Minnesota Pollution Control Agency

October 12, 1994

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

RE: Statement of Need and Reasonableness for Proposed Amendments to Permanent Rules Governing Air Emission Permits and Monitoring and Testing Requirement, Minn. Rules pts. 7007.0800 and 7017.0100

Dear Ms. Hruby:

Enclosed for your review is a copy of the Statement of Need and Reasonableness for proposed rules as required by Minn. Stat. § 14.115, subd. 8 (1992). If you have any questions, please call me at 296-7712.

Sincerely,

Norma L. Coleman

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

NLC:jmd

Enclosure

520 Lafayette Rd. N.; St. Paul, MN 55155-4194; (612) 296-6300 (voice); (612) 282-5332 (TTY)
Regional Offices: Duluth • Brainerd • Detroit Lakes • Marshall • Rochester

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments to Rules Governing Air Emission Permits and Monitoring and Testing Requirements; Minn. Rules chapters 7007 and 7017

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The Minnesota Pollution Control Agency (Agency) is proposing to amend its rule governing compliance certifications under air emission permits and to propose a rule clarifying that any credible evidence may be used to determine whether an air quality requirement has been violated. The amendments are being made in response to a formal request by the U.S. Environmental Protection Agency (U.S. EPA) for a revision to Minnesota's State Implementation Plan (SIP) under the Clean Air Act (Act).

II. STATEMENT OF MPCA'S STATUTORY AUTHORITY

The Agency has statutory authority to undertake this rulemaking under Minnesota Statutes section 116.07, subdivision 4. Under this broad grant of authority the Agency may adopt and amend rules relating to:

> . . . any purpose within the provisions of Laws 1969, chapter 1046, for the prevention, abatement or control of air pollution ... Without limitation, rules or standards may relate to sources or emissions of air contamination or air pollution, to the quality or composition of such emissions, or to the quality of or composition of the ambient air or outdoor atmosphere or to any other matter relevant to the prevention, abatement or control of air pollution.

The Agency has related authority to require air emission permits under Minn. Stat. § 116.081 and to establish the conditions in permits under Minn. Stat. § 116.07, subd. 4a. The Agency has authority to require sources to "maintain records; to make reports; to

install, use, and maintain monitoring equipment or methods; and to make tests . . . in accordance with methods, at locations, at intervals, and in a manner as the agency shall prescribe...." under Minn. Stat. § 116.07, subd. 9 and may require sources to provide information they have which is relevant to pollution under Minn. Stat. § 116.091.

III. STATEMENT OF NEED

Under the rulemaking requirements of Minn. Stat. ch. 14, the Agency must show that its proposed amendments are needed. Generally, "need" means that there is a problem requiring administrative attention.

Title V of the Clean Air Act Amendments of 1990 (1990 Amendments) and EPA's implementing regulations require all states to establish a program to issue operating permits to air emission sources. Clean Air Act (CAA) §§ 501-507;[1] 40 C.F.R. pt. 70 (1993). The Agency adopted chapter 7007, establishing an air emission permit program designed to meet Title V requirements, and submitted that program to the EPA for approval on November 15, 1993. Chapter 7007 includes provisions, mandated by the Act, that require permittees to submit periodic compliance certifications to the Agency in which they state whether they have been in continuous or intermittent compliance with the permit's provisions. Minn. R. 7007.0800, subp. 6.

Title VII of the 1990 Amendments required EPA to adopt rules requiring enhanced monitoring by certain air emission sources. The EPA proposed its enhanced monitoring rule on October 22, 1993, which was too late to include in the MPCA's rule establishing chapter 7007.[2] EPA's proposed rule describes the criteria and procedures that would have

---

1 These sections are codified at 42 U.S.C. § 7661a (Supp. II 1991), but are most often referred to by their Clean Air Act section number. Other parts of this document will reference section 114 of the Act, which is codified at 42 U.S.C. § 7414 (Supp. II 1991) and section 113, which is codified at 42 U.S.C. § 7413 (Supp. II 1991).

2 The air emission permits rule, Minn. R. 7007.0100-.1850, became legally effective on October 18, 1993.

to be met by sources subject to the enhanced monitoring requirements, and requires that the data obtained through enhanced monitoring be the basis of the source's certification of whether its compliance has been continuous or intermittent. 58 Fed. Reg. 54648-99 (Oct. 22, 1993).

The increased emphasis on continuous means of determining compliance changes some of EPA's current practices under the Act and some parts of many state programs. Currently, compliance is often determined through means of a single performance stack test conducted only at start-up of a facility, or repeated only once every few years. Now, many sources will have to implement additional means of monitoring, such as installing continuous emission monitors or keeping continuous track of materials used in processing. While these methods of determining compliance are already and increasingly being used by many sources, their use will significantly expand.

However, EPA is concerned that some existing technical standards in state and federal law may implicitly or explicitly link compliance solely to specific performance stack tests. Such pre-1990 testing requirements will still exist after the enhanced monitoring rule is adopted, and some state laws might be interpreted to make a performance stack test the exclusive means of determining compliance.[3] To prevent such possible interpretations

---

3 EPA fully explained its concerns in this regard at 58 Fed. Reg. 54658-60 and 54677-78. Apparently, one federal court interpreted a part of California's SIP to exclude use of evidence other than the reference test method to prove a violation. United States v. Kaiser Steel Corp., No. 82-2623-IH (C.D. Cal. Jan. 17, 1984). In the legislative history of the 1990 Amendments, Congress described its amendment to Section 113(e) as follows:

> . . . the amendment clarifies that courts may consider any evidence of violation or compliance admissible under the Federal Rules of Evidence, and that they are not limited to consideration of evidence that is based solely on the applicable test method in the State implementation [plan] or regulation. For example, courts may consider evidence from continuous emission monitoring systems, expert testimony, and bypassing and control equipment malfunctions, even if these are not the applicable test methods. Thus, this amendment overrules the ruling in United States v. Kaiser Steel Corp., [citation omitted] to the extent that the court in that case excluded the consideration of such evidence.

Senate Rpt. No. 228, 101st Cong., 1st Sess. at 366, reprinted in 1990 U.S. Code Cong. & Admin. News at 3749.

from preventing full implementation of the enhanced monitoring program, EPA has proposed to amend various parts of its own rules to specify that the results of enhanced monitoring may be used in compliance certifications and as evidence of violations.[4] In addition, the 1990 amendments specify that "any credible evidence (including evidence other then the applicable test method)" may be used to establish violations. CAA § 113(e)(1).

EPA's amendments to its own rules do not fully solve the problem of enhanced monitoring data possibly being excluded from use in certifying compliance and proving violations. This is because Title V permits include provisions based on both federal rules and state rules which have been submitted to and adopted by the EPA as part of a SIP under section 110 of the Act.[5] As a result, the EPA announced its intention in the preamble to its proposed enhanced monitoring rule to issue a "SIP call" to correct possible deficiencies in the regulations of all states. 58 Fed. Reg. at 54676-77. A call from the EPA to revise a SIP may be made under section 110(k)(5) of the Act whenever EPA finds that a SIP is substantially inadequate to comply with a requirement of the Act. EPA made such a finding regarding Minnesota's SIP based on the concerns discussed above, and issued the state a SIP call by letter dated March 24, 1994 (Exh. 1). A revision to the SIP is due to the EPA by November 15, 1994, or the date that the enhanced monitoring rule becomes final, if later.

---

4 See 58 Fed. Reg. 54648 (Oct. 22, 1993), which proposes to make these changes to 40 C.F.R. pts. 51 and 52 (governing SIPs), 40 C.F.R. pt. 60 (federal New Source Performance Standards), and 40 C.F.R. pt. 61 (federal National Emission Standards for Hazardous Air Pollutants). Enhanced monitoring requirements will be codified as 40 C.F.R. pt. 64.

5 States develop SIPs to implement the controls needed to comply with the National Ambient Air Quality Standards. SIPs must be submitted to EPA and, when approved, EPA promulgates them as federal regulations for the area covered by each SIP submission. As a result, an approved SIP is enforceable by both the state and federal governments. SIPs may be amended by similar state and federal regulatory action.

Once EPA issues a SIP call, the state must submit a SIP revision by EPA's deadline or be subject to sanctions under the Act. CAA § 110(m). EPA must also promulgate a Federal Implementation Plan within two (2) years of the state's failure to submit the SIP or correct the deficiencies cited by EPA. CAA § 110(c)(1).

EPA's SIP call requires the Agency to amend its SIP to ensure that information gathered as a result of the proposed enhanced monitoring program may be used in compliance certifications and, along with other credible evidence, as evidence of violations. The Agency needs to adopt the proposed rules in order to comply with EPA's SIP call.

For several reasons, the Agency believes that this rulemaking is merely a clarification of the only reasonable interpretation of its existing rules. Several Minnesota rules establish performance standards and then go on to specify particular performance test methods and procedures to use when performance stack tests are conducted. The rules each also state, however, that the Commissioner can approve other test methods.[6] The rules do not state that the listed performance stack test methods or that performance stack tests in general are the exclusive means of determining compliance. In fact, the rules have always provided that the commissioner can require continuous emissions monitors, Minn. R. 7017.1000, subp. 1 (1993). Similarly, Minn. Stat. § 116.07, subd. 9, allows the Agency to require a source to use "monitoring equipment and methods", make "tests", and provide "other information" requested by the Agency to enforce air quality requirements. Based on its statutes and rules, the Agency believes that any credible evidence of noncompliance is already admissible to prove a violation even without the proposed amendments. However,

---

6 See Minn. R. 7011.0115, 7011.0530, 7011.0615, 7011.0720, 7011.0820, 7011.0915, 7011.1130, 7011.1320, 7011.1425, 7011.1620, 7011.1720, 7011.1910, 7011.2010. Agency rules have always provided that the Agency can specify equivalent or alternative test methods. See Minn. R. 7017.2050, (Minn. R. 7017.2000, which was repealed by the comprehensive amendment to the performance stack test rule that adopted part 7017.2050, also allowed alternative or equivalent test methods.)

the proposed amendments are useful to make this important point explicitly clear (instead of implicitly clear from the above legal analysis), to avoid any possible confusion.[7]

IV. STATEMENT OF REASONABLENESS

Under the rulemaking requirements of Minn. Stat. ch. 14, the Agency must show the reasonableness of its proposed amendments. "Reasonableness" generally means that there is a rational basis for the Agency's proposed amendments. In the rulemaking context, "reasonableness" means that the proposed amendments are an appropriate solution to the problem they are intended to address. The reasonableness of the Agency's proposed amendments to chapters 7007 and 7017 are discussed below.

The Agency has tried to craft amendments that would address the concerns raised by the EPA as the basis of its SIP call. In addition, the Agency is mindful of the fact that the EPA suggested language is narrowly written to address the federal concerns, without recognizing the specific concerns of individual state programs. Therefore, while the Agency began with EPA's proposed federal language, the Agency has made some changes to reflect specific concerns unique to the Agency's permitting program. This approach is reasonable because it resolves the problems raised by EPA without creating additional problems for the state.

A. AMENDMENTS TO MINN. RULES PT. 7007.0800, SUBPART 6.

The Agency proposes to add a new sub-item (5) to the end of item C of subpart 6, part 7007.0800. Part 7007.0800 describes what must be in an air emission permit. Item C specifies that permits must require periodic compliance certifications, and describes their contents, who they should be sent to, and who must sign them. This is therefore the logical place to position the new language clarifying that none of the other provisions of an

---

7 The MPCA presented EPA with its analysis as to why Minnesota Rules do not suffer from the Kaiser defect, but EPA still required the MPCA to proceed with a SIP revision that explicitly resolves the issue before the MPCA embarks on full implementation of the Title VII enhanced monitoring and the Title V permitting program next year.

applicable requirement shall be read to limit the use of the enhanced monitoring data, or other approved monitoring methods, in the required certifications.

In proposing this language, the Agency recognizes that if its provisions were too narrow, they could do more harm than good. For example, if the language applied only to enhanced monitoring methods, only to SIP provisions, only to Title V permits, or only to federally enforceable conditions, it could create the presumption that the concepts do not apply in other circumstances. As noted above, the Agency already takes a broad view of the acceptability of required monitoring methods (i.e., that performance stack tests are not the exclusive basis of compliance certifications or the exclusive means of determining violations). The language throughout this rulemaking is intended to clarify this interpretation. The Agency is therefore drafting it broadly, and intends that it be read expansively.

The effect of sub-item (5) is two-fold: it ensures that no language of any "applicable requirement" (which by definition at Minn. R. 7007.0100, subp. 7, includes the SIP and other pertinent agency rules) will be read to prohibit source owners and operators from basing compliance certifications on (a) approved enhanced monitoring protocol methods, or (b) any other method approved for the source in an operating permit. This language not only eliminates any confusion arising as a result of the new enhanced monitoring program, but goes on to also make it clear that other monitoring methods in the permit may also be used. It is reasonable to specify both types of methods because the enhanced monitoring methods only apply to certain units at major sources. Other units and other sources may also be required to undertake new methods of monitoring pursuant to 40 C.F.R. 70.6(a)(3) and Minn. R. 7007.0800, subp. 4. This category of monitoring should be acceptable for compliance certifications for the same reason enhanced monitoring methods should be acceptable: both result from specific determinations in the permit on what type of monitoring is appropriate for the source.

The language deviates from the federally suggested language in two significant ways. It refers to not just SIP provisions but to all "applicable requirements", which includes all agency rules that regulate air emission permit sources, because not all agency rules immediately or automatically become part of the SIP. The Agency wants this clarifying language to apply uniformly, and for the same reasons that it applies to the SIP. It is reasonable to clarify that sources can certify compliance status based on the monitoring methods approved in the permit for the source for any state requirement, including the few that do not happen to be in the SIP.

Secondly, the language differs from the suggested federal language in that sub-item (5)(b) includes more than just monitoring methods approved under the Title V program and incorporated into federally enforceable permits. It applies to any monitoring method required by a permit issued under chapter 7007, even if the method is in a state permit or is not federally enforceable. This is reasonable because chapter 7007 governs not just permits required by Title V but also permits required solely by state law. Moreover, some monitoring requirements of both state and Title V permits may not be federally enforceable. Nonetheless, the Agency wants to be clear that the results of those monitoring methods are available for use in compliance certifications, for the same reasons that Title V based and federally-enforceable methods should be available.

B. AMENDMENTS ADDING MINN. RULES PT. 7017.0100

The Agency also proposes to amend chapter 7017, Monitoring and Testing Requirements, to ensure that, consistent with federal law, any credible evidence may be used to establish an air quality violation, including enhanced monitoring and other monitoring methods.

Subpart 1

This subpart defines two terms that will be used in subpart 2: "applicable requirement" and "compliance document." Both terms are already defined elsewhere in Agency rules, but the other definitions would not apply to this part unless repeated here.

Subpart 2 needs to be able to refer to Agency requirements that may appear in various forms, such as a state rule, a permit, a stipulation agreement, or an administrative order. Rather than list out all the sources of Agency requirements, the Agency proposes relying on two terms that are already used in closely related contexts. The term "applicable requirement" is central to chapter 7007. The term "compliance document" is used in the performance test rule. Minn. R. pts. 7017.2001 - 2060. Together these terms encompass all the vehicles through which the Agency would impose on a source monitoring requirements pertinent to this rulemaking.

The term "applicable requirements," defined at Minn. R. pt. 7007.0100, subpart 7, includes all the state and federal rules, standards and monitoring methods that might be included in an operating permit. It includes all SIP requirements, thereby incorporating administrative orders which have been added to the SIP. It also includes the Agency's performance test rule and therefore any test requests made by the commissioner under the authority of that rule. The term "compliance documents" includes requirements that are in the permits themselves, or requirements in other documents enforceable by the Agency pursuant to Minn. Stat. chs. 115 and 116 (1992).

Subpart 2

This subpart makes explicit the Agency's longstanding interpretation of what may be used to prove a violation: any monitoring method that the Agency is requiring the source to use, and any other "credible evidence." The broad language of this subpart makes it clear that this approach applies to any technical standard, regardless of its source, and to any related monitoring method which the Agency requires, regardless of its source.

Clarifying that any credible evidence may also be used to establish violations is reasonable because it allows the courts to retain their traditional function of deciding what evidence is credible, and prevents any court from reading into an applicable requirement or compliance document an unintended limitation on what may be admissible. For example, a standard of performance in a state rule may require use of a certain

performance test method to determine whether a source is complying with an emission limit. However, the permit may require that source to also install and use continuous emission monitors (CEMs) under part 7017.1000, or the permit may establish an alternative or equivalent performance test method under part 7017.2050. This rule will make explicit the implicit assumption and practice the Agency has had in approving these monitoring methods: that evidence from the CEMs or alternative or equivalent test methods may be used to prove in court whether a violation occurred. This language also keeps the door open for other evidence of violations, such as witness testimony, ambient air testing, evidence of noncompliance with permit terms limiting hours of operation or use of certain fuels or materials, evidence of non-use of control equipment, etc., presuming the evidence meets other traditional indicia of credibility.

As demonstrated in Section II, the Agency can show in an analysis of its statutes and rules that any credible evidence of a violation is admissible, that a state requirement to do a certain type of testing does not exclude other evidence of a violation, and that the monitoring methods the agency requires are being required precisely for the purpose of determining compliance. However, since the Agency must respond to EPA's SIP call and since this point is not explicit in Agency rules, it is reasonable to explicitly state it in proposed part 7017.0100.

In its proposed language, EPA suggests that states establish a "presumption" that required monitoring methods are "credible evidence" for purposes of establishing a violation. However, the Agency questions whether it would have the authority to create such a presumption. A presumption is basically a procedural device to govern the presentation of evidence in court. [See Minnesota Rules of Evidence, Rule 301, and committee comment.] While presumptions can be established by both the judiciary and the legislature, the legislature has not clearly delegated to the Agency authority in this area.

The Agency can, however, clarify that its own rules cannot be used to limit a court's consideration of any credible evidence of violation of an Agency standard. Moreover, the

Agency can specify how compliance with its technical standards will be measured. As is discussed in Part II, Minnesota Statutes gives the Agency explicit authority to require a source to monitor and make tests in the manner prescribed by the Agency. Minn. Stat. § 116.07, subd. 9. This is in addition to the Agency's broad authority to establish air standards and to make rules on "any other matter relevant to the prevention, abatement, or control of air pollution." Minn. Stat. § 116.07, subd. 4. It is reasonable for the Agency to make explicit in this rulemaking that the monitoring methods it requires a source to employ will indeed be used to determine compliance with the technical standards it requires the source to meet.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minnesota Statutes, section 14.115, subdivision 2, requires the Agency, when proposing rules which may affect small businesses, to consider the following methods for reducing the impact on small businesses:

(a) the establishment of less stringent compliance or reporting requirements for small businesses;
(b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
(c) the consolidation or simplification of compliance or reporting requirements for small businesses;
(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
(e) the exemption of small businesses from any or all requirements of the rule.

The proposed rules will apply to small businesses as defined in Minnesota Statutes section 14.115. However, since this is a clarification of the Agency's current interpretation, this rulemaking does not constitute a change in the Agency's approach toward those businesses. Moreover, this rulemaking does not impose any additional compliance or reporting requirements on any businesses, so the considerations listed above do not strictly apply. The Agency also notes that EPA is requiring all states to make the rule changes proposed here.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minnesota Statutes section 116.07, subdivision 6, to give due consideration to economic factors. The statute provides:

> In exercising all its powers, the pollution control agency shall give due consideration to the establishment, maintenance, operation, and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

The Agency does not believe that the proposed rulemaking will have any significant economic impact. It does not impose any new monitoring requirements, but merely makes it clear that the results of monitoring required by other rules and by permits, along with other credible evidence, may be used to establish violations.

VII. IMPACT ON AGRICULTURAL LANDS AND FARMING OPERATIONS

Minnesota Statutes section 14.11, subdivision 2, requires that if the Agency proposing adoption of a rule determines that the rule may have a direct and substantial adverse impact on agricultural land in the state, the agency shall comply with specified additional requirements. Similarly, Minnesota Statutes section 116.07, subdivision 4, requires that if a proposed rule affects farming operations, the Agency must provide a copy of the proposed rule and a statement of the effect of the proposed rule to the Commissioner of Agriculture for review and comment. The MPCA believes that the proposed rules will not have any impact on agricultural lands or farming operations.

VIII. COSTS TO LOCAL PUBLIC BODIES

Minnesota Statutes, section 14.11, subdivision 1, requires the Agency to include a statement of the rule's estimated costs to local public bodies in the notice of intent to adopt rules if the rule would have a total cost of over $100,000 to all local bodies in the state in

either of the two years immediately following adopting of the rule. The Agency does not expect this rulemaking to have any cost to local bodies in the state.

IX. REVIEW BY COMMISSIONER OF TRANSPORTATION

Minnesota Statutes section 174.05 requires the Agency to inform the Commissioner of Transportation of all rulemakings that concern transportation, and requires the Commissioner of Transportation to prepare a written review of the rules. This requirement does not apply because this rulemaking does not affect transportation.

X. CONCLUSION

Based on the foregoing, the proposed amendment to part 7007.0800 and the addition of part 7017.0100 are both needed and reasonable.

Dated: September 27, 1994

for Ann Thomas, deputy
Charles W. Williams
Commissioner

EPD1:FREESE.BQ6

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 24 1994

REPLY TO THE ATTENTION OF:
(R-19J)

RECEIVED
MAR 29 1994
MINN. POLLUTION
CONTROL AGENCY

Charles Williams, Commissioner
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155-3898

Dear Mr. Williams:

In 1990, Section 114 of the Clean Air Act (Act) was amended to require the Administrator of the United States Environmental Protection Agency (USEPA) to promulgate rules implementing an enhanced monitoring and compliance certification program for major stationary sources of air pollution. The primary purpose of this program is to reduce air pollutant emissions by requiring sources to monitor compliance with applicable emission limitations or standards on a continuing basis over time. In contrast to the compliance program before the 1990 Amendments, the monitoring data collected through this program would serve as the basis for a source to certify compliance, and could be used by USEPA and the States as direct evidence of an enforceable violation of the underlying emission limitation or standard. Since the 1990 Amendments, USEPA has been evaluating the available alternatives for implementing this program, and decided upon the approach set forth in the proposed Enhanced Monitoring Program Rule, which was published in the Federal Register on October 22, 1993.

The Agency has determined that certain Federal regulations and existing State Implementation Plans (SIPs) preclude USEPA and the States from fully implementing this program because the regulations and SIPs may be interpreted to limit the types of testing and monitoring data that may be used for determining compliance and establishing violations. Further, these SIPs may be interpreted to restrict USEPA's ability to use any credible evidence of a violation in enforcement actions. These deficiencies were identified in the October 22, 1993 proposed Enhanced Monitoring Program Rule. In that proposal, USEPA proposed conforming amendments to its own Federal regulations. In addition, USEPA notified the States of its intent to issue a SIP Call, pursuant to section 110(k)(5) of the Act, requiring States to revise their SIPs on the basis that they were substantially inadequate to comply with the requirements of sections 110(a)(2)(A), (C), and (F), 113(a) and (e), and 114(a)(3) of the Clean Air Act [codified at 42 U.S.C. § 7410(a)(2)(A), (C), and (F), § 7413(a) and (e), and § 7414(a)(3)].

The purpose of this letter is to formally notify you that USEPA finds the SIP for Minnesota substantially inadequate to comply with the requirements of the above-referenced sections of the Act.

The USEPA calls upon the State of Minnesota to cure the identified inadequacies by revising its SIP. To provide sufficient time to adopt and submit revisions, the State of Minnesota is required to revise its SIP by the later of two events: (1) the promulgation of the Enhanced Monitoring Program Rule (currently scheduled for September 30, 1994, per consent decree); or (2) November 15, 1994, which is the anticipated date for the final permit program approval. The USEPA anticipates final action on the SIP revision before the State begins to issue its first permits under the Title V Operating Permits program. If the State fails to submit curative SIP revisions to USEPA in a timely manner or if USEPA disapproves the submitted revisions, USEPA would be compelled by the Act to promulgate a Federal Implementation Plan (FIP) to correct the deficiencies. Draft FIP language was proposed in the October 22, 1993, Enhanced Monitoring Program Rule, and USEPA intends to take final action on FIPs by June 30, 1995.

I recognize that the schedule as outlined above is ambitious, but I believe it can be met if we work together. To that end, enclosed is draft SIP language that would achieve the desired goal. I look forward to this cooperative effort. Should you or your staff have questions concerning this SIP Call, please contact William MacDowell of my staff at (312) 886-6798

Sincerely yours,

Valdas V. Adamkus
Regional Administrator

Enclosures

Proposed SIP Language (2/15 Correction)

Option 1

[Section] Compliance Certifications. Notwithstanding any other provision in any plan approved by the Administrator, for the purpose of submission of compliance certifications the owner or operator is not prohibited from using the following in addition to any specified compliance methods:

(1) An enhanced monitoring protocol approved for the source pursuant to 40 CFR Part 64.

(2) Any other monitoring method approved for the source pursuant to 40 CFR 70.6(a)(3) and incorporated into a federally enforceable operating permit.

[Section] Enforcement. (a) Notwithstanding any other provision in the [name of State or area] implementation plan approved by the Administrator, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such plan.

(1) Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source:

(A) An enhanced monitoring protocol approved for the source pursuant to 40 CFR Part 64.

(B) A monitoring method approved for the source pursuant to 40 CFR 70.6(a)(3) and incorporated in a federally enforceable operating permit.

(C) Compliance test methods specified in the applicable plan approved in this part.

(2) The following testing, monitoring or information gathering methods are presumptively credible testing, monitoring or information-gathering methods:

(A) Any federally-enforceable monitoring or testing methods, including those in 40 CFR parts 51, 60, 61 and 75.

(B) Other testing, monitoring or information-gathering methods that produce information comparable to that produced by any method in (1) or (2)(A).

Option 2

[Section] Compliance Certifications. Notwithstanding any other provision in any plan approved by the Administrator, for the purpose of submission of compliance certifications an owner or operator is not prohibited from using monitoring as required under 40 CFR 70.6(a)(3) and incorporated into a federally enforceable operating permit in addition to any specified compliance methods.

[Section] Enforcement. (a) Notwithstanding any other provision in the [name of State or area] implementation plan approved by the Administrator, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such plan.

(1) Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at the source:

(A) A monitoring method approved for the source pursuant to 40 CFR 70.6(a)(3) and incorporated in a federally enforceable operating permit.

(B) Compliance methods specified in the applicable plan.

(2) The following testing, monitoring or information gathering methods are presumptively credible testing, monitoring or information gathering methods:

(A) Any federally-enforceable monitoring or testing methods, including those in 40 CFR parts 51, 60, 61 and 75.

(B) Other testing, monitoring or information-gathering methods that produce information comparable to that produced by any method in (1) or (2)(A).