


# Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 705

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 5/27
DATE FOR REVIEW 6/5
DATE DUE 6/10

Adopted w/a hearing _____
Adopted w/o a hearing ✓
Temporary rule _____

Approved 6/5 Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 6/5

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___ Rule as Adopted

___ Rule as Proposed

___ Order Adopting

___ Notice of Intent to Solicit Outside Opinion

___ Order for rulemaking
_____ Date of Hearing

___ Certificate of Board's Authorizing Resolution

___ Notice of rulemaking
_____ Sufficiency

___ Affidavit of Mailing Notice of rulemaking
_____ At least 30 days prior to hearing/adoption

___ Mailing list Certificate

___ Publication in State Register
_____ At least 30/20 days prior to hearing/adoption

___ Hearing Examiner's Report

___ Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

___ Agency's Findings of Fact

___ LCRAR Report or agency Affidavit

___ Certificate of Board's Resolution Adopting Rules

___ Order Approving Incorporation by Reference

___ Statement of Need and Reasonableness

___ Petition for Adoption of a Rule

___ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

___ Certificate of Compliance w/Rulemaking Procedures

___ Affidavit of Mailing Notice of Submission to Attorney General

___ Notice of Submission to the Attorney General

RR705

STATE OF MINNESOTA

MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Adoption of Amendments to Minn. Rule APC 33.B.7. and 33.B.8.a., 6 MCAR §§4.0033.B.7. and 4.0033.B.8.a., Standards of Performance for Coal Handling Facilities Within Designated Areas

STATEMENT OF NEED AND REASONABLENESS

## INTRODUCTION

The subjects of this rulemaking proceeding are proposed amendments to an existing rule of the Minnesota Pollution Control Agency (Agency), 6 MCAR §4.0033, Standards of Performance for Coal Handling Facilities Within Designated Areas. Specifically, the Agency proposes to amend 6 MCAR §§4.0033.B.7. and 4.0033.B.8.a. for the purpose of clarifying the requirements of the existing rule.

The proposed amendments would, if adopted, make it clear that if fugitive emissions from enclosed coal handling facilities located within the Minneapolis-St. Paul Air Quality Control Region or within the boundaries of the City of Duluth exceed 20 percent opacity, then the owner or operator must control those emissions by either installing control equipment or by using dust suppression methods. If the control equipment option is chosen, then the standard applicable to the facility is expressed in terms of a particulate grain loading. If dust suppression methods are used, then the standard applicable to the facility is expressed in terms of opacity.

## II. EXHIBITS

The following exhibits support the need for and reasonableness of the proposed amendments and are available for inspection at the Agency offices:

1. Letter from James T. Shields, Minnesota Association of Commerce and Industry, to the Legislative Commission to Review Administrative Rules, dated November 21, 1980.

2. Letter signed by Louis J. Breimhurst for Terry Hoffman, Executive Director of the Agency, to Sue Robertson, Executive Director of the Legislative Commission to Review Administrative Rules, dated January 13, 1981.

3. Letter from Ted Shields, Minnesota Association of Commerce and Industry, to Louis J. Breimhurst, Executive Director of the Agency, dated February 23, 1981.

4. Letter from Ted Shields, Minnesota Association of Commerce and Industry, to Louis J. Breimhurst, Executive Director of the Agency, dated February 25, 1981.

5. Letter from Louis J. Breimhurst, Executive Director of the Agency, to Sue Robertson, Executive Director of the Legislative Commission to Review Administrative Rules, dated February 26, 1981.

## III. NEED FOR THE PROPOSED AMENDMENTS

During the fall of 1979, the Agency conducted public hearings as a part of rulemaking procedures for the purpose of adopting

Minn. Rule APC 33, 6 MCAR §4.0033, a rule governing fugitive emissions from coal handling facilities located in the Minneapolis-St. Paul Air Quality Control Region and within the boundaries of the City of Duluth. These rules were proposed as a part of Minnesota's effort to revise its State Implementation Plan in accordance with the 1977 amendments to the Clear Air Act. Following receipt of the Hearing Examiner's Report, the rules were adopted by the Agency on May 27, 1980. Following review of the rules by the Chief Hearing Examiner and the Attorney General, they were published in the State Register and became effective on November 17, 1980.

On November 21, 1980, the Minnesota Association of Commerce and Industry (MACI) requested the Legislative Commission to Review Administrative Rules (LCRAR) to review the reasonableness of four sections of the rule, specifically 6 MCAR §§4.0033.B.7., B.8.a., D.1. and D.2. (See Exhibit 1.) MACI's concern centered on the fact that these four provisions of the rules contained enforceable opacity standards. MACI contended that it was unreasonable to have enforceable opacity standards because opacity readings cannot be taken with any degree of accuracy. The Agency did not agree with MACI and submitted comments to the LCRAR responding to MACI's allegations. These comments, included in Exhibit 2, set forth the history and substance of the dispute between MACI and the Agency with respect to the rules.

On February 2, 1981, this matter was considered by the LCRAR, which directed the staff of the Agency to meet with MACI to see if sections B.7. and B.8.a. could be amended to resolve the dispute. MACI had, in the interim, withdrawn its objections to sections D.1. and D.2. of the rule because they duplicate federal new source performance standards. (See Exhibit 5 at page 2.)

The Agency staff met with MACI on February 10, 1981, and reached an agreement on amendatory language for sections B.7. and B.8.a. which would clarify the requirements which the Agency intended to impose through the existing rule. This agreement is reflected in two letters which Mr. Ted Shields of MACI wrote to Louis J. Breimhurst, Executive Director of the Agency. (Exhibits 3 and 4.) The Agency proposed to resolve the matter pending before the LCRAR by amending sections B.7. and B.8.a. through a noncontroversial rulemaking procedure. (Exhibit 5.) At its meeting of March 2, 1981, the LCRAR approved the concept of amending the rules through the noncontroversial rulemaking procedure.

The proposed amendments are needed to clarify the existing rules, to settle a dispute with MACI, and to resolve the matter which was brought before the LCRAR.

## IV. REASONABLENESS OF THE PROPOSED AMENDMENTS

### A. Reasonableness of Proposed Amendments to 6 MCAR §4.0033.B.7.

The existing language of 6 MCAR §4.0033.B.7. provides as

follows:

> B. Standards of performance for certain coal handling facilities. The owner or operator of a new or existing coal handling facility which is located within the Minneapolis-St. Paul Air Quality Control Region or within the boundaries of the City of Duluth shall perform the following abatement measures unless otherwise exempted by portions of this rule:
>
> 7. Enclosed coal handling facilities or emission sources not specifically covered by any other provision in this rule. Control exhaust gases from any enclosed coal handling operations so that particulate emissions in such gases do not exceed 0.020 gr/dscf or 20 percent opacity.

The existing language is apparently confusing in that some people read the rule to require that the owner or operator of an affected facility is required to meet both the 0.020 gr/dscf standard and the 20 percent opacity standard. However, it was the intent of the Agency to provide the owner or operator with a choice of control methods for facilities of this type. The intent was that the owner or operator should be able either to install control equipment (a baghouse filter) or to use dust suppression methods. The rule was intended to provide alternative performance standards in accordance with the operator's choice of control method. If the control equipment option were to be chosen, then the particulate grain loading standard was intended to be applied. If the dust suppression method of control were selected, then it was intended that the opacity standard apply.

The proposed amendments to §4.0033.B.7. are reasonable because they clarify the Agency's intent and eliminate the

confusion as to the requirements imposed by the rule. The proposed amendments are reasonable for the further reason that they make it clear that no controls need be implemented at the facility unless emissions exceed 20 percent opacity in the first instance. Finally, the proposed amendments are reasonable because they impose no more requirements than the existing rule.

B. Reasonableness of Proposed Amendments to 6 MCAR §4.0033.B.8.a.

The existing language of 6 MCAR §4.0033.B.8.a. provides as follows:

> B. Standards of performance for certain coal handling facilities. The owner or operator of a new or existing coal handling facility which is located within the Minneapolis-St. Paul Air Quality Control Region or within the boundaries of the City of Duluth shall perform the following abatement measures unless otherwise exempted by portions of this rule:
>
> 8. Railcar unloading.
>
> a. When the amount of coal unloaded by rail is 200,000 tons per year or greater, unload railcars only within a permanent building or structure and install an exhaust air system or apply dust suppression methods such that fugitive particulate emissions from any openings do not exceed 20 percent opacity.

Like the existing language of §4.0033.B.7., this existing language is confusing in that it may be erroreously read to require both the installation of an exhaust air system (baghouse filter) and meeting the 20 percent opacity standard. However, it was the intent of the Agency to provide the owner or operator with a choice of control methods for building openings. The intent was

tnat the owner or operator should be able either to install an exhaust air system or to use dust suppression methods. The 20 percent opacity standard was intended to apply only if the dust suppression control option was chosen.

The proposed amendments to §4.0033.B.8.a. are reasonable because they clarify the Agency's intent as to the requirements imposed by the rule. The proposed amendments are reasonable because they clarify that no controls need be implemented at the facility unless emissions from building openings exceed 20 percent opacity in the first instance. The proposed amendments are reasonable because they require no additional controls than the existing rule. However, the amendments do add a particulate grain loading standard of 0.020 gr/dscf to the rule which is applicable to the control equipment option. This standard is reasonable because the Agency's experience with baghouse filters shows that the standard is easily achievable, since baghouse filters typically have a control efficiency over 99 percent. The addition of the standard to the rule does not make the rule more stringent, but clarifies that any control equipment installed must be operated properly.

## V. CONCLUSION

Based on the foregoing, the proposed amendments to 6 MCAR §§4.0033.B.7. and 4.0033.B.8.a. are both needed and reasonable.

Louis Breimhurst

LOUIS J. BREIMHURST
Executive Director

Dated: March 26, 1981

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

# Office Memorandum

TO : ART ENGELBRECHT
Chairman
Minnesota Pollution Control Agency

DATE: June 5, 1981

ATTN : Jocelyn F. Olson
Special Assistant Attorney General

FROM : Jerry S. Anderson
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Amendments to Minn. Rule APC 33.B.7. and 33.B.8.a., 6 MCAR §§ 4.0033.B.7. and 4-0033.B.8.a., Standards of Performance for Coal Handling Facilities Within Designated Areas

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

JSA:rjg

Enc.

cc: Susan Robertson
Duane Harves

STATE OF MINNESOTA

MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Adoption of Amendments to Minn. Rule APC 33.B.7. and 33.B.8.a., 6 MCAR §§4.0033.B.7. and 4.0033.B.8.a., Standards of Performance for Coal Handling Facilities Within Designated Areas

ORDER ADOPTING AMENDMENTS TO RULE

Notice of the Agency's intent to adopt the above-entitled rules without a public hearing was published in the State Register on April 13, 1981 (5 S.R. 1608) and was sent by United States mail to all persons on the list maintained by the Agency pursuant to Min. Stat. §15.0412, subd. 4 (1980) on April 10, 1981. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving no requests for a public hearing within the 30-day comment period, receiving no comments within the 30-day comment period, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED, that these amendments to the rule identified as 6 MCAR §§4.0033.B.7. and 4.0033.B.8.a., Standards of Performance for Coal Handling Facilities Within Designated Areas, are adopted this 26th day of May, 1981, pursuant to the authority vested in the Agency by Minn. Stat. §116.07, subd. 4 (1980).

MINNESOTA POLLUTION CONTROL AGENCY

ART ENGELBRECHT
Chairman

LOUIS J. BREIMHURST
Executive Director

AMENDMENTS AS ADOPTED

6 MCAR §4.0033 Standards of Performance for Coal Handling Facilities Withing Designated Areas

B. Standards of performance for certain coal handling facilities. The owner or operator of a new or existing coal handling facility which is located within the Minneapolis-St. Paul Air Quality Control Region or within the boundaries of the City of Duluth shall perform the following abatement measures unless otherwise exempted by portions of this rule:

7. Enclosed coal handling facilities or emission sources not specifically covered by any other provision in this rule. If exhaust gases from any enclosed coal handling facility exceed 20 percent opacity, then the owner or operator of such facility shall select and implement one of the following further controls:

a. Install exhaust air system and control exhaust gases so that particulate emissions in such gases do not exceed 0.020 gr/dscf.

b. Control exhaust gases ~~from any enclosed coal handling operations~~ using dust suppression methods so that particulate emissions ~~in such gases~~ do not ~~exceed 0.020 gr/dscf or~~ exhibit greater than 20 percent opacity.

8. Railcar unloading.

a. When the amount of coal unloaded by rail is 200,000 tons per year or greater, unload railcars only within a permanent building or structure ~~and~~. If exhaust gases from such building or structure exceed 20 percent opacity, then the owner or operator of such facility shall select and implement one of the following further controls:

1. ~~i~~ Install an exhaust air system and control exhaust gases so that particulate emissions in such gases do not exceed 0.020 gr/dscf. ~~or~~

2. Control exhaust gases using ~~apply~~ dust suppression methods ~~such~~ so that ~~fugitive~~ particulate emissions ~~from any openings~~ do not ~~exceed~~ exhibit greater than 20 percent opacity.

APPROVED AS TO FORM AND LEGALITY

6 - 5 1981

WARREN SPANNAUS, ATTORNEY GENERAL

BY Jerry Anderson

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUN - 5 1981
Joan Anderson Growe
Secretary of State
9:50 a.m.

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

ADDRESS REPLY TO:
ATTORNEY GENERAL'S OFFICE
POLLUTION CONTROL DIVISION
1935 WEST COUNTY ROAD B-2
ROSEVILLE, MN 55113
TELEPHONE: (612) 296-7342

May 26, 1981

Mr. Jerry Anderson
Special Assistant Attorney General
Office of the Attorney General
G-25 State Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

RE: In the Matter of the Proposed Adoption of Amendments to Minn. Rule APC 33.B.7. and 33.B.8.a., 6 MCAR §4.0033.B.7. and 4.0033.B.8.a., Standards of Performance for Coal Handling Facilities Within Designated Areas

Dear Mr. Anderson:

In accordance with Minn. Stat. §15.0412, subd. 4h (1980), the above captioned rule amendments are hereby submitted to you for your review.

The following documents are enclosed:

1. Amendments as adopted. (Original and three copies.) The amendments as adopted are identical to the amendments as proposed.

2. Order Adopting Amendments. (Two copies.)

3. Certificate of Board's Resolution Adopting Amendments to Rule.

4. Order for Notice of Intent to Adopt a Amendments to a Rule Without Public Hearing.

5. Certificate of Board's Authorizing Resolution.

6. Notice of Intent to Adopt a Amendments to a Rule Without a Public Hearing.

7. Affidavit of Mailing.

8. Mailing List Certificate.

AN EQUAL OPPORTUNITY EMPLOYER

RECEIVED
MAY 27 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

9. Amendments as Proposed.

10. Findings of Fact and Conclusions.

11. Statement of Need and Reasonableness.

12. Affidavit regarding comments submitted to the Agency.

13. Certificate of Compliance With Rulemaking Procedures.

14. Affidavit evidencing that no persons requested nofitication of transmittal of rules to the Office of the Attorney General.

No Notice of Intent to Solicit Outside Opinion was published specifically with respect to these amendments, since these amendments were proposed as a result of a review of the review of the rules by the Legislative Committee to Review Administrative Rules, which review immediately followed the adoption of 6 MCAR §4.0033. A Notice of Intent to Solicit Outside Opinion with respect to the rules as originally adopted was published at 2 S.R. 2238 (June 12, 1978).

If you have any questions concerning this rule, please call me at 296-7343.

Very truly yours,

Jocelyn F. Olson

JOCELYN F. OLSON
Special Assistant
Attorney General

Enclosures

Call Lisa Tigel if approved on 5 (also forward rule to Lisa)

CERTIFICATE OF BOARD'S
RESOLUTION ADOPTING AMENDMENTS

I, Art Engelbrecht, do hereby certify that I am the Chairman of the Minnesota Pollution Control Agency, an Agency duly authorized under the laws of the State of Minnesota, and that the following resolution was adopted at a meeting of the Agency properly called on the 26th day of May, 1981, that a quorum was present at said meeting, that a majority of the Agency members voted in favor of the resolution, and that the following resolution is set forth in the minutes of said meeting and has not been rescinded or modified:

> BE IT RESOLVED, that the Minnesota Pollution Control Agency adopts the attached Findings of Fact and Conclusions and the Order Adopting Amendments to 6 MCAR §4.0033.B.7. and 4.0033.B.8.a., Standards of Performance for Coal Handling Facilities Within Designated Areas.
>
> BE IT FURTHER RESOLVED, that the Executive Director is authorized to forward the rule amendments to the Attorney General for approval, to have the rule published in the State Register, and to do all things and sign all documents necessary to accomplish the promulgation of these amendments.

IN WITNESS WHEREOF, I have hereunto subscribed my hand this 26th day of May, 1981.

Art Engelbrecht
ART ENGELBRECHT
Chairman

Diane Rafferman
Attest by one other Agency member

STATE OF MINNESOTA

MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Adoption of Amendments to Minn. Rule APC 33.B.7. and 33.B.8.a., 6 MCAR §4.0033.B.7. and 4.0033.B.8.a., Standards of Performance for Coal Handling Facilities Within Designated Areas

ORDER FOR NOTICE OF INTENT TO ADOPT AMENDMENTS TO RULE WITHOUT PUBLIC HEARING

IT IS ORDERED this 25th day of March, 1981, that a Notice of Intent to Adopt Amendments to a Rule Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Minnesota Pollution Control Agency for that purpose and be published in the State Register.

MINNESOTA POLLUTION CONTROL AGENCY

Louis J. Breimhurst

LOUIS J. BREIMHURST
Executive Director

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

I, Art Engelbrecht, do hereby certify that I am the Chairman of the Minnesota Pollution Control Agency, an Agency duly authorized under the laws of the State of Minnesota, and that the following resolution was adopted at a meeting of the Agency properly called on the 24th day of March, 1981, that a quorum was present at said meeting, that a majority of the Agency members voted in favor of the resolution, and that the following resolution is set forth in the minutes of said meeting and has not been rescinded or modified:

> BE IT RESOLVED, that the Minnesota Pollution Control Agency (Agency) hereby authorizes the initiation of rulemaking proceedings on the attached amendments to 6 MCAR §§4.0033.B.7. and 4.0033.B.8.a.
>
> BE IT FURTHER RESOLVED that the Agency finds that the attached proposed rule amendments are non-controversial in nature and hereby authorizes rulemaking proceedings in accordance with statutory provisions regarding non-controversial rules.
>
> BE IT FURTHER RESOLVED, that Louis J. Breimhurst, the Executive Director of the Agency, be and he is granted the authority and directed to sign an Order of the Agency directing that Notice be given of the Agency's intent to adopt without a hearing amendments to 6 MCAR §§4.0033.B.7. and 4.0033.B.8.a., to sign the Notice thereof, and to perform any acts incidental thereto. In the event a public hearing becomes necessary, Louis J. Breimhurst is hereby granted the authority and directed to call a hearing for the purose of promulgating said amendments as well as performing and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Agency's representative at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my hand this 26th day of May, 1981.

Art Engelbrecht
ART ENGELBRECHT
Chairman

Duane Rappana
Attest by one other Agency member

Minnesota Pollution Control Agency
Division of Air Quality

Proposed Adoption of Amendments to 6 MCAR §§4.0033.B.7. and 4.0033.8.a., Standards of Performance for Coal Handling Facilities Within Designated Areas

Notice of Intent to Adopt Amendments to a Rule Without a Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends to adopt amendments to the above entitled rule without a public hearing. The Agency has determined that the proposed adoption of amendments to this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §15.0412, subd. 4h (1980).

The proposed amendments to 6 MCAR §4.0033.B.7. and 4.0033.B.8.a. would, if adopted, make it clear that if fugitive emissions from enclosed coal handling facilities located within the Minneapolis-St. Paul Air Quality Control Region or within the boundaries of the City of Duluth exceed 20 percent opacity, the owner or operator of such facility must control those emissions by either installing control equipment or by using dust suppression methods. If the control equipment option is chosen, then the standard applicable to the facility is expressed in terms of a particulate grain loading. If dust suppression methods are used, then the standard applicable to the facility will be expressed in terms of opacity.

Copies of this notice and the proposed amendments may be obtained by contacting Bradley Beckham, Division of Air Quality, Minnesota Pollution Control Agency, 1935 West County Road B2, Roseville, Minnesota 55113, telephone (612) 296-7265.

Persons interested in these amendments shall have 30 days, specifically until May 15, 1981, to submit comments on the proposed amendments. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the Agency will proceed according to the provisions of Minn. Stat. §15.0412, subd. 4-4f (1980).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to Bradley Beckham at the address and telephone number stated above.

Authority for the adoption of these amendments is contained in Minn. Stat. §116.07, subd. 4 (1980). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and may be obtained by contacting Jayne Stilwell at the address stated above telephone (612) 296-7280.

Upon adoption of the final amendments without a public hearing, the proposed amendments, this Notice the Statement of Need and Reasonableness, all written comments received, and the final Amendments as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final amendments as proposed for adoption, should submit a written statment of such request to Bradley Becknam at the address and telephone number previously stated.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. §10A.01, subd. 11 (1980) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by commmunicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone: (612) 296-5615.

Dated: March 26, 1981

LOUIS J. BREIMHURST
Executive Director

AMENDMENTS AS PROPOSED

6 MCAR §4.0033 Standards of Performance for Coal Handling Facilities Withing Designated Areas

B. Standards of performance for certain coal handling facilities. The owner or operator of a new or existing coal handling facility which is located within the Minneapolis-St. Paul Air Quality Control Region or within the boundaries of the City of Duluth shall perform the following abatement measures unless otherwise exempted by portions of this rule.

7. Enclosed coal handling facilities or emission sources not specifically covered by any other provision in this rule. If exhaust gases from any enclosed coal handling facility exceed 20 percent opacity, then the owner or operator of such facility shall select and implement one of the following further controls.

a. Install exhaust air system and control exhaust gases so that particulate emissions in such gases do not exceed 0.020 gr/dscf.

b. Control exhaust gases ~~from any enclosed coal handling operations~~ using dust suppression methods so that particulate emissions ~~in such gases~~ do not ~~exceed 0.020 gr/dscf or~~ exhibit greater than 20 percent opacity.

8. Railcar unloading.

a. When the amount of coal unloaded by rail is 200,000 tons per year or greater, unload railcars only within a permanent building or structure ~~and~~. If exhaust gases from such building or structure exceed 20 percent opacity, then the owner or operator of such facility shall select and implement one of the following further controls.

1. ~~i~~ Install an exhaust air system and control exhaust gases so that particulate emissions in such gases do not exceed 0.020 gr/dscf. ~~or~~

2. Control exhaust gases using ~~apply~~ dust suppression methods ~~such~~ so that ~~fugitive~~ particulate emissions ~~from any openings~~ do not ~~exceed~~ exhibit greater than 20 percent opacity.

Mailing list certificate attached

STATE OF MINNESOTA

COUNTY OF RAMSEY

AFFIDAVIT OF MAILING

In the Matter of the Proposed Adoption of Amendments to Minn. Rule APC 33.B.7. and 33.B.8.a., 6 MCAR §4.0033.B.7. and 4.0033.B.8.a., Standards of Performance for Coal Handling Facilities Within Designated Areas

Dale Newton, being first duly sworn, deposes and says:

That on the 10th day of April, 1981, at the City of Roseville, County of Ramsey, State of Minnesota, s/he served the attached Notice of Intent to Adopt Amendments to Rule Without Public Hearing, together with a copy of the above-referenced amendments, by depositing in the United States mail a copy thereof, properly enveloped, with first class postage prepaid, on all persons and associatons who have requested that their names be placed on file with the Minnesota Pollution Control Agency for the purpose of receiving notice of proposed adoption of rules by this Agency and on all other persons and associations named on the attached mailing list.

Dale E. Newton

Dale Newton

Subscribed and sworn to before me this 10th day of ~~March~~ April, 1981.

Vicky Lowrie

VICKY LOWRIE
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires Dec 7 19[illegible]

STATE OF MINNESOTA

COUNTY OF RAMSEY

MAILING LIST CERTIFICATE

In the Matter of the Proposed Adoption of Amendments to Minn. Rule APC 33.B.7. and 33.B.8.a., 6 MCAR §4.0033.B.7. and 4.0033.B.8.a., Standards of Performance for Coal Handling Facilities Within Designated Areas

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. §15.0412, subd. 4 (1980) that their names be placed on file with and maintained by the Minnesota Pollution Control Agency (Agency) for the purpose of receiving notice of the proposed adoption of rules by the Agency is accurate and complete as of 10.00 a.m., this 27th day of March, 1981.

Marjorie Boarchard

Marjorie Boarchard

Subscribed and sworn to before me this 27 day of March, 1981

Vicky Lowrie

Notary Public

VICKY LOWRIE
NOTARY PUBLIC—MINN.
RAMSEY COUNTY
My Commission Expires Dec.

Minnesota Pollution Control Agency
Division of Air Quality

Proposed Adoption of Amendments to 6 MCAR §§4.0033.B.7. and 4.0033.8.a., Standards of Performance for Coal Handling Facilities Within Designated Areas

Notice of Intent to Adopt Amendments to a Rule Without a Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends to adopt amendments to the above entitled rule without a public hearing. The Agency has determined that the proposed adoption of amendments to this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §15.0412, subd. 4h (1980).

The proposed amendments to 6 MCAR §4.0033.B.7. and 4.0033.B.8.a. would, if adopted, make it clear that if fugitive emissions from enclosed coal handling facilities located within the Minneapolis-St. Paul Air Quality Control Region or within the boundaries of the City of Duluth exceed 20 percent opacity, the owner or operator of such facility must control those emissions by either installing control equipment or by using dust suppression methods. If the control equipment option is chosen, then the standard applicable to the facility is expressed in terms of a particulate grain loading. If dust suppression methods are used, then the standard applicable to the facility will be expressed in terms of opacity.

Copies of this notice and the proposed amendments may be obtained by contacting Bradley Beckham, Division of Air Quality, Minnesota Pollution Control Agency, 1935 West County Road B2, Roseville, Minnesota 55113, telephone (612) 296-7265.

Persons interested in these amendments shall have 30 days, specifically until May 15, 1981, to submit comments on the proposed amendments. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the Agency will proceed according to the provisions of Minn. Stat. §15.0412, subd. 4-4f (1980).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to Bradley Beckham at the address and telephone number stated above.

Authority for the adoption of these amendments is contained in Minn. Stat. §116.07, subd. 4 (1980). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and may be obtained by contacting Jayne Stilwell at the address stated above telephone (612) 296-7280.

Upon adoption of the final amendments without a public hearing, the proposed amendments, this Notice the Statement of Need and Reasonableness, all written comments received, and the final Amendments as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final amendments as proposed for adoption, should submit a written statment of such request to Bradley Becknam at the address and telephone number previously stated.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. §10A.01, subd. 11 (1980) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by commmunicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone: (612) 296-5615.

Dated: March 26, 1981

LOUIS J. BREIMHURST
Executive Director

AMENDMENTS AS PROPOSED

6 MCAR §4.0033 Standards of Performance for Coal Handling Facilities Withing Designated Areas

B. Standards of performance for certain coal handling facilities. The owner or operator of a new or existing coal handling facility which is located within the Minneapolis-St. Paul Air Quality Control Region or within the boundaries of the City of Duluth shall perform the following abatement measures unless otherwise exempted by portions of this rule.

7. Enclosed coal handling facilities or emission sources not specifically covered by any other provision in this rule. If exhaust gases from any enclosed coal handling facility exceed 20 percent opacity, then the owner or operator of such facility shall select and implement one of the following further controls.

a. Install exhaust air system and control exhaust gases so that particulate emissions in such gases do not exceed 0.020 gr/dscf.

b. Control exhaust gases ~~from any enclosed coal handling operations~~ using dust suppression methods so that particulate emissions ~~in such gases~~ do not ~~exceed 0.020 gr/dscf or~~ exhibit greater than 20 percent opacity.

8. Railcar unloading.

a. When the amount of coal unloaded by rail is 200,000 tons per year or greater, unload railcars only within a permanent building or structure ~~and~~. If exhaust gases from such building or structure exceed 20 percent opacity, then the owner or operator of such facility shall select and implement one of the following further controls.

1. ~~i~~ Install an exhaust air system and control exhaust gases so that particulate emissions in such gases do not exceed 0.020 gr/dscf. ~~or~~

2. Control exhaust gases using ~~apply~~ dust suppression methods ~~such~~ so that ~~fugitive~~ particulate emissions ~~from any openings~~ do not ~~exceed~~ exhibit greater than 20 percent opacity.

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PROGRAM EVALUATION SPEC
122 VETERANS SERV BLDG
ST PAUL MN 55155

LEGISLATIVE COMM ON
WASTE MANAGEMENT
ATTN MIKE ROBERTSON
B-46
STATE CAPITOL

ATTORNEY GENERAL'S OFFICE
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ATTN RAY QUINN
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SENATE COUNCIL OFFICE
ATTN ALAN WILLIAMS
RM 480
STATE OFFICE BLDG
ST PAUL MN 55155

BRD OF ARCH ENG LAND SURV
AND LANDSCAPE ARCHITECTURE
ATTN LOWELL E TORSETH
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INONA DAILY NEWS
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Offset Rule
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2-20-81 w/ cover letter

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~~Ted Shields~~
~~Minnesota Association of Commerce & Industry~~

Ted. Shields
Minnesota Association of Commerce & Industry
480 Cedar Street

Don Farb
Barr Engineering

purchase or obtain offsets, this rule shall not be construed to create a property right that requires compensation from the State should offsets later become unuseable due to a change in an applicable emission limitation or standard of the Agengy.

G. Severability. If any provision of this rule or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect any other provision or application of any other part of this rule or any other rule which can be given effect without the invalid provision or application and to this end the provisions of this rule and the various applications thereof are declared to be severable.

# Pollution Control Agency
# Air Quality Division

## Proposed Amendments to 6 MCAR §§ 4.0033.B.7. and 4.0033.B.8.a., Standards of Performance for Coal Handling Facilities within Designated Areas

### Notice of Intent to Amend Rules without A Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (agency) intends to adopt amendments to the above entitled rule without a public hearing. The agency has determined that the proposed adoption of amendments to this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h (1980).

The proposed amendments to 6 MCAR §§ 4.0033.B.7. and 4.0033.B.8.a. would, if adopted, make it clear that if fugitive emissions from enclosed coal handling facilities located within the Minneapolis-St. Paul Air Quality Control Region or within the boundaries of the City of Duluth exceed 20 percent opacity, the owner or operator of such facility must control those emissions by *either* installing control equipment *or* by using dust suppression methods. If the control equipment option is chosen, then the standard applicable to the facility is expressed in terms of a particulate grain loading. If dust suppression methods are used, then the standard applicable to the facility will be expressed in terms of opacity. A copy of the proposed amendments is enclosed.

Additional copies of this Notice and the proposed amendments are available and may be obtained by contacting Bradley Beckham at the following address and telephone number:

Bradley Beckham
Division of Air Quality
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, Minnesota 55113
Telephone: (612) 296-7265

Persons interested in these amendments shall have 30 days, specifically until May 15, 1981, to submit comments on the proposed amendments. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subds. 4-4f (1980).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to Bradley Beckham at the address and telephone number previously stated.

Authority for the adoption of these amendments is contained in Minn. Stat. § 116.07, subd. 4 (1980). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and may be obtained by contacting Jayne Stilwell at the address stated above, telephone (612) 296-7280.

Upon adoption of the final amendments without a public hearing, the proposed amendments, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Amendments as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final amendments as proposed for adoption, should submit a written statement of such request to Bradley Beckham at the address and telephone number previously stated.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. §. 10A.01, subd. 11 (1980) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250 not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone, (612) 296-5615.

March 26, 1981

Louis J. Breimhurst, Executive Director
Pollution Control Agency

## Amendments as Proposed

**6 MCAR § 4.0033 Standards of performance for coal handling facilities within designated areas.**

B. Standards of performance for certain coal handling facilities. The owner or operator of a new or existing coal handling facility which is located within the Minneapolis-St. Paul Air Quality Control Region or within the boundaries of the City of Duluth shall perform the following abatement measures unless otherwise exempted by portions of this rule.

7. Enclosed coal handling facilities or emission sources not specifically covered by any other provision in this rule. If exhaust gases from any enclosed coal handling facility exceed 20 percent opacity, then the owner or operator of such facility shall select and implement one of the following further controls:

a. Install exhaust air system and control exhaust gases so that particulate emissions in such gases do not exceed 0.020 gr/dscf.

b. Control exhaust gases ~~from any enclosed coal handling operations~~ using dust suppression methods so that particulate emissions ~~in such gases~~ do not ~~exceed 0.020 gr/dscf or~~ exhibit greater than 20 percent opacity.

8. Railcar unloading.

a. When the amount of coal unloaded by rail is 200,000 tons per year or greater, unload railcars only within a permanent building or structure ~~and~~. If exhaust gases from such building or structure exceed 20 percent opacity, then the owner or operator of such facility shall select and implement one of the following further controls.

1. ~~i~~ Install an exhaust air system and control exhaust gases so that particulate emissions in such gases do not exceed 0.020 gr/dscf. ~~or~~

2. Control exhaust gases using ~~apply~~ dust suppression methods ~~such~~ so that ~~fugitive~~ particulate emissions ~~from any openings~~ do not ~~exceed~~ exhibit greater than 20 percent opacity.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

STATE OF MINNESOTA

MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Adoption of Amendments to Minn. Rule APC 33.B.7. and 33.B.8.a., 6 MCAR §§4.0033.B.7. and 4.0033.B.8.a., Standards of Performance for Coal Handling Facilities Within Designated Areas

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter come on for decision before the Minnesota Pollution Control Agency (Agency) on the 26th day of May, 1981. After affording all interested persons and opportunity to present written and oral data, statements and arguments to the Agency, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering the Statement of Need and Reasonableness and the written comments submitted to the Agency, and after considering all of the evidence adduced upon the records, files and proceedings herein, the Agency, being fully advised in the premises, hereby accepts and adopts the following Findings of Fact and Conclusions.

FINDINGS OF FACT

1. The Agency published its notice of intent to adopt the above captioned rule amendments, together with the proposed amendments, in the State Register on April 13, 1981 (5 S.R. 1608).

2. On April 10, 1981, the Agency gave the same notice by United States mail to all persons who have registered their names with the Agency pursuant to Minn. Stat. §15.0412, subd. 4 (1980).

3. The notice of the Agency's intent to adopt the rule amendments afforded all interested persons an thirty (30) days to submit data and views on the proposed rule amendments and to

object to a lack of a hearing on the proposed rule amendments. The notice was in all respects in compliance with the requirements of Minn. Stat. §15.0412, subd. 4h (1980).

4. The Agency prepared a Statement of Need and Reasonableness and made it available to the public, together with the exhibits referenced therein, upon the date of mailing of the notice of intent to adopt the rule amendments.

5. During the thirty day comment period, the Agency received no objections to a lack of hearing on the proposed rule amendments.

6. The Agency adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the rule. The Agency hereby incorporates the Statement of Need and Reasonableness into these Findings.

7. The Agency received no written comments on the proposed amendments.

CONCLUSIONS

1. The Minnesota Pollution Control Agency duly acquired and has jurisdiction over this proceeding.

2. The Agency published and served due, timely, and adequate notice of the adoption of the rule without a hearing.

3. All relevant legal and procedural requirements of statutes and rules have been properly complied with.

4. No changes in the rule amendments as proposed have been made and thus no substantial change has been made in the rule amendments as adopted.

MINNESOTA POLLUTION CONTROL AGENCY

Art Engelbrecht
Chairman

LOUIS J. BREIMHURST
Executive Director

Dated: May 26, 1981

STATE OF MINNESOTA

MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Adoption of Amendments to Minn. Rule APC 33.B.7. and 33.B.8.a., 6 MCAR §§4.0033.B.7. and 4.0033.B.8.a., Standards of Performance for Coal Handling Facilities Within Designated Areas

AFFIDAVIT REGARDING COMMENTS RECEIVED PURSUANT TO NOTICE

Bradley Beckham, being duly sworn on oath deposes andy says:

1. That he is an employee of the Division of Air Quality, Minnesota Pollution Control Agency.

2. That he was named in the Notice of Intent to Adopt Amendments to a Rule Without a Public Hearing as the person to be contacted as to comments on the above-referenced rule;

3. That the Agency received no written responses or comments in response to such Notice.

Bradley Beckham

Bradley Beckham

Subscribed and sworn to before me this 26th day of May, 1981.

Patricia Schwarz

Notary Public

PATRICIA SCHWARZ
NOTARY PUBLIC—MINNESOTA
ANOKA COUNTY
My Commission Expires Aug. 6, 1987

STATE OF MINNESOTA

MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Adoption of Amendments to Minn. Rule APC 33.B.7. and 33.B.8.a., 6 MCAR §§4.0033.B.7. and 4.0033.B.8.a., Standards of Performance for Coal Handling Facilities Within Designated Areas

CERTIFICATE OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Jocelyn F. Olson, do hereby declare that I have examined the proposed amendments to a rule and all related documents and that, based on them and my personal familiarity with the applicable requirements, all rulemaking procedures required by statute and rule have been followed.

Jocelyn F. Olson

JOCELYN F. OLSON
Special Assistant
Attorney General

Dated: May 26, 1981

STATE OF MINNESOTA

MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Adoption of Amendments to Minn. Rule APC 33.B.7. and 33.B.8.a., 6 MCAR §§4.0033.B.7. and 4.0033.B.8.a., Standards of Performance for Coal Handling Facilities Within Designated Areas

AFFIDAVIT REGARDING NOTIFICATION OF TRANSMITTAL TO ATTORNEY GENERAL

Bradley Beckham, being duly sworn on oath deposes andy says:

1. That he is an employee of the Division of Air Quality, Minnesota Pollution Control Agency.

2. That he was named in the Notice of Intent to Adopt Amendments to a Rule Without a Public Hearing as the person to be contacted as to notification of the Agency's transmittal of the above-captioned amendments to a rule to the Attorney General.

3. That no person requested, either orally or in writing, to be notified of the transmittal of such amendments to the Attorney General.

Bradley Beckham
Bradley Beckham

Subscribed and sworn to before me this 26thday of May, 1981.

Patricia Schwarz
Notary Public

PATRICIA SCHWARZ
NOTARY PUBLIC—MINNESOTA
ANOKA COUNTY
My Commission Expires Aug. 6, 1987