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Minnesota Pollution Control Agency

December 12, 1995

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AIR AND RADIATION DIVISION
U.S. EPA, REGION V

Mr. David Kee, Director
Air and Radiation Division
U. S. Environmental Protection Agency
77 West Jackson Boulevard, A-18J
Chicago, Illinois 60604

AIR TOXICS AND RADIATION
BRANCH
U.S. EPA, REGION V

Re: State Delegation of Section 112 Standards

Dear Mr. Kee:

*Why is this
letter?*

This letter fulfills the Minnesota Pollution Control Agency's (MPCA) commitment in a March 30, 1995, letter to the U.S. Environmental Protection Agency (EPA) to request straight delegation of rules promulgated under 40 CFR pt. 63, hereinafter referred to as section 112 standards. Specifically, the MPCA requests delegation of section 112 standards, all National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Source Categories and 40 CFR. pt. 68 (section 112(r)) as it applies to part 70 sources. The MPCA is not, at this time, requesting delegation of the Early Reductions Program, section 112(r) as it applies to non-part 70 sources, and section 112 standards regulating radionuclides. Except as listed above, the MPCA will accept straight delegation of section 112 standards. If the MPCA, upon EPA's promulgation of a section 112 standard, decides that it would prefer not to be delegated a particular rule, it will so inform EPA in a suitable filing under section 112(1).

The criteria that must be established for approval of a program for delegation of section 112 standards, as promulgated by the EPA, include adequate legal authority and resources to implement and enforce and an adequate plan for implementation and expeditious source compliance. To further MPCA's request for delegation, these criteria are discussed below and relevant elements of Minnesota's Title V Operating Permit Program submittal of November 15, 1993, are incorporated by reference.

Necessary legal authority and state statutes, regulations and other requirements

The MPCA has statutory authority under Minn. Stat. 116.07, subd. 4a to incorporate all applicable requirements needed to prevent pollution into operating permits. This broad authority, plus the requirement in Minn. R. 7007.0800, subp. 2 to include all applicable requirements in permits, fully allows the MPCA to incorporate federal regulations of section 112 into operating permits. As section 112 standards are promulgated by EPA, they automatically fall within the definition of applicable requirements in Minn. R. 7007.0100, subp. 7, and will be reflected in operating permits as required by Minnesota's operating permit rule (EPA final interim approval July 17, 1995). To further address this requirement, refer to Minnesota's Title V Operating Permit Program submittal section III.D and Minnesota's Attorney General's (AG) Office legal opinion, sections I, VII and XXII in Attachment C.

The MPCA does have authority to adopt EPA's section 112 rules as state rules under Minn. Stat. § 116.07, subd. 4. This authority will be used to incorporate the federal standards by reference. Once adopted as a state rule, the MPCA would have authority to enforce those standards directly under Minn. Stat. § 115.071 and other law, regardless of whether or not the source subject to the

standard had a permit. See AG letter, sections XIV and XXII. Minnesota has begun rulemaking to incorporate into state law section 112 standards promulgated to date. When incorporated into state rule, non-part 70 sources will be subject to MPCA enforcement of section 112.

The MPCA is requesting delegation for non-part 70 sources, including implementation and inspection, until these rules are adopted as state rules. When the rules are adopted, the MPCA will also enforce the standards. The MPCA will amend this filing to include its state rules when they are adopted. Until the rules are adopted, the MPCA will refer any violations to EPA for formal enforcement action. The MPCA expects to adopt its rules incorporating the federal standards that have been promulgated by EPA prior to September 1995 in the Spring of 1996.

The MPCA recommends that the delegation also provide that authority is delegated to implement and enforce future section 112 standards or amendments to existing standards effective on the date such standards become applicable under state law. This language is present in the MPCA's current delegation under section 111 and 112 for standards in 40 CFR pts. 60 and 61.

Adequate Resources

The MPCA submitted a fee demonstration and organizational structure in sections II.H and II.I of the Title V Operating Permit Program submittal. The submittal demonstrates that Minnesota has adequate legal resources to implement and enforce section 112 standards with respect to part 70 sources. Implementation and enforcement of section 112 standards for non-part 70 sources will be supported by section 105 grant resources. The same organizational structure would be used to address part 70 and non-part 70 sources. Table II-1 summarizing staff positions as they relate to funding sources has been updated and is enclosed.

Implementation Schedule

The implementation of section 112 standards has been an ongoing activity for the Air Quality Division (AQD) since late 1993. We began by accepting notifications for the first promulgated NESHAPs for Source Categories—Perchloroethylene Dry Cleaning Facilities—and continue to accept initial notifications as NESHAPs for Source Categories are promulgated. The AQD has initiated the rulemaking process to incorporate into state law section 112 standards promulgated to date, except for the Early Reductions Program. The MPCA intends to periodically rulemake as section 112 standards are promulgated in the future.

The MPCA is committed to implementing the section 112 standards as demonstrated by devoting resources to coordinate this effort especially throughout the permit section. Staff from this section along with staff from the Air Toxics Unit and the Small Business Assistance Program, have engaged in numerous outreach activities with several source categories (dry cleaners, degreasers, chromium electroplaters, ethylene oxide sterilizers) to provide information on the NESHAPs and assistance in completing and submitting initial notifications.

The MPCA will not consider implementing section 112(r) for non-part 70 sources at this time. The feasibility of implementing section 112(r) for non-part 70 sources will be addressed as part of an Accidental Release Prevention grant received from the EPA.

Compliance Plan

The MPCA submitted a description of its compliance tracking and enforcement program in sections II.F and II.J of the Title V Operating Permit Program submittal. The submittal assures compliance with section 112 standards with respect to part 70 sources. Compliance with section 112 standards for non-part 70 sources will be supported by section 105 grant resources.


Mr. David Kee

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Accordingly, the MPCA requests straight delegation of section 112 standards except as noted above. Should you have any comments or questions regarding our request, please contact Rod Massey, of my staff, at (612)296-7512. We hope that this letter meets your criteria for approval and we look forward to receiving your written response to our request at the earliest convenience.

Sincerely,



Charles W. Williams
Commissioner

CWW:lmg

Enclosure

cc: Rachel Rineheart, EPA

PROGRAM TITLE	Title V Fees	Non-Title V Fees	Special Projects
Manager's Office (management)	1.75	0.25	
Computer Support	4.25	1.75	
Small Business		5.00	
Regulatory Tracker, Trainer	2.00		
Program Development Unit (mgt/supervisor)	2.00		
State Implementation Plans/Rules	2.00	3.00	
Economist		1.00	
Technical Support/Research	2.00	2.00	1.00
Lead, Noise	2.00	1.00	
Monitoring Unit (supervisor)	1.00		
General Air Monitoring	1.00	8.00	
Quality Assurance		2.00	
Acid Rain Program	2.00	1.00	
Regional Support	2.00		
Air Toxics Unit (supervisor)	1.00		
Federal Air Toxics Rule Implementation		0.50	
Air Toxics/Emission Facility Review	1.00	3.00	
Air Toxics Inventory		1.00	1.00
Accidental Release			1.00
Mobile Sources Unit (supervisor)		1.00	
Vehicle Inspection Maintenance Program		8.00	
Transportation Planning		3.00	
Permit Section (management)	1.00		
Permitting/Permit Info Tracking and Coord.	30.75		
Permitting (Regional)	3.00		
Compliance and Enforcement Section (mgt)	0.75	0.25	
Compliance Determination Unit	13.00		
Asbestos		2.00	
Metro Enforcement Unit	7.50	0.50	
Regional Enforcement Unit	7.50	1.50	
Administration and Support Staff	15.50	3.75	
TOTAL	103.00	49.50	3.00