MEMORANDUM OF AGREEMENT
BETWEEN
THE MINNESOTA POLLUTION CONTROL AGENCY
AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 5
REGARDING
SECTION 112, CLEAN AIR ACT IMPLEMENTATION

INTRODUCTION

The purpose of this Memorandum of Agreement (MOA) is to provide joint procedures to facilitate federal delegation of authority to implement and enforce standards and the delegable general provisions promulgated by the United States Environmental Protection Agency (EPA) under Section 112, excluding Section 112(r), of the Clean Air Act as amended (Section 112) to the Minnesota Pollution Control Agency (MPCA). This MOA sets forth specific expectations and responsibilities of the MPCA and EPA and describes a formal procedure for delegating standards applicable to Part 70 sources. Both the MPCA and EPA recognize that timely delegation of Section 112 responsibilities is vital to implementation of both the Title V and Section 112 program. The parties to this agreement affirm their commitment to an effective state/EPA partnership, and agree to review this MOA, as the need arises.

SCOPE

The MPCA has requested, and EPA intends to grant, delegation of responsibilities for implementation and enforcement of emission standards and other requirements promulgated under Section 112 through the process set out in this MOA. The MPCA has not requested and, at this time, does not intend to request delegation of the accidental release program under Section 112(r). This MOA addresses only those provisions and responsibilities for which the MPCA has requested delegation.

The MPCA assumes primary responsibility for implementing the 112(l) program within its boundaries, except for Indian country.

BACKGROUND

Section 112 requires EPA to develop National Emissions Standards for Hazardous Air Pollutants for Source Categories (NESHAPs). Section 112(l) authorizes the Administrator to delegate the authority for the implementation and enforcement of standards promulgated under Section 112 to any state which applies for such delegation and which can demonstrate that it has in place a program which meets the criteria set forth in Section 112(l) and its implementing regulations at 40 CFR § 63.91. The Administrator has delegated the authority to approve state programs to the Regional Administrators.

In a letter dated December 12, 1995, and an amendment to that letter dated July 26, 2001, the MPCA sought approval of its program for implementation and enforcement of emission standards and other requirements for air pollutants subject to Section 112, only as they apply to Part 70 sources, including the Part 63 general provisions. The MPCA has demonstrated that it has in place appropriate mechanisms for implementing and enforcing Section 112 standards with respect to Part 70 sources in accord with this MOA, and that its program is in compliance with the regulations at 40 CFR § 63.91.

EPA Region 5 approved the MPCA's Section 112 program in a July 23, 2002, *Federal Register* rulemaking pursuant to Section 112(l), at which time the authority to implement existing Section 112 standards for Part 70 sources was delegated to the MPCA (*67 FR at 48038*).

EPA will maintain responsibility for implementation and enforcement of the Section 112 standards for non-Part 70 sources and for those standards for which the MPCA has declined to accept implementation authority or has relinquished that authority. All forms, reports and other required submittals for these sources should be sent to George Czerniak, Chief, Air Enforcement and Compliance Assurance Branch (AE-17J), Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604

POLICY STATEMENT

The MPCA and EPA hereby agree to establish a process for delegation of responsibilities under Section 112(l). Both the MPCA and EPA recognize that the MPCA's ability to implement and enforce a Section 112 standard and the delegable general provisions in a timely manner will depend largely upon its having access to information regarding such standard prior to its final promulgation. The delegation process should therefore be an interactive, information-sharing process, which should begin prior to promulgation by EPA of the Section 112 standard to be delegated.

Appended to this MOA are three appendices that list Section 112 standards based on the status of their delegation of authority from EPA to the MPCA, as of the date of this MOA. The purpose of these appendices is to identify the status of a Section 112 standard as it relates to the administrative process that the MPCA is following to secure EPA's delegation authority as of the date of the execution of this MOA.

Appendix A contains the Section 112 standards that EPA Region 5 in its July 23, 2002, *Federal Register* rulemaking has already announced its intention to delegate both implementation and enforcement authority.

Appendix B identifies the Section 112 standards incorporated into Minnesota Rules on June 1, 2004, but as of the date of this MOA have not yet been delegated from EPA to the MPCA. The implementation and enforcement of these standards will be delegated from EPA to the MPCA through the procedures described in this MOA.

Appendix C identifies the Section 112 standards promulgated by EPA, but not yet incorporated into Minnesota Rules. The implementation and enforcement of these standards will be delegated from EPA to the MPCA through the procedures described in this MOA.

Authority to implement and enforce future Section 112 standards will be delegated to the MPCA in accordance with this MOA. Additionally, the MPCA may in the future relinquish implementation and/or enforcement authority to EPA through procedures described in this MOA.

Delegation of each Section 112 standard means the delegation of the standard as promulgated by EPA unless the MPCA notifies EPA otherwise, either as specified in Part III. C. of the Procedures section of this agreement or within the alternative standard delegation procedures provided within Section 112 itself.

PROCEDURES FOR DELEGATION OF IMPLEMENTATION AND ENFORCEMENT AUTHORITY

To transfer delegation of implementation and enforcement authority, the MPCA and EPA agree to implement the following procedures:

I. When authorizing construction of an air emissions source or facility, the MPCA issues a "combined" air emissions permit that establishes the conditions for both construction and operation of an air emissions facility. MPCA shall implement Section 112 standards pursuant to this MOA by including applicable Section 112 requirements in the Part 70 permit when issuing "combined" permits authorizing construction and operation. MPCA shall also include applicable Section 112 requirements in Part 70 operating permits when they are issued or revised.

II. Prior to final promulgation of a Section 112 standard, EPA shall provide MPCA with any information it has regarding Minnesota sources that may be subject to such standard.

III. The process for delegating implementation and enforcement following final promulgation by EPA of a Section 112 standard will be as described herein.

A. *Implementation Authority.* Upon final signature of this MOA, implementation authority is delegated as follows:

1. The implementation of standards listed in Appendix A is delegated to MPCA in their entirety.

2. The implementation of standards listed in Appendix B is delegated to MPCA with the execution of this MOA, except for the following standard:

Hazardous Waste Combustors, Subpart EEE

3. As expeditiously as practicable and, if possible, within 12 months of the execution of this MOA, the MPCA shall incorporate each standard in Appendix C by reference into the state air quality regulations. Section 112 standards shall be incorporated without change. Upon completion of such regulatory action, the MPCA shall submit a letter to EPA with proof of incorporation by reference, including the date of the action. If the MPCA finds that it is unable to complete rulemaking to incorporate a Section 112 standard into state rules within 12 months of the execution of this MOA, the MPCA shall notify EPA in writing.

4. EPA automatically delegates the authority to implement any future section 112 standard upon the effective date of the promulgated standard. If the MPCA does not intend to accept implementation delegation of a future standard, the MPCA will notify EPA in writing within 45 days of the effective date of the promulgated standard. If the MPCA finds that it is unable to complete rulemaking to incorporate the standard into state rules within 12 months of its promulgation, the MPCA shall notify EPA in writing, within 9 months of the promulgation date of the standard..

B. *Enforcement Authority.* Upon final signature of this MOA, enforcement authority is delegated as follows:

1. Enforcement of standards listed in Appendix A is delegated to the MPCA with the execution of this MOA.

2. The enforcement of standards listed in Appendix B is delegated to the MPCA with the execution of this MOA, but for the following standard:

   Hazardous Waste Combustors, Subpart EEE

3. The enforcement of standards listed in Appendix C will be delegated to the MPCA after this MOA has been executed and those standards have been incorporated into the state air quality regulations. EPA shall respond to the MPCA's written announcement of completing its rulemaking to incorporate the standards by reference with a letter delegating enforcement authority to the MPCA with respect to the standard or standards.

4. The enforcement of any future section 112 standards not described in this MOA will be delegated to the MPCA following the MPCA's acceptance of implementation authority and incorporation of such standards into the state air quality regulations according to the procedures in part III (A) of this MOA.

C. *Limited Acceptance of Delegation.* If the MPCA opts to accept implementation and enforcement authority, but wants to exclude one or more provisions of the standard from the delegation, the MPCA shall notify EPA in writing of its intent to accept implementation and enforcement authority within the limits described in the letter.

The MPCA may propose limited acceptance of delegation of a standard at any time in accordance with the procedures in Part D of this section.

D. *Relinquishing Delegation Authority*. The MPCA may, upon written notification to EPA, relinquish the enforcement or implementation authority for a Section 112 standard or portion thereof. Situations under which the MPCA may relinquish delegation authority include, but are not limited to: amendment of the standard by EPA; resource constraints; and changes in EPA policy or interpretation. The MPCA shall provide EPA a reasonable period of time between the notice and the date that the MPCA relinquishes its delegation authority.

IV. The MPCA shall be responsible for implementing and enforcing fully delegated Section 112 standards and the delegable general provisions in Minnesota. Such implementation and enforcement shall include, as appropriate:

A. Distribution of initial notification forms to potentially affected sources;

B. Receiving initial notifications and compliance certifications from affected sources;

C. Issuing or revising Part 70 construction and/or operating permits for affected sources as needed to include Section 112 standards, described in part I of "Procedures for Delegation of Implementation and Enforcement Authority;"

D. Assuring compliance through implementation of the Part 70 construction and/or operating permits for those affected sources required to obtain permits.

V. Delegation of the general provisions in Part 63 will be implemented according to the procedures in the September 14, 2000, *Federal Register* (*65 FR 55810*). Parts 63.1, 63.2, 63.3, 63.4, 63.5, 63.6, 63.7, 63.8, 63.9, 63.10, 63.11 and 63.14 have already been incorporated by reference into the MPCA's rules and EPA hereby delegates implementation and enforcement delegation of those provisions. The general provisions that are retained by EPA and will not be delegated are:

A. The authority to add or delete pollutants from the list of hazardous air pollutants under Section 112(b);

B. The authority to add source categories to or delete source categories from the federal source category list established under Section 112(c)(1) or to subcategorize categories on the federal source category list after proposal of a relevant emission standard;

C. The authority to revise the source category schedule established under Section 112(e) by moving a source category to a later date for promulgation; and

D. Any other authorities determined to be non-delegable by EPA.

VI. Until the MPCA obtains the authority necessary to enforce Section 112 standards, EPA

shall initiate enforcement action when enforcement is in the best interest of the state, the general public, or EPA, or when delayed enforcement would impose an undue level of risk on the general public and/or the environment. After EPA delegates enforcement authority to the MPCA, nothing in this MOA or in any delegation of a NESHAP standard or requirement shall prohibit or limit EPA from enforcing any applicable emission standard or requirement under Section 112, at any time, including enforcement by EPA where the state has taken an enforcement action against a particular source for violations of Section 112.

VII. The MPCA will obtain concurrence from EPA on any matter involving the interpretation of Section 112 of the Act or 40 CFR Part 61 and 63 to the extent that implementation, administration or enforcement by these sections have not been covered by EPA determination or guidance.

Upon signature of this MOA, the implementation and enforcement of all existing section 112 standards, which have been incorporated into the Minnesota Rules and the delegable general provisions listed in Section IV of this Memorandum that have been incorporated into Minnesota Rules, are delegated to the state of Minnesota as set forth above. This delegation process excludes standards as they apply to non-Part 70 sources and excludes Section 112(r). The above agreement is effective when signed and may be modified upon mutual agreement by the MPCA and EPA. Nothing in this agreement shall be construed to restrict in any way the authority of either EPA or the MPCA to fulfill its responsibilities under state or federal law.

James L. Warner, Director
Majors and Remediation Division
Minnesota Pollution Control Agency

Date: Sept 7, 2004

Steve Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection Agency

Date: 2/15/2005

APPENDIX A
Section 112 Standards
National Emissions Standards for Hazardous Air Pollutants
Already Incorporated By Reference
Into State Rule at the Time of EPA's July 2002 Federal Register Notice

Promulgated NESHAP	Subpart	Promulgation Date	Minn. Rule
Dry Cleaning	M	09/22/1993	7011.7100
Coke Oven Batteries	L	10/27/1993	7011.7080
Synthetic Organic Chemical (HON)	F	04/22/1994	7011.7040(A)*
Synthetic Organic Chemical (HON)	G	04/22/1994	7011.7040(B)*
Synthetic Organic Chemical (HON)	H	04/22/1994	7011.7060(A)
Synthetic Organic Chemical (HON)	I	04/22/1994	7011.7060(B)
Industrial Cooling Towers	Q	09/08/1994	7011.7160
Halogenated Solvent Cleaning (degreaser)	T	12/02/1994	7011.7200
Commercial Sterilizers	O	12/06/1994	7011.7140
Gasoline Distribution	R	12/14/1994	7011.7180
Magnetic Tape	EE	12/15/1994	7011.7300
Chromium Electroplating	N	01/25/1995	7011.7120
Epoxy/Polyamide Resins, Group II	W	03/08/1995	7011.7420(B)
Secondary Lead Smelters	X	06/23/1995	7011.7240
Refineries I (misc. vents, tanks, leaks, etc.)	CC	08/18/1995	7011.7280
Aerospace Manufacturing/Rework	GG	09/01/1995	7011.7320
Marine Vessel Loading	Y	09/19/1995	7011.7260
Wood Furniture	JJ	12/07/1995	7011.7340
Shipbuilding & Ship Repair	II	12/15/1995	7011.7360
Printing & Publishing	KK	05/30/1996	7011.7380
Off-Site Waste and Recovery	DD	07/01/1996	7011.7400(A)
Tanks – Level 1	OO	07/01/1996	7011.7400(B)
Containers	PP	07/01/1996	7011.7400(C)
Surface Impoundments	QQ	07/01/1996	7011.7400(D)
Individual Drain Systems	RR	07/01/1996	7011.7400(E)
Oil-Water Separators & Organic-Water Separators	VV	07/01/1996	7011.7400(F)
Elastomeric Resins, Group I	U	09/05/1996	7011.7420
Thermoplastic Resins, Group IV	JJJ	09/12/1996	7011.7420(D)

*Not listed in July 23, 2002, *Federal Register* Notice

APPENDIX B
Section 112 Standards
National Emissions Standards for Hazardous Air Pollutants
Incorporated By Reference Into State Rule on June 1, 2004

Promulgated NESHAP	Subpart	Promulgation Date	Minn. Rule
Primary Aluminum	LL	10/07/1997	7011.7660
Pulp & Paper I & III (Pulping, Mechanical)	S	04/15/1998	7011.7700(A)
Pharmaceuticals	GGG	09/21/1998	7011.7580
Flexible Polyurethane Foam Production	III	10/07/1998	7011.7480
Ferroalloys	XXX	05/20/1999	7011.7460
Polyether Polyols	PPP	06/01/1999	7011.7620
Mineral Wool	DDD	06/01/1999	7011.7520
Primary Lead	TTT	06/04/1999	7011.7235
Phosphoric Acid	AA	06/10/1999	7011.7600(A)
Phosphate Fertilizer	BB	06/10/1999	7011.7600(B)
Wool Fiberglass	NNN	06/14/1999	7011.7730
Portland Cement	LLL	06/14/1999	7011.7640
Oil & Natural Gas production	HH	06/17/1999	7011.7290(A)
Natural Gas Transmission & Storage	HHH	06/17/1999	7011.7290(B)
Steel Pickling – HCl Process	CCC	06/22/1999	7011.7670
Pesticide Active Ingredient	MMM	06/23/1999	7011.7560
Generic (acetal, acrylic, HF, polycarbonate)	YY	06/29/1999	7011.7030
Hazardous Waste Combustors	EEE	09/30/1999	7011.7410
Publicly Owned Treatment Works	VVV	10/26/1999	7011.7680
Amino/Phenolic Resins, Group III	OOO	01/20/2000	7011.7420(C)
Secondary Aluminum	RRR	03/23/2000	7011.7665
Pulp & Paper II, Recovery Combustion	MM	01/12/2001	7011.7700(B)
Vegetable Oil Production	GGGG	04/12/2001	7011.7840
Nutritional Yeast	CCCC	05/21/2001	7011.7780
Boat Manufacturing	VVVV	08/22/2001	7011.7370
Leather Finishing	TTTT	02/27/2002	7011.7760
Refineries II (cracking, reforming, sulfur)	UUU	04/11/2002	7011.7280(B)
Wet-Formed Fiberglass Mat	HHHH	04/11/2002	7011.7720
Metal Coil	SSSS	06/10/2002	7011.7905
Cellulose Products	UUUU	06/11/2002	7011.7740
Primary Copper	QQQ	06/12/2002	7011.7650
Rubber Tire	XXXX	07/09/2002	7011.7860
Polyvinyl Chloride	J	07/10/2002	7011.7820
Generic (carbon, cyanide, ethylene, spandex)	YY	07/12/2002	7011.7030
Large Appliances	NNNN	07/23/2002	7011.7900
Friction Materials	QQQQQ	10/18/2002	7011.7880
Paper & Other Webs	JJJJ	12/04/2002	7011.7385

APPENDIX B (continued)
Section 112 Standards
National Emissions Standards for Hazardous Air Pollutants
Incorporated By Reference into State Rule on June 1, 2004

Promulgated NESHAP	Subpart	Promulgation Date	Minn. Rule
Municipal Solid Waste Landfills	AAAA	01/16/2003	7011.7390
Coke Oven Pushing, Quenching, Stacks	CCCCC	04/14/2003	7011.7090
Flex. Polyurethane Foam Fabrication	MMMMM	04/14/2003	7011.7485
Refractory Products	SSSSS	04/16/2003	7011.7920
Hydrochloric Acid Production	NNNNN	04/17/2003	7011.7610
Reinforced Plastic Composites	WWWW	04/21/2003	7011.7800
Asphalt Roofing & Processing	LLLLL	04/29/2003	7011.7940
Brick & Structural Clay	JJJJJ	05/16/2003	7011.7930
Clay Ceramics	KKKKK	05/16/2003	7011.7935
Integrated Iron & Steel	FFFFF	05/20/2003	7011.7675
Semiconductor Manufacturing	BBBBB	05/22/2003	7011.7960
Metal Furniture	RRRR	05/23/2003	7011.7910
Engine Test Cells/Stands	PPPPP	05/27/2003	7011.7980
Wood Building Products	QQQQ	05/28/2003	7011.8000
Fabric Printing, Coating & Dyeing	OOOO	05/29/2003	7011.7770

APPENDIX C
Section 112 Standards
National Emissions Standards for Hazardous Air Pollutants
Not Yet Incorporated By Reference In to State Rule

Promulgated NESHAP	Subpart	Promulgation Date	Minn. Rule
Site Remediation	GGGGG	10/08/2003	n/a
Primary Magnesium Refining	TTTTT	10/10/2003	n/a
Taconite Iron Ore Processing	RRRRR	10/30/2003	n/a
Miscellaneous Organic Chemical (MON)	FFFF	11/10/2003	n/a
Metal Can	KKKK	11/13/2003	n/a
Miscellaneous Coating Manufacturing	HHHHH	12/11/2003	n/a
Miscellaneous Metal Parts and Products	MMMM	01/02/2004	n/a
Lime Manufacturing	AAAAA	01/05/2004	n/a
Organic Liquids Distribution	EEEE	02/02/2004	n/a
Combustion Turbines	YYYY	03/05/2004	n/a
Plastic Parts	PPPP	04/19/2004	n/a
Iron and Steel Foundries	EEEEE	04/22/2004	n/a
Reciprocating Internal Combustion Engines	ZZZZ	06/15/2004	n/a
Plywood and Composite Wood Products	DDDD	07/29/2004	n/a