Minnesota Pollution Control Agency
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June 25, 2009

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RE: In The Matter of the Proposed Rules of the Minnesota Pollution Control Agency Governing Air and Water Permit Fees, Minnesota Rules, Parts 7002.0016 to 7002.0310.

Dear Librarian:

The Minnesota Pollution Control Agency (MPCA) intends to hold a hearing regarding proposed rules governing air and water permit fees. We have published a Notice of Hearing and proposed rules in the June 22, 2009, edition of the *State Register*.

The MPCA has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the MPCA is sending the Library a copy of the Statement of Need and Reasonableness at the time we are mailing our Notice of Hearing.

If you have any questions, please contact me at 651-757-2245.

Sincerely,

Jim Brist
Planner Principal
Policy, Local Government Assistance and Solid Waste Section
Municipal Division

JB:wgp

Enclosure: Statement of Need and Reasonableness

Minnesota Pollution Control Agency

Municipal Division

Statement of Need and Reasonableness

Proposed Amendment to Rules Governing Air and Water Emission Permit Fees
Minnesota Rules, Chapter 7002

Minnesota Pollution Control Agency

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STATEMENT OF NEED AND REASONABLENESS

MINNESOTA POLLUTION CONTROL AGENCY

Upon request, this Statement of Need and Reasonableness (SONAR) can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Jim Brist at the Minnesota Pollution Control Agency, Municipal Division, 520 Lafayette Road North, St, Paul, MN 55155-4194; telephone 651-757-2245; fax 651-297-8676; or e-mail jim.brist@state.mn.us. TTY users may call the MPCA at 651-282-5332 or 800-657-3864.

Minnesota Pollution Control Agency
Municipal Division

STATEMENT OF NEED AND REASONABLENESS (SONAR)

Proposed Amendment to Rules Governing Air and Water Permit Application Fees,
Minnesota Rules, Chapter 7002.

I. INTRODUCTION AND STATEMENT OF GENERAL NEED FOR THESE RULES

Under its legislative authority (Minn. Stat. §116.07) and based upon the 2007 and 2008 legislative directives, the Minnesota Pollution Control Agency (MPCA) is amending Minnesota Rules, Chapter 7002. These amendments will add new fees for air permit applications; make changes to the fees charged for water permit applications; and codify changes to water quality annual fees made by legislative action.

The MPCA has experienced a variety of funding challenges. Most importantly, the MPCA's fee revenues have not kept pace with the cost of managing these programs. The Legislature has transferred money, in the past, into these fee accounts to address potential deficits. During the 1990s, as summarized on Page x of the Summary Section found in the Office of the Legislative Auditor's 2002 Program Evaluation Report entitled, "Minnesota Pollution Control Agency Funding" (Exhibit A), dated January 24, 2002, (2002 Legislative Auditor's Report) the MPCA received water quality fee account increases only in 1992 and several MPCA proposals for fee account increases were not enacted by the Legislature. In 2001, the MPCA proposed an environmental tax reform to address the funding issue, and this was also rejected by the Legislators. The 2002 Legislative Auditor's Report indicated that policymakers should consider whether they wanted to fund the MPCA with general or broad-based revenue sources as compared to "polluter-based" sources due to the cost of regulating types of pollution that are hard to trace to individual sources, such as mobile air emissions or nonpoint water discharges.

Specifically, the 2002 Legislative Auditor's Report stated:

> *State law says that fees should be set at levels that do not significantly over-recover or under-recover the costs of providing services. However, water quality fee revenues cover less than 60 percent of MPCA's staff costs for water-related permitting, compliance monitoring, and enforcement—and this does not include administrative overhead costs or the costs of essential activities such as ambient water monitoring, permit-related rule development, environmental review, and technical assistance. In fact, the Legislature should clarify in law the types of costs that should be covered by MPCA fees, thus making it easier to determine the exact extent of compliance with the law.*

The fees for MPCA water permits have not increased since 2003; although the complexity of the analysis that goes into the MPCA's permitting processes, as well as inflation, have increased the costs associated with water quality permitting. In 2003, the Legislature approved modest increases to the application fees and annual fees for water quality permits. These increases were below the level recommended by 2002 Legislative Auditor's Report and did not address the policy question of how to fund the MPCA's regulatory work. For a summary and the full 2002 Legislative Auditor's Report, see: http://www.auditor.leg.state.mn.us/ped/2002/pe0202.htm (Exhibit A).

In the new millennium, Minnesota experienced an economic expansion that impacted MPCA's permitting programs on many levels. Two examples, from industrial sector activities, were the growth of the ethanol and mining industries. Additional efforts by industrial sectors, including power, to find alternative fuels to the traditional coal or natural gas fuels required the MPCA to expand its knowledge and understanding of emissions and management techniques for the storage of the fuel and disposal of the residuals, while modifying or issuing these permits in a timely fashion. Examples from local government activities included expanding solid waste facilities and expanding or modifying municipal wastewater treatment facilities. The MPCA's staff resources were taxed to meet this increased permitting need in a timely fashion.

The MPCA responded to the expanding industrial sectors, at the time, by redirecting staff to focus on ethanol and mining construction projects. The demand for environmental review and permitting in all sectors was greater than the ability of the MPCA to respond. The focus on mining and ethanol projects created a staffing deficit for environmental review and permitting for other industrial and municipal activities. The Governor and Legislature responded to this staffing deficit by appropriating additional funds on May 8, 2007. These funds allowed the MPCA to add staff for the FY 2008-2009 biennium. The funding, however, was for only one biennium and carried with it the expectation that the MPCA would seek additional revenues to cover this staffing need permanently. In *Minnesota Laws* (2007), chapter 57, section 3, subdivision 2, the MPCA was directed to amend its rules or, where necessary, provide recommendations for legislative action, as follows:

> *By January 15, 2008, the commissioner shall amend agency rules and, where legislative action is necessary, provide recommendations to the house of representatives and senate divisions on environmental finance on water and air fee changes that will result in revenue to the environmental fund to pay for regulatory services to the ethanol, mining, and other developing economic sectors.*

Although the MPCA's permit activity in the past decade, as well as the legislation cited above (which specifically identifies the need to address developing economic sectors), has been focused on an increase in permit activity, the need for the amendments to the permit fees is broader than the need to address economic growth. The changes are necessary to address fundamental funding issues and the increasing complexity of environmental regulation. The proposed fee amendments are not intended to address short-term funding needs, but are designed to provide a flexible mechanism for the legislature and the MPCA to fund regulatory activities in changing economic climates.

The MPCA initiated a process to determine how to create revenue by seeking input by affected parties and by looking to funding options used by other states to create revenue. This stakeholder process was used to develop recommendations for consideration by the Legislature for ensuring implementation of a revenue system before the one-time funding expired. The MPCA's funding proposal was contained in its January 15, 2008, MPCA Report to the House and Senate Divisions on Environmental Finance entitled, *"Air and Water Fees Legislative Report"*, (2008 Legislative Report), which included a preliminary proposal for changes to the air and water permit fees by statute. The MPCA's 2008 Legislative Report can be viewed at http://www.pca.state.mn.us/publications/reports/lrp-f-1sy08.pdf. (Exhibit B) The MPCA's 2008 Legislative Report identified where permit application fee revisions were needed and proposed a structure for addressing those needs.

The MPCA found that the time period, May 2007 to January 2008, provided by *Minnesota Laws* (2007), chapter 57, section 3, subdivision 2, was insufficient to conduct a rulemaking under the requirements of the Administrative Procedures Act. Specifically, to obtain adequate stakeholder involvement and development of the full budget picture to better assess the fees now proposed by the MPCA, seven months was not adequate for the MPCA to complete required public notices, develop ideas, seek input and develop a reasonable approach to permit application revenue collection. Thus, the MPCA provided the Legislature with the requested recommendation for legislative changes, based on limited stakeholder involvement.

At legislative hearings, held by the House Environment and Natural Resource Finance Division Committee on March 11 and 13, 2008, the MPCA received verbal clarification and direction regarding the air and water fees. The Committee indicated that the recommendations contained in the MPCA's 2008 Legislative Report were too complicated to be contained in legislation, the MPCA had its own rulemaking authority in Minn. Stat. § 116.07, and the MPCA should utilize the rulemaking process to make the necessary changes by the beginning of the 2010 fiscal year. A recording of those hearings may be found at: http://www.house.leg.state.mn.us/audio/archivescomm.asp?comm=4400&ls_year=85.

Because of Minn. Stat. 116.07, subd. 4d, *Minnesota Laws* (2007), chapter 57, section 3, subdivision 2, and the MPCA's interaction with the Legislature in presenting the MPCA's 2008 Legislative Report and the direction clarified at the March 11 and 13, 2008, hearings, the MPCA continued its efforts on this rulemaking. This process took advantage of the stakeholder work started in 2007 and expanded the process to encourage full representation by permit holders across the state, not just their representatives from related affiliations. As discussed in more detail later, the MPCA published a notice in the *State Register* on June 16, 2008, requesting comments on these planned amendments as an effort to be inclusive in this process.

While meetings held in 2007 were with representatives of stakeholder groups, the MPCA thought it important to reach out during the rule process to actual permit holders. Thus, in addition to the public notice on June 16, 2008, the MPCA mailed an invitation to participate in the rulemaking process to about 6,000 potentially affected parties. On July 24, 2008, the MPCA hosted two statewide video conference meetings (afternoon and evening sessions were held) that included sites in St. Paul, Duluth, Brainerd, Detroit Lakes, Mankato, Willmar, Marshall and Rochester. These meetings updated participants on the proposal presented to the Legislature for adoption by law and requested comments on other options that should be considered by the MPCA during the rulemaking process. Based on comments received during and after these sessions, the MPCA drafted actual rule language. During the week of September 29, 2008, the MPCA held public meetings in St. Paul, Rochester, Willmar, and Brainerd to seek input on a draft rule. The comments received at those meetings were used to further refine the fee rule proposal. Copies of written comments received are provided in (Exhibit C).

As explained to stakeholders participating in the rulemaking process, there are several aspects to the MPCA's justification of the need for the rules. First, any rulemaking must be founded in the MPCA's statutory authority. The MPCA was first authorized to collect fees in 1983, *Minnesota Laws* (1983), ch. 301, sec. 113. The MPCA is required to issue permits and to monitor compliance with those permits (Minn. Stat. § 115.03 and Minn. Stat. §116.07.). This statutory mandate to issue permits is supported by Minn. Stat. § 116.07, subd. 4(d), which authorizes the MPCA to collect fees through rules to fund its permitting activities. Because the MPCA must administer permit programs for air quality and water quality permits; it is expected to assess fees to permit holders and applicants sufficient to cover the administrative costs of permit-related

activities. On the basis of the combined requirements of these two statutes, there is a need to establish fee rules, and amend them as necessary, so that the rules will accurately address the costs associated with implementing the permit programs.

The air emission and water quality fee rules were last amended in 1992; however, changes were made by legislative action, the last being in 2003. Since that time, there have been many changes to the universe of permit holders and the administration of the MPCA's permit program. The MPCA believes that the increased fees are necessary to cover the costs associated with permit-related activities and to continue to issue permits within a reasonable timeframe.

Although the MPCA has collected permit fees since 1983, the 2002 Legislative Auditor's Report and the MPCA's 2008 Legislative Report identified that the MPCA was not collecting enough fees to adequately fund the program. As a result of these Reports, the MPCA is amending the existing fee rules to address increasing the overall revenues from permit applications.

The increased cost of regulating facilities covered by air quality and water quality permits is based on a number of factors. In addition to the increased cost of maintaining adequate staff, a number of regulatory changes have occurred and thus, impact the staffing numbers and staff activities. For instance, in the area of air permitting, the MPCA has experienced the same increased demand on MPCA resources due to more permits and changes in federal law without a corresponding increase in funding. Currently, no fees are charged for air permit applications, which is inconsistent with the MPCA's water and hazardous waste programs. Facility owners holding air permits are charged only an annual fee based on emissions from a facility, as required by the federal Clean Air Act (CAA). The current annual fees are insufficient to cover the cost of issuing operating permits and associated regulatory needs. The MPCA is proposing to address the deficit through application fees for permitting new facilities or modifying existing facility permits.

In addition, changing federal and state program regulations and the MPCA's response to the interest shown by the MPCA Citizens' Board and the Minnesota Legislature on climate changes have increased the costs of the MPCA's regulatory work due to the additional work required. For example, recent changes in the federal CAA require that air quality permit applicants evaluate $PM_{2.5}$. Emission estimates for $PM_{2.5}$ are now required in all applications for individual permits and amendments to those permits. Also, $PM_{2.5}$ is now included in applicability analysis, Best Available Control Technology (BACT) analysis and dispersion modeling for Prevention of Significant Deterioration (PSD) permits and modifications. Additionally, the MPCA Citizens' Board interest in climate change and greenhouse gases associated with industrial facilities, in conjunction with increasing interest by the Minnesota Legislature and other states, required the generation of MPCA policy that requires emission estimates of greenhouse gases in some facility permit applications; those for which an Air Emission Risk Analysis (AERA) or Environmental Assessment Worksheet (EAW) is required. Policy on greenhouse gases is still developing and the MPCA anticipates further work in this area including the development of emission standards. Thus, the MPCA believes undertaking rulemaking, to include fees for air quality permit applications, is needed.

For water quality permit applicants, the 2003 Minnesota Court of Appeals decision in *Minnesota Center for Environmental Advocacy v. Minnesota Pollution Control Agency,* 660 N.W.2d 427 (Minn. App. 2003) led to some additional rulemaking by the MPCA's stormwater permit program regarding nondegradation review requirements and additional review by the program, particularly for municipal stormwater sewer system permit applications. Also as a result of this

decision, the MPCA must now place the stormwater pollution prevention plans for municipalities on public notice. This results in additional review time, document preparation time, and expense to duplicate the public notice processes. Time is also added due to the formal responses required to questions raised during this second process with regard to how a municipality or developer will ensure best management practices are followed and as to whether those practices are adequate. Further, the 2006 Minnesota Supreme Court decision in *C.A.R.D. v. Kandiyohi County*, 713 N.W.2d 817 (Minn. 2006) resulted in changes to the MPCA's environmental review assessment worksheets, which now contain a discussion of cumulative effects in the geographic area. This decision required additional efforts by the MPCA, to identify potential contributors of air emissions or water discharges, and additional modeling for the project under review. Finally, another example of a court decision impacting the MPCA's regulatory work was *In the Matter of the Cities of Annandale and Maple Lake*, (731 N.W.2d 502 (Minn. May 17, 2007)), a case that impacted how the MPCA water quality permitting program addresses trading and/or offsets for wastewater treatment plants.

As noted above, the MPCA's regulatory work has become increasingly complex and reflects the interrelated nature of environmental review, permitting and associated regulatory activities. The regulatory work related to permitting includes: review of permit application submittals, environmental review, technical assistance in developing data and consideration of alternatives, data management, compliance and enforcement review of existing facilities, program development, and administrative support. The complexity and interdisciplinary approaches needed to permit projects has impacted the MPCA's ability to complete timely environmental review and permitting actions. These rule amendments are needed to ensure that the MPCA is able to afford the proper resources to meet its regulatory obligations.

The resulting fees from this rulemaking will be significant for both air and water permit applications. Thus, the MPCA believes the rulemaking process is appropriate as it provides for those impacted by the change to present their concerns and options for modification. Both the Legislature in its March 2008 directive to the MPCA and the Legislative Auditor through the 2002 Legislative Auditor's Report, have indicated that the MPCA should cover costs associated with the regulatory obligations associated with permitting by collecting permit fees. This rulemaking addresses the need to meet the fee collection standards as voiced by both the Legislature and the Legislative Auditor. Under the current water fee program, application fees of $240 are charged for sewer extensions and $350 for most other applications with the exception of construction stormwater application fees, which are $400. The current fees for applications and modifications to water permits generate approximately $1,450,000 annually. The new annual water fee collection target is $3.0 million per year, or $6.0 million per biennium. To meet the new fee target, the proposed changes to the water permit fees will increase these permit application and permit modification fee rates significantly. No air permit application fee currently exists, and the collection target for these permits is $2.0 million per year, or $4.0 million per biennium. Thus, in total, the MPCA is seeking to collect $5 million in permit application fees each year or $10 million over a biennium.

II. STATUTORY AUTHORITY

As indicated above, the MPCA began a process in 2007 to respond to legislative directive associated with appropriated funds for additional staff. The MPCA believed the directive required the MPCA to, at a minimum; develop a report by January 15, 2008, with recommendations for legislative action or rulemaking. The MPCA believed, since rulemaking

could not be completed from May 2007 to January 2008 under the Administrative Procedures Act, legislative action was needed to amend the rules and put appropriate permit fees into law, based on Minn. Stat. § 14.125.

Minnesota Statute § 14.125, TIME LIMIT ON AUTHORITY TO ADOPT, AMEND, OR REPEAL RULES, states:

> *An agency shall publish a notice of intent to adopt rules or a notice of hearing within 18 months of the effective date of the law authorizing or requiring rules to be adopted, amended, or repealed. If the notice is not published within the time limit imposed by this section, the authority for the rules expires. The agency shall not use other law in existence at the time of the expiration of rulemaking authority under this section as authority to adopt, amend, or repeal these rules.*
>
> *An agency that publishes a notice of intent to adopt rules or a notice of hearing within the time limit specified in this section may subsequently amend or repeal the rules without additional legislative authorization.*

During budget hearings on March 11 and 13, 2008, MPCA staff went back before the House Environmental and Natural Resources Finance Division and requested the Legislature to adopt the fee system identified in the MPCA's 2008 Legislative Report into law. The Committee Chair clarified that it wanted the MPCA to undertake the changes through rulemaking as it has the authority to collect permit fees by rule under Minn. Stat. § 116.07. At the Committee Hearings in March 2008, the chair noted specifically that the MPCA had its own authority to conduct rulemaking and no additional authority was needed by the Legislature. On June 16, 2008, the MPCA published a notice in *the State Register* (32 SR 2234) requesting comments on these planned amendments. Therefore, the MPCA believes it has the proper authority to undertake this rulemaking effort.

Specifically, the MPCA believes it has the authority to conduct this rulemaking effort and establish fees due to the enactment of Minn. Stat. § 116.07, subd. 4(d) in which the Minnesota Legislature authorized the MPCA to collect permit fees. Minn. Stat. § 116.07, Subd. 4(d) states:

> *Subd. 4(d). Permit fees. (a) The agency may collect permit fees in amounts not greater than those necessary to cover the reasonable costs of developing, reviewing, and acting upon applications for agency permits and implementing and enforcing the conditions of the permits pursuant to agency rules. Permit fees shall not include the costs of litigation. The fee schedule must reflect reasonable and routine direct and indirect costs associated with permitting, implementation, and enforcement. The agency may impose an additional enforcement fee to be collected for a period of up to two years to cover the reasonable costs of implementing and enforcing the conditions of a permit under the rules of the agency. Any money collected under this paragraph shall be deposited in the environmental fund.*
>
> *(b) Notwithstanding paragraph (a), the agency shall collect an annual fee from the owner or operator of all stationary sources, emission facilities, emissions units, air contaminant treatment facilities, treatment facilities, potential air contaminant storage facilities, or storage facilities subject to the requirement to*

obtain a permit under subchapter V of the federal Clean Air Act, United States Code, title 42, section 7401 et seq., or section 116.081. The annual fee shall be used to pay for all direct and indirect reasonable costs, including attorney general costs, required to develop and administer the permit program requirements of subchapter V of the federal Clean Air Act, United States Code, title 42, section 7401 et seq., and sections of this chapter and the rules adopted under this chapter related to air contamination and noise. Those costs include the reasonable costs of reviewing and acting upon an application for a permit; implementing and enforcing statutes, rules, and the terms and conditions of a permit; emissions, ambient, and deposition monitoring; preparing generally applicable regulations; responding to federal guidance; modeling, analyses, and demonstrations; preparing inventories and tracking emissions; and providing information to the public about these activities.

In addition, Minnesota Rule 1400.2070 STATEMENT OF NEED AND REASONABLENESS, Subp. 1, item D reads in relevant part:

….The statement must include:

D. a citation to the agency's grant of statutory authority to adopt the rule and, if the grant of authority was made after January 1, 1996, the effective date of the agency's statutory authority to adopt the rule; and ….

The MPCA's express statutory authority to establish permit fees was granted in Minn. Stat. § 116.07, subd. 4(d). Because this statute was enacted prior to January 1, 1996, Minn. Stat. § 14.125, Time Limit on Authority to Adopt, Amend or Repeal Rules, does not apply, nor does the requirement of Minn. R. 1400.2070, subp. 1, item D, to report the effective date of the Agency's statutory authority to adopt the rule.

In addition to MPCA's statutory authority to establish permit fees stated above, the MPCA has additional authority granted and directed by the 2007 and 2008 Legislature to amend the permit fee rules to specifically address the expenses associated with air and water permit issuance. In *Minnesota Laws* (2007), chapter 57, section 3, subdivision 2, the MPCA was directed to amend its air and water permit fees rules as follows:

By January 15, 2008, the commissioner shall amend agency rules and, where legislative action is necessary, provide recommendations to the house of representatives and senate divisions on environmental finance on water and air fee changes that will result in revenue to the environmental fund to pay for regulatory services to the ethanol, mining, and other developing economic sectors.

Further, the 2008 Legislature clarified in hearings on March 11 and 13, 2008, that it believed the MPCA should undertake rulemaking to amend the permit fee rules and that they believed, as does the MPCA, that the MPCA has its own authority in addition to these Legislative directives for this rulemaking effort, and that further legislative action was not required. Thus, the MPCA believes it has met the requirement of Minn. Stat. § 14.125 by the notice of this hearing and the procedures being taken to complete the rulemaking as directed by the 2008 Legislature. The MPCA believes all rulemaking actions will be complete within 18 months of the March 2008 directives.

III. REGULATORY ANALYSIS

Minnesota statutes contain several requirements relating to rulemaking. These requirements are addressed below as they relate to the proposed fee rule amendments.

Minn. Stat. § 14.111 FARMING OPERATIONS. Minn. Stat. § 14.111 requires an agency to provide a copy of the proposed rule change to the Commissioner of Agriculture, no later than 30 days prior to publication of the proposed rule in the *State Register*. The MPCA intends to serve the required notification to the Commissioner of Agriculture with a specific reference to the impact that the proposed permit fees are expected to have on the owners and operators of livestock feedlots.

Minn. Stat. § 14.116 NOTICE TO LEGISLATURE. Minn. Stat. § 14.116 states that when an agency mails notice of intent to adopt rules under section 14.14 or 14.22, the agency must send a copy of the same notice and a copy of the Statement of Need and Reasonableness to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules. The MPCA intends to serve the required notification to the current chairs and ranking minority party members.

Additionally, if the mailing of the notice is within two years of the effective date of the law granting the agency authority to adopt the proposed rules, the agency shall make reasonable efforts to send a copy of the notice and the SONAR to all sitting legislators who were chief House of Representatives and Senate authors of the bill granting the rulemaking authority. If the bill was amended to include this rulemaking authority, the agency shall make reasonable efforts to send the notice and the SONAR to the chief House of Representatives and Senate authors of the amendment granting rulemaking authority, rather than to the chief authors of the bill. The MPCA intends to send the notice and SONAR to all sitting legislators who were chief House of Representatives and Senate authors of the *Minnesota Laws* (2007), Chapter 57, Sec 3, subd. 2.

Minn. Stat. § 14.127 LEGISLATIVE APPROVAL REQUIRED. Minn. Stat. § 14.127 establishes specific conditions for evaluation of the cost of compliance for small businesses or local governments. The MPCA has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed $25,000 for any small business or small city. Although the actual costs to a business or city will depend on the type of permit sought and the timing of permitting activity, the MPCA is not aware of any instances where the limit is expected to be exceeded by a small business or small city in the next few years. However, to eliminate the possibility that this limit could be exceeded, the MPCA has included a provision to cap the fees as they apply to small businesses and small cities. Part 7002.0255 specifically caps the cost for a small business or city, as defined in Minn. Stat. § 14.127, at $25,000 for the first year following the effective date of the rule. Therefore, the MPCA has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed $25,000 for any small business or small city.

Minn. Stat. § 14.131 FACTORS TO BE ADDRESSED IN THE STATEMENT OF NEED AND REASONABLENESS. Minn. Stat. § 14.131 sets out seven factors the MPCA must address in this SONAR, based on information that may be obtained by reasonable effort. This

Statute also requires that this SONAR include a discussion of how the rules address the legislative policy for performance-based standards and an explanation of how the MPCA provided additional notification of the rulemaking to potentially affected parties.

The seven factors that must be addressed are:

"(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule"

The classes of persons who will bear the cost, and will also benefit from the proposed rule changes, are the businesses and communities that either currently or in the future will hold an air quality permit and/or a water quality permit from the MPCA. The entities that will be affected by the fee increases fall into three primary classes, local units of government, agricultural (feedlots) and industrial. There are approximately 3,700 MPCA air permits and 16,000 water permits, when including the short-term construction stormwater permits, in the MPCA's database. The number of permits varies over time as many permits were issued for a short term and expired. The proposed fees account for the differences in permit timeframes and level of effort. Not all permit applications will be subject to the amended fees being proposed, i.e., no increase for construction stormwater permit applications, but the numbers of existing permits give an indication of the magnitude of the regulated community and the type of businesses that will be affected. The proposed permit application fees will apply to new applicants and to existing permittees that are seeking reissuance or modification. The MPCA cannot predict how many actual permits will be sought, modified, or re-issued in the coming years. However, based on a review of database records, it is reasonable to anticipate a similar level of permit activity as has occurred over the past five years.

At this time, the MPCA has issued approximately 3,700 air permits for stationary sources ranging from small scale industrial facilities, such as an auto paint shop, to large air emission facilities such as power plants, refineries and industrial incinerators. Because these facilities represent ongoing industrial activities needed to support the population of Minnesota, the MPCA expects that there will be continued activity in the air permit program, especially in the area of energy production.

The MPCA has approximately 16,000 water permits that address water operations and/or discharges and cover a number of MPCA programs. Many of these 16,000 permits are attributable to construction stormwater projects that close out after development is complete. These permits apply to facilities ranging from the smallest type of facility required to get a permit, construction activities disturbing one acre of land or 1,000 animal units at a feedlot, to the largest facilities, which handle wastewater from the Twin City Metro area. The number of permits will change over time.

Stormwater discharges are also a large category of water permits. Construction stormwater permits are the largest category of stormwater permittees. Of the 16,000 water quality permits, the MPCA issues 2,500 - 3,000 construction site stormwater permits annually. A number of additional (400 - 1,200) construction stormwater permits are created through the subdivision of large development projects. Construction stormwater permits are only active for the period of construction and are then closed out to be addressed by another permit or no permit at all. The

MPCA has issued 1,729 industrial stormwater permits and expects to issue nearly 2,300 more after the finalization of the new General Industrial Stormwater Permit. The MPCA has also issued coverage for 233 Municipal Separate Storm Sewer Systems (MS4) under the MS4 General Permit.

The facility permits that the MPCA issues for water discharges (excluding stormwater) include both municipal and industrial dischargers. There are approximately 560 facilities permitted under a water discharge general permit, and approximately 1,100 individual water quality permits. About 95 percent of the Concentrated Animal Feedlot Operations (CAFOs) are permitted under a specific General National Pollutant Discharge Elimination System (NPDES) Permit for these facilities and the remaining five percent are permitted under individual NPDES permits as they cannot meet the qualifications for coverage under the General NPDES Permit because of the treatment technology used at the site or site conditions.

Although these entities will bear the costs of the fee increases, there will also be benefits to the same classes of permit holders as a result of the rule amendments. The increase in fee revenues will enable the MPCA to maintain timely issuance of permits. Under federal and state law, for instance, permit applicants are to submit applications for reissuance or modification, 180 days prior to permit expiration date to allow for the MPCA to review, public notice, and reissue the permit. Under state law, feedlot permits are to be issued within 60 days of permit application or completion of an EAW, with a possible extension of 60 days. (Minn. Stat. § 116.07, subdivision 7 (3)(b) and Minn. Stat. § 15.99.) Prior to the increased appropriation from the Legislature for regulatory activities, the MPCA established a queue for new applications for both air and water permit applications, because the amount of work exceeded the resources available to do the permitting. This situation existed in spite of ongoing process improvement efforts for both the air and the water permitting processes. Because most of the permitting work was being applied to applications for new facilities or modifications to existing facilities seeking expansion, a backlog of permit applications for permit re-issuance was also developing.

With additional resources received from the additional funds appropriated in the 2007 legislative session, the MPCA now initiates work on permit applications when received and is addressing the backlog of permit re-issuance work. The amendment of the fee rules will establish a process to collect the necessary funds and maintain timely issuance of permits. Timely permit issuance will allow municipalities and businesses to move forward with projects in a predictable fashion. In addition, the increased fee revenue will provide the MPCA with the funds to ensure comprehensive environmental compliance resulting in environmental gains, which will benefit all citizens of Minnesota.

"(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues"

The MPCA currently collects fees for air and water permits and has in place processes for these activities. Therefore, the cost to the MPCA is not anticipated to be significantly different from what the MPCA currently incurs to collect fees.

Other state agencies may be affected by the increases in the fee rules. Several state agencies, such as the Department of Transportation, Department of Corrections, Department of Human Services and the Department of Natural Resources hold air or water permits from the MPCA. Currently, the MPCA has permitted more than 20 facilities owned and operated by a state agency. These permittees, when they seek a new permit or a reissuance of their existing permit,

will bear the costs for a permit application specified in these rules. The MPCA cannot determine the extent of the permit needs for other state agencies, but does not believe it will be a significant number or that the costs will be significant in relation to the cost of the overall construction or operation of the air or water facility.

"(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule"

The MPCA has been authorized in Minn. Stat. § 116.07, subd. 4(d) to collect fees *"to cover the reasonable costs of developing, reviewing, and acting upon applications for agency permits and implementing and enforcing the conditions of the permits pursuant to agency rules."* This authority was reinforced by a mandate in *Minnesota Laws* (2007), chapter 57, section 3, subdivision 2, directing the MPCA to adopt fee rules that would *"result in revenue to the environmental fund to pay for regulatory services to the ethanol, mining, and other developing economic sectors."* The MPCA interprets these legislative directives to mean that the rules should be based on the concept of "polluter pays" and the Legislature intends that permittees bear the cost of the permit programs. Because of the directive by the Legislature, the MPCA has been instructed to charge reasonable permit fees to cover the costs of its permit program and increased regulatory services. Further, because Minn. Stat § 116.07, subd.4d prohibits over collecting fees, the MPCA designed its proposal to include a self correcting adjustment. Therefore, the MPCA believes there are no less costly or less intrusive methods.

"(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule"

Because of the legislative directive to collect fees through rulemaking and specifically to do so from permit applicants, the MPCA did not consider different options to collect fees except through the permit application process. However, the MPCA did research different fee systems used by other states to cover some of the costs of regulatory programs for both air and water. These systems included fixed dollar amounts for all permit applications, fees based on the capital cost of a project, a point system where fees increased based on level of work required to develop a permit, hourly fees, and increases in annual fees versus application fees. This information was shared with stakeholder groups and, based on this information, the stakeholders were asked to identify elements that should be considered in developing the fee system for Minnesota. The following key recommendations were identified:

1. The fee associated with a permit action should correlate with the level of effort required by the MPCA;
2. The system should not be so complex that a permit applicant submitting a permit application has difficulty calculating the fee, or that MPCA staff must spend extensive time in administering the fee system;
3. The permit applicant should have a clear idea of what the fee will be so that they are able to budget for this expense. Therefore, avoid using an hourly fee because the applicant cannot determine how many hours needed to process the permit application;
4. Small businesses, feedlots, or units of government should not be burdened with excessively high fees;
5. Fees should encourage the reduction of impacts to the environment by a facility (i.e. less pollutant equals a lower fee);

6. Fees should apply to new construction or modifications only and the MPCA should not increase fees for applications for permit re-issuance;
7. Revenue received from the municipal and industrial sectors for water permits should be proportional to the associated increase in workload attributable to those sectors; and
8. The MPCA should develop a fee system for construction activities that compensates for the high annual fees that some facilities pay.

Many of the alternatives considered for achieving the objective of the rules did not meet as many of the recommendations above, as the proposed option. Therefore, these options were rejected as being unacceptable to the regulated community and the MPCA. The point system proposed in the rule closely aligns with many of the identified stakeholder recommendations and achieves the outcome as directed by the Legislature in session law and specified in statute.

"(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals"

The cost to comply with the proposed rule will vary based on whether the permit applicant is renewing a permit with no changes to operations or whether a permit is being sought for a new facility or a modification to an existing facility. Under this amendment, as the level of effort in the permitting process increases, the cost associated with the permit also increases. Fees will range from $285 for an air administrative amendment, such as a change in ownership of a facility, to $40,300 to $75,475 to expand a large wastewater treatment facility or build a new ethanol plant. These fees represent a small cost compared to the overall cost of a project. For example, at the high end of the fees, the $75,475 permit fee to build a new ethanol facility is less than one percent of the capital cost of $100 to $150 million for that same facility. Even the most expensive feedlot permit application would be charged a permit fee that is still less than 1 percent of the estimated capital cost. For an individual permit with environmental review for a dairy operation with digestion as waste treatment, the fee charged would be $6,510, which is less than one percent of the capital cost, estimated at over $1 million.

The fees increase as the complexity of the facility or site location increases and as the potential impact to public health and the environment increases. The following examples show fees that would be borne by different categories of affected parties, based on the specifics of each example and $285 per point for air permit activities and $310 per point for water permit activities:

1. Municipal:
    a. A permit applicant from any size municipal public operated treatment works renewing the water quality permit with no changes in the operation of the facility or applicable standards would be assessed a permit application fee of $1,240 (4 points for application times $310) for a five-year permit;
    b. A permit applicant from a city expanding from 30,000 gallons per day to 60,000 gallons per day. (approximate population of 250 to 600) would be assessed a permit application fee of $9,300 (30 points for application times $310) for the water quality permit;
    c. A permit applicant from a city expanding from 300,000 gallon per day to 600,000 gallons per day (approximate population of 2,500 to 6,000) would be assessed a combination of a permit application fee and additional fees in the amount of $27,900 (30 points for application + 5 points for additional flow + 35 points for EAW + 20 points for non-degradation review = 90 points times $310) for the water quality permit;

d. A permit applicant from a city expanding from 20 million gallons per day to 25 million gallons per day (approximate population of 150,000 to 250,000) would be assessed a combination of a permit application fee and additional fees in the amount of $21,700 (30 points for application + 20 points for increased flow, + 20 points for non-degradation review = 70 points times $310) for the water quality permit; or
e. A permit applicant from a city expanding from 250 MGD to 380 MGD (approximate population of 1.5 to 2.5 million) would be assessed a combination of a permit application fee and additional fees in the amount of $38,750 (30 points for application + 40 for increased flow + 35 points for EAW + 20 points for non-degradation review = 125 points times $310) for the water quality permit.

2. Agricultural:
   a. A permit applicant seeking coverage under a reissued general or seeking a reissued individual water quality permit would be assessed a permit application fee of $620 for a five-year permit (2 points for application times $310);
   b. A permit applicant seeking modification(s) under a general water quality permit would be assessed a fee of $620 (2 points for application times $310);
   c. A permit applicant seeking construction of a new facility (with greater than 1,000 animal units) under a general water quality permit would be assessed a fee of $5,270 (2 points for permit application + 15 points for EAW = 17 points times $310);
   d. A permit applicant seeking modification of an existing facility under an individual water quality permit of a size that does not require an Environmental Assessment Worksheet would be assessed a fee of $1,860 (6 points for permit application times $310); or
   e. A permit applicant seeking an individual water quality permit for the construction of a new feedlot operation, which requires an EAW, would be assessed a fee of $6,510 (6 points for application + 15 points for EAW = 21 points times $310).

3. Industrial:
   a. An industrial permit applicant renewing a water quality permit with no changes in the operation of the facility or applicable standards would be assessed a permit application fee of $1,240 for a five-year permit (4 points for application times $310);
   b. A permit applicant seeking coverage under a general industrial by-products water quality permit would be assessed a permit application fee of $1,240 (4 points for application times $310);
   c. A permit applicant seeking a minor amendment of power plant air quality permit would be assessed a permit application fee of $1,140 (4 points for application times $285);
   d. A permit applicant seeking a major modification for a water quality permit for a cheese producer, with no increase in flow, would be assessed a permit application fee of $2,480 (8 points for application times $310);
   e. A permit applicant seeking a major amendment of an air quality permit for a manufacturing facility would be assessed a permit application fee of $14,250 (25 points for the application + 15 points for modeling review + 10 points for NESHAP review = 50 points times $285);
   f. A permit applicant seeking a major amendment for an increase of less than 10,000 barrels per day of refining capacity at an oil refinery would be assessed a fee of $28,500 (25 points for application + 15 points for modeling review + 30 points BACT review +10 points netting review + 10 points New Source Performance Standard (NSPS) review + 10

points National Emission Standards for Hazardous Air Pollutant (NESHAP) review = 100 points times $285) for the air quality permit;

g. A permit applicant seeking a large paper mill expansion would be assessed an application and additional fee of $21,700 (30 points for application + 20 points for flow increase + 20 points for non-degradation review = 70 points times $310) for their water quality permit and $31,350 (25 points for permit application + 15 points for modeling + 20 points taking limits + 30 points BACT review + 20 points NSPS = 110 points times $285) for the air quality permit, for a total permit fee of $53,050; or
h. A permit applicant for a new ethanol plant using natural gas as the fuel source would be assessed a fee of $17,050 (30 points for application + 5 points for flow increase + 20 points for non-degradation review = 55 points times $310) for the water permit and $58,425 (75 points for permit application + 15 points for modeling + 10 points for NESHAP review + 15 points for AERA + 20 points for taking limits to receive a specific permit + 70 points for EAW = 205 points times $285) for a total of $75,475.

"(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals"

The consequences of not adopting the proposed rule would be a reduction in MPCA resources, resulting in a delay in the issuance of permits required to initiate construction of new municipal, agricultural or industrial facilities, and resulting in an increased backlog of permits to be reissued with new environmental limits. Additionally, the MPCA's overall capability to support the ongoing regulatory actions associated with permit facility would be reduced and it could be expected that increased environmental damage would result and attributable to the lack of inspections and appropriate compliance follow up. The MPCA would also find it difficult to modify existing systems to allow for electronic permit applications, data submissions and other innovations that serve the permit applicant and general public as well as the MPCA.

The MPCA cannot accurately estimate the costs for each of the classes identified because the losses would stem from lost productivity or capacity to grow (e.g. if a city was unable to expand their wastewater treatment facility and could not approve residential, commercial or industrial development) due to delays in receiving a permit. This will vary in every situation from very minor to the potential loss of a project in sectors where entry into a market early would make or break a proposed facility's success. Additionally, the costs to the general public of the ongoing discharge or emission of specific pollutants would be specific to an area or body of water impacted by the emission or discharge.

"(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference"

Federal regulations developed to fulfill the requirements of the Clean Air Act and established in Code of Federal Regulations (CFR) Title 40, Part 70.9 require states that implement the federal permit program to charge fees to owners and operators of Part 70 sources that are sufficient to cover the permit program costs. The regulations required in CFR Title 40, Part 70.9, Fee determination and certification, state:

> *(a) Fee Requirement. The State program shall require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other*

period, that are sufficient to cover the permit program costs and shall ensure that any fee required by this section will be used solely for permit program costs.
(b) Fee schedule adequacy. (1) The State program shall establish a fee schedule that results in the collection and retention of revenues sufficient to cover the permit program costs. These costs include, but are not limited to, the costs of the following activities as they relate to the operating permit program for stationary sources:
(i) Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;
(ii) Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;
(iii) General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;
(iv) Implementing and enforcing the terms of any part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;
(v) Emissions and ambient monitoring;
(vi) Modeling, analyses, or demonstrations;
(vii) Preparing inventories and tracking emissions; and
(viii) Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program contained in section 507 of the Act in determining and meeting their obligations under this part.
(2)(i) The Administrator will presume that the fee schedule meets the requirements of paragraph (b)(1) of this section if it would result in the collection and retention of an amount not less than $25 per year [as adjusted pursuant to the criteria set forth in paragraph (b)(2)(iv) of this section] times the total tons of the actual emissions of each regulated pollutant (for presumptive fee calculation) emitted from part 70 sources.

The regulations further state in CFR Title 40, Part 70.9:

(3) The State program's fee schedule may include emissions fees, application fees, service-based fees or other types of fees, or any combination thereof, to meet the requirements of paragraph (b)(1) or (b)(2) of this section. Nothing in the provisions of this section shall require a permitting authority to calculate fees on any particular basis or in the same manner for all part 70 sources, all classes or categories of part 70 sources, or all regulated air pollutants, provided that the permitting authority collects a total amount of fees sufficient to meet the program support requirements of paragraph (b)(1) of this section.

The rule as proposed is in full compliance with the requirements as stated in CFR Title 40, Part 70.9 and therefore there are no differences that need to be addressed.

For fees associated with water quality permits and stormwater permits, there are no associated federal regulations that correspond to the state fee rules so there are no differences to assess.

Minn. Stat. § 14.131 Factors to be addressed in the Statement of Need and Reasonableness. Performance-based rules, Minn. Statute. § 14.131, requires that an agency include in its SONAR a discussion of how the agency, in developing the rules, considered and implemented the legislative policy supporting the adoption of performance-based standards as set forth in Minn. Stat. § 14.002, which states in part:

> *"whenever feasible, state agencies must develop rules and regulatory programs that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals."*

Generally, performance-based systems would govern the operations or design of a facility. The MPCA's technical rules often contain performance-based options that allow for flexibility, and options to achieve standards. Given this, the MPCA still attempted to find a method to apply this policy in the development of the permit application fee system. In discussions with stakeholders, the MPCA found that the opportunity to use of performance-based standards would be using incentives in the form of reduced fees for superior environmental results. Stakeholders requested the MPCA consider reduced application fees for facilities demonstrating superior achievement in meeting agency regulatory objectives. The MPCA agreed with the concept and worked to identify methods that could be readily implemented without extensive data and recordkeeping on the part of the MPCA or regulated party, to avoid significantly increased administrative costs to the agency and in turn, raising the fees. The MPCA considered the use of existing certification programs such as ISO14000 or DEED, as the idea of an existing, accepted program would be needed to provide assurances to the public on environmental results. Stakeholders identified that the ability to qualify for these incentives would not be equally available to all permit applicants because of the high cost of receiving certification. These costs and tracking systems, in most cases, would preclude governmental units and small businesses from qualifying for this type of incentive. The MPCA does not believe that it is reasonable to increase the fees for all permits to establish an incentive program that is not equally available to all facilities due to the high certification costs. The MPCA sought the input of stakeholders for other incentives, and none were provided. The MPCA will continue looking for performance-based incentives to reduce permit application fees and will propose amendments accordingly.

Minn. Stat. § 14.131 ADDITIONAL NOTIFICATION. Minn. Stat. § 14.131 requires that an agency must, in its SONAR,

> *"describe the agency's efforts to provide additional notification under section 14.14, subdivision 1a, to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made".*

The requirements of Minn. Stat. § 14.14 include:

> 14.14. Subd. 1a. Notice of rule hearing.
>
> *(a) Each agency shall maintain a list of all persons who have registered with the agency for the purpose of receiving notice of rule proceedings. The agency may inquire as to whether those persons on the list wish to maintain their names on it and may remove names for which there is a negative reply or no reply within 60 days. The agency shall, at least 30 days before the date set for the hearing, give notice of its intention to adopt rules by United States mail to all persons on its list,*

and by publication in the State Register. The mailed notice must include either a copy of the proposed rule or an easily readable and understandable description of its nature and effect and an announcement that a free copy of the proposed rule is available on request from the agency. In addition, each agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication. The notice in the State Register must include the proposed rule or an amended rule in the form required by the revisor under section 14.07, together with an easily readable and understandable summary of the overall nature and effect of the proposed rule, a citation to the most specific statutory authority for the proposed rule, a statement of the place, date, and time of the public hearing, a statement that persons may register with the agency for the purpose of receiving notice of rule proceedings and notice that the agency intends to adopt a rule and other information required by law or rule. When an entire rule is proposed to be repealed, the agency need only publish that fact, along with an easily readable and understandable summary of the overall nature of the rules proposed for repeal, and a citation to the rule to be repealed.

The MPCA considered these statutory requirements by conducting an extensive stakeholder process to obtain input into the design of the fee system and to notify the potentially regulated parties of the MPCA's intent regarding fee rules. The amendments to the fee rules will affect a large number of entities and will make significant changes to the fees they pay. The following activities were conducted to alert the regulated community, general public, and legislative interests, regarding the revisions being considered. Additional notification, as required by Minn. Stat. § 14.14, subd. 1a will be conducted when the rules are published for public comment with the Notice of Hearing.

During the summer and fall of 2007, the MPCA conducted a number of meetings with organizations that represented specific permit sectors that would be affected by the revisions. The meetings were held with the Minnesota Chamber of Commerce, the League of Minnesota Cities, agriculture organizations, and representatives from small businesses. The MPCA requested that they notify their membership about the upcoming rulemaking. The MPCA also met with legislators who had a specific interest in the fee rules. These discussions were general and focused on obtaining input about how the MPCA should proceed with the fee revisions. From this round of stakeholder input, the MPCA produced its 2008 Legislative Report. During legislative hearings in the 2008 Legislative session, the MPCA was directed to undertake a formal rulemaking process and amend its fee rules to address revenue shortfalls.

Thus, the MPCA initiated the first formal step of the Administrative Procedures Act during the summer months of 2008. The MPCA published a Request for Comments in the June 16, 2008, *State Register* (32 SR 2234) that identified the general nature of the amendments being considered and also provided notification of public meetings to be held. As part of the public notification process associated with that Request for Comments, the MPCA took a number of steps to keep interested parties involved in the rulemaking process.

The MPCA provided a broad notification to all potentially interested parties of the pending rulemaking. The MPCA also requested their participation in an electronic survey designed to identify their level of interest in the fee rules and obtain information for future contact. This notification in the form of a letter of invitation signed by Myrna M. Halbach, Director,

Operational Support Division, notified recipients of the MPCA's rulemaking plans and invited their participation in an electronic survey. The MPCA was seeking information in the electronic survey in order to plan public informational meetings. The MPCA also desired to obtain e-mail addresses for future notification of interested parties. This invitation requested participation in the electronic survey but also provided the option of receiving standard mail notifications of rule-related activities. On June 12, 2008, the MPCA mailed the letter of invitation to approximately current 6000 holders of MPCA air emission and water quality permits.

In addition to the mailed letter of invitation, the MPCA provided additional opportunity to participate in the formal rulemaking process through the following mechanisms.

1. The letter of invitation was posted on the Website the MPCA maintains at http://www.pca.state.mn.us/permits/airwaterfees.html regarding the fee rulemaking.
2. On June 12, 2008, the MPCA sent the letter of invitation to subscribers of the Air Quality Technical Info Listserve, which has 228 subscribers, and also the list of National Pollutant Discharge Elimination System permit holders.
3. On June 20, 2008, the MPCA invited participation in the survey in the Minnesota Environmental Partnership Weekly update, which was emailed to 1,120 entities.
4. The Request for Comments, published in the *State Register* on June 16, 2008, provided notification of the MPCA's intent to amend the fee rules and an invitation to participate in the survey, and also provided detailed information regarding public information meetings to be held on July 28, 2008.
5. The Request for Comments was mailed to all the parties who had indicated on the electronic survey that they were interested in the fee rules and was also electronically distributed to the distribution lists identified above.
6. The Request for Comments was posted on the MPCA's Webpage that provided background information including links to a legislative report, a Webcast of background information regarding the air and water fees and relevant factsheets.
7. Public meetings were held on July 28, 2008, at all seven of the MPCA's regional offices, and the St. Paul office, via videoconference connections. To encourage attendance, two sets of meetings were held, a daytime and an evening session. Both sessions provided similar staff presentations and provided similar opportunities for input.
8. An additional round of public informational meetings was held at four locations throughout the state on September 29 and 30, and October 1 and 2, 2008. These meetings, which provided both afternoon and evening opportunities to participate, were held in St. Paul, Rochester, Willmar and Brainerd.

Minn. Stat. § 14.131 CONSULT WITH THE COMMISSIONER OF FINANCE. As required by Minn. Stat. § 14.131, the MPCA will consult with the Commissioner of Finance concerning the impact of the changes to the rule on local governments. The MPCA met with the Executive Budget Officer assigned to the MPCA to discuss the draft proposal and intends to send to the Commissioner of Finance copies of the proposed rules and this SONAR at the same time they are sent for review and approval to the Governor's Office. The preliminary meeting with the Department of Finance indicated that that Department will be able to do the analysis with the rule and SONAR, as drafted.

Additionally, in accordance with Minn. Stat. § 14.131, the MPCA will send a copy of the SONAR to the Legislative Reference Library when the notice of hearing is mailed under section 14.14, subd. 1a.

IV. RULE-BY-RULE ANALYSIS OF SPECIFIC NEED AND REASONABLENESS

GENERAL REASONABLENESS

The MPCA currently charges fees to permittees based on annual air emissions. These emission fees are mandated by the Federal Clean Air Act. The process for assessing annual air emission fees is found in existing part 7002.0025 and is not being amended in this rulemaking. However, the MPCA proposes to make minor clarifying changes to the rules that address the administrative process for issuing the annual air emission fee. These modifications reflect administrative changes in how the new permit application part of the fee program will be implemented. The MPCA believes that it is reasonable to approach the administrative processes for all fees in a consistent manner, as it maintains clarity for the fee payer and achieves efficiencies for the MPCA. The proposed changes regarding the administrative processes are found in parts 7002.0065, 7002.0075, and 7002.0085, and are discussed in more detail below.

The most significant changes being proposed are new rules that establish a fee system applicable to air quality permit applicants. The new fees provide a reasonable approach to ensure essential funding of the MPCA's air quality program. The General Need for charging fees to air permit applicants, which is the legislative mandate to the MPCA to collect fees to cover the costs of administering the MPCA's air program, is discussed in Part I. of this SONAR. Part I of this SONAR also discussed the applicable fee to various classes of permittees. In general, the MPCA believes the approach used to develop the new air permit application and modified water fees is reasonable as it reflects the level of work needed for the various permit applications reviewed.

The fee system has accounted for the important recommendations suggested by stakeholder representatives in the 2007 effort and documented in the MPCA's 2008 Legislative Report. In developing fee options, the MPCA investigated revenue options used by other states. In meetings with stakeholders (in both 2007 and 2008), the MPCA presented permit fee options used by other states and how using those systems might look when applied to Minnesota applications. A summary of these options is found in the PowerPoint presentation attached to the MPCA's 2008 Legislative Report (Exhibit B) as Exhibit #3. A more complete listing of the different types of fee systems used by other states can be found in Exhibit D. The MPCA believes it has taken a reasonable approach to collecting the needed revenues.

In 2008, the MPCA considered an additional option for discussion. The new option was a combination of permit application fees and annual fees. This option was offered as a potential method to help avoid large swings in the permit application fees with a small adjustment to annual permit fees. The MPCA also felt that in raising this option for stakeholders they would consider it and other options put out by the MPCA, and perhaps put forth additional ways to achieve the collection of appropriate revenues in an acceptable manner for reasons such as equitable distribution of costs for ongoing regulatory needs of operating facilities and new facilities, simplicity, and ease of understanding. The Pork Producers, in their letter dated August 12, 2008, (Exhibit C) suggested that a fee system be based upon cost of construction. The MPCA did consider how this approach would function. The basic premise of such an approach is that the more a project cost, the more complicated or the more work required of the MPCA; and thus, the fee should be greater. While on the surface, this may seem appropriate, an evaluation of permit review actually indicates that the complexity and controversy of a project is not a direct result of the size or cost of a project. The level of work for a specific permit is not, in every instance, directly influenced by the cost of a particular project; more so in air permitting than water. Thus, the mechanisms used to collect fees are somewhat different. Additionally, the same

type of power facility located in an urban setting will have a different need for public meetings, modeling, and perhaps even emission controls than one located outside of any municipality in agricultural setting. For water permits, the size of the discharge along with types of pollutants in the discharge relates directly to the complexity of the permit review and approval process; while in air the complexity and level of effort will depend on the type of facility, type of permit, emission components, and number of emission units.

After considering various options and obtaining stakeholder feedback, the MPCA decided to develop rules based upon the point system put forth in the MPCA's 2008 Legislative Report. The point system is based on the level of effort needed to develop specific types of permits. This system is based on the premise that facilities needing more complex permits, because of the rules that they are required to follow or their potential impact on human health or the environment, should pay a higher fee. While the other systems considered would recover the same revenue, the MPCA believes the point system, with a formula that accounts for a fee target and actually results in achieving the target, reasonably assesses the cost of maintaining a regulatory system across a diverse set of permit types.

Therefore, it is reasonable for the MPCA to develop a formula adaptable to the changes in the demand for and level of effort with regard to review of permit applications with a readjusting mechanism built in. Additionally, it is reasonable to incorporate in a regulatory mechanism the formula and the supporting administrative process, into rules having the power and effect of law.

A. AMENDMENTS TO AIR FEES (Minn. R. 7002.0016 – 7002.0085)

SPECIFIC NEED AND REASONABLENESS

7002.0016 AIR QUALITY PERMIT APPLICATION FEES AND ADDITIONAL FEES. This is a new rule part. The MPCA has no permit application fee for any air quality permitting action; although such actions represent a significant demand on MPCA program resources. Subpart 1 establishes that a fee is required for all air permit activities required by Minn. R. ch. 7007, and for applicability requests, which precede a permit application. One exception to this requirement exists. The exception indicated is for the reissuance of individual state or Federal Part 70 (operating) permits issued under either state or federal programs. No fee will be assessed for these permit applications as the cost of reissuance of individual operating permits is covered by the annual air emission fees, as required under federal law, and collected under Minn. Stat. § 116.07, subd. 4d., item (b) and Minn. R. 7002.0025 through 7002.0085.

Subpart 1. Fee required. This Subpart clarifies that no action will be taken on a permit application until the application fee is received. For water permits, this administrative procedure has already been in place for some time, and, indeed, permit applications without the appropriate fee have been determined to be incomplete and the applications returned. It is reasonable that all permit programs managed by the MPCA operate under the same principles. Furthermore, it is reasonable to clearly articulate the MPCA's intentions regarding the fee program applicable to air quality permit applications. The MPCA believes that subpart 1 clearly describes the applicability and expectations for these fees.

In the MPCA's 2007 preliminary meetings with stakeholders, a number of recommendations were identified for consideration in the development of a fee system. The stakeholders indicated that of particular importance to them was that the fees should apply to new construction or modifications to existing facilities that are required to have an air emission permit. The MPCA

considered this input in developing the fee amendment language. However, the first consideration is the directive provided by the Legislature to capture the appropriate revenue to support the MPCA's regulatory effort. After considering the variability in developing, reviewing, and acting upon applications for MPCA permits, and associated regulatory actions, the MPCA believes it has established reasonable permit application fees for new air facilities or modifications to existing facilities. The reissuance of air permits is not addressed in these amendments as the level of effort is covered as part of the costs addressed with annual permit fees as required under federal law discussed earlier.

The final sentence in subpart 1 states that fees are not refundable. The MPCA believes that it is reasonable to decline refunding of fees, because the expenses related to the review and processing of the application or any additional activities do not change as a result of the outcome of the review. The outcome of a fee is to ensure resources are available for the work effort; the decision of the permit applicant not to proceed; the decision of another governmental body to deny facility construction or location, or the results of the MPCA's review do not change the required need for MPCA review of the permit application. If there are circumstances, either related to the MPCA review or outside factors, that eliminate the need for the air permit, the MPCA will still have expended staff time and resources in the review of the permit application. The MPCA reviews permit applications in good faith; and believes it is reasonable that the permit application fee is not returned as the fees address the level of work, not the decision. It is reasonable to establish in this Subpart the understanding that the fees provided to cover that effort will not be refunded.

Subpart 2. Fee determination. Subpart 2 contains an explanation of the mechanism for making fee determinations is a point system established in part 7002.0019 multiplied by the result of the dollars per point formula established in part 7002.0018. The MPCA believes it is reasonable to provide a clear statement of how the fees will be calculated to avoid confusion and miscalculation of the fees. It is also reasonable that the reader be provided exactly where further information is contained in the rules, to be user friendly.

7002.0017 AIR QUALITY PERMIT APPLICATION AND ADDITIONAL FEE TARGET. This is a new rule part that describes how the air quality permit fee target is set, and under what conditions it will increase or decrease.

The unadjusted fee target of $4,000,000 for each biennium is based upon the one-time appropriation from the 2007 Legislature to support regulatory action. The MPCA was appropriated funds for regulatory needs, particularly permitting for mining, ethanol, and economic developing sectors, in three media arenas: air, water and multi-media. The water media appropriation of $1,035,000 was used, in part, to establish the water quality permit fee target and is discussed in more detail under part 7002.0251. The Legislature appropriated $1,140,000 for work associated with air quality permits and $825,000 for multi-media activities. In determining fee targets, the MPCA considered the desire of stakeholders to have equity in the revenue collection process and the actual activities associated with permitting specific facilities. The MPCA has found that typically, facilities requiring air quality permits also require the MPCA to look at other programs managed by the MPCA, such as storage tanks for products or solid waste. Rather than choosing to establish multiple fee systems for these activities, the MPCA determined that one fee collected at the time of an air quality permit application was appropriate. Therefore, the MPCA, in setting the fee target for air quality permit applications, used the combined totals of the air and multi-media appropriations. During the public information meetings, the MPCA provided this explanation to stakeholders and received no negative feedback.

The MPCA also recognized that since no application fees currently exist for air quality permits, any fee would be a significant increase for applicants. Therefore, the MPCA did not base the fee target on the cost of existing staff associated with the air quality permitting process, but rather used the 2007 appropriation as a base from which future fee targets would be generated, as explained in the following paragraphs. The MPCA believes that this method for setting the fee target is appropriate as it establishes a target grounded in law and accounts for the ability of permit applicants to absorb an approach that moves permit application fees from zero, to possibly, thousands of dollars.

The ongoing fee target is dependent on the MPCA's ability to collect the fee target in the previous biennium and is adjusted for inflation based on the consumer price index. Adjustment of the fee target is necessary because the revenue generated each biennium will change based on the number of applications processed and the number of additional permit-related activities conducted during the biennium. Because the MPCA cannot precisely predict these numbers, the MPCA has proposed a system to adjust the target fee to account for either over or under collection of the target. Adjusting the target fee on a biennial basis will assure that the dollar per point value will neither significantly over nor under recover costs. Additionally, the MPCA believes that a biennial adjustment minimizes wide swings in the permit application fee that could occur if based on a single year of data.

The MPCA believes it is reasonable to adjust the fee target to reflect for inflation that has occurred based on the consumer price index. As specified in Minn. Stat. § 116.07, subd. 4d., item (a), the MPCA has authority and is expected to collect fees to cover the reasonable costs of developing, reviewing, and acting upon applications for Agency permits and implementing and enforcing the conditions of the permits. If the fee target is not adjusted, the fees over time will fail to cover the cost of these activities. The use of the consumer price index is reasonable because it is a standardized adjustment and transparent to all parties and is used as an inflation adjustment factor in calculating the dollar per ton value for the existing annual air quality permit fee as established in Minn. Stat. § 116.07, subd. 4d., item (d). The MPCA has established 2009 as the baseline year for the calculation of the consumer price index. The next adjustment would occur prior to the next biennial cycle so that is implemented on July 1, 2011. It is reasonable to clearly identify the baseline and that baseline is reasonably the effective year of the applicable new rules.

7002.0018 COMPUTATION OF THE DOLLARS PER POINT FOR AIR PERMITS. The application fees are based on the level of MPCA work effort required for the review and development of a permit, which is represented as points. The points, specific to the permit application, are then multiplied by a specific dollar per point amount, which is calculated using a formula established in this part. The computation of the dollar per point amount will be done prior to each new biennium and will be posted on the MPCA's Website, when established.

The dollars charged per point is calculated based on three factors that will change over time. The first factor is the adjusted air quality permit application and additional fee target, as calculated per part 7002.0017. The second factor is the five-year annual average number of permit applications received. The third factor is the five-year annual average number of additional permit activities (e.g. modeling, risk analyses or variances) conducted by the MPCA. The

formula uses these factors to calculate the dollar per point value, which reflects the anticipated level of work and the fee target. Exhibit E demonstrates how this system was used to develop the point system that is the basis of these rule amendments. This formula was discussed with stakeholders during the preliminary rule development process.

This approach is reasonable because it is not a "one size fits all" approach, but instead is tailored to the level of work associated with a specific permit type and using five-year averages balances the extremes. This is a reasonable approach to attributing costs for the review of permit applications and to those paying the fees. The formula is based on the fee target, as adjusted over time, and accounts for the number of applications received and the additional activities that must be conducted in the development of the requested permits over time. The use of a rolling annual five-year average will avoid any radical swings in the dollars per point value from biennium to biennium. A clearly defined fee target with adjustment is a reasonable approach because it will allow permit applicants to anticipate the fee and enable them to budget more accurately for the cost of the permit application.

7002.0019 AIR QUALITY PERMIT APPLICATION FEES AND ADDITIONAL FEES.
The points assigned for each type of permit application listed in subpart 1 and for each type of additional activity listed in subpart 2 are based on five-year averages. As discussed earlier under the general reasonableness for these rules, the MPCA discussed a variety of options that could be used to collect the fee. One alternative discussed with stakeholders was an option to charge fees based on the actual MPCA-staff hours needed to complete a review and issue each particular permit. Stakeholders did not support this type of fee system. The stakeholders were concerned with the lack of predictability and stability for fees using an hourly rate. The MPCA agreed with stakeholders on the need to provide for a fee system that would not experience wide cost swings for similar permit types. Additionally, the MPCA considered the level of administrative costs that would be associated with an hourly-rate system. Such a system would add significant MPCA administrative costs to track specific hours worked by the permit application and the staff needed to review the components, and by billing the permit applicant along the permitting process to avoid one large bill at the end of the process. The MPCA would need to establish a billing system that would adjust as wages, indirect and direct costs change. The use of categorical permit fees provides not only clarity of costs for the permit applicant but maintains an administrative system already established for water permit applications, for instance. The fee points proposed in these rule amendments represent the MPCA's efforts to develop a system that accounts for the level of work needed on average for each category of permit identified; although specific examples of permit actions that took less time or much greater time than the average can be documented. The MPCA believes it is reasonable to use an average in defining the level of effort for each category of permit application, as it allows for a simpler, more stable approach to cost recovery.

Though the points are correlated to the staff time needed to develop a permit, the fees are intended to recover costs also associated with the MPCA's regulatory activities associated with the permit review and issuance, not just the cost of preparing the permit. These regulatory activities include technical assistance, data management and review, compliance determination and enforcement of all permit requirements, new and emerging environmental issue evaluations, new federal regulations and state legislative directives, and ongoing administrative and business support activities. The MPCA assumes that there is a correlation between the level of effort put into the development of a permit and the other regulatory activities. For example, as the complexity of a permit increases so does the review of compliance-related data and the administrative process needed to issue the permit. Therefore, the complete regulatory activities

associated with the permit require more effort and thus, more costs are recovered through the fee system. The MPCA believes that the proposed application fees reasonably cover the cost of the MPCA's regulatory functions in permitting facilities without creating a complicated system. It is reasonable that the proposed system will not recover all regulatory actions, as annual permit fees already recover some of the ongoing regulatory actions, but makes a reasonable connection to those activities associated with permit application reviews.

Subpart 1. Application Points. Subpart 1 identifies the different point values assessed for permit application types, amendments or applicability requests listed in items A through K. The points for the air quality permit application fees in subpart 1 were developed based on the MPCA's actual permit issuance data of MPCA permit staff work effort, which establishes the average permit staff time necessary to issue different types of permits. The permit team may consistent of only a single staff person, as in the case of a permit amendment, or a number of staff members. As the permit complexity increases, staff members with specific expertise (i.e., modeling) join the permit team to review the permit application and assist with the development of the permit. The review and development process for each permit type is the same; but, because each permit must contain unique limits and operating conditions represented by the type and location of a facility, the permit level of effort to complete the review and develop the permit may vary greatly. For example, a minor modification may address only one pollutant from one piece of control equipment; whereas, a new Individual Federal Part 70 permit will require the review of multiple issues (i.e. types of pollutants emitted, amount of each pollutant emitted, site and location of the emission point, monitoring requirements, and reporting requirements) for many different emission units. The number of points assigned to a particular permit type is based on an average staff time required to process and issue that specific permit type. Exhibit F provides data on the amount of permit staff time spent on the review of different permit applications and captures the range of time spent for each application type. The number of points assigned to a particular type of permit is based on an average of the amount of staff time required to process and issue a specific type of permit and the fee revenue target that must be achieved.

Permitting activities include permit application review, review of emissions calculations, site visits, meetings and correspondence with facility owners and consultants, determining regulatory requirements, establishing monitoring and reporting requirements, drafting a permit and its Technical Support Document (TSD), internal consultations, public notice drafting and publication, public meetings and, in some cases, presentation of the permit for approval by the MPCA Citizens' Board. The level of effort is different for the different types of permit applications and the fee system appropriately reflects the difference. Thus, in establishing the point system, the MPCA used the Individual Federal Part 70 (Part 70) air emissions permit as the type of permit requiring the greatest amount of work, and other permit activities were compared to this type of permit to reflect the MPCA's level of effort.

Part 70 is the term used for permits specifically required by federal regulations. These permits are required for facilities that emit larger amounts of air pollutants. This permit program is implemented nationwide under the same general principles and guidance. The United States Environmental Protection Agency (EPA) evaluates and approves state programs that serve to implement these federal requirements. Federal law also requires that these permits be renewed every five years. Other types of permits are required by state rules and statutes. In Minnesota, these permits are the result of state-specific strategies approved by the federal government to regulate smaller sources of air emissions and to attain compliance with broader air quality federal laws and regulations. The different permit types or permitting approaches are assigned points in the proposed rules based on their relative complexity in relation to the Individual Part 70 permit.

The degree of involvement by the MPCA staff with a permit action depends on the type of permit. In general, the more significant the potential impact to air quality a facility may have, the more detailed the effort required by MPCA staff. Individual facility permits, and all amendments, except administrative amendments, go to permit teams made up of a permit engineer, a peer reviewer (another permit engineer) and compliance and enforcement staff who work together to draft the facility permit. Other team members, e.g. modeling staff, air toxics staff, may be needed depending on the complexity of the project.

All individual permit actions (i.e., not general, capped, or registration permits) are accompanied by an individualized TSD. The TSD provides the technical and legal basis for the various permit conditions including any information relevant to rule interpretations or policy decisions made by the MPCA or EPA. The development of the TSD can be a significant MPCA work effort and, in turn, affects the number of points that are assessed to a particular permit activity. The level of work includes the permit engineer developing the document and the time needed for other staff to review the TSD as part of the process of providing input on the permit and conducting peer review activities.

The state and federal rules have deadlines that apply to the processing of each type of permit or amendment. All deadlines are based on the date of receipt of a complete permit application. Operating permits and major amendments that do not authorize construction are required to be acted on within 18 months. Major amendments for construction of a modification (or for an operating permit to construct a new facility) are required to complete the public notice process within 12 months. Moderate amendments are required to be issued within six months, minor amendments within 90 days, and administrative amendments within 60 days. However, the MPCA may issue a construction authorization for moderate amendments via a letter prior to permit issuance. Additionally, for minor and administrative amendments, the permittee need not wait for a letter or the permit amendment issuance before making the proposed change. Because the permittee need not wait for these amendments to be issued, minor and administrative amendments are often not processed by the MPCA unless the permit is open for a different reason such as a major amendment or an action to reissue the permit. However, the MPCA has found that in some cases the permit applications thought by the applicant to be a minor amendment is found to be a different amendment type. Thus, the permit application fees proposed in this rulemaking would allow for the MPCA to undertake more timely reviews and resolve any differences before they become an issue of non-compliance. The MPCA finds it to be a reasonable approach that the assessed fee will correspond to an improved review effort.

There are many factors that can extend the permitting process and increase the level of MPCA effort required. New federal rules continue to be developed and often add to the complexity of the permitting program. Several New Source Performance Standard (NSPS) and National Emission Standards for Hazardous Air Pollutant (NESHAP) rules, which pertain to many facilities, have recently been promulgated. In addition, some area source NESHAPs have been promulgated and EPA is expecting to issue more in the near future. EPA also expects to promulgate new New Source Review (NSR) rules and a $PM_{2.5}$ implementation rule, which will require additional modeling and analysis, has already been promulgated. These rules are expected to have a significant impact on the MPCA's permitting program.

Other factors that add to the resources needed to issue permits are implementation of the mercury Total Maximum Daily Load (TMDL) limits and evaluation of greenhouse gas emissions. In addition, public involvement and the importance of air quality emissions as related to public

health lead to the need for more public meetings and more public comments submitted during the comment period. They may indirectly lead to additional legislative requirements as happened during the 2008 Legislative session requiring a cumulative impact analysis when issuing air permits in a specific neighborhood in Minneapolis (Minn. Stat. § 116.07, subd. 4a, 2008).

A permit amendment may be needed if an owner or operator makes changes at the facility after receiving a facility permit. The type of amendment depends on the nature of the change. To determine if an individual permit must be amended, the permittee must calculate the potential change in emissions of the modification; review the applicable state and federal rules and regulations; and determine the applicable amendment type. The review and appropriate determination must be completed before starting construction on a facility modification because some amendment types require that the permit amendment be issued before construction commences. Permit amendment types are differentiated based on threshold levels of emissions and the applicability of certain Federal programs. The types of amendments are administrative, minor, moderate, and major, and are discussed in Items A, E, H and I below.

Item A. Administrative Amendment or Administrative Change of Name, Ownership, or Control. Administrative amendments or an administrative change of name, ownership, or control are the simplest changes made to a permit and have the lowest point value. These amendments include a name change or change in ownership, or an amendment to extend a deadline in a permit by no more than 120 days. These changes require a small work effort, such as work only by the permit engineer to document the change, and by support staff to make associated changes in the MPCA's data system that tracks all permitting actions and to provide the amended permit to the permit holder.

The rule language makes reference to specific parts and subparts of Minn. R. ch. 7007 because those rule parts require issuance of a new permit for a name change or change in ownership or control and do not specifically address amending the permit. The MPCA intends to charge one point for this type of change in the permit. Additionally, the MPCA does not intend to charge a fee for a new general permit, registration permit or capped permit when the change requested is only for a name change or change in ownership or control. This is consistent with the existing rules applicable to water quality permit applications. The MPCA believes it reasonable to have a consistent approach between its permitting programs. Administrative amendments or administrative changes of name, ownership, or control are valued at one point or $285, which is reasonable based on the level of effort required to complete this work.

Item B. Registration Permit. Registration permits are streamlined permits for facilities with low actual emissions versus their potential emissions and the facility is subject to only a limited set of straightforward state and federal performance standards. In general, the facility's actual emissions must be less than 50 percent of the federal thresholds. Registration permits allow facilities to make modifications, provided the modified facility still qualifies for the same permit. These permits are similar to general permits in that they are easier to obtain than an individual permit and the requirements are less rigorous when making modifications. There are currently more than 3,000 registration permit holders in Minnesota.

The level of effort to process a registration permit is low, but does require some review of the emission calculations and determination of the acceptable level of emissions. This type of permit application generally does not involve review or assistance from compliance and enforcement staff. Therefore, it is reasonable to assess two points ($570) for this type of permit application as it takes more effort than administrative amendments but not nearly the amount of effort required

to issue a Part 70 permit. The permit application is reviewed to verify that a registration permit is appropriate and that the facility will meet all applicable regulatory requirements. However, the review is not extensive because the amount of emissions allowed under registration permits is low.

Items C. and D. State and Part 70 General Permit. General permits are pre-written and pre-noticed to cover a range of operating scenarios and applicable requirements for a given industry sector. Therefore, once the initial general permit is issued, the permit applicant and associated permit issuance activities require a lower level of effort by the MPCA than individual permits. Because of this, a general permit is typically quicker to obtain than an individual total facility permit, provided the specific qualifications are met. The basic review by the MPCA is ensuring that the permit application is complete and that coverage under the general permit is appropriate. The MPCA currently has developed one federal general permit (for general manufacturing) and one state general permit (for non-metallic mineral processing). The MPCA has currently granted coverage to 20 facilities under a general permit for Part 70 sources and to 115 facilities under the state general permit.

General permits are designed to address activities at qualifying facilities that are similar in nature and do not require specific regulatory conditions for a specific facility. The MPCA work effort is spent developing the qualifying conditions for coverage under a general permit and ensure that all the applicable regulatory, monitoring, and reporting requirements are included in the permit. Once the draft general permit is ready, MPCA staff place it on public notice and respond to comments prior to finalizing the permit. However, because general permits apply to a number of regulated entities, the cost of the development effort is shared by all entities that fall under the general permit and not by a single applicant. Therefore, it is reasonable to charge three ($855) and four ($1,140) fee points for general permits. An additional point is charged for Part 70 General Permits because this type of general permit must address the additional requirements under the federal program. Ensuring compliance with the federal program requires additional work to develop the general permit so the federal requirements are incorporated and not in conflict with state regulations. Once the general permit is issued, granting coverage under a general permit for a specific facility requires MPCA staff to review the permit application to confirm that the facility appropriately fits under the general permit, inputting facility information into the data system, and issuing coverage documentation. The three ($855) and four ($1,140) points assigned for general permits are reasonable as the work effort to develop the general permit is incorporated along with the permit application review effort into the total point value.

Item E. Minor Amendment. Minor permit amendments do not require the extensive work effort of a new permit or even of moderate or major amendments discussed under Items H. and I. The level of effort is more than that required to issue a general permit because it is an individual permitting action and does not benefit from the shared work effort that is derived under a general permit. The MPCA's effort for a minor amendment involves validating that the actions being sought fit the minor modification category, which often requires a review of MPCA and federal policies in addition to previous decisions to ensure consistency. Additionally, MPCA staff must ensure the facility description and emission data is accurate; modify facility data in the MPCA's database, as appropriate, and determine if all applicable regulatory requirements will be met should the modification be granted. Generally, the changes to the permit and data system are minimal and the amount of documentation is significantly less than the Individual Part 70 permit, which is used as the base permit for purposes of awarding point values. Even though an individual TSD is prepared to document the amendment, the TSD is less substantial than one prepared for other permit amendments or Individual Part 70 permits. The level of effort to review

and issue a minor permit amendment is also less than that required for moderate or major amendments. Minor amendments are not subject to the public notice process. The MPCA has determined that the level of effort of a minor amendment is similar to that of a General Part 70 permit, because the basic activities are similar in determining qualifications and updating facility information. Assessing four ($1,140) points for minor amendments is, therefore, reasonable.

Item F. Capped Permit. The Capped Emissions Permit rule, Minn. R. 7007.1140 to 7007.1148, establishes conditions under which owners or operators of facilities, with actual emissions less than 90 percent of federal permitting thresholds, are allowed to apply for and obtain an air emissions permit. The permit requirements for use in these circumstances are contained in the rule itself. This rule-based state permit is called a capped emission permit or capped permit. The capped permit offers a permitting option that applies all applicable requirements to non-complex facilities for which site-specific, customized permit conditions are not necessary. As long as the facility remains below the thresholds and the permittee demonstrates that the facility will continue to meet the rule requirements, the permittee may make changes at the facility without a permit amendment from the MPCA. The level of effort in review and preparation of a capped permit is similar to a federal general permit and minor amendments. Thus, the MPCA assigned a point value of four ($1,140) to these permit applications, which the MPCA believes is reasonable. The application must be reviewed to determine compliance with the appropriate rules. Additionally, the proposed facility details must be assessed to determine that no other applicable requirements exist that would require the facility to be permitted under other conditions. No public notice process is required with a capped permit. Selection of the capped permit option also reduces the potential for an applicant to be charged additional activity fees. When a capped permit is issued, such things as modeling are limited; therefore, the additional fees for modeling review would be avoided. At this time, twenty capped permits have been issued in Minnesota.

Item G. Applicability Requests. Applicability requests are an action that normally precedes a permit application. The person submitting an applicability request is seeking a formal response from the MPCA as to whether a specific rule or regulation applies to a proposed facility or proposed change at an existing facility. These requests require extensive review and documentation why the rule or regulation does or does not apply. Additionally, MPCA staff may require discussions and agreement with the EPA’s interpretation of federal requirements. The determination of the applicability of a rule is critical to the level of control required for different pollutants, and, ultimately, the design of the facility and associated air pollution control devices. The determination of the applicability of a rule is also critical to whether a permit or permit amendment is needed, and if so, what type of permit or permit amendment is needed. These reviews frequently occur upon promulgation of new rules or regulations prior to the development of a record that would clarify when and how the rules or regulations are applied. The level of MPCA effort involves extensive research into the type of request, the potential emissions from the proposal, and often requires legal interpretation of the rules or regulations. Because of the complexity of these requests and the extensive research demanded, the MPCA has determined that ten points ($2,850) are appropriate for applicability reviews. This review is often the critical basis for the TSD and permit issued at a later date, and may result in considerable additional costs to a proposed facility design and operation. Thus, the importance of applicability determinations requires that time be taken and consistency between permit engineers be ensured and thus, peer review and leadership involvement may be required, which elevates the level of

effort above some of the permit applications discussed above. The rule also recognizes that more than one request could be made for an applicability review and clarifies that the full ten points will be assessed for each review requested. This is reasonable because each review is a separate action and each review and response will take a similar level of effort.

Item H. Moderate Amendment. Moderate amendments are another specifically-identified type of amendment to an individual permit resulting in specific review and approval requirements. Moderate amendments are a defined set of changes that are addressed through this type of permit modification. Fifteen points ($4,275) have been assigned, and the MPCA believes this is a reasonable reflection of the MPCA staff's effort to review and issue these permit amendments. The amount of effort needed to process a moderate permit amendment is less than would be needed for an original individual permit or a major permit amendment. A significant difference is that a public review process is not required for a moderate amendment and changes to the data system are limited. While the review is less than a major amendment, it is considerably more than needed for a minor amendment due to the nature of changes that qualify an amendment for the moderate amendment process. A new TSD for the permit amendment must be prepared to document the changes, including the legal basis, and peer review of the permit is needed to determine consistency. The MPCA believes it is reasonable to assess one-fifth the points assessed for issuance of an Individual Part 70 permit, as the data contained in Exhibit F shows.

Item I. Major Amendment. Major amendments are required for significant changes to a facility such as adding more capacity. These types of permit amendments require significant review of the applicable rules to determine what actions by MPCA staff and the permittee are required to achieve full compliance with applicable program rules and policies. Also, MPCA staff will need to review and craft new requirements, as appropriate, for the associated monitoring and reporting requirements used to demonstrate compliance. Major amendments typically require substantial review of calculations to verify applicability of rules and regulations, and the assumptions made in the design of pollution control equipment and/or operations. Major amendments are also more likely to require input from additional MPCA staff; this could include, for example, review and input from compliance staff regarding performance test results and the appropriateness of proposed testing requirements, and/or input from modeling staff regarding changes to the facility that may affect previous modeling results. Peer review of the draft permit and TSD is needed because the complicated nature of these permits and the regulatory basis requires that another technical review occur for consistency with similar permits issued for other facilities emitting similar pollutants but perhaps from a different industrial process. Also, other staff may be involved as team members, e.g. preparation of public notice documents or an information officer in determining the appropriate nature of specialized public involvement needed. The majority of major amendments must be published for public notice and public meetings are needed to explain the proposed changes and how any potential environmental or health impacts will be mitigated through design and operational controls. Twenty-five points or $7,125 have been assigned for the permit application fee for major modifications. The MPCA has determined that these amendments take a level of effort equal to one-third the level of effort needed to issue an Individual Part 70 permit. The MPCA believes it is reasonable to assign this same relationship to the fee differential between the permit efforts.

Item J. Individual State Permit. Issuing an individual state permit is a significant MPCA effort. Review of rules and regulations is needed to determine the applicable requirements to be included in the permit. This is a significant level of effort in and of itself; since, the determination that a facility and the pollutants emitted from the facility are not required to be regulated under a federal permit has cost implications to the permit applicant in terms of design,

operation and reporting requirements. It is important that this determination be made early in the review process as the documents and data may change dependent on whether a federal individual permit is needed. Once it is determined that an individual state permit is appropriate, engineering review of emission calculations and facility design are needed to assure compliance with applicable requirements. Facilities regulated by an individual state air emission permit are not as complex to review as an Individual Part 70 permit (i.e. they would generally have fewer emission units and have the potential for lower emissions than a facility requiring a Part 70 permit). As a result, these facilities are subject to fewer regulations and the level of extra review by peers is less than in the case of an Individual Federal Part 70 permit. Additionally, the EPA staff are not likely to be involved in continuing discussions, as the facility will be permitted and regulated under state rules and permitting efforts. Exhibit F shows the average hours needed historically to review and issue an individual state permit is approximately two-thirds the level needed for an Individual Part 70 permit. Since the Individual Federal Part 70 permit level of effort is the standard against which the MPCA compared all other permits, the MPCA believes it is reasonable to assign 50 points or $14,250 for this type of permit application.

Other parts of the review and permit issuance process includes a site visit, which may include enforcement staff in addition to the permit writer, and the crafting of a very detailed TSD and unique permit. It is usually necessary to have considerable interactions including conference calls, electronic and written correspondence and document exchange, and meetings with the facility owner(s) and their consultants for MPCA staff to understand design assumptions and planned operational conditions of the facility. Additionally, the facility owner (permittee) must fully understand the requirements to be placed in the permit. When the permit is developed, facility description information is entered into the data system, and associated permit documentation is prepared for public notice. Review of the permit and TSD is provided by a peer reviewer (another permit engineer), and compliance and enforcement staff to ensure permit conditions are measurable and compliance can be determined. This type of permit requires public notice, associated public meetings, response to comments, and required documentation. Because these permits have the potential to significantly impact air quality if operation conditions are not appropriate, interest by local citizens and environmental entities is usually higher than expected with amendments or general permits. Again, the MPCA believes the points assigned to this permit type will collect the appropriate fees needed to cover associated costs, particularly when combined with the additional points assessed for the more detailed work discussed in subpart 2.

Item K. Individual Part 70 Permits. Individual Part 70 permits are the most complex and detailed permitting action for an air quality permit. Because of this, the MPCA established this as the permit level of effort by which it judged other efforts for the various permit types issued for facilities emitting air pollutants. The permitting action regarding Individual Part 70 permits requires analysis and incorporation of all applicable federal regulations as well as specific state requirements. Engineering review and analysis is required of the facility design and associated air pollution control devices to assure that the proposed facility will be able to fully comply with all applicable requirements. The monitoring and reporting protocols are also analyzed to assure full compliance with regulatory requirements and are documented in the permit. A site visit, which may include enforcement staff and other team members in addition to the permit writer, may be made to the proposed facility location. Extensive interaction with the facility owner(s) and their consultants is required so that MPCA staff fully understands the operational design of the facility and associated equipment and the facility owner and their consultants understand the regulatory requirements. This interaction is critical in assuring that the facility, when placed into operation, will be in full compliance with all rules and regulations and will not harm human health or the environment.

The draft permit is unique to the facility and may be hundreds of pages in length in order to properly address the number of emission units proposed for any facility. Peer review of the permit and TSD is required, and other staff are involved as team members to complete modeling analysis, determine other applicable MPCA programs (i.e. mercury reduction or greenhouse gas analysis), document preparation for public notice, and a public information officer to assist in the public review process and specifically media information requests. The proposed permit that is developed and the associated support documentation are made available for public review and public meetings may be held to discuss the proposed permit. Like the individual state permit, these permits have the potential to significantly impact air quality if operation conditions are not appropriate; thus, interest by local citizens and environmental entities is usually higher and more focused than expected with amendments or general permits. Comments received by the MPCA are responded to and changes based on the comments are made to the permit before issuance. This type of permit may be presented to the MPCA Citizens' Board for action, (i.e. if an EAW is required for the proposed facility or if Board review is requested by the public). Seventy-five points ($21,375) are assigned for Individual Part 70 permits to reasonably reflect the extensive effort required to develop these permits and complete the public process to issue them. These permits will often be required to pay additional fees as indicated in subpart 2, which reflect the complexity and the number of additional staff experts needed.

Subpart 2. Additional points. Subpart 2 establishes fees for specific activities that are required for some permits, but not for all permits. By employing the use of additional points, the MPCA is better able to assign a cost to the permit process reflective of the level of effort. During the stakeholder process, some individuals indicated that it was important that the fee correspond to the level of effort required to develop a permit. The MPCA agreed that this was a reasonable expectation and would draft a system to accomplish this goal. The MPCA believes that it has found a reasonable approach to meeting the level of effort fee by charging for the additional work required for permits that have unique review activities.

The additional points assigned in subpart 2 are based on an assessment of the level of MPCA effort required for each activity. The assessment is based on an average time needed to conduct each activity review and converted to a point value. The specific review activities are unique to each permit application and some take more time than others. The MPCA staff involved in the assessment of the work effort necessary to complete each activity review for the development of this rulemaking has actual experience in completing the different review activities. The MPCA feels that it is reasonable to use the expertise of the individuals that conduct the work to develop the appropriate point value. As discussed above in each permit-related item under subpart 1, the MPCA has based the number of points applied to additional permit activities by comparing those activities to the effort required to issue an Individual Part 70 Permit. The difficulty or complexity of the work effort expended for the MPCA to conduct the following additional activities was also considered in comparison to the 75 points assigned to that level of effort.

Item A. Modeling Review. Modeling review requires the assessment of the location of pollutant discharge points, emission characteristics and amounts by an engineer and the review of the modeling procedure by an atmospheric dispersion modeler to verify that the correct model was utilized and the correct values were applied in the model. There are different EPA models that may be used and are dependant on the pollutant(s) being evaluated and on the complexity of the facility or terrain around the facility. Modeling under the Prevention of Significant Deterioration (PSD) program is conducted in accordance with 40 CFR § 52.21 and generally follows procedures as described in the New Source Review Workshop Manual (Exhibit H). The

modeling results may require that conditions are placed in the permit to reflect any restrictions that may have been assumed in the modeling. In addition, the modeling results are presented and explained in the TSD. In the case of public meetings, developing materials to make this very technical process understandable by non-modelers can be significant.

This review was assigned 15 ($4,275) points, which the MPCA believes accurately characterizes the average level of MPCA work required. The rule identifies specific exceptions to the points for modeling. Screening modeling or CAPS modeling are not assessed additional points because these are simple models that use a conservative predictive approach and, therefore, do not require the same level of review and analysis as envisioned under this item.

Item B. Best Available Control Technology (BACT). BACT reviews are required by federal regulations (40 CFR § 52.21, subp. J) and must be completed in a specified manner. The New Source Review Workshop Manual (Exhibit H) describes the top-down approach to be used in performing a BACT analysis. EPA maintains the Applicability Determination Index (ADI), which contains additional guidance and policy determinations. The ADI is consulted as part of the BACT review. The review standard of what qualifies as BACT continually changes based upon advancement in air pollution control technology. The review, therefore, requires extensive research and assessment of the control technology currently being used in the United States to determine if proposed controls of predicted emissions in the permit application are consistent with the best available control technology used at similar facilities around the country. The EPA has developed databases to assist in this type of review, but the MPCA review effort is still significant. BACT reviews may also require assessment of the proposed control cost effectiveness, which would entail contacting control equipment vendors or reviewing previous BACT determinations. Determining the appropriate BACT also often requires discussion with the EPA, the facility owner(s), and consultants to reach agreement on the analysis and its final results. Compliance and enforcement staff may be involved in determining appropriate compliance methods to place into the draft permit. BACT reviews have been assigned 15 points for each PSD pollutant analyzed. This means that in the case of a facility that emits several PSD pollutants, the points will be multiplied by the number of PSD pollutants that require review. For example, PM_{10} and $PM_{2.5}$ are considered separate pollutants; therefore, points would be assessed for both of these pollutants. The MPCA believes this is a reasonable because each pollutant must be fully assessed and the research, modeling and final assessment are unique to each pollutant.

Item C. Lowest Achievable Emission Rates (LAER). LAER review is similar to BACT review but is applied in situations where an area of the state has been identified as non-attainment. Minnesota, at this time, does not currently have any non-attainment areas, but the MPCA felt it reasonable to define during this rulemaking what an appropriate fee would be. Based on the similarity in the review for BACT, the MPCA believes it is reasonable to apply the same point system and value of 15 as it did for BACT reviews. The 15 points will be applied for each non-attainment NSR pollutant reviewed for a particular facility because, similarly to a BACT review, a similar level of effort is required for each LAER review.

Item D. Clean Air Interstate Rule (CAIR)/Part 75 Continuous Emission Monitoring Analysis. The Part 75 analysis is required to address the impacts of acid deposition from electrical generating facilities. The CAIR analysis may require review of control equipment or monitoring technology. The analysis and associated review assures compliance with applicable rules and associated emission monitoring requirements. Compliance staff may be involved to assess the

proposed monitoring requirements. Based on the level of effort required to complete this type of review, the MPCA believes it is reasonable to assign ten points for this activity, as it is not as extensive as the BACT and LAER reviews and is specific to electrical generating facilities, which narrows the effort.

Item E. New Source Performance Standards Review (NSPS). NSPS review is another federal requirement of the Clean Air Act Amendments. There can be multiple standards applicable to a given facility under this review. Therefore, the MPCA is proposing to multiply the point value by the number of standards requiring review for applicable to the facility or proposed modification. The NSPS review is conducted to assure that applicable provisions of the standards are addressed and incorporated in the permit. Information about the emission unit or process, and possibly about emission rates, must be individually assessed to determine the applicability of federal regulations. EPA may also be consulted in determining applicability. The rules generally require monitoring and recordkeeping; compliance and enforcement staff may need to be involved in writing permit conditions. The MPCA believes the review of any one standard review is similar to a Part 75 review and thus, assigned a value of ten points for each standard reviewed.

The rule provides an exemption for the NSPS review conducted for registration or capped permit applications. These permit types are written by rule or in a manner that accounts for the level of emissions from facilities eligible for these permits. Specific NSPS reviews are not required and it is, therefore, reasonable to not apply additional points for these permit types.

Item F. National Emission Standards for Hazardous Air Pollutants Review. The MPCA's activities relative to NESHAP reviews arise out of federal requirements of the Clean Air Act Amendments and are contained in 40 CFR Part 63. A NESHAP review is conducted to assure that all standards are addressed in the application and incorporated in the permit. Information about the emission unit or process, and often emission rates, must be assessed to determine the applicability of the rule provisions. The rules generally require monitoring and recordkeeping and compliance and enforcement staff may need to be involved in selecting the appropriate compliance demonstration methods and in writing permit conditions. A permit holder may be required to comply with more than one NESHAP. The MPCA believes the level of effort for each NESHAP review is similar to an applicability review. Therefore, the MPCA believes that ten points for this type of review is reasonable. Again, the point value is multiplied by the number of standards reviewed as applicable to the facility or proposed modification.

These reviews do not apply to the registration or capped permits for reasons discussed in item E.

Item G. Case-By-Case Maximum Achievable Control Technology (MACT) Review. The Clean Air Act Amendments require that a case-by-case MACT analysis be conducted for a new facility that is a major source of hazardous air pollutants, or for an amendment adding an emission unit or process that is by itself a major source of hazardous air pollutants, if there is not a promulgated NESHAP, unless the source has been specifically regulated or exempted from regulation. The general process is outlined in 40 CFR Part 63, subp. B. However, there have been few such reviews done; and, so, there is little existing guidance that can be used in performing these reviews. Because of the infrequent nature of these reviews, the MPCA considered the similarities that these reviews would likely have with other specific reviews required by federal law.

These reviews require a greater level of effort to complete than the reviews identified in items B. through F. above, as they require review of controls used throughout the subject industry and a determination of suitability of the control for the facility to be permitted. In addition, the appropriate monitoring and recordkeeping must be determined and included in the permit; this requires the input of compliance and enforcement staff. Other staff are likely to be involved to evaluate the proposed technology, such as the specialized research scientist used by the MPCA in reviewing new technologies proposed for the mining sector. The specialized research scientist has the skills necessary to understand the provided data and find solutions to operations and design that would achieve pollutant reductions affordable by the industry. Selecting the appropriate control technology and associated compliance demonstration methods often requires substantial discussions with the EPA, facility owner(s) and consultants. Also, since these reviews typically involve the use of developing technologies, the public meetings are more involved than for other types of reviews. These types of review have been assigned 20 points by the MPCA. If more than one source category review is required for a permit, 20 points would be assessed for each source category review completed. The MPCA believes the assigned points reasonably reflect the level of effort needed for these reviews.

Item H. Netting. Netting analysis may be performed for a permit application to show that emission increases and decreases show that the "net" emissions increase is less than the PSD threshold and avoid this review. This analysis is done on a case-by-case basis for facilities and requires a substantial amount of effort in completing calculations and reviewing the results to determine if the review is needed. The process for performing a netting analysis is described in the New Source Review Workshop Manual (Exhibit H). The ADI contains additional information and may be searched to find additional guidance on performing the analysis. The calculations performed for a netting analysis are generally complex. Review of a netting analysis also requires review of previous permit actions and thorough review of previous calculations and facility modifications. The review may also involve review of past emission inventory data and an evaluation by compliance and enforcement staff of the actual emission levels for use in determining whether a facility may reduce its level such that no PSD review will be required. Based on the level of effort required for netting, the MPCA believes it has established a reasonable assessment of ten points.

Item I. Limit to Remain Below Programmatic Regulatory Threshold. The permit process to establish limits to remain below regulatory thresholds requires an assessment that the limit can be achieved, proper development of permit conditions, and inclusion of associated monitoring and reporting requirements to demonstrate compliance where applicable. These are important components of a permit for MPCA consideration because when facilities seek to proceed in a way that reduces requirements in their permit or in a way that avoids specific review requirements, the MPCA must assure that the proposals are consistent with the applicable rules and regulations. This item identifies specific regulatory programs to which these additional points apply. The MPCA believes that the ten points assessed for each regulatory program is a reasonable reflection of that required work effort.

Item J. Plantwide Applicability Limit (PAL). A PAL is a plantwide emission limit based on plantwide actual emissions. If the facility emissions are kept below a plantwide actual emissions cap, the major New Source Review permitting process may be avoided when making changes to the facility or individual emissions units under federal law. Only existing facilities may receive an actual PAL since is based on actual emissions and not predicted. The PAL is set based on the baseline actual emissions for all emissions units emitting the PAL pollutant, using the same 24-month period for all units. The MPCA's review of PAL applicability through a major permit

amendment requires the permit applicant must demonstrate that the PAL will not cause or contribute to an exceedance of a PSD increment or adversely impact visibility in a Class 1 area (e.g. Boundary Waters Canoe Area). Because of the potential for significant air quality impacts if the calculations are wrong and the damage to important natural resources, the MPCA finds that the review analysis of the modeling data and existing emissions is extensive. Also, compliance and enforcement staff involvement are needed to assist in developing the appropriate monitoring and recordkeeping that must be a part of the permit to ensure the PAL would not be exceeded. The MPCA has determined that it is reasonable to assess this review 20 points for each PSD pollutant for which a PAL is established.

Item K. Air Emission Risk Analysis (AERA) Review. An AERA is conducted when an EAW is required for a proposed facility and may also be required under other circumstances, such as when air emissions of any criteria pollutant are expected to be greater than 100 tons per year after the application of control equipment. The review involves an analysis of all air toxics released from a facility to identify the potential for health risks to people who live or work near a facility. The review involves engineering calculations of potential emissions, which may require additional research into appropriate emission factors and substantial discussions with the facility owner(s) and consultant, modeling of the air toxics released, a risk assessment of impacts to the public and a risk management decision based on the available data. Significant documentation is part of the process of performing an AERA. The AERA analysis also provides an opportunity to look at mitigation options for a facility to reduce these risks. While the AERA acts as a risk screening tool, the results of this analysis may require more refined modeling, changes in facility design, or changes in facility operation. Additional monitoring, testing or recordkeeping may also be required in the permit. Thus, compliance and enforcement staff may also be involved in permit development due to the AERA results. Because of the complexity of these reviews and the amount of time that is required to complete a review, the MPCA determined that it is reasonable to charge 15 points for an AERA review.

Item L. Variance Request Under part 7000.7000. The review and approval of a variance request follows specific procedures established by rule. Variance requests are infrequent and the standard by which a permit applicant must justify the need to avoid a specific standard or regulatory requirement is high. The variance review includes considerable data analysis and research, including additional modeling to determine the technical feasibility of the permittee's ability to comply with a standard or rule, the impacts to the environment and public health and welfare for the requested relief from rule or standard, and the economic cost to meet the rule or standard as it exists. Variance requests require approval by the MPCA Citizens' Board. If a variance is granted, the permit must be written to require regular reports from the permittee regarding efforts to find a method through technology or operational changes so the variance is no longer necessary. This requires ongoing review and analysis by MPCA staff, and perhaps additional decisions by the MPCA Citizens' Board, since variances are not permanent. Variance requests must be public noticed and approved prior to the approval of the related permit. Because an approved variance could result in an increase in emissions or an exemption from specific operational standards, other facility permittees, citizens near the project, and environmental groups often raise issues that require detailed and technical comments in response. Any decision before the MPCA Citizens' Board requires additional mailings, document preparation, presentation preparation, and the actual Board meeting(s). After the meeting, additional documentation and mailing is also needed to notify all interested parties of the decision. The MPCA resources required are extensive and ongoing and as a result, it is reasonable to assess 35 points for processing a variance request.

Item M. Confidentiality Request under part 7000.1300. Under specific circumstances, a person may request that information about a proposed facility be kept confidential. The review of information in an application, which is requested to be held as confidential, must be documented and any information identified as confidential must have special handling and security by the MPCA so that it is not available for public review. The review requires documentation that the request for confidentiality is consistent with applicable rules and regulations. Confidentiality reviews are assessed two points based on the level of MPCA effort required. The MPCA believes it has established a reasonable value for this activity because it happens infrequently and documentation on the level of effort is not available. Thus, the MPCA determined that because some analysis and review is required the level of effort was greater than an administrative change, but could not reasonably justify a level of effort equal to permit applications seeking coverage under general permits. The MPCA believes this conservative approach is reasonable.

Item N. Environmental Assessment Worksheet (EAW) Review. During the MPCA's discussions with legislators during the 2008 Legislative Session, Legislators expressed their concerns that existing permit application fees did not address the total cost to the MPCA for review of permit applications and particularly the EAW process. The MPCA agreed with the legislators and now includes this assessment in its current proposal. Assessing a fee for the environmental review process is reasonable because the environmental review is a necessary, pre-permitting activity, and an operating permit cannot be issued until the environmental review is completed. Legislators understood that the development of an Environmental Impact Statement (EIS) is funded by the proposer, but they also believed the cost of preparing an EAW should also be born by project proposers, and, thus, included in the cost of permit fees. The MPCA agrees that for new facilities with mandatory EAW requirements, the information review, data analysis, and process management are considerable. The MPCA believes that it is reasonable to charge fees for the review of EAWs because of the level of effort needed to complete this process, and because the EAW informs the development of the permit.

The assessed points are different for different categories of EAWs, but are the same for air-related or water-related projects. Thus, the reader will see the same point categories later in this SONAR in relation to water permit fees. The MPCA found that the different categories of EAWs and their corresponding point values are most clearly represented by the Environmental Quality Board (EQB) rule number. First, by using the EQB rule citation, the permit applicant has an easy reference that is used on permit applications and Websites when guiding project proposers to mandatory EAW reviews. Second, using the rule citations allows for ease in grouping very different project types by level of effort. The grouping of the EAWs into three different categories is based on the MPCA's historical experience regarding the level of effort required for completing an EAW review, the concerns raised by stakeholders about the relative impacts of any fees on specific sectors, and the legislative directive contained in *Minnesota Laws* (2007), chapter 257, section 3. As with the assignment of points for different types of permit applications, the time to complete an EAW review varies from project to project, but an average level of effort can be assigned for the different categories of EAW review work based upon the MPCA's past experience.

Fifteen points are assigned to mandatory EAWs for feedlots and sewer extensions. These projects are not governed by air quality permits. However, since the EAW point category is first encountered in relation to the air permit application fees, the MPCA believes it is reasonable to explain why fifteen points were assigned to this category now to assist the reader in understanding the justification for the other EAW categories. The review effort for these activities is not as great as for other types of EAWs, in part because they do not have a direct

discharge to waters of the state, nor do they have complicated industrial processes for consideration in analyzing for air quality concerns. For instance, sewer extension evaluations are mostly about the land resources potentially impacted (i.e. are wetlands disturbed, will surface waters be crossed) rather than requiring a review of water quality standards or air emissions. Similarly, the majority of feedlots are regulated by coverage under a general permit because of the consistent nature by which these facilities are designed and operated. Likewise the air and water analyses are fairly simple to address considering there is no wastewater discharge permitted, and there are not multiple air emission units with a variety of air pollutants to address. Feedlot projects do require some time devoted to the land application of manure to ensure that intended application rates do not impact ground water conditions or runoff to surface water because of location, method of application, or the soil and crop availability to uptake nutrients found in manure that if found in water could create an environmental issue. The EAW review must also assure proper design and operation of a feedlot or a sewer collection system. Additionally, for any EAW, there are a number of data elements to be considered and a specific public notice and comment process to be followed, as established in rules under the authority of the EQB. Therefore, the MPCA believes that the assessment of 15 points is reasonable for this level of review.

In establishing this point value, the MPCA not only considered its level of effort but also the comments received from stakeholders. In response to comments, the MPCA did re-evaluate the point value originally proposed (20 points). The comments raised concerns that the difference between these straightforward EAW reviews and the complicated, multi-media projects was not reasonable. Additionally, the commenters raised concerns about the ability to pay of individual producers and small municipalities when compared to the larger facilities considered under the other mandatory categories. The MPCA gave consideration to the issues raised and believes the current value is a reasonable compromise. The MPCA finds that, while the review process may have room to reduce costs associated with these project groups, the fundamentals of any EAW review are the same. Thus, the foundational costs of data collection, drafting of documents, public notice, public comment, and final decision documents are the same across all project groups.

The second EAW category includes activities that require a greater level of work effort to complete because of their size, the material (e.g. hazardous waste or material) handled at the facility, the potential environmental impacts, and the variability in designs. These projects are assessed 35 points because of the amount of data to be collected, analyzed, and considered during the EAW process. Additionally, the natural resources potentially impacted by the proposed projects under these categories are significantly different than that associated with feedlots or sewer extensions. The type of projects included in this category are: facilities designed for or capable of transferring 300 tons or more of coal per hour or with an annual throughput of 500,000 tons of coal; the expansion or reconstruction of an existing municipal or domestic wastewater treatment facility that results in an increase by 50 percent or more and by at least 200,000 gallons per day of its average wet weather design flow capacity; construction of a new municipal or domestic wastewater treatment facility with an average wet weather design flow capacity of 200,000 gallons per day or more; or construction of a new industrial process wastewater treatment facility with a design flow capacity of 200,000 gallons per day or more, 5,000,000 gallons per month or more, or 20,000,000 gallons per year or more.

The type of analysis needed for these types of facility categories are air modeling for determination of particulate matter in the cases of coal transfers, determining appropriate mitigation needed to reduce potential impacts that could be associated with air quality and also

evaluating potential site runoff with coal dust and would be appropriately controlled and managed. For wastewater treatment facilities (municipal or industrial), air or water modeling may be required. The type of chemicals used in the treatment process may have toxic effects in a discharge to surface waters and evaluation of the entire industrial process may require additional data. Furthermore, addressing impaired water issues from the environmental assessment process requires surface water modeling to understand compliance with restoration plans, federal and state regulations, and applicable court decisions. Additionally, due to the size and environmental issues surrounding the EAWs in this category, these EAWs more frequently require the MPCA Citizens' Board to make a decision on the need for an EIS or the related conditions in the associated permit. Appearances before the MPCA Citizens' Board mean additional mailings, document preparation, presentation preparation for the Board meeting, and staff participation at the actual Board meeting. Thus, the increase in points associated with this category of EAWs is reasonable.

The third EAW category is for activities that require review and analysis on a wide variety of issues due to size and nature of the project; typically have significant involvement with the public before and during the EAW process, and require a cross-media staff team to work closely on the projects (e.g. facilities that emit more than 250 tons per year of a single air pollutant, waste-to-energy incinerators, hazardous waste processing facility with a capacity greater than 1,000 kilograms per month, or a new or expanding facility for the production of alcohol fuels that would have or would increase its capacity by 5,000,000 or more gallons per year of alcohol produced). This type of EAW review will involve significant staff resources for data analysis, coordination with other state agencies, public notification, public meetings, and MPCA Citizens' Board approval. These projects have the potential to not only impact the environment, but also have a significant connection to local issues such that the EAW process often takes more than 12 months to develop and a variety of public meetings during the project development phase.

An example of the difference between this category and the previous category are the consideration of two recent controversial projects and the different level of effort needed. Consider two controversial projects, one a wastewater treatment facility and one an ethanol production project. The wastewater project took 12 months and about 224 hours, while the ethanol project took two years and approximately 3,000 hours for the EAW only. These examples are used to illustrate the difference between recent controversial projects. If a direct evaluation was done to compare hours, one might conclude that the number of points for category 3 should be 13 times the number of points assigned category 2 projects. The MPCA believes this would not be a reasonable approach to assessing points because the level of interest in the very large and controversial projects in category 3 by the Legislature and the public have caused the MPCA to more diligently track the hours involved in an ethanol project than other projects. Thus, the wastewater project may be under reported for the hours needed to complete. Additionally, fewer projects are completed in category 3. Thus, it is difficult to really extrapolate out that the ethanol project in this example is an average project. Therefore, the MPCA does not believe it is appropriate to assign points in the range the hour differential would seem to suggest. The MPCA is comfortable that the average project in category 3 is at least twice the effort of category 2 and thus, believes that it is reasonable to assess this category of EAW review 70 points.

The concluding paragraph clarifies that only mandatory EAWs are subject to this part and addresses how the value of points for EAW reviews will be calculated when an air quality and water quality permit are required for a project. The MPCA believes it is prudent to clarify that the additional points and associated costs will only be assessed for mandatory EAW reviews as

specified in Minn. R. 4410.4300 and the MPCA is the designated responsible governmental unit assigned to conduct the review. The MPCA concluded that this approach is reasonable because resources for the non-mandatory categories cannot be anticipated and the approach for these rules is to apply the level of effort needed for expected costs.

It is also reasonable to exempt the cost of completing an EAW under a petition to avoid any appearance that decisions to grant a petition were biased to collect a fee. In either of these non-mandatory situations, commenters expressed concerns that project opponents would use preparation costs as a means to block a project. The MPCA believes that avoidance of any mitigating factors is a reasonable approach, particularly in light of the infrequent nature that EAWs are completed outside of the mandatory categories.

The MPCA further believes it is needed and reasonable to clarify what fee value is used to calculate the cost associated with EAW reviews. If a project proposer is required to conduct an EAW and also required to obtain both an air and a water permit, the points for the EAW review will be only charged once, and the points will be multiplied by the lower of the dollar per point value of either the air or the water permit. This is reasonable, because the review effort only needs to be done once and double billing for the same work effort would not accurately reflect the level of effort required of the MPCA to complete the EAW review process in concert with the permit review and issuance process.

7002.0021 CAPPED COSTS FOR SMALL BUSINESSES AND CITIES. This rule establishes a cap on the amount of fees that a small business or small city must pay in the first year following enactment. The statutory requirement in Minn. Stat. § 14.127, reads as follows:

> *Subdivision 1.**Cost thresholds.***
> *An agency must determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed $25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees. For purposes of this section, "business" means a business entity organized for profit or as a nonprofit, and includes an individual, partnership, corporation, joint venture, association, or cooperative.*
>
> *Subd. 2. **Agency determination.***
> *An agency must make the determination required by subdivision 1 before the close of the hearing record, or before the agency submits the record to the administrative law judge if there is no hearing. The administrative law judge must review and approve or disapprove the agency determination under this section.*
>
> *Subd. 3. **Legislative approval required.***
> *If the agency determines that the cost exceeds the threshold in subdivision 1, or if the administrative law judge disapproves the agency's determination that the cost does not exceed the threshold in subdivision 1, any business that has less than 50 full-time employees or any statutory or home rule charter city that has less than ten full-time employees may file a written statement with the agency claiming a temporary exemption from the rules.*

Upon filing of such a statement with the agency, the rules do not apply to that business or that city until the rules are approved by a law enacted after the agency determination or administrative law judge disapproval.

The MPCA believes that the intent of Minn. Stat. § 14.127, to minimize the effect of rules on small businesses and cities in the first year, is reasonably addressed by the inclusion of a cap on the fee costs. The MPCA believes that a cap on the total fees due in the first year after the fee rule amendments become effective will provide reasonable time for small businesses and cities to plan for future costs that will be required for permitting actions. In order to fund its permitting activities, the legislature has made it clear that MPCA needs to use a fee assessment process to generate revenue. However, the MPCA also believes that it is reasonable to mitigate the effects of the new fees on small businesses and small cities for a period of one year from the effective date of the rules. This is a precautionary measure, as the MPCA does not anticipate that there will be any small businesses or cities that will have any permit-related fees that will exceed the $25,000 limit in the first year of the effective date of the rules and therefore, does not expect that this capping provision will have an effect on any projected revenue.

7002.0022 PAYMENT OF APPLICATION AND ADDITIONAL FEES. This rule describes the process for how and when a payment should be made. The process is the same as currently used for the air quality annual fee and the water quality permit application and annual fees. The MPCA believes this provides a clear mechanism for the permit holder to make the necessary fee payment. The MPCA believes that a 30-day time period for payment of the assessed additional fees is reasonable because the MPCA does not intend that the work necessary to process the application should be delayed. The final sentence of this part clarifies that the permit will not be issued until all invoices have been paid. This is reasonable to assure that the MPCA spends resources on its regulatory responsibilities versus spending resources to collect unpaid permit fees.

7002.0023 NOTIFICATION OF ERROR OF ADDITIONAL FEE. The MPCA will determine the cost for additional points associated with a permit and submit an invoice to the permit applicant, as specified in Part 7002.0022. Part 7002.0023 establishes a procedure to be used if the permit applicant believes that there is an error in the invoice. The MPCA believes it is reasonable to establish a specific process for disputing a bill, to establish specific timeframes for the permit applicant to indicate a dispute exists, and for the MPCA to respond and refund, as appropriate any overpayment.

7002.0065 PAYMENT OF ANNUAL FEES. Part 7002.0065 is an existing rule that is being amended to add the term “annual” to the title to distinguish annual fees from application fees and to accurately reflect the payment process that must be followed. This is reasonable because clear instructions will avoid errors when payments are made. The amendments delete an obsolete reference to making the payments to the MPCA. Fees are currently collected by the Minnesota Department of Revenue. However, the payment procedure has changed in the past and may change in the future based on applying the most cost-effective practices for collecting fees. Therefore, it is reasonable to incorporate general language in the rule that instructs the fee payer/permittee to make payment as directed in the invoice. The amendments to this part also change the date of payment due from 60 days of receipt of the invoice to 30 days of receipt of the invoice. This change is being made because all other payments as required in this rule are due within 30 days of receipt of invoice. Having one date that is different creates confusion and increases the potential for payment error. For these reasons, it is reasonable to set the payment schedule for the annual fee at 30 days.

7002.0075 NOTIFICATION OF ERROR OF ANNUAL FEE. Part 7002.0075 is an existing rule that is being amended by clarifying changes. The MPCA is adding the term "of annual fee" to the title to clarify the applicability of this part. The word "believes" is also being substituted for "thinks" for grammatical reasons. The MPCA is also changing the phrase "owner or operator" to "person" to allow a broader applicability of this Part. The MPCA believes it is reasonable to extend the right to notify the MPCA of a potential error to persons in addition to the owner or operator of a facility because the actual fiscal manager of the facility may indeed be the person to recognize the error. The MPCA believes it is more efficient to allow more than the owner or operator to raise such an issue.

This existing rule is also being amended to delete the phrase "no later than June 30 of the year in which the fee was assessed, whichever is later." This change is being made to develop consistency in the process of providing notification of errors. This is reasonable because it will avoid confusion caused by having different processes and timeframes for the different elements of the rule that address notification of error. This change is also reasonable because 60 days are adequate for providing a notification of error of the amount set forth in the invoice.

In Item A, the MPCA is removing a phrase "and shall not be refunded" because it is redundant and unnecessary to the meaning of the rule.

Item B is being amended to eliminate the phrase "the overpayment shall be refunded to the person or credited to the person's account" and add the phrase "refund the overpayment". The MPCA believes that it is not necessary to identify in rule the options for settling an overpayment. It is important that the overpayment be refunded, but the details for making that refund are case specific and need not be identified in the rule.

7002.0085 LATE PAYMENT OF FEES. This Part is amended by deleting the language that states from whom the late payment penalty invoice will be received. Because the organizational structure of the MPCA can change over time, it is reasonable to delete from the rules any reference to the invoicing entity and only refer to the information that will be provided on the invoice. The fact that a penalty is charged for late payment is a requirement of the existing rule and is not being changed in this rulemaking. The rule is also being amended to change the phrase "the owner or operator" to "permittee" in two places, because it is a more accurate term to describe the entity that is subject to the permit and annual fees and, therefore, also the late fees. The owner or operator of a facility may be different than the actual permittee, such as in the case of a contract operator for a municipality. Because the permittee is the regulated entity the changes to this term are reasonable.

B. AMENDMENTS TO WATER FEES (Minn. R. 7002.0210 – 7002.0310)

The general need for the MPCA to charge permit fees is discussed in Part I. of this SONAR. Part I of this SONAR identifies the basis for these rule amendments; the MPCA is mandated to charge fees to cover the costs of the permit programs. This general need is reflected in the proposed amendments by extending the current fee system to more completely address the universe of MPCA permittees and to reflect the MPCA resources used in the permit programs. The MPCA currently charges annual fees to water permittees and these amendments will codify the existing annual fees as they were established in legislation (2002 *Session Law* Ch. 220, Sec. 15). The general reasonableness regarding these amendments is found on page 21 at the beginning of Part IV. The proposed amendments extend the permit fee structure to account for

all MPCA permitting activities based on level of effort. Stakeholders participating in MPCA meetings in 2007 and 2008 recommended that the MPCA develop a system that reflected the complexity of the permit process. The proposed system also allows the fee adjustments within specified parameters without the need of rulemaking. The specific need and reasonableness for the proposed changes to the water quality permit fees follow.

SPECIFIC NEED AND REASONABLENESS

7002.0210 SCOPE. Part 7002.0210 is an existing rule that is being amended to include reference to the requirements of Minn. R. 7090.0030, which is an existing MPCA rule that contains the requirements for stormwater permits. The requirement in Minn. R. 7090.0030 to obtain a stormwater permit for certain activities is not new and the current rule addressing water quality permit fees includes fees for stormwater permits. The MPCA believes it is reasonable to add the reference to Minn. R. 7090.0030 in the rule as it will bring clarity to the scope of the rule.

7002.0220 DEFINITIONS. Part 7002.0220 establishes the definitions that apply to the water quality permit fees. This Part is being amended by the addition of a new definition for "general municipal separate storm sewer system (MS4) permit" and by amending the definition of "individual storm water permit" and "sewage". The existing rule at subparts 3a and 3b, provide definitions for "general construction storm water permit" and "general industrial storm water permit" because these permits are subject to stormwater permit fees under the rule. It is necessary to add a definition for "general MS4 permit" because these permits are newly included in the fee system for stormwater permits in part 7002.0254 of this rulemaking. The definition being added is reasonable because it clearly identifies the type of permits that will be the subject of the fees.

The definition of "individual storm water permit" is being amended to remove a reference to a specific part of the fee rules. The former reference to part 7002.0310 is deleted because it is not critical to or an element of the definition. The text being removed is already covered in part 7002.0310. Therefore, the MPCA believes these modifications are needed and reasonable as anyone reading the rule will understand its applicability.

The definition of "sewage" in subpart 7 is being amended to correct an error in the cross-reference. The MPCA previously amended Minn. R. 7080.1100, which changed the numbering of the definition of "sewage". Therefore, it is necessary to modify the rule to reflect the appropriate cross-reference and reasonable because anyone reading the rule should expect that references are accurate.

7002.0230 FEE DETERMINATION. This Part is amended to accurately identify those parts of the rule that address fee determinations. The change identifies a range of newly added rule parts, which are established as parts 7002.0250 to 7002.0310. These parts establish the fee target and end with the part that establishes the annual fee in part 7002.0310. It is reasonable to amend the rule to clearly state how the fees will be determined and to eliminate conflicting text that would not agree with other changes to the rule.

The existing statement about notification was deleted from this part because not all fees have a notification or invoicing component. Detail regarding payment of fees is provided in parts 7002.0240 and 7002.0270, which describes how the fees are to be paid and distinguishes

between fees that must be submitted with the application and fees for which the permit applicant or permit holder will receive an invoice. The MPCA believes it is reasonable that unnecessary rules be eliminated and that those proposed provide appropriate guidance to all effected parties.

7002.0240 PAYMENT OF FEES. This Part was modified to make references to the appropriate rule parts that are being amended in the rule and also to cite the associated payment instructions (either at the time of application or as invoiced). It is reasonable to amend this rule to more clearly identify the relevant rules and eliminate any possible misunderstanding about the use of invoices to prompt fee payment. The final sentence of this part clarifies that the permit will not be issued until all invoices have been paid. This is reasonable to assure that the MPCA spends resources on its regulatory responsibilities versus spending resources to collect unpaid permit fees.

7002.0250 WATER QUALITY PERMIT APPLICATION FEE. This Part formerly only contained an introductory paragraph and is now divided into two subparts.

Subpart 1. Fee Required. This Subpart is modified to identify that it is applicable to "water quality" permits, to eliminate the dual reference to permit modifications, and to more accurately identify the citations to the permitting activities to which the application fees apply, which are identified in Minn. R. 7001.0020 and 7090.0030.

Subpart 2. Fee determination. This new subpart is added to identify that application fees, except those for stormwater permit applications, will be based on a points system and to identify where in the rule the points are established. Stormwater permit applications are excluded because the fees for these applications, as assessed in part 7002.0254, are expressed as a specific dollar amount and do not utilize the points system.

7002.0251 WATER QUALITY PERMIT APPLICATION AND ADDITIONAL FEE TARGET. This is a new rule and is added to identify the process by which the MPCA will establish the target that the water quality application and additional permit fees are intended to meet. The unadjusted fee target of $6,000,000 for each biennium is based upon the one-time appropriation from the 2007 Legislature to support regulatory action and in an effort to respond to the 2002 Legislative Auditor's Report. In 2007, the MPCA was appropriated funds for regulatory needs, particularly permitting for mining, ethanol and economic developing sectors, in three media arenas: air, water, and multi-media. The water portion of this appropriation was $1,035,000 per year or $2,070,000 for the biennium. The MPCA also currently receives $1,971,000 per year or $3,942,000 per biennium. The MPCA believes it reasonable to collect both of these appropriations through permit application fees. Thus, when summed, the total water fee target for a biennium is $6,012,000 or $6 million when rounded.

As discussed earlier in the SONAR under part 7002.0017 (page 21), the MPCA will adjust the target fee in two ways. First, the target will be adjusted based on whether during the previous biennium the MPCA collected more or less than the target fee. It is not possible to anticipate the exact number of permit applications that the MPCA will receive; and, therefore, the exact amount of revenue that will be generated. For this reason, the MPCA may over or under collect permit revenue over the course of two years. Adjusting the target fee on a biennial basis will assure that the dollar per point value will neither significantly over nor under recover costs. Additionally, the MPCA believes that a biennial adjustment minimizes wide swings in the permit application fee that could occur if based on a single year of data.

The second factor in the calculation is that the target fee will be adjusted to consider inflation. The MPCA is establishing 2009 as the base year for the inflation factor, which is reasonable because 2009 is the year in which these rules will become effective. The MPCA believes it is reasonable to adjust the fee target to reflect for inflation that has occurred based on the consumer price index. As specified in Minn. Stat. § 116.07, subd. 4d., item (a), the MPCA has authority and is expected to collect fees to cover the reasonable costs of developing, reviewing, and acting upon applications for Agency permits and implementing and enforcing the conditions of the permits. If the fee target is not adjusted, the fees over time will fail to cover the cost of these activities. The use of the consumer price index is reasonable because it is a standardized adjustment and transparent to all parties and is used as an inflation adjustment factor in calculating the dollar per ton value for the existing annual air quality permit fee as established in Minn. Stat. § 116.07, subd. 4d., item (d). The MPCA has established 2009 as the baseline year for the calculation of the consumer price index. The next adjustment would occur prior to the next biennial cycle so that it is implemented on July 1, 2011. It is reasonable to clearly identify the baseline and that baseline is reasonably the effective year of the applicable new rules.

The MPCA believes that the use of a formula to biennially calculate the fee target is the most reasonable method for ensuring that the mandated fee revenue is fairly and accurately collected without the need for costly and time consuming rulemaking to amend the target.

7002.0252 COMPUTATION OF THE DOLLARS PER POINT FOR WATER PERMITS.
The application fees are based on a calculation of the amount of MPCA work effort required for the review and development of a permit, which is represented as a range of points. Those points are then multiplied by a specific “dollar per point” amount calculated using the formula established in this Part. The computation of the dollars per point will be done prior to the beginning of each new biennium and will be posted on the MPCA’s Website.

The dollars charged per point is calculated using three factors that will change over time. The first is the adjusted water quality permit application fee and additional fee target as calculated in part 7002.0251. The second factor is the five-year annual average number of permit applications received. The third factor is the five-year annual average number of additional permit activities (e.g. increased design flow, non-degradation review or variances) conducted by the MPCA. The formula uses these factors to calculate the dollar per point value. Exhibit E demonstrates how this system was used to develop the basis for this rule. This formula was discussed with stakeholders during the preliminary rule development process.

This approach is reasonable because the fees are tailored to represent the level of effort needed to review and issue specific permits rather than a flat fee that would require the simplest permits to subsidize more complicated permit actions. The formula is based on the adjusted fee target and accounts for the number of applications received and the additional activities conducted in the development of the requested permits, which correlates to the amount of MPCA resources expended. The use of a rolling annual five-year average for the number of permit applications received and the additional permit activities completed will avoid any radical swings in the dollars per point value from biennium to biennium. This is reasonable because it will allow permit applicants to anticipate the fee and budget more accurately for the cost of the permit application. It also establishes a system that provides a reasonable assurance that the fee target is achieved and thus, meeting the intent of the 2007 Legislative directive and 2002 Legislative Auditor’s Report.

7002.0253 WATER QUALITY PERMIT APPLICATION FEES AND ADDITIONAL FEES. The amendments to this part represent a major revision to how permit application fees are currently calculated for water quality permits. In the past, the permit application fees did not reflect the amount of MPCA work effort needed to process the applications and generate a valid permit. The permit applications, in the past, were a flat fee based on type of permit, i.e. general or individual, with no regard to the complexity of the permit needed. In meetings with stakeholders, the stakeholders clearly communicated a preference for a fee system that reflected the level of effort required to complete the permit. Thus, they essentially supported the establishment of a system where applicants for complex permits paid a higher fee than applicants for less complex permits as opposed to the flat fee system currently employed.

A point system is a reasonable method to use in order to account for the varied amount of work effort needed to process different types of permit applications and to account for additional actions that are required on some but not all permits. The development of the point system for water quality permits is similar to the point system used for calculating fees for air quality permit applications as described earlier in this SONAR. The points assigned for water quality permits correlate to the level of effort required by the MPCA to process the different types of permit applications and develop a permit that complies with applicable regulations and establish processes for determining that a facility is being operated in full compliance with all applicable requirements.

It is important to note that the fees will cover the cost of regulatory activities of the MPCA associated with the permit and are not limited to the cost of just preparing the permit. The MPCA's regulatory activities include: technical assistance, management and review of data that is required to be submitted to the MPCA as part of a permit, ongoing compliance determination and enforcement of all permit requirements, program development efforts to address new and/or emerging environmental issues and associated federal and state congressional or legislative directives, and administrative and business support activities. It is reasonable to assume that there is a correlation between the level of effort put into the development of a permit and these other regulatory activities. As the complexity of a facility and the associated permit increases the associated efforts to determine full compliance with the permit also escalates. Ongoing compliance efforts include the management and the review of compliance monitoring data provided to the MPCA, response to any values that are outside of established limits and associated correction or enforcement actions if required. Therefore, the MPCA believes that the system of points developed for calculating an application fee reasonably correlates with the cost of associated regulatory functions of the MPCA.

The type of work activities involved in review and development of permits includes pre-application assistance regarding design options, applicable standards, regulatory requirements and other issues that may impact the facility location and the operational design. Once the application is received the permitting process includes such items as permit application review, site visits, meetings and correspondence with facility owners and consultants, technical review of the facility design and equipment, identification of all regulatory requirements (e.g. testing, monitoring and reporting requirements), writing of the permit and associated technical support documents, internal consultation on issues such as compliance history and environmental review, publication of public notices, public meetings, response to public comments and, in some cases, presentation to the MPCA Citizens' Board. This work is often done by a team who bring

different areas of expertise to the process such as engineering, regulatory knowledge, compliance expertise, water quality standards, and Environmental Assessment Worksheet review if the proposed activity fits the criteria specified in Minn. R. 4410.4300 when the MPCA is the designated responsible governmental unit.

The points assigned for permit applications and additional activities in subparts 1 and 2 are based on an assessment of the level of MPCA effort required for each type of application or activity as determined by staff responsible for these activities. The assessment is based on an average of the time value for each type of permit application or activity. The assessment is averaged because the time to conduct the work is unique to each permit application and some applications take more time and others less time. The MPCA staff that developed the assessment of the work effort had hands-on experience in completing different permitting activities. It is reasonable to use the expertise of the individuals that conduct the work to assign the appropriate point value.

Subpart 1. Application Points. This subpart establishes that the fees will be calculated by multiplying the fee points identified in items A to D by the computed dollar per point value.

Item A. Water Quality Effluent Limitation Review. Item A identifies the points assessed for reviewing a water quality effluent limitation request. An effluent limitation review, as completed by MPCA staff, ensures that appropriate limits and other requirements are included in the NPDES permit for a wastewater facility or industrial discharge so that water quality and designated uses are protected in the receiving water. The water quality effluent limitation review also ensures nondegradation requirements are met and though nondegradation reviews are charged specific fees under subpart 2, item C. The review determines what limits or requirements are necessary and reasonable. Effluent limitation reviews are site-specific for each discharge and are based on the specific characteristics of the discharge and the receiving water.

MPCA rules require that effluent limits be assigned to protect water quality standards at all flows greater than the 7Q10 low flow in the receiving water. The 7Q10 low flow is a calculated flow statistic, and is defined as the lowest average flow for seven consecutive days with a recurrence interval of ten years. If the minimum secondary treatment requirements in Minn. R. ch. 7053 are not adequate to protect water quality standards, then more stringent limits may be assigned under other parts of the chapter.

An effluent limit review includes the following:

- Identify nondegradation design flow (basis for nondegradation review requirements for expanded discharges);
- Determine low flow statistics of receiving water for facilities with continuous or periodic/seasonal wastewater discharges;
- Determine use classification and special designation (if any) of receiving waters;
- Identify and evaluate receiving water monitoring data that may be used in the development of limits, and determine if any additional monitoring requirements are needed;
- Evaluate appropriate limits for conventional pollutants and the need for ammonia limits;
- Evaluate the need for toxics limits and/or monitoring requirements, which includes Whole Effluent Toxicity Testing and Priority Pollutant monitoring;
- Evaluate the need for phosphorus limits and Phosphorus Management Plans, including modeling;
- Evaluate any potential impacts to wetlands and determine the need for additional discharge limits or requirements, and/or wetland monitoring;

- Identify where biological monitoring data and assessments can provide further information to assess whether or not appropriate limits and requirements are included in the NPDES permit;
- Identify discharges to impaired waters (TMDL reaches) and address issues as appropriate;
- Identify discharges to waters that support Endangered Species and address issues as appropriate (federal requirement), and
- Integrate other water programs into the review process, such as biological monitoring, TMDLs, or Basin Planning.

This type of review is assigned a point value of five, based on the level of effort required to complete this work. The rule identifies that points for an effluent limit review will only be charged for water quality effluent limits that are submitted as a separate action and not for water quality effluent limitation review work that is done based on a permit application. Assigning points for this review work, which is applicable to a specific facility, is reasonable because the work is being completed for that specific potential permit applicant's benefit.

Item A further clarifies that the five points assigned to effluent limitation reviews is a one time assessment and that multiple reviews are each assessed a new fee. It is reasonable for the MPCA to assess new fees for each subsequent review, because each review will make additional demands on the MPCA's staff resources.

Item B. Feedlot Permit Applications. Item B identifies the points assigned for four different kinds of feedlot permit applications. The first is for coverage under a general permit including first time applications for a new facility and also subsequent applications for coverage under the general permit when it is reissued. Applications for coverage under the general permit are assessed two points. The second type of application is for permittees that are requesting a modification but that already hold a general permit. This type of application is also assessed two points. The third type of permit application is for an individual permit to construct a new facility or modify an existing feedlot. Six points are assessed for new or modified individual permits. The fourth type of permit application is for reissuance of an individual permit and two points are assessed for these applications.

General permits are designed to address activities that are similar in nature and do not require specific regulatory conditions due to such things as facility location. Since the work effort to develop a general permit can be shared by multiple facilities, the points assigned are lower than those charged for an individual permit. MPCA data of staff time spent on the different types of permits in the feedlot program, identifies that, on average, an individual permit takes three times more staff work hours to complete than a general permit. Therefore, it is reasonable that individual permits are assigned a point value three times greater than the point value for a general permit. Reissuance of individual permits, where there are no changes from the original permitted activity and design, require less time to process and, therefore, assessing two points is reasonable.

Item C. Wastewater Disposal System and Biosolids Treatment and Storage Applications. Item C addresses the points applied to wastewater applications for municipal and non-municipal wastewater treatment facilities and for disposal systems and biosolids treatment or storage facilities. The different types of permit applications are identified below in nine separate subitems. Each is assigned a point value based on the effort required to issue and manage the permit.

Subitem (1) addresses application fees for general permits. Four points are assigned for applications for a new facility that is either seeking coverage under a general permit, modification of an existing facility that is covered under a general permit or applying for ongoing coverage under a general permit once it has expired. Development of the general permit requires significant work effort to capture all the applicable regulatory, monitoring and reporting requirements in addition to a public notice and response to comments, but the effort is shared by all entities that fall under the general permit. Therefore, the points assigned are less than that charged for individual permits. Once the general permit is developed, the associated review involves determining that a new facility or modifications proposed to an existing facility will fall within the scope of the general permit and that site specific requirements are not required to provide protection of public health and the environment.

Subitem (2) addresses the issuance of individual wastewater permits or biosolids treatment or storage permits for new facilities and assigns 30 points for these applications. This is the highest number of points assigned for wastewater applications and reflects the high level of effort required to issue permits for new facilities. These permits require extensive work to validate that the correct water quality standards are being applied, that all regulatory requirements regarding discharges, monitoring and reporting will be met, and that the facility as designed has the capacity to be in full compliance with all applicable requirements. The process involves inspection of the proposed facility location and review of the extensive work done by the persons developing the facility, their consultants, and ensuring that the work is documented in the permit application. A team of MPCA staff with different areas of expertise work on the review of the application and development of the permit. These permits must be publically noticed and public meetings are usually held to address comments and concerns of interested parties. All public comments are responded to and in some cases, when EAWs are required, the permit will be presented to the MPCA Citizens' Board. Based on the level of effort required to process these applications, the MPCA believes a point value of 30 is reasonable.

Subitem (3) addresses the applications for major modifications that do not include construction. This type of modification can arise when a facility owner or operator requests to make a change in operation that will require changes to the permit but will not require any associated construction activities. This type of application is assigned eight points in recognition of the lower work effort required, primarily in the area of engineering review, which is greater when construction is involved. Major modifications to a facility that include an increase in design flow, but do not require construction would be covered under this Subitem. Public notice and review of public comments is required; thus, it is reasonable that the permit be assigned more points than a general permit but much less than the points assigned to a modification with construction.

Subitem (4) addresses major modifications that include construction, but the modifications to the facility will not change the design flow. An example of a modification that would fall into this category would be the addition of chemical treatment that requires construction of storage facilities and a system to introduce the chemicals but which would not increase the design flow of the facility. This type of application is also assigned eight points because less work effort is required in comparison to modifications to facilities where the design flow is increasing and all aspects of the treatment facility require review. Under these circumstances, because the design flow is not changing, the MPCA will not be required to look at effluent limitations or nondegradation review, thus reducing the amount of effort required. The MPCA believes the eight points assigned reasonably reflect the level of effort needed.

Subitem (5) addresses major modifications with construction and an increase in design flow. These modifications require a level of effort that is comparable to building a new facility and sometimes may require a greater work effort due to the complication of designing the old and new systems to work effectively together. This type of modification requires pre-application assistance, setting effluent limits, engineering design review, monitoring requirements and full review of compliance with all applicable rules and regulations, plus requirements for public notice and associated public meetings. This type of permit application is assigned a point value of 30, which is the same as that assigned for a new facility. The MPCA believes that because the permit requirements require the same review activities as a permit application for a new facility, it is reasonable to assign the same point value.

Subitem (6) addresses minor modifications, which are assigned a value of four points. The lower fee points assigned reflects the reduced level of effort to prepare minor modifications. The specific work involved with this type of modification includes determination of full compliance of the changes with applicable rules, documentation and entry of the information in the database used to track all permitting actions, and preparation and distribution of the amended permit. Typically, no public notice is required for minor modifications to water quality permits.

Minor modifications initiated by the MPCA to correct permit errors will not be assessed a fee for the minor modification. The MPCA believes it is reasonable that the correction of permit errors, such as typos or location citations, are done without direct charges to the permittee since no application or review is required.

Subitem (7) assigns four points for the reissuance of an individual permit where no changes are being made to the facility. The permit rules require that individual permits be renewed every five years. If changes are being proposed for a facility, the appropriate application associated with the change must be submitted to the MPCA with the associated fee. The review and reissuance effort for facilities that are not undergoing any changes is not as complex as for a new permit or major permit modification. Therefore, charging a lower fee is reasonable. The review of applications for reissuance involves validation that no new state or federal requirements apply to the facility and that the facility has been, and in the future will operate, in full compliance with all permit requirements.

Subitem (8) addresses the issuance of an individual pretreatment permit and assigns eight points to this type of permit. Individual pretreatment permits are utilized to impose national categorical pretreatment standards (from Title 40 Code of Federal Regulations, Chapter I, Subchapter N) on industrial users who discharge to non-delegated publicly owned treatment works (POTW) and who are subject to these regulations. Industries subject to national categorical pretreatment standards that discharge to a POTW where MPCA has delegated authority to administer the federal pretreatment regulations are permitted by the POTW and not the MPCA. There are nine delegated POTWs at this time and the MPCA is planning to delegate to seven more POTWs in the next few years.

Permits for categorical pretreatment standards require analysis of the permittee’s process and waste stream composition to correctly identify the correct category and subcategory in the national categorical pretreatment standards. Because of the number of possible categories and subcategories and the complexity of the applicability of the standards, this analysis can become involved. There are 34 categories that can have multiple subcategories in each. This type of review is only done for initial issuance of a pretreatment permit and requires more staff expertise and effort than for a general permit or reissuance of an individual permit without changes.

Subitem (9) assigns eight points to the issuance of individual dredge material disposal permits. The majority of dredge material disposal projects are likely to qualify for the general dredge material disposal permit once it is available. For those projects not meeting the criteria for the general permit, an individual permit will be required. Individual dredge material permits require a more extensive review of the waste characterization of the dredge material, dredge disposal locations, and proposed treatment of any discharged water, as well as potential coordination with other governmental agencies. Public notice and review of public comments are also required; thus, it is reasonable that an individual dredge material permit will be assigned four more points than the four points that are assigned for a general dredge disposal permit.

Item D. Sewer Extension Applications. Item D. provides a list of the points assigned for applications for sewer extensions. Currently, any sewer extension application is charged the same fee regardless of the size of the proposed project. In the rule, as amended, the number of points assessed for sewer extension applications increase based on increases in the design flow of the proposed project. Overall, the point values are all relatively low, one, two or three points, because the level of MPCA effort to issue a sewer extension permit is low. However, it is reasonable to use a tiered system that reflects the fact that more time is spent on the sewer extension permits as the design flow increases.

Subpart 2. Additional Points. Subpart 2 addresses how additional points will be assessed for permit related activities that apply to some, but not all, permits. The assignment of additional points for specific permit actions is a reasonable method to reflect the additional work effort needed to accomplish specific reviews. The additional points in this subpart are associated with permit development activities that increase the demands on MPCA resources. The point values assigned for these additional activities, like the application points, are based on the MPCA's determination of the actual level of effort involved in performing the identified activity or activity review. The points were assigned based on information provided by MPCA staff completing the permitting work and who are knowledgeable of the work effort involved.

Item A. Increased Design Flow. Item A addresses the additional points associated with various levels of increased design flow at any of the permitted facilities identified in subpart 1. As the design flow increases, the level of review also increases to assure full compliance with applicable rules and to ensure protection of human health and the environment. For facilities with design flow increases less than 0.20 million gallons per day (MGD), no additional points are assigned as the effort required for this level of flow increase are already considered in the points assigned to an application fee. However, as the amount of design flow increases above 0.20 MGD the number of points also increases to reflect the more detailed review required. There are six categories of increased design flow listed in subitems (1) to (6) with the associated points ranging from zero to 40 for the largest increased design flows. Item A includes a clarification that the measurement of the flow determination would not include flow of noncontact cooling water. The flow of noncontact cooling water is specifically addressed in item B.

Subitem (7) in Item A specifically addresses the points assigned for the review of mine pit and quarry dewatering and sewer extensions. For these types of flow increases, no additional points are assigned. For mine pit and quarry dewatering, the associated increase in design flow is already represented in the hours calculated to conduct the primary review and permitting activity and is covered in the application fee for a new discharge or modification to an existing discharge as discussed in subpart 1, item C. above. For sewer extensions, the increased design flow is

reflected in the points assigned for the different types of sewer extension applications discussed in subpart 1, item D, which specifically account for the increase in the design flow for the specific project.

Item B. Noncontact Cooling Water. Item B assigns additional points for permit applications that include an increase in the discharge of noncontact cooling water. The processing of a permit application for the discharge of noncontact cooling water may require the participation of a permit writer, compliance staff, standards setting, and technical staff. Staff meet and confer regarding previous permit compliance, facility operational issues, needed permit language, and potential problems that may arise during the permit process. The process requires a great deal of staff involvement prior to writing the permit and public notification that the permit will be reissued. The process also includes responding to comments submitted during the public notice period and preparing documentation required for contested permits, if necessary.

When the maximum design daily flow exceeds 50 MGD, additional federal requirements are tripped and additional staff time is necessary to review the large flow volume. Facilities with flows greater than 50 MGD have a higher potential of impacting the receiving water from both a pollutant and hydraulic perspective. Facilities with flows this high are often power plants or other very large industries. Mixing zones between the discharge and the receiving water must be analyzed at critical flow regimes to ensure that a balanced indigenous population of aquatic life can be maintained while also ensuring that water quality standards are met. This requires the review and analysis of large volumes of monitoring data for both the discharge and the receiving water. The public notice period for these permits often generates many public comments. Based on the level of work effort required to issue a permit with increased discharges of noncontact cooling water, the assessment of 5 points for an increase less than 50 MGD and 20 points for an increase greater than 50 MGD is reasonable. An example of a facility with noncontact cooling water and an increase in design flow relating may be found in Exhibit G.

Item C. Nondegradation Review. Item C addresses the points assigned for permits that require a nondegradation review and assigns 20 points for this type of review. These reviews are required under specific state rules and the work effort required in conducting the review is extensive. For new or expanded discharges to or impacting Outstanding Resource Value Waters (ORVW), nondegradation review includes a determination of whether any prudent and feasible alternatives exist to the proposed discharge. Staff evaluate information submitted by the project proposer for at least seven general alternatives, which may include evaluations of other alternatives proposed by the applicant or recommended by staff. Developing recommendations for the proposed discharge may include preliminary effluent limitations and other protective measures for pollution control, and involve consultation with other state and local agencies and other affected citizens having interest in the proposed project.

For new or expanded significant discharges to non-ORVW waters, the review includes the determination of whether additional control measures beyond minimum treatment requirements may reasonably be taken to minimize the impact of the discharge on the receiving water. In making the decision, consideration is given to the importance of economic and social development impacts of the project, the impact of the discharge on the quality of the receiving water, the characteristics of the receiving water, the cumulative impacts of all new or expanded discharges on the receiving water, the costs of additional treatment beyond the minimum treatment requirements established in rule, and other matters brought to the MPCA’s attention. Developing recommendations for the proposed discharge includes the determination of preliminary effluent limitations.

The MPCA staff's preliminary determination regarding nondegradation is subject to a public comment period and final review and consideration by the MPCA Citizens' Board or MPCA Commissioner. Based on the level of work effort involved in conducting these reviews, the MPCA believes it is reasonable to assess 20 points for a nondegradation review.

Item D. Variance Request. Item D assesses 35 points for a variance request. The review and approval of a variance request follows specific procedures established by rule (Minn. R. 7000.7000). The review includes determination of the technical feasibility of the ability to comply with a rule and the economic cost of compliance. Variance request require approval by the MPCA Citizens' Board and also are required, by rule, to be reviewed on a periodic basis. As discussed under part 7002.0019, subpart 2, item L, the MPCA believes the points proposed for a variance request are reasonable.

Item E. Confidentiality Requests. Under specific circumstances a person may request that specific information about a proposed facility be kept confidential. The review must be documented and any information identified as confidential must be separately handled so that it is not available for public review. The review requires documentation that the request for confidentiality is consistent with applicable rules and regulations. Confidentiality reviews are assessed two points, which is reasonable based on the amount of MPCA staff time needed to make the necessary special provisions for confidentiality. The MPCA believes it has established a reasonable value for this activity because it happens infrequently and documentation on the level of effort is not available. Thus, the MPCA determined that because some analysis and review is required the level of effort was greater than an administrative change, but could not reasonably justify a level of effort equal to permit applications seeking coverage under general permits. The MPCA believes this conservative approach is reasonable.

Item F. Environmental Assessment Worksheet (EAW) Review. It is reasonable to charge fees for the review of EAWs because they may be a required step in the permitting process and the EAW informs the permitting process. The point values assessed under this item are identical to the points assessed in part 7002.0019, subpart 2, item N. The reader is referred to page 36 for the MPCA justification regarding the reasonableness of the tiered system proposed for mandatory EAW activities.

7002.0254 WATER QUALITY STORMWATER PERMIT APPLICATION FEES.

The MPCA's stormwater permit program regulates stormwater discharges from three sources; municipal separate storm sewer systems (MS4s), construction activity, and industrial activity, and issues both general and individual permits for these discharges. Through the permit application and the annual permit fees, the MPCA must address the costs to administer the permit application, review, and approval processes; and the investment in supporting infrastructure including, among other substantial costs, development and operation of essential data management systems.

New stormwater permit fees are needed because the current cost for the MPCA to administer stormwater permits greatly exceeds the overall revenue generated by the two existing stormwater fees, which charge for construction and industrial general stormwater permits under part 7002.0310, subpart 3. Currently, the MPCA does not charge fees for general MS4 or industrial permit applications. The fees currently charged for industrial (an annual fee) and construction general stormwater permit applications do not cover the MPCA costs related to the stormwater permit program, nor is it reasonable that these two revenue sources pay for all stormwater

regulatory activities. Therefore, part 7002.0310 is being revised in this rulemaking to remove references to stormwater permit application fees. The permit application fees the MPCA intends to apply to stormwater are addressed in new items A to D in this Part.

The MPCA believes the $400 fee being charged for all stormwater permit application fees is reasonable. The MPCA's proposal to charge the same application fee for all stormwater permits is a reasonable way to address the costs of administering permits and permit applications. Based on comments received by stakeholders with specific concerns regarding the stormwater permit fees, the MPCA believes it has found a reasonable method to appropriately increase revenues for these activities while not overestimating the work effort needed to manage the program in the future after current design activities are complete.

The first type of permit application fee being addressed in this Part is the application fee for a general permit for discharges of stormwater associated with construction activity. The fees for this type of permit were formerly addressed in part 7002.0310, subpart 3, which required an application fee of $240 for a general construction stormwater permit, with no annual fee. However, a statutory change in 2003 resulted in several modifications to the stormwater permit fees, as discussed below, including an increase in the general construction stormwater permit fee.

Under Minnesota Session Laws, chapter 128, section 157, the changes in stormwater permit fees charged by the MPCA resulted in an increase from $240 to $400 in the application fee for general construction stormwater permits. The permit fee changes became effective July 1, 2003. Because this modification is only codifying the existing application fee for a general construction stormwater permit of $400 established in statute, the MPCA believes the proposed amendment is reasonable.

The second type of permit application fee, identified in item B, is the application fee for an MS4 permit or modification of an existing MS4 permit. This part requires a new fee of $400 to be charged for MS4 permit applications or modifications to an existing MS4 permit, other than modification of a Stormwater Pollution Prevention Program (SWPPP). The rule clarifies that MS4 permit modifications are not to be confused with modifications to the SWPPP, which are not being charged a fee at this time.

The MPCA does not currently charge a permit application fee for this type of permit. However, the MPCA will have issued coverage to more than 230 MS4 permittees by the end of 2009. The MPCA believes it is reasonable to charge a fee and begin to cover the expenses of the extensive review and processing of these permits. The review of the MS4 SWPPPs by the MPCA staff is the result of the Minnesota Court of Appeals ruling on the general MS4 stormwater permit. The court required that the MPCA provide public notice and opportunity for hearing on the proposed SWPPP for each MS4. This requirement has meant that the MPCA must conduct near individual-permit level review and public notice of each SWPPP. As a result, the MS4-SWPPP approval process has taken the equivalent of three to four full-time staff more than two years to approach completion. Consequently, permittees typically have had a considerable wait for permit coverage, MS4-SWPPP approvals, technical assistance, guidance, and timely resolution of enforcement issues. However, because this is the first review of SWPPPs, the MPCA believes it is reasonable to charge the cost equivalent to the issuance of construction stormwater permits, which also have SWPPPs until more data is collected and streamlining activities may be implemented.

Item C establishes a permit application fee of $400 for a general industrial stormwater permit. The MPCA has issued coverage to more than a thousand permittees under this type of permit and currently charges a $400 annual fee but no application fee. The current revenues from the annual fees are insufficient to fully administer a regulatory program including the development and issuance of the new industrial general stormwater permit to meet federal regulatory requirements. The MPCA believes it is reasonable to assess an application fee to better reflect the resources needed for the industrial permit program.

It is difficult to predict how many additional industrial facilities will need to apply for stormwater permit coverage once development of the new industrial permit is complete and the permit is issued. The range in the number of possible permittees is very large. Since there should be some economies of scale in MPCA's administrative costs for industrial stormwater, it is possible that the proposed industrial application and annual fees could meet the MPCA's costs. The MPCA believes that, given this uncertainty in the potential number of additional permittees, the MPCA should take only a modest step at this time, which is reflected in the decision to limit the application fee to $400. The MPCA believes consistency among the fees paid throughout the stormwater program is reasonable until more accurate data is collected and efforts to streamline the permit issuance process, which may include on-line applications like the construction stormwater program, have been implemented.

The MPCA will likely revisit stormwater fees in the near future to more closely align with the actual level of work to administer the stormwater program. The MPCA, with the Stormwater Steering Committee (SSC), has recently completed development of the Stormwater Management Roadmap for Minnesota. The SSC is a diverse and comprehensive group of stormwater managers and other stormwater stakeholders. The MPCA and SSC are still considering the many needs for stormwater management as identified in the Roadmap, some of which have cost implications. Until this work is completed, the MPCA agrees with its stakeholders that a modest fee for all permit applicants is reasonable so that all appropriately share the cost of the program.

Item D establishes a permit application fee of $400 for all individual stormwater permits, regardless of the category of permit. The above discussion of Items A to C addresses general permits, but some stormwater discharges are covered by an individual permit. Currently, there are only two individual municipal stormwater permittees (Minneapolis and St. Paul) as they are not eligible for coverage under the general permit. Some industrial facilities whose stormwater requirements are built into their individual permits to discharge wastewater or other non-stormwater are also not covered by the general permit. Under the proposed rules the latter incur only the fee for wastewater discharges set out in parts 7002.0253. Although an individual permit requires more MPCA staff effort to develop, the MPCA believes, at this time, it is reasonable to charge the same amount as the general permits. During the stakeholder process, the MPCA received a number of comments on the readiness of the program to charge accurately for the various stormwater permits. Many commenters indicated that because of the design work being completed, as described above, the individual permit application fees could not be accurately understood. The MPCA agreed with these comments and believes that it is appropriate and reasonable that individual permit applicants pay at least what those applying for coverage under a general stormwater permit would pay during this development period.

7002.0255 CAPPED COSTS FOR SMALL BUSINESSES AND CITIES. This part of the rule establishes a cap on the amount of fees that a small business or small city must pay in the first year following enactment and is based on a provision of Minnesota Statutes that requires agencies to consider such costs when promulgating rules. A complete discussion of the statutory

requirement in Minn. Stat. § 14.127, and the MPCA's efforts to reasonably address the intent of that legislation, is provided in the discussion of the amendments to part 7002.0021 in this SONAR.

The MPCA believes that a cap on the total fees due in the first year after the fee rule amendments become effective will provide reasonable time for small businesses and cities to plan for future costs that will be required for permitting actions. In order to fund its permitting activities, the legislature has made it clear that MPCA needs to use a fee assessment process to generate revenue. However, the MPCA also believes that it is reasonable to mitigate the effects of the new fees on small businesses and small cities for a period of one year from the effective date of the rules. This is a precautionary measure, as the MPCA does not anticipate that there will be any small businesses or cities that will have any permit-related fees that will exceed the $25,000 limit in the first year of the effective date of the rules and therefore, does not expect that this capping provision will have an effect on any projected revenue.

7002.0258 NOTIFICATION OF ERROR. The MPCA will determine the additional points associated with a permit as established in part 7002.0253, subpart 2 and submit an invoice to the permit applicant as specified in 7002.0240. Part 7002.0258 establishes the procedure to be used if the permit applicant believes that there is an error in the invoice. It is reasonable to establish a specific process for disputing a bill and to establish specific timeframes for the permit applicant and the MPCA to respond. If an error has been made, the MPCA believes that a refund of the overpayment is reasonable.

7002.0270 ANNUAL FEE. Part 7002.0270 is an existing rule that establishes the basis for the MPCA to collect annual fees from water permittees. The introductory paragraph is being amended to reflect that changes are being made to items A to D. Several of these items are being deleted in this rulemaking so that the identified range must be adjusted accordingly.

The language in subpart A is being changed to delete a date that has passed. The language that refers to permit holders with unexpired permits on February 3, 1992 and makes reference to part 7002.0305 is being deleted because the language is no longer applicable. Part 7002.0305 is being repealed in this rulemaking.

Items B and C are being deleted because they addressed application fees, which are now covered under another part of the rule (see discussion of part 7002.0253) and this part now only addresses annual fees.

The current items E and F (now revised to be items C and D) are being changed so that annual fees are charged only for persons that actually hold a permit and are not charged to persons who have made application for a permit. With the increase in the application fees for a permit, the MPCA believes it is reasonable to amend this part to eliminate the charge for the annual fee prior to the issuance of the permit. This reasoning is also applied to the changes being made in part 7002.0310. In that rule, changes have been made to assess the annual fee only upon issuance of the permit and not following receipt of an application.

In the new item D, subitems 1 and 2 have been modified by adding the word "individual" to describe which feedlot NPDES and SDS permits will be charged an annual fee under the category "other nonmunicipal". A new subitem 3 has also been added to clarify that general

feedlot permits will pay the annual fee set in part 7002.0310, subpart 3, under "general". These are reasonable clarifications of the applicability of the annual fee requirements and reflect current practice.

7002.0290 LATE PAYMENT FEE. This Part has been amended to make it consistent with the way that late payments are being addressed for air quality permit fees in existing rule part 7002.0085. The existing language addressing late payments of water quality fees established a 20 percent penalty for fees that were more than 30 days overdue. The proposed revisions extend the time period before the MPCA considers a payment to be late from 30 days to 60 days. The proposed revisions will also make the existing rule less stringent by changing the existing 20 percent fee for late payments to a 10 percent late payment fee. These changes reflect the way that late payments are addressed in the existing air permit fee rules. The MPCA believes that these changes to the rule are reasonable because they have been effectively applied to the air permit fees for several years. In addition, it is reasonable to maintain consistency in how the fees are administered within both the air and water permit programs.

The final sentence of the existing rule addressed the circumstance where a fee continues to be unpaid. The MPCA is modifying the language of that part to make it consistent with the language of part 7002.0085 but is not changing the effect, which is that an additional ten percent late fee will be assessed at 30-day intervals. A concluding sentence stating that all late fees are due upon receipt of an invoice is being added to clarify the applicability and to maintain consistency with existing part 7002.0085.

7002.0300 WATER QUALITY PERMIT FEE SCHEDULE. This part is being repealed because all annual fees for water quality permits will now be covered in part 7002.0310 only.

7002.0305 **TABLE, WATER QUALITY PERMIT FEES PAID BY HOLDERS OF UNEXPIRED PERMITS.** This part is being repealed because it is no longer applicable. This part established fees for major NPDES facilities that paid separate processing and annual fees under parts 7002.0210 to 7002.0310 prior to February 3, 1992, and continued in effect until their permit expired. It is now reasonable to apply the same annual fees for all water quality permits.

7002.0310 WATER QUALITY ANNUAL PERMIT FEES. This part is changed by deleting all references to permit application fees so that it covers only the water quality annual fees. Permit application fees are now addressed in parts 7002.0253 and 7002.0254 as discussed in this SONAR previously. The annual fee values in this part have also been changed to reflect changes to the annual fees made by the Legislature in 2002, Session Law chapter 220 Sec. 15. The Session Laws stated…*"The agency shall adopt amended water quality permit fee rules incorporating the permit fee increases in this subdivision under Minnesota Statutes, section 14.389. The pollution control agency shall begin collecting the increased permit fees on July 1, 2002, even if the rule adoption process has not been initiated or completed. Notwithstanding Minnesota Statutes, section 14.18, subdivision 2, the increased permit fees reflecting the permit fee increases in this section and the rule amendments incorporating those permit fee increases do not require further legislative approval."* The rule as amended incorporates the permit fee increases as specified in 2002 Session Law chapter 220 Sec. 15 that have been in effect since July 1, 2002.

Subpart 1. Major NPDES permit fees. Subpart 1 has been changed by replacing the word "fees" with "annual fee", which is a more accurate term now that the subpart has been revised so that it no longer addresses both application fees and annual fees. The revisions also add language

specifying that the annual fee is assessed only after a permit has been received and is not charged at the time of application. The word “facilities” has been deleted from the phrase “major NPDES facilities” and replaced with the word “permit” for consistency. .

Item A addresses the annual fees that are charged for municipal permits and item B addresses the annual fees for other types of permits, classified as “nonmunicipal”. Nonmunicipal permits include industrial facilities and any other permitted facility that does not meet the definition of municipal facility. Both of these items are amended by the deletion of all references to the application fees and by changing the amount of annual fees to be consistent with the action taken by the legislature in 2002. The MPCA is taking this “no change” approach based on comments by stakeholders that the fee increases should be applied to permit applications for new facilities or modifications to existing facilities. This approach will work for a period of time but at some point the fees will have to be adjusted to account for inflation and the incorporation of additional requirements in state and federal rules and regulations that require additional resources to assure compliance with all regulatory requirements.

Subpart 2. Nonmajor NPDES and state disposal permit fees. This Subpart addresses the annual fees charged for nonmajor NPDES and State Disposal System permits. The same changes are being made to this Subpart as are being made to subpart 1. The introductory language is being changed by the deletion of the phrase “applied for” because the fees now will not apply until a permit is issued. The word “fees” is being changed to “annual fee” to more accurately identify the scope of this subpart. The same type of changes as were made to subpart 1 are being made to subpart 2 to eliminate the column that addresses application fees and to revise the amount of annual fees to be consistent with the action taken by the legislature in 2002. The MPCA believes that these changes are reasonable for the same reasons discussed in subpart 1.

In item A, the MPCA is revising a category of municipal permits to change “Sewage Sludge Landspreading Facilities” to “Facilities for the treatment or storage of biosolids only”. The description of this type of facility is being revised to clarify what type of facility is addressed. The word “only” is an important clarification to this item. If a facility has an NPDES permit and also has components or sites for the treatment or storage of biosolids, those actions would be covered under their NPDES permit and this part would not apply. However, if they don’t hold an NPDES permit and they are seeking a permit to handle biosolids “only”, then the facility owner would need a permit and would be required to pay the associated annual fee.

Item B is amended by adding a new category of nonmuncipal permits, “Individual stormwater permits”, and a corresponding annual fee for those types of permits. The MPCA has always charged a fee for this type of permit, but it was not previously explicitly identified in this part of the rules. The MPCA believes it is a reasonable clarification of the way fees are currently charged for this type of permit.

Subpart 3. Other water quality permit fees. In subpart 3, the MPCA is revising the way “Storm Water” is written for consistency purposes. The MPCA is also adding a new category of permit, the “General MS4 stormwater permit”. Although this is a new category of permit, at this time the MPCA is not charging any annual fee for it. This zero charge is the same as the fee that already exists in this part for a “General construction stormwater permit”. The MPCA believes it is reasonable to identify these types of permits, even though there is no fee, to eliminate confusion regarding their annual fee status. As discussed in the explanation of the application fees for stormwater permits in part 7002.0254, the stormwater program is being reviewed at this time and may result in future modifications to these rules.

LIST OF EXHIBITS

In support of the need for and reasonableness of the proposed rules, the MPCA will enter the following exhibits into the hearing record:

Exhibit A: The Office of the Legislative Auditor's 2002 Program Evaluation Report entitled, "*Minnesota Pollution Control Agency Funding*", dated January 24, 2002.

Exhibit B: The MPCA Report to the House and Senate Divisions on Environmental Finance entitled, "*Air and Water Fees Legislative Report"*, dated January 15, 2008.

Exhibit C: Copies of written comments received during the rule development process.

Exhibit D: Air and Water Permit fee options used by other states.

Exhibit E: Factors used to calculate the dollar per point value.

Exhibit F: Average of the amount of staff work required for each permit.

Exhibit G: Facility example relating to 7002.0253, subp. 2, items A and B.

Exhibit H: New Source Review Workshop Manual.

LIST OF WITNESSES

The MPCA plans to have some or all of the following staff available to testify at the public hearings on issues relevant to the proposed rules.

Myrna Halbach, Director of the MPCA's Operations Support Division

Leah Hedman, Assistant Attorney General of the Minnesota Office of Attorney General

Jim Brist, Rule Coordinator in the Policy, Local Government Assistance, and Solid Waste Section of the MPCA's Municipal Division

Carol Nankivel, Rule Coordinator in the Policy, Local Government Assistance, and Solid Waste Section of the MPCA's Municipal Division

Paula Connell, Supervisor in the Air Quality Permits Section of the MPCA's Industrial Division

Deb Lindlief, Water Quality NPDES/SDS Permit Coordinator in the Municipal Wastewater Section of the MPCA's Municipal Division

Dave Sahli, P.E., Principal Engineer in the Municipal Wastewater Section of the MPCA's Municipal Division

Dave Wall, Supervisor in the Environmental Review and Feedlot Section of MPCA's Regional Division

VII. Conclusion

Based on the Foregoing, the proposed rules are both needed and reasonable.

Dated: 3/2/09

Paul Eger
Commissioner
Minnesota Pollution Control Agency