Minn. Stat. § 116.07, subd. 4b. Although facilities will not be able to control the specific dollar per ton amount they will pay each year, they will have control over the amount of pollution they emit to the atmosphere, and thus have some control over their annual fee. The polluter pays concept may also provide a incentive for facilities to reduce air emissions.

No Emissions Cap

One of the most important issues considered by the MPCA in drafting this rule was whether or not the rule should include a "cap" on payments made by facilities whose emissions are over a certain level. This matter was discussed by the TAC and no consensus was ever reached. The MPCA ultimately decided, for the reasons discussed below, not to include a cap in the proposed rule.

As discussed earlier, both Title V of the 1990 Clean Air Act Amendments and the 1991 amendments to Minn. Stat. § 116.07, subd. 4d, require the MPCA to impose a fee that will result in the collection in the aggregate of a minimum amount: [1] $25 per ton of each of several regulated pollutants emitted in the state. However, in calculating that aggregate amount, the federal law allows, and the state law requires, the MPCA to ignore those emissions in excess of 4000 tons per year of each pollutant from a single source. 42 U.S.C. § 7661a(b)(3)(B)(iii), Minn. Stat. § 116.07, subd. 4d(c). As a result, the total amount that must be collected by these fees is substantially less than it would otherwise be.

While the federal and state laws mandate collection of a certain minimum amount, they leave to the discretion of the MPCA the decision of how to distribute the fee among various emitters, including whether or not a cap should be imposed on the fees paid by a given facility. Large emitters of air pollutants, in particular, Northern States Power (NSP) and Minnesota Power, expressed their opinion in the Technical Advisory Committee and elsewhere that the MPCA's rule should include such a cap. They noted that without a cap, utilities would be paying a large percentage of the fees collected by the Air Quality Division, but that these utilities do not demand a similarly large fraction of the Air Quality Division's regulatory attention.

In considering whether or not a cap should be incorporated into the rule, the MPCA staff analyzed four different emission cap scenarios. This analysis is set forth in Exhibit 3. The four scenarios are: 1) a 4000 ton

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1. The Clean Air Act Amendments do allow a state to collect less than the minimum amount if it can demonstrate that it can meet all program goals with less. 42 U.S.C. § 7661a(b)(3)(B)(iv). However, the state statute does not allow that option. Minn. Stat. § 116.07, subd. 4d(c).

cap, 2) a 10,000 ton cap, 3) half-charge for emissions over 4000 tons, and 4) no cap. The analysis makes the following assumptions:

1. The most current 1990 emission data was used. This data was not finalized when this scenario was prepared and is subject to change.
2. A fixed fee collection target of $6,000,000 is assumed for example.
3. The potential effects of new permit charges and indirect source permit charges on the total collection target are ignored.

The analysis shows the impact of the various scenarios on several example industries. In addition, four companies that would potentially benefit from a 4000 ton cap are studied specifically to determine what percentage of the total $6,000,000 target they would pay.

The analysis shows that the four companies listed would pay up to 58 percent of the fees collected by the MPCA if there were no cap, and would pay about 30 percent if there were a 4000 ton cap. NSP Company, the company for which the cap would have the greatest impact, would pay approximately 38 percent of the fees with no cap, and about 17 percent with a 4000 ton cap. The analysis also shows that with no cap the fee per ton of pollutant emitted would be $13.01, and with a 4000 ton cap it would be $25.01. An analysis similar to the one presented in Exhibit 3 was publicly reviewed by MPCA board members on two occasions: on June 25, 1991, when the emergency rule was under consideration, and at the Air Quality Board Committee meeting on December 16, 1991, in the context of the proposed permanent rule. At both of those meetings, representatives of NSP Company made their views known to the Board Committee members and MPCA staff. Minnesota Power and Light was also

represented at the December 16 committee meeting to support an emissions cap, and Virginia Public Utilities was represented to oppose a cap. The issue was also considered at three of the TAC meetings, where TAC members disputed whether or not a cap was appropriate. The MPCA recognizes that placing a cap on emissions would have certain advantages. Primarily, it would keep the percentage of revenues paid by the utilities closer to the percentage of MPCA time devoted to regulating them. In addition, a cap would decrease the secondary effect of the utilities' fee burden on on all consumers of power, including other businesses.

The MPCA believes, however, that it is more advantageous, and more consistent with legislative intent, not to have a cap in the rule. First, putting a cap into the rule would increase the fee per ton by approximately 90 percent. This increase would shift onto small emitters, who are typically smaller businesses, a much greater fee burden than they would otherwise pay. The MPCA is directed by Minn. Stat. § 14.115, subd. 2 (1990) to consider various options for reducing the burden of environmental regulation on small businesses. Not including a cap, and thereby keeping the dollar per ton rate lower, is consistent with this directive.

As the figures set forth in the MPCA's "Consideration of Economic Factors," section below (section VI) show, the increased fee paid by the large utilities appears to be a relatively small percentage of their total operating revenues (less than 0.5 percent in the case of NSP). The MPCA believes these utilities will be able to absorb this additional cost or pass it on to ratepayers without a significant change in rates. To the extent that ratepayers ultimately pay this fee, the MPCA considers that to be fair because all ratepayers benefit from the energy associated with the pollution on which the fee is based. There is no comparable assurance that smaller emitters could

easily bear or pass along the increase in the fee that would result if there were a cap, particularly since, unlike the utilities, most of the other sources face competition from companies in other states or countries who may not pay similar fees.

Not including a cap in the rule also acknowledges that an important goal of the rule is to correlate the fee to the impact an emitter has on the environment. This approach will create some incentive for emitters to limit their emissions. Putting a cap in the rule would have eliminated that incentive for the largest emitters. Moreover, the MPCA recognizes that the 4001st ton of a pollutant emitted by a facility has the same potential impact on the environment as the first ton emitted by that facility. Imposing the fee equally on those two tons is therefore appropriate.

The MPCA believes that its "no-cap" approach to the fee, focusing not just on the costs of regulation but on an emitter's impact on the environment, is consistent with the intent of the Minnesota legislature when it adopted the amendments to Minn. Stat. § 116.07, subd. 4d. On April 24, 1991, representatives from both Minnesota Power and NSP testified before the Environment and Natural Resources Division of the Senate Finance Committee during its consideration of the fee amendments. The NSP representative noted that NSP could end up paying from 23 percent to 36 percent of the MPCA's collected revenues under the proposed amendments. Senator Steven Morse, the Senate sponsor of the amendments, stated as follows:

> ...although NSP might end up paying a disproportionately large share for what it costs to regulate NSP, that's -- what that tells me is that NSP is also putting in a disproportionately large load of the contaminants into the environment. And there are two ways of looking at this: how much it costs to regulate NSP, and also how much

pollution is going up. And I think there ought to be some proportional relationship between how much pollution is going up the stack and how much someone pays for doing that.

By not incorporating a cap into the rule, the MPCA is proposing a fee that is more closely linked to an emitter's impact on the environment than on the costs of regulating that emitter. This approach reflects the intent of the legislature, as illustrated by the above comments by the sponsor of the legislation.

B. Reasonableness of the Rule by Section

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

Part 7001.0140 FINAL DETERMINATION

Subpart 2. Agency Findings (Item 7)

and

Part 7001.-0180 Justification To Commence Revocation Without Reissuance Of Permit (Item D)

The changes to the permit revocation provisions of Minnesota Rules pts. 7001.0140 and 7001.0180 are needed and reasonable because they ensure that the MPCA's existing enforcement authority over air quality fees will apply to the new emissions fees.

Formerly, the MPCA had the authority to revoke a permit if the permittee had not paid air permit fees (and the MPCA still has this authority regarding other permit fees it assesses. By repealing the air quality permit fee provisions and referring to the fees proposed in this rule as "emission fees," the existing provision of parts 7001.0140 and 7001.0180 would arguably not apply. These changes ensure that the MPCA retains the ability to use its permit revocation authority if the emission fees are not paid. Because the

fees for many facilities will be much larger under the proposed rule than in the past, owners and operators may be less willing to pay them. It is therefore even more important for the MPCA to have effective enforcement tools to ensure compliance with the fee rule.

Part 7002.0005 SCOPE

This proposed rule section sets forth the scope and applicability of the air emission fee rules. This rule will apply to all facilities that are required to obtain an air emission permit or an indirect source permit from the state of Minnesota, plus any facility that is subject to the requirement to obtain a permit under Title V of the 1990 Clean Air Act Amendments. The sources that are subject to Title V will all eventually have to obtain a Minnesota air emission permit. This rule section is reasonable because Minn. Stat. § 116.07, subd. 4d(b) requires the MPCA to collect fees from all stationary sources, emission facilities, etc., subject to the cited state or federal permitting requirements.

Part 7002.0015 DEFINITIONS

This proposed section sets forth the definition of terms used within the rules. Definitions proposed that differ from terms defined in the previous fee rule or in another section of the rules are discussed below.

Subpart 2. Affected Facility

The intent of part 7002.0005 SCOPE is to make this rule applicable to any air emission facility that will be required to obtain an air emission permit from the state of Minnesota. Similarly, affected facility is defined to cover all those required to obtain an air emission permit, except those obtaining a permit solely under the indirect source provisions. This term is defined here to simplify the rest of the rule, and to avoid the need to amend

the rule in the event that the requirements to obtain an air emission permit eventually change.

Facilities obtaining indirect source permits are excluded from the definition of affected facility because these facilities are not required to pay an emission based fee. Therefore, the provisions of parts 7002..0025, 7002.0085, and 7005.1875 should not apply to them. Removing them from the definition of affected facility has this effect.

Subpart 3. Emission Inventory

This definition defines the inventory and refers the reader to the requirements given in new part 7005.1875.

Subpart 4. Regulated Pollutants

The calculation of the fee target amount, the fees due by a facility, and the information submitted in the emissions inventory all turn on the definition of "regulated pollutant." It is therefore reasonable to define that term.

The definition proposed includes nitrogen oxides, volatile organic compounds (VOC), and pollutants for which a National Ambient Air Quality Standard (NAAQS) has been promulgated (excluding carbon monoxide), consistent with the requirements of the 1991 amendments to Minn. Stat. § 116.07, subd. 4d(c) and 42 U.S.C. § 7661a(b)(3)(B)(ii). Pollutants for which a NAAQS has been promulgated are PM-10, sulfur dioxide, lead, and carbon monoxide. There is a NAAQS for nitrogen dioxide, but "oxides of nitrogen" are included in the fee base because of the fact that nitrogen oxide (NO) is emitted in addition to nitrogen dioxide from most combustion processes. It is appropriate to include both in the fee base because nitrogen oxide oxidizes to nitrogen dioxide in the atmosphere. The most current draft of EPA's rules for state permit programs

(40 CFR Part 70) which are meant to interpret the provisions of Title V of the 1990 Clean Air Act Amendments makes this distinction as well.

Not explicitly included in the definition of regulated pollutant are pollutants regulated under Section 111 and 112 of the Federal Clean Air Act. Most of the pollutants regulated under section 111 and 112 of the Clean Air Act are VOCs or particulates, and as such they are already included in the definition of regulated pollutants, however there are a few exceptions. The MPCA is planning to regulate these pollutants in its pending toxics rule, in which it will establish methods for measuring the emissions of those pollutants, and set up an inventory system for these pollutants, or utilize an existing inventory system. Until these methods are established, the MPCA has no way to reliably measure and record the emissions of Section 111 and 112 pollutants, and hence no way to charge a fee based on them. It is the MPCA's intention to amend this definition of regulated pollutant to include pollutants regulated under sections 111 and 112 of the Clean Air Act, and to include pollutants for which a state ambient air standard, but not a NAAQS, has been established, as part of the pending toxics rulemaking.

Part 7002.0025 ANNUAL EMISSION FEE RATES

Subpart 1. Annual Emissions Fee

Subpart 1 of this part requires owners and operators of affected facilities to pay an annual emission fee for each ton of pollutant emitted. This subpart describes the fee per ton in terms of "X," the calculation of which is explained in part 7002.0045, rather than in specific dollar amounts. Discussed further below, the value of X is determined by dividing the total amount of money that needs to be collected by the total number of tons in the emission inventory. A specific dollar per ton amount was not placed in the rule because if it had been, the total amount collected would vary every year

with the number of tons in the inventory, or else the dollar per ton amount would have to be changed in the rule each year to accommodate the current budget and to ensure compliance with the state and federally imposed minimum collection amounts. The approach taken here is reasonable because it eliminates the need for the division to enter rulemaking each year. This approach also establishes a fixed method of calculating the fee per ton, without leaving it up to the MPCA's discretion.

The fee will be based on each ton of regulated pollutant actually emitted from the facility during a given year, as determined by the most recent available emission inventory. In the case of the 1993 emission fee, the most recent available inventory will be the one covering 1991 emissions, due to be submitted to the MPCA on April 1, 1992. Because the changes to the emissions inventory proposed in this rule will not be effective by the April 1 deadline, facilities will be required to submit their inventories under the existing provision of part 7005.1870, subp. 4. As a result, the emissions fees for fiscal year 1993 will only be charged to those required to submit information under the existing inventory provisions. This excludes those facilities who have potential emissions of over 25 tons per year but who have actual emissions below 25 tons per year, and who therefore are not required to submit an inventory under existing law. The MPCA believes that this group as a whole emits relatively few tons per year, and that excluding them from the fee for fiscal year 1993 is reasonable given the administrative cost and difficulty of conducting a second inventory between the time this rule is effective and the time the fiscal year 1993 billings must be sent out.

Initially, MPCA staff planned to place the fee on potential emissions rather than actual emissions. Potential emissions, defined at Minn. Rules pt. 7005.0100, subp. 35a (1991), are essentially a facility's emissions if it were

running at its maximum allowable capacity all year long. MPCA staff preferred this approach to imposing the fee because it would be an easier system to administer and it would create an incentive for facilities to have their permits amended to eliminate unused potential emissions, which would aid the MPCA in air quality planning.

Many members of the TAC objected to charging the fee based on potential emissions because it does not accurately portray what a facility emits from year to year. The committee felt that if efforts were made to reduce emissions in a particular year, or if economic or weather factors reduced the amount of pollution from a particular facility for a given year, then the annual fee should reflect the change. The MPCA decided to base its fee on actual emissions instead of potential emissions in answer to these comments, and corresponding changes to the emission inventory portion of the rule have been made accordingly.

The fee per ton in the proposed rule does not vary with the toxicity of the pollutant. Earlier drafts of the rule imposed a charge on lead emissions that was fifty times higher than the charge imposed on the other pollutants. This weighting was arrived at by comparing the federal ambient air standards for lead versus the average of the standards for the other pollutants for which a NAAQS has been promulgated. By this comparison, lead was approximately 50 times more toxic than the other pollutants, and hence the MPCA proposed to charge it a fee that would be fifty times higher.

Many members of the TAC objected to imposing a weighted fee on lead at this time. Many other toxic pollutants, which are the subject of the upcoming MPCA toxics rulemaking, will ultimately be subject to this fee. They are not currently subject to the fee, as explained above, because their emissions cannot be accurately measured and inventoried until the MPCA

completes the toxics rulemaking. As part of that rulemaking, the MPCA intends to establish a ranking system assigning a relative toxicity to each pollutant. The MPCA intends to amend the fee rule at that time to add those pollutants, charging differential fees that will reflect the toxicity ranking system. The ranking system in the toxics rule is likely to be somewhat different than that relied on by staff to weight the lead fee. For these reasons, the MPCA has decided not to attempt to impose a differential fee on lead at this time. When the toxics rule is adopted, the fee for lead can be weighted along with the fees for all the other pollutants, using a consistent toxicity ranking method.

Subpart 2. New Facilities

Subpart 2 sets a fee for new air emission facilities that have been issued an air emission permit in the previous calendar year, but have not yet been required to submit an emission inventory. The TAC discussed a fee of this type because of the fact that there is a one year lag between the time pollutants are emitted and the time they are charged a fee (i.e. pollutants emitted in calendar year 1992 will be billed for in January of 1994).

The new facility fee was set by averaging the annual costs of permitting and enforcing the average facility. Since the permit cycle is five years, the costs of permitting and enforcement were accumulated for a five year period, and then the result was divided by five to get an annual average cost. The annual costs were determined by multiplying the average number of hours spent on each task related to permitting and enforcement by the average salary and benefit hourly cost related to that activity. The result was multiplied by a factor of 1.285 for indirect costs, which is the factor used by the MPCA for state fiscal year 1992. The factor for fiscal year 1993 is not yet available, but should be fairly consistent with the 1992 factor. The calculations are shown below. The permit numbers are based on federal fiscal year 1991, and the

times are based on state fiscal year 1991, but they are used together to estimate costs. The engineering time spent on permits and amendments could not be separated, so the estimate of average time spent on a permit will be conservative.

PERMIT STAFF

Actions: 134 permits + 116 amendments = 250 permit actions

Hours:		
	Permitting:	12,846 hours
	Enforcement issues:	128 hours
	Documentation:	3,545 hours
	Record Keeping:	85 hours
	Total:	16,604 hours

16,604 / 250 = 66.42 hours/permit action

Average permit engineer cost (including benefits):
$53,687/year / 52 weeks/year / 40 hours/week X 1.285 = $33.17/hour
66.42 hours X $33.17/hour = $2202.97

MANAGEMENT

Engineering Supervisor Cost (including benefits):
$60,866/year / 52 weeks/year / 40 hours/week X 1.285 = $37.60/hour
(assume one hour)

Section Manager Cost (including benefits):
$60,771/year / 52 weeks/year / 40 hours/week X 1.285 = $37.54/hour
(assume one hour)

Total Management Cost: $37.60 + $37.54 = $75.14

CLERICAL

Average Clerk Typist Cost (including benefits):
$27,590/year / 52 weeks/year / 40 hours/week X 1.285 = $17.05/hour
(assume eight hours)

8 hours X $17.05/hour = $136.36

ENFORCEMENT

Inspections: 468/year
Inspection hours: 5,180/year

5,180 / 468 = 11.07 hours/inspection

Average enforcement staff cost (including benefits):
$41,709/year / 52 weeks/year / 40 hours/week X 1.285 = $25.77/hour

11.07 hours X $25.77/hour = $285.24 ($1426.22 for 5 inspections)

TOTAL COST

5-year total (assuming one inspection/year):

Permit Staff:	$2202.97
Management:	$75.14
Clerical:	$136.36
Enforcement:	$1426.22
Total:	$3840.69

Annual total cost: $3840.69 / 5 = $768.14

Based on the above calculations, a fee of $770 has been set for new facilities to be billed the calendar year following their permit issuance.

Subpart 3. Use of Potential Emissions

Subpart 3 states that if an emission facility fails to submit actual emissions data as required by part 7005.1870 subpart 4 or 7005.1875, the emission fee for that facility will be based on the facility's potential-to-emit, which assumes continuous operation of the facility throughout the calendar year. This is reasonable because potential-to-emit will be the best data available to the MPCA in the absence of facility-supplied emission data. Moreover, because the potential-to-emit will always be somewhat greater than the actual emissions, it creates an incentive for facilities to supply their actual emissions data.

Part 7002.0035 AIR QUALITY ANNUAL FEE TARGET

The fee target part is included in this rule because the rule uses a formula for emission fees rather than specific dollar amounts, so we must give some indication of how we will set the targeted fee amount.

Fee Target for Fiscal Year 1993

Item A sets the fee target for fiscal year 1993 at $5,093,000. This

amount is reasonable because it reflects the requirements of Minn. Stat. § 116.07, subd. 4d(c)(1), which says that the MPCA's fee rule must result in the collection, for fiscal year 1993, of "the amount appropriated by the legislature from the air quality account in the environmental fund for the agency's air quality program." The law requires the MPCA to apply its revenues from those fees to "all direct and indirect" costs of the program. Minn. Stat. § 116.07, subd. 4d(b).

The legislature's direct appropriation to the MPCA's Air Quality Division from the environmental fund for fiscal year 1993 was $5,011,000. 1991 Minn. Laws, ch. 254, art. 1, § 2, subd. 1. The Air Quality Division's indirect costs for fiscal year 1993 are $156,000. This figure is arrived at by starting with the amount appropriated from the environment fund to the MPCA for General Support in fiscal year 1993, or $2,115,000. 1991 Minn. Laws, ch. 254, art. 1, § 2, subd. 7. The MPCA determines the Air Quality Division's share of these indirect costs by using the indirect cost allocation plan originally prepared for use in federal grant submissions, which has been approved by the EPA and the Minnesota Department of Finance under Minn. Stat. § 16A.127, subd. 4 (1990). From the sum of its direct and indirect appropriation, or $5,167,000, the MPCA has subtracted the amount paid to it by the Metropolitan Airport Commission to operate the state airport noise program. In fiscal year 1993, this amount will be $74,000. Hence, the MPCA's fee target for fiscal year 1993 is $5,093,000.

Fee Target for Fiscal Year 1994 and Thereafter

Part b. explains that the fee target for fiscal year 1994 and thereafter will be the larger of the following:

1. The legislative appropriation to the Air Quality Division (direct and indirect costs, minus any amount collected from the Metropolitan Airport Commission for the airport noise program); or
2. An amount calculated by multiplying $25/ton, in 1989 dollars, by the number of tons of regulated pollutants in the most recent emission inventory, using a maximum of 4000 tons of pollutant for any facility.

The purpose of this language is to satisfy the minimum criteria set forth in both the state and federal legislation. These laws require the fee rule to collect a minimum of $25 per ton (the federal law allows the state to collect a lesser amount if it can be proven that a lesser amount is adequate to fund the entire Title V permit program, but the state law does not allow that option). Minn. Stat. § 116.07, subd. 4d(c)(2) and 42 U.S.C. § 7661a(b)(3)(B)(i). This dual approach to setting the fee target is reasonable because it ensures that the minimum amount required by state and federal statute will be collected. However, it also gives the MPCA the opportunity to collect more than the $25/ton amount, if more is needed to finance the Air Quality Division's programs, by persuading the legislature that a higher appropriation is required. This flexibility is needed to ensure that the MPCA's Air Quality Division can collect enough to cover all its reasonable direct and indirect costs related to the listed activities, as required by state and federal law. Minn. Stat. § 116.07, subd. 4d(b) and 42 U.S.C. § 7661a(b)(3)(b)(i).

If the $25/ton calculation is used to calculate the fee target, it must first be adjusted for inflation since 1989. This adjustment is required by state and federal law. Minn. Stat. § 116.07, subd. 4d(d) and 42 U.S.C. § 7661a(b)(3)(B)(v). In its proposed rules implementing the provisions of Title

V of the Clean Air Act Amendments, EPA described in detail a means of adjusting the $25/ton figure by comparing the 1989 Consumer Price Index with the most recent one. The rule requires that the inflation adjustment made to the $25/ton figure be consistent with the rules EPA ultimately adopts on this point. This is reasonable because it ensures that the approach taken under this rule will comply with the approach the EPA will require as it reviews the rule for program approval. The rules adopted by the EPA will be consistent with the inflation adjustment required by state statute, because the state statutory provisions on inflation adjustment were modelled after the Federal Clean Air Act provisions under which EPA's rules will be adopted. Minn. Stat. § 116.07, subd. 4d(d) and 42 U.S.C § 7661a(b)(3)(B)(v).

Item C is reasonable and necessary because it is highly unlikely that the MPCA will be able to collect the exact amount of its fee target in any given year. A potential overcollection or more likely, undercollection, could be caused by many factors discussed more below. If the MPCA fails to collect its fee target in a given year, and is therefore unable to return to the air quality account in the environmental fund all that it has been appropriated, Item C(1) allows for the excess to be carried over and be subtracted from the next year's fee target. Item C(3) allows it to collect the shortfall the next year. Conversely if the MPCA collects more than its fee target, Item C(2) allows for the excess to be carried over and be subtracted from the next year's fee target. Item C(3) allows the Commissioner to build a "cushion" into its fee target, of no more than five percent, in recognition of the likelihood that it will not collect its full fee target each year.

The MPCA is primarily concerned about undercollection, considering it to be more likely than overcollection. One potential cause of undercollection would be mistakes in collecting emissions data, including mistakes made by

reporting facilities, by the MPCA, or by the MPCA's contractor. (While mistakes could as easily result in overcollection as in undercollection, the ones that would result in overcollection will be more consistently noticed by facilities and brought to the MPCA's attention). The MPCA hopes to minimize these mistakes through quality control measures and through certain amendments to the inventory requirements, discussed below, but some may still occur, particularly while the fee program is new. In addition, undercollection may result from nonpayment by certain emitters. While the MPCA intends to vigorously enforce the payment provisions, it would be unrealistic to expect 100% payment, particularly in times of economic recession when some emitters might file for bankruptcy protection. The bankruptcy of a single relatively large emitter could result in a significant undercollection of fees by the MPCA.

The five percent nonpayment rate is currently the MPCA's best-guess of likely nonpayment. It is based on nonpayment rates of air quality fees for fiscal years 89 and 90. The rule allows the Commissioner to build in a cushion that is less than five percent if future experience shows a better rate of payment.

The cushion provisions of Item C(3) result in a fee rule that will as closely as possible comply with the statutory requirement to adopt fee rules that will "result in the collection" of the target amount. Minn. Stat. § 116.07, subd. 4d(c). The flow-through provisions of parts c(1) ad c(2) ensure that if the MPCA inaccurately predicts the nonpayment rate, its undercollection or overcollection will be corrected the next year. These adjustments are necessary for the reasons discussed above. They are reasonable because they ensure that in the long run, the MPCA collects its established fee target, no less and no more.

Part 7002.0035 COMPUTATION OF THE DOLLAR PER TON FIGURE

This part explains how the dollar per ton figure will be calculated. The reasonableness of having a formula in the rule instead of specific dollar per ton amounts is discussed above under part 7002.0025 "ANNUAL EMISSION FEE RATES." The calculation starts with the fee target, as determined in part 7002.0035, subtracts the total amount to be billed as indirect source permit fees and new permit fees for the previous calendar year, and divides by the number of tons in the inventory. This approach is reasonable because the previous calendar year's permitting activities will be the most recent data available at the time of the billing.

Part 7002.0055 INDIRECT SOURCE PERMIT FEES

This part outlines charges for ISP fees. An indirect source, according to Minn. Rules part 7001.1260, subp. 5, is "a facility, building, structure, or installation which attracts or may attract mobile source activity that results in emissions of a pollutant for which there is a state standard." A person constructing such an indirect source is required by Minn. Rules part 7001.1270 (1991) to first obtain an ISP permit from the MPCA. For reasons explained below, related to statutory authority and administrative practicality, the ISP fee is not an annual emissions-based fee, but a one-time service-based fee.

The requirement that the MPCA impose an annual fee, set forth in the 1991 amendments to the state fee statute, does not apply to indirect sources. The statute requires that the MPCA impose annual fees on owners and operators of "all stationary sources, emission facilities, emissions units, air contaminant treatment facilities, treatment facilities, potential air contaminant storage facilities, or storage facilities" subject to state or federal air permitting requirements. Minn. Stat. § 116.07, subd. 4d(b).

Indirect sources do not fall within this definition of sources subject to the annual fee, and therefore the MPCA is not relying on the 1991 legislation for its authority to impose ISP permit fees. Rather, the MPCA is relying on its pre-existing statutory authority at what is now part (a) of Minn. Stat. § 116.07, Subd. 4d (1990). This pre-existing authority allows the MPCA collect fees related to the costs of reviewing and acting upon permit applications, and implementing and enforcing the conditions of those permits.

In addition, it would be impractical to try to charge an annual emissions based fee to indirect sources. An ISP permit does not govern what the source actually emits, but instead relates to the emissions it attracts in the form of traffic, and such emissions are difficult to measure. Also, unlike other air quality permits which expire in five years, indirect source permits have no fixed expiration date. Charging a one-time service based fee is therefore more appropriate.

Three staff people work part-time on the ISP program. The percentage of their time they devote to ISP depends on the number and type of ISP applications received. Application rates vary tremendously from year to year. In calendar year 1990, 21 applications were received; in calendar year 1991, 11 applications were received. It is therefore very difficult to predict the number of ISP applications that will be submitted in upcoming years.

Under the circumstances, rather than determining program costs and dividing by predicted applications to establish the fee, the MPCA has analyzed the hours of staff time typically involved in reviewing ISP applications. Staff reviewed permit applications submitted over the past several years and determined that it took approximately 15 hours to process a "basic" ISP application, i.e., one that did not involve any of several complicating factors. They then reviewed more complicated permits in a variety of

categories, and determined how many additional hours were typically involved in processing those permits. [2] These numbers were then multiplied by the average ISP hourly staff costs, including benefits, and multiplied by the indirect cost factor, to come up with appropriate basic fees and, where complicating factors exist, appropriate surcharges. The calculations are given below. Fees were rounded to the nearest $5.

Average hourly ISP staff cost (including benefits):

$43,260/year / 52 weeks/year / 40 hours/week X 1.285 = $26.73

The noise variance cost (*) contains 45 hours of ISP staff time, and also an estimated 80 hours of Noise Unit staff time at $41,709/year X 1.285 or $25.77/hour.

ACTIVITY	HOURS	FEE
Basic charges:		
New permit application	60	$1605
Permit modification application	45	$1205
Surcharges:		
Involves 5000 or more parking spaces or 700,000 or more square fee	75	$2005
*Noise variance applied for	45 + 80	$3265
On-site contamination affects facility	30	$800
Requires binding commitments for new roadway improvements	45	$1205
Requires involvement of more than one governmental unit or roadway authority	15	$400
Involves more than one applicant (except governmental co-applicants acting in regulatory capacity)	75	$2005

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2. However, indirect sources may also be stationary sources if they emit their own pollutants in addition to attracting pollution in the form of traffic. To the extent they emit pollution directly, they may, of course, be subject to the requirements to obtain a permit for those emissions and to pay the emissions fees.

Permit application formally amended
during application review process
to change size or scope of project.....45.....$1205
Contains an entertainment or sports
facility with a peak attendance
level of 10,000 people or more, or
10,000 or more parking spaces.....60.....$1605
Involves a Change in ownership (except
from single owner to single owner).....45.....$1205

As noted above, the surcharges are designed to reflect the typical increase in staff time that results when various complicating factors are present in an ISP application. It is reasonable to charge these surcharges because it keeps the basic ISP fees relatively low, and allows the fee to be more closely tailored to reflect the actual staff attention demanded by an application. Set forth below are the reasons why additional staff time is required in each circumstance where a surcharge applies.

Involves 5000 or more parking spaces or 700,000 or more square feet. This surcharge is reasonable because applications for facilities of this size require more staff analysis. In addition, permits for facilities with 5000 new or additional parking spaces require staff to comply with certain public noticing provisions of Minn. Rules ch. 7001 (1991), from which smaller facilities are exempted. See Minn. Rules pt. 7001.0020, subp. J (1991). Additional staff time is required for tasks such as preparing and posting public notices, responding to citizen inquiries, analyzing the impact of the proposed source on additional intersections and on other indirect sources, determining the impact of the source on the area's NAAQS attainment status, and preparing unique special conditions for the permit.

Noise variance applied for. If an applicant applies for a variance from the noise standards of Minn. Rules ch. 7010 (1991), that variance will be reflected in the ISP permit. As a result, staff enforcing the noise rule and those reviewing ISP permits will be involved in reviewing the variance request,

preparing the necessary Board items and public notices, and adding noise provisions to the ISP permit.

On-site contamination affects facility. This surcharge would apply when the construction of the facility to be permitted would be complicated by the presence of ground contamination due to hazardous waste dumping, leaking underground storage tanks, etc. Pursuant to Minn. Rules 7001.1340 (1991), an ISP must include "conditions necessary for the permittee to achieve compliance with all applicable Minnesota or federal statutes or rules." Where ground contamination is present, construction of the indirect source could expose the contamination to the air and cause new air emissions. Such contamination could also cause other problems during or after construction, such as explosions and drinking water contamination. To minimize this possibility, ISPs will incorporate necessary construction or cleanup limitations suggested by other MPCA divisions more directly involved in overseeing cleanups, resulting in additional staff hours processing the ISP application.

Requires binding commitments for new roadway improvements. The primary goal of the ISP program is to ensure that roadways are adequate to handle the anticipated new traffic without air-polluting traffic jams. Sometimes, roadway improvements are necessary to achieve this goal. Under Minn. Rules pt. 7001.1340, subp. 1.A. (1991), ISPs may include a condition that source owners and operators obtain binding commitments to make roadway improvements from governmental authorities. When such commitments are involved, additional MPCA staff time is typically required to be involved in determining what improvements are needed and when, and to draft the appropriate permit conditions.

Requires involvement of more than one governmental unit or roadway authority. Occasionally, a project will require the involvement of more than

one governmental unit or roadway authority. For example, roadway changes may need to be made on a state highway as well as a county road to facilitate traffic flow to the source. These circumstances require additional staff time to process the permits, because compliance responsibilities must be allocated between the governmental units or roadways authorities, and the permits frequently require negotiations with the various authorities.

Involves more than one applicant (except governmental co-applicants acting in regulatory capacity). Where there is more than one applicant involved in the construction or operation of a source, the permit must determine which applicant is responsible for complying with which provisions. Additional staff time is required to appropriately draft the permit and to deal with the various applicants. This surcharge does not apply if the multiple co-applicants are governmental authorities acting in a regulatory capacity. In such a circumstance, the previous surcharge would apply.

Permit application formally amended during application review process to change size or scope of project. ISP applicants frequently amend their permit applications to change the size or scope of the project, after MPCA staff has analyzed the application. Staff must then devote additional time to reanalyze the permit based on different assumptions.

Contains an entertainment or sports facility with a peak attendance level of 10,000 people or more or 10,000 or more parking spaces. Indirect sources that will contain an entertainment or sports facility of this size require additional staff analysis because additional traffic arrangements are needed to handle the large and sudden traffic increases. In addition, such facilities result in greater public involvement and, therefore, additional staff time providing information to the public and responding to public comments.

Involves a change in ownership (except from single owner to single owner). Changes in ownership require a change in the permit. If that change is from a single owner to another single owner, the amendment is simple and no surcharge over the base modification fee is warranted. However, commonly, changes in ownership involve multiple owners, requiring additional staff time to determine which party is responsible for complying with given provisions of the permit, and to modify the permit accordingly. In these circumstances, a surcharge is reasonable.

ISP fees will be determined upon submission of the application to the MPCA, or when it becomes apparent that the surcharge applies (for example, when on-site contamination is discovered at the facility), and a bill for the applicable fees will be sent after January 1 of the following calendar year, at the same time that the air emission fees for stationary sources are sent. This approach is reasonable, because the goal of the fee is to cover staff time spent processing the application.

Part 7002.0065 PAYMENT OF FEES

This section states that the bills shall be submitted to the Division Manager, and shall be paid within 60 days of receipt of the bill. 60 days should be ample time in which to settle fee disputes, so late payment and non-payment of fees should be minimized.

There was some discussion in the TAC meetings of offering a quarterly payment option since the amount of the fees for most facilities has increased so dramatically. The problem in offering this option is one of timing between the emission inventory and state fiscal due dates. All of the money that the division must collect for a biennium is due to fiscal services on the last day of the state fiscal year, which is June 30. For instance, all of the money to be collected for the 1992-1993 biennium must be collected by June 30, 1993. If

we are using the most current emissions data possible, we will be using calendar year 1991 emissions data. Since the 1991 data is due on April 1, 1992, and the data takes approximately nine months to process, the earliest that the division could send the bills would be January 1, 1993. This leaves only five months until all of the money is due to fiscal services. Therefore, a quarterly payment option, or even a three payment option, is not feasible. Instead, the MPCA has decided to issue the bills before February 1 of each year, and give the emission facilities 60 days to pay with no penalty, giving ample time for facilities to pay the bill and settle all disputes.

Part 7002.0075 NOTIFICATION OF ERROR

This part gives the fee payer the opportunity to contest the fee. The fee payer must provide a written explanation of why the fee is incorrect. The Commissioner is, in turn, required to respond within 60 days of receipt of the explanation of why the fee is not in error, or return the overpayment. This is reasonable because it gives the fee payer an opportunity to object, and gives the MPCA reasonable time to respond.

The MPCA considered including in the rule a requirement that if disputes over the fee amount took longer than 60 days to resolve, and if an overpayment was ultimately returned to the fee payer, the MPCA would also pay interest on the disputed portion. This suggestion was made by several members of the TAC. Interest payments made by the state Department of Revenue upon return of refunds or overpayments were used as an example of a state agency paying interest to citizens. However, the Department of Revenue has explicit statutory authority to make such interest payments. Minn. Stat. § 270.76 (1990). The MPCA Air Quality Division does not have such authority, nor does it have a standing appropriation from which it is authorized to make such interest payments. The MPCA therefore believes it would be an illegal

commitment of inappropriate funds to agree to provide interest payments, and has not included them in this rule.

The TAC also requested that the MPCA refer in this portion to the appeal options available to a fee payer who disagrees with the Commissioner's decision under this part. The MPCA has chosen not to include such a reference here, because the procedural options available under such circumstances are the standard procedural rights available to citizens under existing laws (such as requesting that the issue be put on the MPCA Board agenda pursuant to Minn. Rules pt. 7000.0500, subp. 6, requesting a contested case hearing pursuant to Minn. Rules pt. 7000.1000, and seeking judicial review of final MPCA decisions pursuant to Minn. Stat. § 115.05 and ch. 14). To refer to these options explicitly here could create the presumption that they do not apply in situations where they are not specifically referenced.

Part 7002.0085 LATE PAYMENT FEE

The late payment fee here has not changed from the one in the previous Air Quality fee rule, and also is the same as in the Water Quality fee rule, part 7002.0290. This late payment fee provides an adequate incentive to pay fees on time without being unreasonable.

This fee is less harsh than the late payment fee that would be imposed by the EPA under federal law if the state did not obtain approval of its own fee program. Under the Clean Air Act, the federally-imposed fee would be fifty percent of the fee amount, plus interest. 42 U.S.C. § 7661a(b)(3)(C)(ii). The MPCA rejected the option of imposing a similarly high fee, because it would be harsher than the late payment fee imposed by other MPCA divisions, and because it does not appear that the EPA will be requiring state's to impose fees as high as they would impose. Moreover, the graduated

fee currently used by the MPCA provides a stronger incentive to pay the fee even after the payment date has passed.

Some members of the TAC considered the MPCA's proposed fee to be still too harsh, and suggested it should be only 10 percent of the fee amount. The MPCA has not accepted this suggestion. As is discussed above, it is important that the fees due under this rule be paid within the state fiscal year in which they are billed. Given the heightened importance of timely payment of this fee, it would be inappropriate to adopt a late payment fee that is less stringent that the one previously used by the Air Quality Division and the one currently used by the Water Quality Division.

Part 7005.1875 EMISSION INVENTORY

The existing emission inventory requirement of part 7005.1870, subpart 4, is being repealed, and this part has been added in its place. Currently, the emission inventory is only required of sources with actual emissions of over 25 tons per year of certain pollutants. Under the new rule, the inventory will be required every year of any facility that is required to obtain an air emission permit from the state of Minnesota. The general threshold for the requirement to obtain an air emission permit is potential emissions of over 25 tons per year. Minn. Rules pt. 7001.1210. Therefore, more facilities will be required to report their emissions to the MPCA than were previously required to.

This expansion in the scope of the inventory is needed and reasonable because the annual fees for all permittees will be based on tons of pollutants emitted as determined from the emission inventory. Because all persons required to obtain an emissions permit must pay a fee, this same class of persons must also report their emissions through this inventory.

Subpart 1 of part 7005.1875 requires owners and operators who submit data to sign a certification assuring that the data is accurate. The certification also acknowledges that the data will be used in assessing a fee per ton of pollution emitted. The first two sentences of the certification are based on existing certification language which the MPCA requires from all permit applicants in accordance with Minn. Rules Pt. 7001.0070. The third sentence, emphasizing that the data will be used for fee assessment, should ensure that facilities look closely at the emissions data they submit, and should eliminate the opportunity for any facility to belatedly claim that it submitted the data without knowing that it would be used to assess a fee. Given the heightened importance of the inventory data, the necessity for accuracy, and the financial incentive for facilities to underestimate their emissions, this certification language is both needed and reasonable.

Subpart 2, is written recognizing that sometimes persons submitting emission inventory data will discover a mistake in their calculation after the data has been submitted. This part allows, indeed requires, the owner or operator to submit corrected data to the MPCA with an explanation of the mistake. If the Commissioner agrees with the correction, the inventory shall be corrected. However, the MPCA cannot allow an endless stream of corrections to the inventory data as used in calculating the emissions fees, because the fee per ton is calculated by dividing the fee target by total tons of emissions in the state. Allowing a correction in total tons after a certain date would require the MPCA to recalculate the fee per ton charged statewide.

Therefore, this part states that the Commissioner will ignore, for purposes of assessing the emissions fee, changes submitted by the owner and operator after November 31 of the year when the data is due. This deadline is reasonable, because it gives the owner and operator several months after the

April 1 inventory due date to review its emissions data and report any mistakes. It also gives the MPCA a reasonable amount of time after that date to tally total emissions in the state and calculate the fee per ton for that fiscal year's billing, which would normally go out in February of the following year.

This language does not prevent the MPCA from charging additional emissions fees if it discovers that the emissions reported by a facility are too low. In such a situation, the MPCA would bill the facility for the newly-discovered emissions. It is reasonable to retain this ability, because otherwise facilities might be able to avoid paying their emissions fee by failing to provide inventory data by November 31. If the MPCA does discover unreported emissions, and collect fees for them, it could exceed its fee target for that year. However, any overcollection would flow through to the next fiscal year and result in a lower fee per ton then.

Part 7005.1876 CALCULATION OF ACTUAL EMISSIONS FOR THE EMISSION INVENTORY

This is a new part that has been added for the purpose of clarifying what type of actual emissions data will be acceptable in the emissions inventory. Since the new emissions fees will be based on the data, the methods of calculating the emissions takes on new importance, both to the MPCA and to the affected facilities. It is therefore reasonable to set out in detail the types of data which the MPCA will accept for the inventory, and the procedures for determining which method may or must be used.

Subpart 1. Emission Factors, and When Alternatives May Be Used

Subpart 1 explains that, in the absence of any additional emission data from the source beyond what is specifically required by the inventory, EPA emission factors will be used to calculate actual emissions, or state generated

emission factors will be used if no EPA emission factors are available. If the MPCA generates its own emission factors, that factor will be calculated using engineering methods consistent with the methods used by the EPA in calculating its emissions factors. In the past the MPCA has relied almost exclusively on emission factors in calculating emissions for its emissions inventory.

This approach is reasonable because for many facilities, there is no better alternative to calculating actual emissions. Reliance on EPA emission factors is reasonable because those factors have been calculated by the EPA for precisely this purpose, and they represent the best information available with which such calculations can be made. However, EPA emission factors are not available for all types of processes for which emissions must be calculated in the inventory. In these situations, MPCA staff will, as they currently do, apply their professional judgment on a case-by-case basis to calculate probable emissions. In calculating such emission factors, they will use methods which are as consistent as possible with the methods used by the EPA in calculating emissions. This approach promotes consistency between those factors calculated by the EPA and those calculated by the MPCA.

Control equipment efficiencies will be estimated using the average of the range of EPA efficiency factors. Alternatively, the facility may choose to use performance test data, provided that the test took place in the year for which the data is being reported. There has been some debate as to whether requiring testing every year is necessary. The MPCA plans to address the required frequency of emission and performance testing in amendments to Minn. Rules part 7005.1860. The MPCA plans to amend part 7005.1876, subparts 1 and 3 at this time also to be consistent with the required frequencies set forth in part 7005.1860.

The EPA emission factors used in the emission inventory system are published in a document entitled "AIRS (Aerometric Information Retrieval System) Facility Subsystem Source Classification Codes and Emission Factor Listing For Criteria Air Pollutants," EPA 450/4-90-003, Office of Air Quality Planning and Standards, Technical Support Division, March 1990. The control equipment efficiency factors are published in a document entitled "AEROS (Aerometric and Emissions Reporting System) Manual Series, Volume 5: AEROS Manual of Codes EPA-450/2-76-005, April 1976." These documents are incorporated by reference in part 7005.0100, where they availability is set forth.

This part also establishes the circumstances under which alternative calculation methods may or must be used. If a facility has Continuous Emission Monitoring (CEM) data available, either because it is required by other law or because they have voluntarily chosen to install CEMs, that data shall be provided to the MPCA with the emissions inventory. The other alternatives discussed below are available at the facility's option. The MPCA may reject the alternatives if the conditions for using them set forth in each subpart have not been met. It is reasonable to provide these alternatives, because when they are appropriately used, they represent equally accurate or more accurate means of calculating actual emissions.

Subparts 2 through 6. Alternative Calculation Methods

Subpart 2 discusses the use of CEM data. CEM installation is required by air emission permits in certain instances, and this data may be used for the emission inventory, provided that all applicable state and federal rules and regulations have been followed, and that permit conditions are met. In addition, the facility must identify when the CEM was operating, and must show how emissions were calculated when the CEM was not operating, i.e., during

"CEM down time." Several options for calculating emissions during down time are provided. One such option is the method that certain facilities will be required to use by EPA regulations to be promulgated under section 412 of the Clean Air Act. 42 U.S.C. § 7651k. This federal method may be used for any facility with a CEM, not just those governed by section 412 of the Clean Air Act.

It is reasonable to provide options for calculating emissions during CEM down times, because CEMs are often unable to operate continuously throughout the year due to equipment failure. It is reasonable to allow facilities to use the federally mandated option identified in the rule in order to prevent some facilities from having to calculate these emissions in two different ways.

Subpart 3 states that a facility may use stack test results in lieu of EPA or MPCA emission factors provided that the test was performed in accordance with part 7005.1860, the test was performed in the same calendar year for which the data is being submitted, and the test reflects a worst-case operating scenario. It is reasonable to provide this option because properly conducted stack test data more accurately represents actual emissions than calculations using emissions factors.

Subparts 4 and 5 outline methods for calculating emissions using the material balance methods for VOCs and sulfur dioxide. The VOC material balance method involves measuring all of the raw material entering the process, and subtracting what can be accounted for coming out. The method assumes that the unaccounted for VOCs are emitted into the air, except to the extent they are captured by control equipment. Pollution control devices are assigned efficiencies published by the EPA, or can be verified by performance tests conducted according to MPCA requirements.

The SO2 material balance method assumes that all the sulfur in the fuel being consumed combines with oxygen to form SO2. The sulfur content of the fuel must be measured by independent laboratories using standard methods. The calculation for determining emissions is set forth in the rule, and simply computes the total weight of sulfur in the fuel, and assumes that each pound of sulfur forms two pounds of sulfur dioxide, because the molecular weight of sulfur dioxide is approximately double the molecular weight of sulfur.

It is reasonable to allow facilities the material balance options, because there may be situations when they provide a more accurate estimate of emissions than EPA emission factors do. Since each ton of pollutant that cannot be directly accounted for is assumed to be emitted to the air, the estimates will be conservative from the MPCA's standpoint.

Subpart 6 was added at the request of the TAC. It states that if none of the other options provided in the other subparts gives an accurate representation of emissions or is technically or economically feasible, then the facility may submit its own proposal. The proposal will have to be submitted to the MPCA no later than October 1 of the year for which the emissions are being calculated. This option will not be available to facilities until the year 1993, due to technical and staffing constraints.

It is reasonable to allow facilities this option, because there may indeed be more accurate, cheaper, easier to use methods of calculating emissions from certain facilities than those set forth in the rule. By allowing this option, the MPCA encourages innovative ways of measuring emissions, provides maximum flexibility to the regulated community, and can reduce the burden of emissions calculations on facilities by allowing them to use less expensive and easier methods. Requiring advance approval of the method, and requiring a detailed explanation of why the alternative method

should be allowed, ensures that only reliable methods are accepted. The MPCA cannot allow this option to be used until October of 1993, because it anticipates that many facilities will want to make proposals, and that reviewing those proposals will be very labor intensive. The MPCA does not expect to have staff available to review the proposals until that time.

This new emission inventory part is reasonable because it provides facilities with the flexibility to provide emission estimates based on various methods, and at the same time provides acceptance criteria so that the MPCA can be assured that the data is a good yet conservative estimate of actual emissions.

Part 7005.0100 DEFINITIONS

Four new definitions are included here that are used in the fee rule or the emission inventory rule, and may be used elsewhere in the future.

Subpart 9a defines "Division Manager" as the Division Manager of the Air Quality Division of the Minnesota Pollution Control Agency. This definition is given to save space in the rules, and also because this title has changed twice in the recent past. Previously, the Division Manager was the "Division Chief," and before that was referred to as the "Division Director."

Subpart 10c. defines "EPA efficiency factor" to mean the control equipment efficiency factors published in the AEROS Manual Series, Volume 5: AEROS Manual of Codes, EPA-450/2-76-005. The average range of these factors will be used in estimating control equipment efficiency and capture efficiency for various types of air pollution control equipment. The document cited is incorporated by reference, with its availability noted pursuant to the requirements of Minn. Stat. § 14.07, subd. 4 (1990).

Subpart 10d. defines "EPA emission factor" to mean the factors published in the AIRS Facility Subsystem Source Classification Codes and

Emission Factor Listing for Criteria Air Pollutants, EPA 450/4-90-003. These are the factors that are used in the emission inventory and are thus used indirectly in the calculation of fees. These factors are typically used to calculate emissions from process data such as type and amount of fuel used, or material produced or processed. This document is incorporated by reference as required by law.

Subpart 39a. defines "PM-10" as particulate matter with an aerodynamic particle diameter less than 10 micrometers. The MPCA is basing fees on PM-10 rather than on total suspended particulate matter (TSP) as has been done in the past, because EPA has modified the ambient air standard for particulates to relate only to those particles of less than 10 micrometers in diameter. State and federal law requires the MPCA to collect fees based on aggregate emissions of all pollutants for which a NAAQS has been established. Minn. Stat. § 116.07, subd. 4d(c) and 42 U.S.C § 7661a(b)(3)(B)(ii). Since the NAAQS now applies to PM-10, so must the fee and the emissions inventory, so a definition of it is needed here.

Subpart 45 defines "volatile organic compound" (VOC) to be any compound which participates in atmospheric photochemical reactions, or in the creation of smog. VOCs are included in the fee rule, and in the emissions inventory, because state and federal statutes require that the aggregate fee collection amount reflect total VOC emissions. Minn. Stat. § 116.07, subd. 4d(c) and 42 U.S.C § 7661a(b)(3)(B)(ii). VOCs are included in the statutes because they contribute to violations of the ozone NAAQS. However, several VOCs have been determined by EPA to be non-reactive; that is, they do not participate in the photochemical reactions which contribute to the ozone problem. The EPA does not consider these pollutants to be VOCs for regulatory purposes, so they have been excluded from the MPCA's definition as well.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

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

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

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

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

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

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

The proposed rules may affect small businesses as defined in Minn. Stat. § 14.115 (1990). As a result, the MPCA has considered the methods listed above for reducing the impact of the rule on small businesses.

The requirement to collect additional fees to fund the air quality program has been mandated by the legislature, and it is the legislature that will ultimately set the air quality fee appropriation each biennium. Thus, the MPCA does not have the flexibility to adjust the total amount of fees to be collected. The MPCA does, however, have the flexibility to determine how these fees will be distributed. In making decisions concerning the distribution of the fees, the MPCA has focused on small business concerns.

The rule establishes emission fees directly proportional to air emissions. Since most small businesses are minor sources of air pollution, the fees they will pay will be considerably less than the fees for larger

industries. In response to item a) above, a lesser fee for small businesses is in effect a "less stringent compliance requirement." Previously, a large portion of the Air Quality Division's fees were based on services performed, so the fees imposed on small businesses and large businesses were fairly similar.

A 4000 ton cap on the number of tons of a single pollutant considered for fee purposes was considered in the development of this rule. The MPCA considered employing such a cap to limit the fees paid by the largest emitters. However, this cap would shift a large amount of the fee burden from the larger industries onto the smaller businesses. Partially in consideration of small businesses, this cap has not been included in the proposed rules. The issue of an emission cap is discussed in more detail in Section VI, "Consideration of Economic Factors," and an analysis of this issue is included as Exhibit 3.

In response to item b) above, a less stringent schedule or deadline for fee payment for small businesses is not possible because it would make the MPCA unable to meet its biennial revenue requirement. As discussed earlier, all funds for any particular fiscal year must be received by June 30.

Item c) has been addressed, not only for small businesses but for all fee payers, in that there is only one annual fee that must be paid, and it is directly linked to a facility's actual emissions. In the past, the MPCA has had a three-part fee system, where a facility would pay a permit application fee, the facility would pay a service-based permit issuance fee, and would also be required to pay an annual fee based on the permitted allowable emissions from the facility. The system proposed is much simpler to understand for the regulated community, and is also simpler to administer for the MPCA.

The establishment of performance standards to replace design or operational standards suggested in item d) do not apply to the emission fee rule.

In response to item e), since the emission fee rule applies only to facilities that are required to obtain an air emission permit, facilities that have potential emissions of less than 25 tons per year that are exempt from the requirement to obtain a permit are also exempt from the fee rule requirements. It is important that the sources that require the attention of the MPCA continue to pay fees to support the program.

VI. CONSIDERATION OF ECONOMIC FACTORS

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

> In exercising all its powers the 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 reasonable, feasible, and practical under the circumstances.

In proposing the rules, the MPCA has given due consideration to available information as to any economic impacts the proposed rules would have. The MPCA will collect annual emission fees from approximately 1000 emission facilities each year. Since the appropriation from the state general fund has been eliminated beginning in fiscal year 1993, the fee burden has necessarily increased dramatically. The targeted amount to be collected in fees for fiscal year 1991 was $646,600, for fiscal year 1992 is $3,389,000, and for fiscal year 1993 it will be $5,093,000, so over two fiscal years there has been approximately a 700 percent increase in the amount to be collected in fees. While the MPCA has the authority to distribute the fees among Minnesota

industries as it sees fit, it does not have the option of reducing the total fee burden, which has been required by the legislature, as mentioned in the previous section.

In deciding how the fee burden should be distributed, consideration was given to capping the amount of emissions that are considered for fee purposes from a single emission facility for each pollutant. This consideration has been discussed above in sections IV and V above, and an analysis of four different emission cap scenarios is attached as Exhibit 3. The four different scenarios considered are:

1. a 4000 ton cap,
2. a 10,000 ton cap,
3. half-charge for emissions over 4000 tons, and
4. no cap.

The analysis makes the following assumptions:

1. The most current 1990 emission data was used. This data was not finalized when this scenario was prepared and is subject to change.
2. A fixed fee collection target of $6,000,000 is assumed for example.
3. The potential effects of new permit charges and indirect source permit charges on the total collection target are ignored.

This analysis shows that for this set of assumptions, the dollar per ton figure varies between $13.01 with no emission cap and $25.01 for a 4000 ton cap. Ten example facilities are listed to demonstrate the potential effects of the various emission caps. There were four companies found in the inventory that would pay a lesser fee with a 4000 ton emission cap than with no cap, and these four facilities have all been included in this analysis. The four facilities for which a 4000 ton cap would be advantageous would see an average fee decrease of 45 percent with a 4000 ton cap, while the remaining six

facilities would see an average increase of 78 percent. The two other cap scenarios provide intermediate alternatives.

Fees that would be paid under this scenario were compared to 1990 operating revenues for two utility companies, NSP and Virginia Public Utilities. The utilities were chosen because their operating revenues are readily available, and because the results show the impact of the rule on both a large and a smaller utility. The 1990 operating revenues for NSP, obtained from the Minnesota Department of Public Service, were $1,441,149,000, and the 1990 operating revenues for Virginia Public Utilities were $10,341,700. The results are presented in the table below.

FACILITY	FEE WITH NO CAP/ % OF REVENUES	FEE WITH A 4000 TON CAP/ % OF REVENUES
NSP	$2,299,988 / 0.16%	$1,046,322 / 0.07%
Virginia Pub. Util.	$93,129 / 0.90%	$ 128,379 / 1.24%

In light of this information, the MPCA has drafted the rule with no emission cap. As mentioned in the "Reasonableness of the Rules as a Whole," section IV.A., the MPCA believes that the large utilities of the state will be able to absorb the cost of the additional fee or pass it on to the ratepayers, and that smaller companies that face competition from other states and countries that may not pay similar fees may have a more difficult time absorbing the increase. The MPCA also feels that it is more consistent with legislative intent not to have an emission cap in the rule, as mentioned earlier.

VII. IMPACT ON AGRICULTURAL LANDS

The MPCA is required by Minn. Stat. § 14.11, subd. 2 (1990) to consider the impacts of the proposed rules on agricultural lands. The statute provides:

If the MPCA proposing the adoption of the rule determines that the rules may have a direct and substantial adverse impact in agricultural land in the state, the MPCA shall comply with the requirements of sections 17.80 to 17.84.

The MPCA believes that the proposed rules will not have any impact on agricultural lands because the rules do not affect agricultural enterprises.

VIII. IMPACT ON LOCAL PUBLIC BODIES

Minn. Stat. § 14.11, subd. 1 (1990) 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.

This rule will become effective in fiscal year 1993. For that year, the expenditures for local public bodies are fairly easy to estimate. Although the fiscal year 1993 fees will be based on calendar 1991 emissions, we can use 1990 emissions data, for which we have an early estimate, as an indicator of what the 1991 emissions may be. Since the fee collection target is fixed, a dollar per ton figure can be estimated by dividing the fee target by the total tons. From this dollar per ton figure, we must then find the total tons of pollutants from the local public bodies and multiply the two numbers together to get the total expenditures. For fiscal year 1994, we not only do not have an indication of the total tons in the inventory, but we also do not know what the fee collection target will be, making it impossible to estimate the total fees

assessed. We will have to rely on the number for fiscal year 1993 as an indicator, keeping in mind that the Air Quality budget needs may increase in fiscal year 1994.

An early estimate of the total emissions in the 1990 emission inventory for the pollutants to which the fee rule applies (PM-10, SO2, NOx, VOC and lead), is 461,303 total tons. Assuming a fee collection target for fiscal year 1993 of $5,167,000, the dollar per ton figure would be $11.20 per ton. The total fee pollutants emitted by local public facilities has been estimated to be 15,950 tons, making the total expenditures for local public bodies in fiscal year 1993 approximately $178,640.

IX. CONCLUSION

Based on the foregoing arguments, the proposed Minn. Rules pts. 7002.0005 to 7002.0085, 7005.1875, 7005.1876, and the proposed amendments to part 7005.0100 are both needed and reasonable.

X. LIST OF WITNESSES AND EXHIBITS

A. Witnesses

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

1. Mark Strange: Mr. Strange will testify on the general need for and reasonableness of the proposed rules.
2. Ann Foss: Ms. Foss will testify on the need for and reasonableness of the proposed rules as they pertain to the emission inventory; specifically, proposed parts 7005.1875 and 7005.1876.

3. Susanne Spitzer: Ms. Spitzer will testify on the need for and reasonableness of the proposed indirect source permit fees as set forth in proposed part 7002.0055.

4. Bob McCarron: Mr. McCarron will testify on the economic analysis the MPCA studied using three scenarios: no emission cap, a 4000 ton per pollutant per facility cap, and a similar 10,000 ton cap.

The MPCA has not solicited witnesses from outside the MPCA to testify in support of the proposed rules.

B. Exhibits

Exhibit No.	Document
1	Title V of the 1990 Clean Air Act Amendments.
2	1991 Minn. Laws ch. 254, Article 2, § 37, amending Minn. Stat. § 116.07, subd. 4d., requiring the MPCA to amend the air quality fee rules.
3	Analysis of the financial impact of various emission cap scenarios.
4	Approval of the proposed fee schedule by the Commissioner of the Minnesota Department of Finance.

Dated: March 24, 1992

CHARLES W. WILLIAMS
Commissioner