

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1016

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 3-9-84
DATE FOR REVIEW 3-19-84
DATE DUE 3-23-84

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

Approved 3.23.84 mjc Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 3/23/84 Revisor approved 3/9/84 disapproved _____

✓ Rule as Adopted

_____ Rule as Proposed

✓ Order Adopting 2.28.84 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 4.24.82 + Affidavit of no response

✓ Order for rulemaking
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
_____ Sufficiency has small biz notice

✓ Affidavit of Mailing Notice or rulemaking
10.14.83 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
10.17.83 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

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

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness has small biz statement

✓ 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

N/A Notice of Submission to the Attorney General

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

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

March 7, 1984

J. Michael Miles
Assistant Attorney General
Second Floor
Administration Building
St. Paul, Minnesota 55155

RE: In the Matter of the Proposed Amendment of Minn. Rule APC 2, Definitions, Abbreviations, Applicability of Standards, Access to Premises, Variances, Circumvention, Severability to be retitled Definitions, Abbreviations, Applicability of Standards, Opacity Standard Adjustment and Circumvention

Dear Mr. Miles:

On February 28, 1984, the Minnesota Pollution Control Agency adopted a resolution adopting the above-entitled amendments. In accordance with the requirements of Minn. Stat. ch. 14 and the rules of the Attorney General, 1 MCAR § 1.203, I have enclosed for your review the following:

A. Rules as adopted (We have enclosed one copy of the rule which the Office of Revisor prepared for the MPCA to use in considering the adoption of the rule. By copy of this letter, we are submitting the adopted rule to the Office of the Revisor for review and approval. We understand that the Revisor, after completing their review, will submit a stamped original and three copies to you as required by your rules.);

B. Order Adopting Rules (two copies);

C. Certificate of Agency's Resolution Adopting Rules;

D. Notice of Intent to Solicit Outside Opinion (6 S.R. 1986) together with an Affidavit Regarding Comments Received in Response to Notice of Intent to Solicit Outside Opinion. (The affidavit states that no such comments were received);

E. Order for Notice of Intent to Adopt Rules Without a Public Hearing (Note that the Order is signed by the Executive Director. The authority for the Executive Director to sign the Order is set forth in the Certificate of Agency's Authorizing Resolution);

F. Certificate of Agency's Authorizing Resolution;

G. Notice of Intent to Adopt Rules Without a Public Hearing signed by the Executive Director;

H. Affidavit of Mailing Notice of Intent to Adopt Rules Without A Public Hearing;

I. Mailing List Certificate together with Mailing List;

J. Rule as Proposed, together with copy of Notice of Intent to Adopt Rules Without a Public Hearing, as they appeared in the State Register (8 S.R. 682);

K. Findings of Fact and Conclusions;

L. Statement of Need and Reasonableness;

M. Relevant Pages from Petition for Amendment of A Rule;

N. Written Comments on the Rule, including Requests for Hearing and Withdrawal of Requests for Hearing;

O. Certificate of Compliance with Rulemaking Procedures; and,

P. Affidavit Regarding Transmittal of the Rule to the Attorney General;

Very truly yours,

LISA R. TIEGEL
Special Assistant
Attorney General

LRT:lt

Enclosures

cc: Office of the Revisor

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : SANDRA S. GARDEBRING
Executive Director
Minnesota Pollution Control Agency
Attn: LISA R. TIEGEL, Special Assist. Attorney General

DATE: 3/23/84

FROM : MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Amendment of Minn. Rule APC 2, Definitions, Abbreviations, Applicability of Standards, Access to Premises, Variances, Circumvention, Severability to be retitled Definitions, Abbreviations, Applicability of Standards, Opacity Standard Adjustment and Circumvention

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;

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.

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

MJC:sa

(A) Ag copy

Pollution Control Agency

Adopted Amendment of Rule APC 2, Definitions, Abbreviations, Applicability of Standards, Access to Premises, Variances, Circumvention, Severability, to be Retitled Definitions, Abbreviations, Applicability of Standards, Opacity Standard Adjustment, and Circumvention

Rule as Adopted

6 MCAR S 4.0002 Definitions, abbreviations, applicability of standards, opacity standard adjustment, and circumvention.

A. Definitions. As used in the state air pollution control rules, the following terms have the meanings given them except as expressly provided in a specific rule:

1. "Agency" means the Minnesota Pollution Control Agency as constituted under Minnesota Statutes, section 116.02, subdivision 1.

2. "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a Reference or Equivalent method but which has been demonstrated to the director's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

3. "Breakdown" means a sudden and unavoidable failure of air pollution control equipment or process equipment to operate as designed.

4. "Commenced" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction, or has entered into a contractural obligation to undertake and complete, within a reasonable time, this program.

5. "Construction" means fabrication, erection, or installation of an emission facility.

6. "Continuous monitoring system" means the total equipment used to continuously sample and condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

7. "Control equipment" means an "air contaminant treatment facility" or a "treatment facility" as those terms are defined in Minnesota Statutes, section 116.06, subdivision 6.

8. "Director" means the chief executive officer of the agency as described in Minnesota Statutes, section 116.04.

9. "Emission facility" means any structure, work, equipment, machinery, device, apparatus, or other means whereby an emission is caused to occur.

10. "Emission source" means a single source whereby an emission is caused to occur.

11. "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the director's satisfaction to have under specified conditions a consistent and quantitatively known relationship to the Reference methods set forth in Code of Federal Regulations, title 40, part 60, appendix A.

12. "Existing facility" means an emission facility at which construction, modification, or reconstruction was commenced before the effective date of the applicable New Source Performance Standard or the applicable state air pollution control rule.

13. "Fugitive emissions" means pollutant discharges to the atmosphere that do not pass through a stack, chimney, or other functionally equivalent opening, at which a measurement of the emissions can be made using a Reference method other than Method 9.

14. "Minneapolis-St. Paul Air Quality Control Region" means the area encompassed by the boundaries of the following counties: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington. See Code of Federal Regulations, title 40, part 81.27 (1982).

15. "Modification" means a physical change or a change in the operation of an emission facility that is not allowed under a permit, stipulation agreement, or an applicable air pollution control rule, and that results in an increase in the emission of an air pollutant.

16. "Monitoring device" means the total equipment used to measure and record (if applicable) process or control equipment parameters.

17. "New facility" means an emission facility on which construction, modification, or reconstruction was commenced after the effective date of the applicable New Source Performance Standard or the applicable state air pollution control rule.

18. "New Source Performance Standard" means a standard of performance promulgated by the administrator of the United States Environmental Protection Agency under the Clean Air Act, United States Code, title 42, section 7411, as amended.

19. "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide.

20. "One-hour period" means any 60-minute period commencing on the hour.

21. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

22. "Owner or operator" means a person who owns, leases, operates, controls, or supervises an emission facility.

23. "Particulate matter" means material, except water, which exists at standard conditions in a finely divided form as a liquid or solid.

24. "Performance specification" means the specifications for continuous monitoring systems in Code of Federal Regulations, title 40, part 60, appendix B (1982).

25. "Person" means person as defined in Minnesota Statutes, section 116.06, subdivision 8.

26. "Potential emissions" means the emissions from an emission facility, after control equipment has been applied, when the facility is operating at maximum design capacity and maximum hours of operation or as limited by enforceable permit conditions, whichever results in fewer emissions.

27. "Reconstruction" means replacement of depreciable components of an existing emission source to which a New Source

Performance Standard or state air pollution control rule is applicable, to the extent that the fixed capital cost of the depreciable components exceeds 50 percent of the fixed capital cost of depreciable components that would be required to construct a comparable entirely new emission source.

28. "Reference method" or "Method" means the procedures for performance tests in Code of Federal Regulations, title 40, part 60, appendix A, (1982).

29. "Run" means the net period of time during which an emission sample is collected.

30. "Shutdown" means the cessation of operation of an emission facility or control equipment for any purpose.

31. "Smoke" means small gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively of carbon and other combustible material, or ash, that form a visible plume in the air.

32. "Standard conditions" means a temperature of 20 degrees Celsius (68 degrees Fahrenheit) and a pressure of 760 mm of Hg (29.92 in. of Hg).

33. "Standard of performance" means a restriction on the amount of air pollutants which may be emitted by an emission facility.

34. "Startup" means the setting into operation of an emission facility or control equipment for any purpose.

35. "State air pollution control rules" means 6 MCAR SS 4.0001-4.0041 (Minnesota Rules APC 1-41).

36. "Total emission facility" means an assemblage of all emission sources on adjacent property that are under common ownership or control and that exist for a common function.

B. Abbreviations. As used in the state air pollution control rules, the following abbreviations have the meanings given them:

1. A.S.T.M., American Society for Testing and Materials;

2. Btu, British thermal unit;

3. °C, degree Celsius (centigrade);

4. cal, calorie;

5. cfm, cubic feet per minute;

6. CO, carbon monoxide;

7. CO_2, carbon dioxide;

8. dscm, dry cubic meter at standard conditions;

9. dscf, dry cubic feet at standard conditions;

10. °F, degree Fahrenheit;

11. g, gram;

12. gr, grain;

13. Hg, mercury;

14. H_2S, hydrogen sulfide;

15. H_2SO_4, sulfuric acid;

16. J, joule;

17. kg, kilogram;

18. l, liter;

19. m, meter;

20. mg, milligram;

21. ml, milliliter;

22. mm, millimeter;

23. N_2, nitrogen;

24. NO_2, nitrogen dioxide;

25. NO_x, nitrogen oxides;

26. O_2, oxygen;

27. ppb, parts per billion;

28. ppm, parts per million;

29. psia, pounds per square inch absolute;

30. scf, cubic feet at standard conditions;

31. SO_2, sulfur dioxide;

32. µg, microgram (10^{-6} gram).

C. Applicability of standards of performance.

1. Existing facility. An owner or operator of an existing emission facility shall comply with all applicable state air pollution control rules for existing emission facilities.

2. New facility. An owner or operator who constructs, modifies, or reconstructs an emission facility shall comply with the New Source Performance Standards, if applicable, or the

standards of performance for a new emission facility set forth in the state air pollution control rules.

3. Exception. For the purpose of the state air pollution control rules, the use of an alternative type of fuel or raw material is not a modification if the existing facility was designed to accommodate the alternative type of fuel or raw material. An emission facility is considered to be designed to accommodate an alternative type of fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change.

D. Opacity standard adjustment.

1. Application for permit modification. An owner or operator of an emission facility may file an application for a permit modification under Minnesota rule APC 3 for adjustment of the opacity standard applicable to an emission source. In addition to the items required under Minnesota rule APC 3, the application must contain data that demonstrates that:

a. based on tests conducted under 6 MCAR S 4.0021, the emission source is in compliance with the applicable standard of performance for particulate matter and all other standards of performance, except the opacity standard;

b. the total emission facility is in compliance with all applicable standards of performance except the opacity standard at the emission ~~source for which adjustment is being sought~~ sources for which adjustments are being sought or have already been permitted by the agency; and

c. the total emission facility was operated in a manner to minimize the opacity of emissions at the emission source during the performance tests conducted under a.

2. Atmospheric dispersion modeling. If the data submitted under 1. indicates that an adjustment of the opacity standard may cause or contribute to a violation of an ambient air quality standard, the agency shall require the owner or operator to conduct atmospheric dispersion modeling and include the results of the modeling in the application for a permit modification. However, a total emission facility that has

potential emissions of particulate matter of less than 25 tons per year is not required to conduct modeling. Modeling must be performed according to Guidelines on Air Quality Models (OAQPS No. 1.2-080, United States Environmental Protection Agency, Office of Air Quality Planning and Standards, 1978) or methods that the director finds to be comparably reliable.

3. Opacity adjustment determination and permit modification. The agency shall set an adjusted opacity standard at the most restrictive level which the performance tests conducted under 1.a. and c. demonstrate the emission source is capable of meeting and shall modify the permit to establish the adjusted opacity standard, if the requirements of 1. and 2. are met and the total emission facility, with the adjusted opacity standard, would meet any one of the following:

a. not cause or contribute to a violation of an ambient air quality standard;

b. have potential emissions of particulate matter of less than 25 tons per year and less than one ton per day; or

c. contribute less than one $\mu g/m^3$ to an annual ambient particulate matter standard violation ~~or~~ and less than five $\mu g/m^3$ to a 24-hour ambient particulate matter standard violation.

E. Circumvention.

~~1.--Concealment-or-dilution.~~ No owner or operator may install or use a device or means that conceals or dilutes emissions, which would otherwise violate a federal or state air pollution control rule, without reducing the total amount of pollutant emitted.

~~2.--Dispersion-techniques.--An-owner-or-operator-may-only use-dispersion-techniques-allowed-under-the-Clean-Air-Act, United-States-Code,-title-42,-section-7423,-as-amended,-and implemented-in-Code-of-Federal-Regulations,-title-40,-parts-51.1 (ii)-and-51.12-(j)-(1)-(1982)-to-calculate-compliance-with-the ambient-air-quality-standards-set-out-in-6-MCAR-S-4.0001-or-with the-regulations-regarding-prevention-of-significant deterioration-(PSD)-set-out-in-Code-of-Federal-Regulations, title-40,-part-52.21-(1982).~~

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 23 1984
Joan Anderson Growe
Secretary of State
12:04PM

APPROVED AS TO FORM AND LEGALITY
March 23 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Martha J Casserly
SPECIAL ASSISTANT ATTORNEY GENERAL

(B)

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Minn. Rule APC 2, Definitions, Abbreviations, Applicability of Standards, Access to Premises, Variances, Circumvention, Severability to be retitled Definitions, Abbreviations, Applicability of Standards, Opacity Standard Adjustment and Circumvention

ORDER ADOPTING AMENDMENTS

Notice of the Minnesota Pollution Control Agency's intent to adopt amendments to the above-entitled rules without a public hearing was published in the State Register on October 17, 1983, (8 S.R. 682) and, on that same day, was sent by United States mail to all persons on the list maintained by the Agency pursuant to Minn. Stat. §14.14 (1982). After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, after receiving fewer than seven requests for public hearing within the 30-day comment period which were not withdrawn, after reviewing and considering the comments, and after determining the need for and reasonableness of the above-captioned amendments,

NOW, THEREFORE, IT IS ORDERED, that the proposed amendments to Minn. Rule APC 2, as published in the October 17, 1983, State Register, are hereby adopted with the following modifications:

Section D.1.b. of the proposed amendments is adopted with the following modification:

D. Opacity standard adjustment.

1. Application for permit modification. An owner or operator of an emission facility may file an application for a permit modification under Minnesota rule APC 3 for adjustment of the opacity standard

applicable to the emission source. In addition to the items required under Minnesota rule APC 3, the application must contain data that demonstrates that:

a. [no change]

b. the total emission facility is in compliance with all applicable standards of performance except the opacity standard at the emission ~~source for which adjustment is being sought~~ sources for which adjustments are being sought or have already been permitted by the agency; and

c. [no change]

Section D.3.c. of the proposed amendments is adopted with the following modification:

D. Opacity standard adjustment.

3. Opacity adjustment determination and permit modification. The agency shall set an adjusted opacity standard at the most restrictive level which the performance tests conducted under 1.a. and c. demonstrate the emission source is capable of meeting and shall modify the permit to establish the adjusted opacity standard, if the requirements of 1. and 2. are met and the total emission facility, with the adjusted opacity standard, would meet any one of the following:

a. not cause or contribute to a violation of an ambient standard;

b. have potential emissions of particulate matter of less than 25 tons per year and less than one ton per day; or

c. contribute less than one ug/m^3 to an annual ambient particulate standard violation ~~or~~ and less than five ug/m^3 to a 24-hour ambient particulate matter standard violation.

Section E.2. of the proposed amendments is deleted in its entirety and section E.1. is adopted as proposed (except that the number "1" and the headnote is deleted.)

These amendments are adopted pursuant to the authority vested

in the Minnesota Pollution Control Agency by Minn. Stat. § 116.07, subd. 4 (1982).

Dated this 28th day of February, 1984.

Cynthia C Jepsen

CYNTHIA JEPSEN
Chairperson

for Jay M. Heffern

SANDRA S. GARDEBRING
Executive Director

All statements of information and comment shall be accepted until June 4, 1982. Any written material received by the State Department of Employee Relations shall become part of the record in the event that the rules are promulgated.

Barbara Sundquist, Commissioner
Department of Employee Relations

Department of Energy, Planning and Development
Development Resources Division

Department of Revenue
Property Equalization Division

Notice of Intent to Solicit Outside Opinions and Information Concerning Rules Governing Designation of Enterprise Zones and Tax Classification of Industrial Employment Property

Notice is hereby given that the State Department of Energy, Planning and Development and the State Department of Revenue are seeking information or opinions from sources outside the agencies in preparing new rules governing "enterprise zones," Minn. Stat. § 273.1312, and tax classification of industrial employment property as defined by Minn. Stat. § 273.1313 (Chapter 523, Article 6, *Laws of Minnesota* 1982) located within these zones. Enterprise zones are areas designated to encourage the location and expansion of job-creating industrial activities. The authority for these rules is contained in Minn. Stat. § 273.1312.

Any person desiring to submit information or comment on the subject of the proposed rules may do so either orally or in writing.

Written and oral comments should be addressed to:

Department of Energy, Planning & Development
Development Resources Division
Attn: Dana Weber-Young
Hanover Building
480 Cedar Street
St. Paul, Minnesota 55101
(612) 296-3976

Department of Revenue
Property Equalization Division
Attn: Michael Wandmacher
Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55145
(612) 296-5135

All statements of information and comment shall be accepted for 30 days from the date of this notice in the *State Register*. Written material received by this date shall become part of the record in the event that rules are promulgated.

W. Wesley Cochrane, Assistant Commissioner
Energy, Planning & Development

Michael P. Wandmacher
Manager, Education Section
Property Equalization Division
Department of Revenue

Minnesota Pollution Control Agency

Notice of Intent to Solicit Outside Opinion Regarding Review of APC 2, Definitions, Abbreviations, Applicability of Standards, Access to Premises, Variances, Circumvention, Severability

Notice is hereby given that the Minnesota Pollution Control Agency is seeking information and opinions from sources outside the agency regarding the review of the existing rule APC 2, entitled Definitions, Abbreviations, Applicability of Standards, Access to Premises, Variances, Circumvention, Severability. In the review process specific consideration will be given to the incorporation of an opacity adjustment procedure and the new federal stack height regulations. Opinions and information on other aspects of the rule are also requested.

Interested persons may submit statements of information and opinions orally or in writing. Written or oral statements should be directed to Richard J. Sandberg at the address or telephone number listed below. Oral comments or inquiries will be accepted during regular business hours over the telephone and in person at the agency office.

Richard J. Sandberg
Minnesota Pollution Control Agency
Division of Air Quality
1935 West County Road B2
Roseville, Minnesota 55113
612-296-7736

All statements of information and opinion will be accepted until June 21, 1982. Any written material received by the agency will be a part of the hearing record in the event amendments to the rule are proposed and public hearings are held.

Dated this 12th day of May 1982.

Louis J. Breimhurst
Executive Director

Office of the Secretary of State
Notice of Vacancies in Multi-member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. **Application deadline is June 15, 1982.**

CITIZEN'S ADVISORY TASK FORCE ON THE BOUNDARY WATERS CANOE AREA has 2 vacancies open immediately. One for a resident of Cook county and one for a resident of Lake county. The task force conducts meetings and research on the establishment and operation of the Boundary Warters Canoe Area; and makes recommendations to the U.S. Forest Service and other federal and state agencies. Members are appointed by the Governor, and are compensated for expenses. For specific information, contact the Citizen's Advisory Task Force on the Boundary Waters Canoe Area, Grand Marais, MN 55604; (218) 287-2020.

POLLUTION CONTROL AGENCY has 1 vacancy open immediately. The agency develops and implements programs to preserve and enhance the air, water and land resources of the state; adopts and enforces rules and regulations; and issues permits to pollution sources. One member must be a person knowledgeable in the field of agriculture. Members of the agency shall be broadly representative of the skills and experience necessary to effectuate the policy pursuant to Minn. Stat. §§ 116.01 to 116.08, except that no member appointed shall be an officer or employee of the state or federal government. Only 2 members at one time may be officials or employees of a municipality or any governmental subdivision, but neither may be a member ex-officio or otherwise on the management board of a municipal sanitary sewage disposal system. Members are appointed by the Governor and confirmed by the Senate. Must file with EPB. Monthly meetings at the agency offices, Roseville. Members receive $35 per diem plus expenses. For specific information, contact the Pollution Control Agency, 1935 West County Road B-2, Roseville, MN 55113, (612) 296-7373.

ADVISORY COUNCIL ON UNIFORM FINANCIAL ACCOUNTING AND REPORTING STANDARDS has 1 vacancy open for a public member pursuant to Minn. Stat. § 121.901, subd. 1(4). The council provides the Board of Education with uniform accounting and reporting standards for school districts; and formulates and recommends rules, changes in statutes, modification of financial accounting codes, manual procedures and reporting forms. School district employees responsibilities include school financing and accounting. Members appointed by the Board of Education. Monthly meetings at the capitol complex, St. Paul. Public employee members receive no compensation; others are compensated for expenses. For specific information, contact the Advisory Council on Uniform Financial Accounting and Reporting Standards, Room 807, Capitol Square Bldg., St. Paul, MN 55101; (612) 296-9786.

METROPOLITAN AIRPORTS COMMISSION has 1 vacancy open immediately. Must be a resident of the appropriate MAC commissioner precinct. The commission promotes air transportation by developing the Twin Cities as an aviation center, coordinates with other aviation facilities in the state to provide economical and effective use of aeronautic facilities and services; may build new airports or acquire existing airports in the metropolitan area; adopts and enforces regulations to manage all metropolitan airports; has jurisdiction over flight and traffic patterns; controls airport land use and provides for airport noise control. Chairman and 8 members are appointed by the Governor, residing in precincts as determined by Governor. They must file with EPB. Meetings are monthly, and members receive $50 per diem. For specific information, contact the Metropolitan Airports Commission, 6040 28th Ave. S., Minneapolis 55450; (612) 726-5770.

D.

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Minn. Rule APC 2, Definitions, Abbreviations, Applicability of Standards, Access to Premises, Variances, Circumvention, Severability to be retitled Definitions, Abbreviations, Applicability of Standards, Opacity Standard Adjustment and Circumvention

AFFIDAVIT REGARDING COMMENTS RECEIVED IN RESPONSE TO NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Richard Sandberg, being duly sworn on oath deposes and says:

1. I am a member of the staff of the Minnesota Pollution Control Agency (MPCA).

2. In the Notice of Intent to Solicit Outside Opinion for the above-entitled rule, which Notice appeared in the May 24, 1982, State Register, (6 S.R. 1986), I was listed as the contact person for the above-entitled rule.

3. The MPCA received no comments in response to its Notice of Intent to Solicit Outside Opinion.

Richard J. Sandberg

Subscribed and sworn to before me this 7th day of March, 1984.

Carol T. Groppoli
Notary Public

CAROL T. GROPPOLI
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Jun.23, 1987

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments of Minn. Rule APC 2, Definitions, Abbreviations, Applicability of Standards, Access to Premises, Variances, Circumvention, Severability, Proposed to be Retitled Definitions, Abbreviations, Applicability of Standards, Opacity Standard Adjustment and Circumvention

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

On the 26th day of July, 1983, the Minnesota Pollution Control Agency duly ORDERED that Notice of Intent to Adopt 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.

Dated: October 21, 1983

Sandra Gardebring

SANDRA S. GARDEBRING
Executive Director

Minnesota Pollution Control Agency

(F)

CERTIFICATE OF AGENCY'S AUTHORIZING RESOLUTION

I, Cynthia Jepsen, do hereby certify that I am a member and the Chairperson of the Minnesota Pollution Control Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Control Agency duly and properly called and held on the 26th day of July, 1983, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said 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 hereby finds that the proposed amendments relating to Minnesota Rule APC 2 are noncontroversial in nature;

BE IT FURTHER RESOLVED, that Sandra S. Gardebring, Executive Director of the Minnesota Pollution Control Agency, is hereby granted authority and directed to sign an Order of the Agency directing that Notice be given of the Agency's intent to adopt without a public hearing the rules, to sign the Notice thereof; and to perform any acts incidental thereto.

Prior to publishing the proposed rules in the State Register, the Executive Director is authorized to make any form changes in the rules that the Revisor of Statutes requires the Agency to make in order to obtain the Revisor's certification as required by Minn. Stat. § 14.07, subd. 2 (1982).

In the event a public hearing becomes necessary, the Executive Director is hereby granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as perform any and all acts incidental thereto, including but not 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 name this 25th day of October, 1983.

Cynthia C Jepsen
CYNTHIA JEPSEN
Chairperson

Dana D. Gilbert
Attest by one other Agency member

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

Proposed Amendment of Minn. Rule APC 2, Definitions, Abbreviations, Applicability of Standards, Access to Premises, Variances, Circumvention, Severability, to be Retitled Definitions, Abbreviations, Applicabilty of Standards, Opacity Standard Adjustment, and Circumvention.

NOTICE OF INTENT TO ADOPT AMENDMENTS WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends to adopt without a public hearing amendments to Minn. Rule APC 2, "Definitions, Abbreviations, Applicability of Standards, Access to Premises, Variances, Circumvention, Severability," to be retitled "Definitions, abbreviations, applicability of standards, opacity standard adjustment and circumvention."

The Agency has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §14.21 - 14.28 (1982).

The proposed amendments involve changes in the format in the rule and some changes which are substantive. The format changes primarily involve the incorporation of all defined terms within the definition section of the rule, elimination of defined terms and abbreviations which are no longer used within the air pollution control rules, consolidation of defined terms, and deletion of sections of the existing rule which are covered in the statutes or the procedural rules of the Agency.

The substantive revisions to the rule include the addition of definitions of new terms used within APC 2 and other air pollution control rules, simplification of the terms "modification" and "reconstruction" which are used to describe certain changes triggering new source requirements, the addition of a new section on opacity standard adjustment, and a new section incorporating the federal dispersion technique (tall stack) requirements.

The proposed amendments are authorized by Minn. Stat. §116.07, subd. 4 (1982). One free copy of the rule is available from the Agency on request.

The Agency has prepared 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 by the Agency to support the proposed amendments. Copies of the Statement of Need and Reasonableness and of the proposed amendments are available and may be obtained by contacting:

Jeanine Willenbring
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113
Telephone: (612) 296-7351

Interested persons have 30 days, specifically until November 17, 1983, to submit comments on the proposed amendments. The proposed amendments may be modified if the data and views submitted to the Agency warrant modification and the modification does not result in a substantial change in the proposed amendments.

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 that a public hearing is required, the Agency will proceed according to the provisions of Minn. Stat. §14.11 - 14.20 (1982).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to Richard Sandberg, at the Agency address previously stated (telephone: (612) 296-7316), no later than November 17, 1983. If a person desires to request a public hearing, the Agency requests that the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

Upon adoption of the amendments by the Agency Board, the rules as proposed, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rule as adopted will be sent 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 adopted, should submit a written statement of such request to Richard Sandberg at the address previously stated.

You are hereby advised, pursuant to Minn. Laws 1983, ch. 188, "Small business considerations in rulemaking," that the proposed rule amendments may have an impact on some small businesses in Minnesota. The portion of the rule as revised which may affect

small businesses relates to the establishment of procedures for adjustment of standards for visible emissions (opacity). The Agency believes that this portion of the rule will be beneficial to small businesses because it allows for relief from the opacity limitations where the source is in compliance with emission limitations and where the expenditure of additional money to meet opacity standards would not provide significant additional benefits to the ambient air quality.

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 (1982) 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 contains certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Dated: October 14, 1983

Sandra Gardebring

SANDRA S. GARDEBRING
Executive Director

(H)

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments of Minn. Rule APC 2, Definitions, Abbreviations, Applicability of Standards, Access to Premises, Variances, Circumvention, Severability, Proposed to be Retitled Definitions, Abbreviations, Applicability of Standards, Opacity Standard Adjustment and Circumvention

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Penny Nickles, being duly sworn, deposes and says:

That on the 14 day of October, 1983, at the City of Roseville, County of Ramsey, State of Minnesota, s/he served the attached Notice of Intent to Adopt Amendments Without a Public Hearing by depositing in the United States mail for first class mailing at said City of Roseville, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Pollution Control Agency for the purpose of receiving notice of the proposed adoption of rules by the Pollution Control Agency.

Penny Nickles

Subscribed and sworn to before me this 20th day of Oct., 1983.

Margaret Frank
Notary Public

MARGARET FRANK
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Sept 26, 1985

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Amendments of Minn. Rule APC 2,
Definitions, Abbreviations,
Applicability of Standards, Access
to Premises, Variances, Circumvention,
Severability, Proposed to be Retitled
Definitions, Abbreviations, Applicability
of Standards, Opacity Standard Adjustment
and Circumvention

CERTIFICATE

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minn. Stat. §14.14 (1982), that their names be placed on file with 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 11 day of October, 1983.

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NORTHERN STATES POWER CO
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SOCIAL SERV DEPT
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MPLS MN 55406
6

FRUNDT FRUNDT & JOHNSON
117 WEST 5TH STREET
BLUE EARTH MN 56013

RELIANCE UNIVERSAL INC
ATTN PAUL H WALKER
ROBTSON RESEARCH & DVLP C
4730 CRITTENDEN DRIVE
LOUISVILLE KY 40233
6

PULP & PAPER
ATTN PAULA IRONS
500 HOWARD ST
SAN FRANCISCO CA 94105
7

C.W. BERGSTROM
DIV. CHIEF ENGINEER
AMOCO PIPELINE CO.
2200 S. MAIN ST.
LOMBARD IL 60148
7

API INC
ATTN TERRY WOLD
2366 ROSE PLACE
ST PAUL MN 55113
7

THE HEALTH CENTRAL SYSTEM
ATTN DONALD G ROBIDA
501 BROOKDALE TOWERS
2810 FIFTY SEVENTH AVE N
MPLS MN 55430
7

CENEX
ATTN RALPH SCHLETTY
BOX 43089
ST PAUL MN 55164
7

BOISE CASCADE CORPORATION
ATTN MR RUSS SUMMER
ENVIRONMENTAL ENGINEER
INTERNATIONAL FALLS MN
56649
7

EPA REGION V
ATTN DAVE ULLRICH
230 S DEARBORN ST
CHICAGO IL 60604
7

DAMES & MOORE
ATTN LARRY ANNEN
1550 NW HWY
PARK RIDGE IL 60068
7

GOULD INC
PORTABLE BATTERY DIVISION
ATTN DOUGLAS ROBAHM
931 VANDALIA ST
ST PAUL MN 55114
7

CLEAR AIR CLEAR WATER
STEVE CHAPMAN
BOX 8597
WHITE BEAR LAKE MN 55110

RICHARD L BUTLER
12600 PARKWOOD DR APT 218
BURNSVILLE MN 55337
7

PICKANDS MATHER & CO
ATTN THOMAS W HAYES
SUITE 811-200 W SUPERIOR ST
DULUTH MN 55802
7

BENDIX
ENVIR & PROCESS INST DIV
P O DRAWER 831
LEWISBURG W VA 24901
7

PAUL WEIR CO
ATTN MARY VACULA
20 NORTH WACKER DR
CHICAGO IL 60606
7

ST PAUL PUBLIC HEALTH
ATTN DR PAUL J COX
555 CEDAR ST
ST PAUL MN 55101
7

FEDERAL-STATE REPORTS INC
ATTN LOU O'BOYLE
5203 LEESBURG PIKE #1201
BAILEYS CROSSROADS
FALLS CHURCH VA 22041
7

OFFICE OF ADMIN HEARINGS
ATTN SAM RUHLE
400 SUMMIT BANK BLDG
310 S FOURTH AVE
MPLS MN 55415
7

MICHAEL HENNEN
4608 ALDRICH AVE S
MPLS MN 55409
7

SHELL ENGINEERING & ASSOC
1804 VANDIVER DRIVE
PO BOX 548
COLUMBIA MO 65205
7

E I DU PONT DE NEMOURS CO
ATTN DAVID T MODI
LEGAL DEPT (D7082)
1007 MARKET STREET
WILMINGTON DE 19898
7

UNION CARBIDE CORP
ATTN C E VAN DYK
OLD RIDGEBURY RD
DANBURY CT 06810
7

LEAGUE OF MINNESOTA CITIES
ATTN DON SLATER
183 UNIVERSITY AVE EAST
ST PAUL MN 55101
7

CITIZENS FOR BETTER ENVIR
ATTN CAROLE BARTH
127 7TH ST N
SUITE 204
MPLS MN 55403
7

ERM-NORTH CENTRAL INC
ATTN SUSAN HOGLUND
200 SOUTH PROSPECT AVE
PARK RIDGE IL 60068
7

ENVIR RESEARCH GROUP
ATTN SALES & MARKETING
PO BOX 70006
135 STATE ST
ST PAUL MN 55107
7

M & M PROTECT CONSULTANTS
ATTN WM R HOYT
1500 NORTH STAR CENTER
MPLS MN 55402
7

MINNESOTA FARMERS UNION
ATTN MARK McAFEE
1717 UNIVERSITY
ST PAUL MN 55104
7

MN CONSERVATION FED
DIANE KELLY
4354 HARRIET AVE SO
MPLS MN 55409
7

SECURE OUR SOCIETY INC
ATTN LESLIE DAVIS
2124 LOWER ST DENNIS RD
ST PAUL MN 55116
7

VAN HOVEN CO INC
ATTN ED VAN HOVEN JR
BOX 56
SO ST PAUL MN 55075
7

NATL RENDERERS ASSO INC
ATTN WILLIAM H PROKOP
2250 EAST DEVON AVE
DES PLAINES IL 60018
7

DAVID N. FASS
HEMATOLOGY RESEARCH
MAYO CLINIC FOUNDATION
ROCHESTER MN 55901
7

MPCA HEARING NOTIFICATION
MAILING LIST
INTER OFFICE

DEPT OF EDUCATION
ATTN FREDRIK M CHRISTIANSEN
RM 911 CAPITOL SQ BLDG
ST PAUL MN 55101

DEPT OF ECONOMIC DVLPMT
ATTN KENT E EKLUND
480 CEDAR ST
ST PAUL MN 55101

DEPT OF ECONOMIC DVLPMT
ATTN RICHARD C BUSKE
480 CEDAR ST
ST PAUL MN 55101

DEPT OF ECONOMIC DVLPMT
ATTN CHARLES SCHAFFER
480 CEDAR ST
ST PAUL MN 55101

OFF OF LEGISLATIVE AUDITOR
ATTN ALLAN BAUMGARTEN
PROGRAM EVALUATION SPEC
122 VETERANS SERV BLDG
ST PAUL MN 55155

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

ATTORNEY GENERAL'S OFFICE
ANTITRUST DIVISION
2ND FLOOR FORD BLDG
117 UNIVERSITY AVE

DEPT OF AGRICULTURE
AGRONOMY SERVICES
ATTN GARY BRAUN
90 W PLATO BLVD
ST PAUL MN 55107

MEEB CENTRAL OFFICE
ATTN RAY QUINN
BOX 5 CENTENNIAL BLDG
ST PAUL MN

SENATE COUNCIL OFFICE
ATTN ALAN WILLIAMS
RM 480
STATE OFFICE BLDG
ST PAUL MN 55155

WATER RESOURCES BOARD
555 WABASHA RM 206
ST. PAUL MN 55102

BRD OF ARCH ENG LAND SURV
AND LANDSCAPE ARCHITECTURE
ATTN LOWELL E TORSETH
500 METRO SQUARE
ST PAUL MN 55101

LEGISLATIVE COMM TO
REVIEW ADMIN RULES
ATTN KATHLEEN BUREK
RM 430
STATE OFFICE BLDG

MN DEPT OF HEALTH
ATTN JAMES WITKOWSKI
717 Delaware St. SE
MPLS MN 55440

MN DEPT ECONOMIC SECURITY
ATTN F JAMES RYBAK PHD
390 AM CE 150 E KELLOGG
ST PAUL MN 55101

~~SCIENCE & TECH OFFICE~~
~~ATTN JOHN MALINKA~~ takeoff
~~RM 49 STATE OFFICE BLDG~~
~~ST PAUL MN 55155~~ no longer exists

WATER PLANNING BOARD
RM 600 AMERICAN CTR BLDG

METROPOLITAN COUNCIL
ATTN JOHN T HOEFT
300 METRO SQ BLDG
7TH ST & ROBERT ST
ST PAUL MN 55101

PRESS/MN GOVT REPORT
ATTN JEAN DAWSON
RM B12 CAPITOL BLDG
ST PAUL MN 55155

MPCA HEARING NOTIFICATION
MAILING LIST
AIR QUALITY REQUESTS

NSP
ATTN ED SCHENTZEL
REGULATORY LIAISON
414 NICOLLET MALL
MPLS MN 55401 AQ

DAIRYLAND POWER COOP
ATTN ERIC HENNEN
PO BOX 817
2615 EAST AVE SO
LA CROSSE WI 54601 AQ

METRO AIRPORTS COMM
ATTN DIR OF OPERATIONS
5040 28TH AVE S
MPLS MN 55450 AQ

KIBCOR ENGINEERING CO
ATTN BERNARD TRENDA
3424 WOODDALE AVE
MPLS MN 55416 AQ

WINONA DAILY NEWS
ATTN DON STUART
101 N FRANKLIN
WINONA MN 55987 OLMSTED WINONA COUNTIES

IOWA DEPT ENVIR QUALITY
ATTN CHARLES MILLER
9TH & GRAND
DE MOINES IA 50316 AQ

~~WB ENGINEERING~~
~~ATTN THOMAS STERN~~
~~176 OLSON MEM HWY~~
~~GOLDEN VALLEY MN 55422~~ AQ

NTERN MINERAL & CHEM CORP
NVIR & SAFETY OPERATIONS
21 E HAWLEY ST
UNDELEIN IL 60060 AQ

W PULP & PAPER
TTN HEIDI SCHULTZ
55 116TH AVE NE SUITE 266
ELLEVUE WA 98004 AQ

CORBIN S KIDDER
442 SUMMIT AVE APT #2
ST PAUL MN 55102 AQ

BARBARA KNAPP
9508 BRUNSWICK CIRCLE
BLOOMINGTON MN 55438
AQ & ACID RAIN

VAN HOVEN CO INC
ATTN ED VAN HOVEN JR
BOX 56
SO ST PAUL MN 55075 AQ

NATIONAL RENDERERS ASSO INC
ATTN WILLIAM H PROKOP
2250 EAST DEVON AVE
DES PLAINES IL 60018 AQ

ADH & SEALANT COUNCIL
1600 N WILSON BLVD
SUITE 910
ARLINGTON VA 22209 AQ

Lea Foushee
No. American Water Off.
1519 A E. Franklin Ave.
Minneapolis, MN 55404
AQ

~~(1)~~ If the permit applicant seeks to obtain an exception on the grounds of undue economic hardship, it shall submit to the director the information set out in rule ~~MPCA 6(b)(5)~~ 6 MCAR § 4.3007 B.5. of the Minnesota Pollution Control Agency.

~~(2)~~ If the permit applicant seeks to obtain an exception on the grounds of technological unachievability, it shall submit to the director the information set out in rule ~~MPCA 6(b)(6)~~ 6 MCAR § 4.3007 B.6. of the Minnesota Pollution Control Agency.

E.-F. [Unchanged.]

Pollution Control Agency

Proposed Amendment of Rule APC 2, Definitions, Abbreviations, Applicability of Standards, Access to Premises, Variances, Circumvention, Severability, to be Retitled Definitions, Abbreviations, Applicability of Standards, Opacity Standard Adjustment, and Circumvention

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

Notice is hereby given that the Minnesota Pollution Control Agency (agency) intends to adopt without a public hearing amendments to APC 2, "Definitions, Abbreviations, Applicability of Standards, Access to Premises, Variances, Circumvention, Severability," to be retitled "Definitions, abbreviations, applicability of standards, opacity standard adjustment and circumvention."

The agency has determined that the proposed amendment of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 14.21-14.28 (1982).

The proposed amendments are authorized by Minn. Stat. § 116.07, subd. 4 (1982). The proposed amendments are published below.

The agency has prepared 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 by the agency to support the proposed amendments. Copies of the statement of need and reasonableness and of the proposed amendments are available and may be obtained by contacting:

Jeanine Willenbring
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113
Telephone: (612) 296-7351

Interested persons have 30 days, specifically until November 17, 1983, to submit comments on the proposed amendments. The proposed amendments may be modified if the data and views submitted to the agency warrant modification and the modification does not result in a substantial change in the proposed amendments.

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 that a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 14.11-14.20 (1982).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to Richard Sandberg, at the agency address previously stated (telephone: (612) 296-7316), no later than November 17, 1983. If a person desires to request a public hearing, the agency requests that the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

Upon adoption of the amendments by the agency board, the rules as proposed, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be sent 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 adopted, should submit a written statement of such request to Richard Sandberg at the address previously stated.

You are hereby advised, pursuant to Minn. Laws 1983, ch. 188, "Small business considerations in rulemaking," that the proposed rule amendments may have an impact on some small businesses in Minnesota. The portion of the rule as revised which may affect small businesses relates to the establishment of procedures for adjustment of standards for visible emissions

(opacity). The agency believes that this portion of the rule will be beneficial to small businesses because it allows for relief from the opacity limitations where the source is in compliance with emission limitations and where the expenditure of additional money to meet opacity standards would not provide significant additional benefits to the ambient air quality.

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 (1982) 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 contains certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Sandra S. Gardebring, Executive Director
Minnesota Pollution Control Agency

Rule as Proposed

~~APC 2~~ 6 MCAR § 4.0002 Definitions, abbreviations, applicability of standards, ~~access to premises, variances,~~ opacity standard adjustment, and circumvention~~, severability~~.

~~(a)~~ A. Definitions. As used in the state air pollution control ~~regulations~~ rules, the following ~~words shall~~ terms have the meanings ~~defined herein~~ given them except as expressly provided in a specific rule:

~~(1)~~ 1. "Agency" means the Minnesota Pollution Control Agency as constituted ~~pursuant to~~ under Minnesota Statutes, section 116.02 ~~subd.~~, subdivision 1.

~~(2)~~ 2. "Alternative method" means ~~any~~ a method of sampling and analyzing for an air pollutant which is not a Reference or Equivalent method but which has been demonstrated to the ~~agency's~~ director's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

~~(3)~~ 3. "Breakdown" means ~~any~~ a sudden and unavoidable failure of air pollution control equipment or process equipment ~~or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered breakdowns~~ to operate as designed.

4. "Commenced" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction, or has entered into a contractural obligation to undertake and complete, within a reasonable time, this program.

~~(4)~~ 5. "Construction" means fabrication, erection, or installation of an ~~affected facility or an~~ emission facility ~~of which an affected facility is a part~~.

~~(5)~~ 6. "Continuous monitoring system" means the total equipment used to continuously sample and condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

~~(6) "Commenced" means that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.~~

~~(7)~~ 7. "Control equipment" means an "air ~~containment~~ contaminant treatment facility" or a "treatment facility" as those terms are defined in Minnesota Statutes, section 116.06 ~~subd.~~, subdivision 6.

~~(8)~~ 8. "Director" means the ~~executive director and~~ chief executive officer of the agency as described in Minnesota Statutes, section 116.04.

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.

~~(9)~~ 9. "Emission facility" means any ~~building, facility, installation,~~ structure, work, equipment, machinery, device, apparatus, or other means whereby an emission is caused to occur.

10. "Emission source" means a single source whereby an emission is caused to occur.

~~(10)~~ 11. "Equivalent method" means ~~any~~ a method of sampling and analyzing for an air pollutant which has been demonstrated to the ~~agency's~~ director's satisfaction to have under specified conditions a consistent and quantitatively known relationship to the Reference methods set forth in Code of Federal Regulations, title 40 ~~C.F.R.~~, part 60, appendix A.

~~(11) "Isokinetic sampling" means sampling in which the linear velocity of the gas entering the sampling nozzle is equal to that of the undisturbed gas stream at the sample point.~~

~~(12) "Method 1" means the test method for Sample and Velocity Traverses for Statinoary Sources, set forth in 40 C.F.R. Part 60, Appendix A Reference Methods.~~

~~(13) "Method 2" means the test method for Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube), set forth in 40 C.F.R. Part 60, Appendix A Reference Methods.~~

~~(14) "Method 3" means the test method for Gas Analysis for Carbon Dioxide, Excess Air, and Dry Molecular Weight, set forth in 40 C.F.R. Part 60, Appendix A Reference Methods.~~

~~(15) "Method 4" means the test method for Determination of Moisture in Stack Gases, set forth in 40 C.F.R. Part 60, Appendix A Reference Methods.~~

~~(16) "Method 5" means the test method for Determination of Particulate Emissions from Stationary Sources, set forth in 40 C.F.R. Part 60, Appendix A Reference Methods.~~

~~(17) "Method 6" means the test method for Determination of Sulfur Dioxide Emissions from Stationary Sources, set forth in 40 C.F.R. Part 60, Appendix A Reference Methods.~~

~~(18) "Method 7" means the test method for Determination of Nitrogen Oxide Emissions from Stationary Sources, set forth in 40 C.F.R. Part 60, Appendix A Reference Methods.~~

~~(19) "Method 8" means the test method for Determination of Sulfuric Acid Mist and Sulvur Dioxide Emissions from Stationary Sources, set forth in 40 C.F.R. Part 60, Appendix A Reference Methods.~~

~~(20) "Method 9" means the test method for Visual Determination of the Opacity of Emissions from Stationary Sources, set forth in 40 C.F.R. Part 60, Appendix A Reference Methods.~~

~~(21) "Method 10" means the test method for Determination of Carbon Monoxide Emissions from Stationary Sources, set forth in 40 C.F.R. Part 60, Appendix A Reference Methods.~~

~~(22) "Method 11" means the test method for Determination of Hydrogen Sulfide Emissions from Stationary Sources, set forth in 40 C.F.R. Part 60, Appendix A Reference Methods.~~

12. "Existing facility" means an emission facility at which construction, modification, or reconstruction was commenced before the effective date of the applicable New Source Performance Standard or the applicable state air pollution control rule.

13. "Fugitive emissions" means pollutant discharges to the atmosphere that do not pass through a stack, chimney, or other functionally equivalent opening, at which a measurement of the emissions can be made using a Reference method other than Method 9.

~~(23)~~ 14. "Minneapolis-St. Paul Air Quality Control Region" means the ~~territorial~~ area encompassed by the boundaries of the following counties: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington. See ~~40 C.F.R. section~~ Code of Federal Regulations, title 40, part 81.27 (1982).

15. "Modification" means a physical change or a change in the operation of an emission facility that is not allowed under a permit, stipulation agreement, or an applicable air pollution control rule, and that results in an increase in the emission of an air pollutant.

~~(24)~~ 16. "Monitoring device" means the total equipment used to measure and record (if applicable) process or control equipment parameters.

17. "New facility" means an emission facility on which construction, modification, or reconstruction was commenced after the effective date of the applicable New Source Performance Standard or the applicable state air pollution control rule.

~~(25)~~ 18. "New Source Performance Standard" means a standard of performance ~~for a new affected facility~~ promulgated

by the administrator of the United States Environmental Protection Agency under the Clean Air Act, United States Code, title 42, section 7411, as amended.

~~(26)~~ 19. "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide.

~~(27)~~ 20. "One-hour period" means any 60-minute period commencing on the hour.

~~(28)~~ 21. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

~~(29)~~ 22. "Owner or operator" means ~~any~~ a person who owns, leases, operates, controls, or supervises an ~~affected facility or an~~ emission facility ~~of which an affected facility is a part~~.

~~(30)~~ 23. "Particulate matter" means material, except ~~uncombined~~ water, which exists at standard conditions in a finely divided form as a liquor or solid.

~~(31) "Performance specification 1" means Performance Specifications and Specification Test Procedures for Transmission Systems for Continuous Measurement of the Opacity of Stack Effluents, set forth in 40 C.F.R. Part 60, Appendix B Performance Specifications.~~

~~(32) "Performance specification 2" means Performance Specifications and Specification Test Procedures for Monitors of SO_2 and NO_x from Stationary Sources, set forth in 40 C.F.R. Part 60, Appendix B Performance Specifications.~~

~~(33) "Performance specification 3" means Performance Specifications and Specification Test Procedures for Monitors of CO and O_2 from Stationary Sources, set forth in 40 C.F.R. Part 60, Appendix B Performance Specifications.~~

24. "Performance specification" means the specifications for continuous monitoring systems in Code of Federal Regulations, title 40, part 60, appendix B (1982).

~~(34)~~ 25. "Person" means person as defined in Minnesota Statutes, section 116.06 ~~subd.~~, subdivision 8.

~~(35) "Proportional sampling" means sampling at a rate that produces a constant ratio of sampling rate to stack gas flow rate.~~

26. "Potential emissions" means the emissions from an emission facility, after control equipment has been applied, when the facility is operating at maximum design capacity and maximum hours of operation or as limited by enforceable permit conditions, whichever results in fewer emissions.

27. "Reconstruction" means replacement of depreciable components of an existing emission source to which a New Source Performance Standard or state air pollution control rule is applicable, to the extent that the fixed capital cost of the depreciable components exceeds 50 percent of the fixed capital cost of depreciable components that would be required to construct a comparable entirely new emission source.

28. "Reference method" or "Method" means the procedures for performance tests in Code of Federal Regulations, title 40, part 60, appendix A, (1982).

29. "Run" means the net period of time during which an emission sample is collected.

~~(36)~~ 30. "Shutdown" means the cessation of operation of an emission facility~~, an affected facility~~ or ~~process~~ control equipment for any purpose.

~~(37) "Six minute period" means any one of the ten equal parts of a one hour period.~~

~~(38)~~ 31. "Smoke" means small gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively of carbon and other combustible material, or ash, that form a visible plume in the air.

~~(39) "Startup" means the setting in operation of an emission facility, an affected facility or process equipment for any purpose.~~

~~(40)~~ 32. "Standard conditions" means a temperature of 20~~°C~~ degrees Celsius (68~~°F~~ degrees Fahrenheit) and a pressure of 760 mm of Hg (29.92 in. of Hg).

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~~(41)~~ 33. "Standard of performance" means a restriction on the amount of air pollutants which may be emitted by an ~~affected~~ emission facility.

~~(42) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.~~

34. "Startup" means the setting into operation of an emission facility or control equipment for any purpose.

35. "State air pollution control rules" means 6 MCAR §§ 4.0001-4.0041 (Minnesota Rules APC 1-41).

36. "Total emission facility" means an assemblage of all emission sources on adjacent property that are under common ownership or control and that exist for a common function.

~~(b)~~ B. Abbreviations

~~The abbreviations~~. As used in ~~these~~ the state air pollution control ~~regulations have~~ rules, the following abbreviations have the meanings given them:

~~(1) avg. average~~

~~(2)~~ 1. A.S.T.M., American Society for Testing and Materials;

~~(3) Be Beryllium~~

~~(4)~~ 2. Btu, British thermal unit;

~~(5)~~ 3. 'C, degree Celsius (centigrade);

~~(6)~~ 4. cal, calorie;

~~(7) CdS cadmium sulfide~~

~~(8)~~ 5. cfm, cubic feet per minute;

~~(9)~~ 6. CO, carbon monoxide;

~~(10)~~ 7. CO_2, carbon dioxide;

~~(11)~~ 8. dscm, dry cubic meter~~(s)~~ at standard conditions;

~~(12)~~ 9. dscf, dry cubic feet at standard conditions;

~~(13) eq equivalents~~

~~(14)~~ 10. °F, degree Fahrenheit;

~~(15) ft^2 square feet~~

~~(16) ft^3 cubic feet~~

~~(17)~~ 11. g, gram~~(s)~~;

~~(18) gal gallon(s)~~

~~(19) g-eq gram equivalents~~

~~(20)~~ 12. gr, grain~~(s)~~;

~~(21) hr hour(s)~~

~~(22) HCl hydrochloric acid~~

~~(23)~~ 13. Hg, mercury;

~~(24) H_2O water~~

~~(25)~~ 14. H_2S, hydrogen sulfide;

~~(26)~~ 15. H_2SO_4, sulfuric acid;

~~(27) I.D. inside diameter~~

~~(28) in. inch(es)~~

~~(29) in. H_2O inches of water~~

~~(30) in. Hg inches of mercury~~

~~(31) K degree Kelvin~~

~~(32) k 1,000~~

16. J, joule;

~~(33)~~ 17. kg, kilogram~~(s)~~;

~~(34)~~ 18. l, liter~~(s)~~;

~~(35) lpm liter(s) per minute~~

~~(36) lb pounds(s)~~

~~(37) M molar~~

~~(38)~~ 19. m, meter~~(s)~~;

~~(39) m^3 cubic meter(s)~~

~~(40) meq milliequivalent(s)~~

~~(41)~~ 20. mg, milligram~~(s)~~;

~~(42) min minute(s)~~

~~(43)~~ 21. ml, milliliter~~(s)~~;

~~(44)~~ 22. mm, millimeter~~(s)~~;

~~(45) mol. wt. molecular weight~~

~~(46) mV millivolt~~

~~(47) N normal~~

~~(48)~~ 23. N_2, nitrogen;

~~(49) nm nanometer(s) 10^{-9} meter~~

~~(50) NO nitric oxide~~

~~(51)~~ 24. NO_2, nitrogen dioxide;

~~(52)~~ 25. NO_x, nitrogen oxides;

~~(53)~~ 26. O_2, oxygen;

~~(54) O.D. outside diameter~~

~~(55) oz ounce(s)~~

~~(56)~~ 27. ppb, parts per billion;

~~(57)~~ 28. ppm, parts per million;

~~(58)~~ 29. psia, pounds per square inch absolute;

~~(59) R degree Rankine~~

~~(60) s at standard conditions~~

~~(61) sec second~~

30. scf, cubic feet at standard conditions;

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~~(62)~~ 31. SO_2, sulfur dioxide;

~~(63) SO_3 sulfur trioxide~~

~~(64)~~ 32. µg, microgram~~(s)~~ (10^{-6} gram).

~~(65) v/v volume per volume~~

~~(66) w.g. water gauge~~

~~(67) yd^2 square yard(s)~~

~~(c)~~ C. Applicability of standards of performance.

~~(1) Affected facilities. An "affected facility" is any equipment, apparatus, or process to which a standard of performance set forth in these air pollution control regulations is applicable. An affected facility may be an individual unit of process equipment, e.g., the clinker cooler in a portland cement plant, or an entire process, e.g., a nitric acid production unit. An affected facility may be an emission facility for which a permit is required under Minnesota Regulation APC 3.~~

~~(2) Existing facilities. An affected facility is an existing facility if:~~

~~(aa) It was in operation on the effective date of the applicable new source performance standard; or~~

~~(bb) The owner or operator of the affected facility commenced construction or modification of the affected facility prior to the effective date of the applicable new source performance standard for the affected facility.~~

~~(3) New facilities. An affected facility which is not an existing facility is a new facility.~~

~~(4) Effective date. The effective date for new source performance standards for affected facilities shall be as follows:~~

~~(aa) Fossil Fuel Fired Steam Generators (APC 4) August 17, 1971.~~

~~(bb) Incinerators (APC 7) August 17, 1971.~~

~~(cc) Storage Vessels for Petroleum Liquids (APC 13) June 11, 1973.~~

~~(dd) Sulfuric Acid Plants (APC15) August 17, 1971~~

~~(ee) Nitric Acid Plants (APC 16) August 17, 1971~~

~~(ff) Portland Cement Plants (APC 22) August 17, 1971~~

~~(gg) Asphalt Concrete Plants (APC 23) June 11, 1973~~

~~(hh) Petroleum Refineries (APC 24) June 11, 1973~~

~~(ii) Secondary Lead Smelters (APC 25) June 11, 1973~~

~~(jj) Secondary Brass and Bronze Ingot Production Plants (APC 26) June 11, 1973~~

~~(kk) Iron and Steel Plants (APC 27) June 11, 1973~~

~~(ll) Sewage Sludge Incinerators (APC 28) June 11, 1973~~

~~(mm) All others the date the applicable new source performance standard became law.~~

~~(5) Modifications~~

~~(aa) A modification to an exiting affected facility is any physical change in, or change in the method of operation of, an affected facility which increases the amount of emissions into the atmosphere of any air pollutant to which a new source performance standard applies or which results in the emission of any air pollutant not previously emitted, to which a new source performance standard applies.~~

~~(bb) Any owner or operator who modifies an existing affected facility after the effective date of an applicable new source performance standard shall comply with the new source performance standard for the affected facility for each pollutant to which a standard applies and for which there is an increase in the emission rate to the atmosphere.~~

~~(cc) Emission rate shall be expressed as kg/hr of any pollutant discharged into the atmosphere for which a standard is applicable. The agency shall use the following to determine emission rate:~~

~~(i) Emission factors as specified in the latest issue of "Compilation of Air Pollutant Emission Factors," EPA Publication No. AP 42, or other emission factors determined by the agency to be superior to AP 42 emission factors, in cases where utilization of emission factors demonstrate that the emission level resulting from the physical or operational change will either clearly increase or clearly not increase.~~

~~(ii) Material balances, continuous monitor data, or manual emission tests in cases where utilization of emission~~

factors as referenced in paragraph (i) does not demonstrate to the agency's satisfaction whether the emission level resulting from the physical or operational change will either clearly increase or clearly not increase, or where an owner or operator demonstrates to the agency's satisfaction that there are reasonable grounds to dispute the result obtained by the agency utilizing emission factors as referenced in paragraph (i). When the emission rate is based on results from manual emission tests or continuous monitoring systems, the procedures specified in Appendix C Determination of Emission Rate Change, set forth in 40 C.F.R. Part 60, shall be used to determine whether an increase in emission rate has occurred. Tests shall be conducted under such conditions as the agency shall specify to the owner or operator based on representative performance of the facility. At least three valid test runs must be conducted before and at least three after the physical or operational change. All operating parameters which may affect emissions must be held constant to the maximum feasible degree for all test runs.

(dd) The requirements of subsection (5)(bb) shall not apply if the owner or operator who modifies an existing affected facility can demonstrate to the agency that modification of the affected facility will not result in an increase in total emissions from all existing emission sources in the process. The required reduction may be accomplished through the installation or improvement of a control system or through physical or operational changes to facilities including reducing the production of a facility or closing a facility. The director may require the submission of such information as the director deems necessary to a determination whether there will be an increase in total emissions.

(ee) The owner or operator of an existing affected facility may undertake any of the following modifications without being required to comply with the new source performance standard for the affected facility:

(i) Maintenance, repair, and replacement which the agency determines to be the routine.

(ii) An increase in production rate, if that increase can be accomplished without a major capital expenditure. "Capital expenditure" means an expenditure for a physical or operational change to an existing facility which exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in Internal Revenue Service Publication 534 and the existing facility's basis, as defined by section 1012 of the Internal Revenue Code.

(iii) An increase in the hours of production.

(iv) Use of an alternative fuel or raw material if, prior to the effective date of the applicable new source performance standard, the existing facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if provisions for that use were included in the final construction specifications.

(v) Conversion to coal required by state or federal law for energy considerations.

(vi) The addition or use of any control equipment, except when control equipment is replaced with other control equipment which the agency determines to be less environmentally beneficial.

(vii) The relocation or change in ownership of an existing facility.

(ff) The modification of an affected facility or the addition of a new affected facility shall not by itself require the owner or operator to comply with the new source performance standards for other existing facilities.

(gg) Any owner or operator who modifies a new affected facility shall comply with the new source performance standard.

(hh) Nothing in this subsection (e) shall affect the requirement of Minnesota Regulation APC 3(e) that a permit be obtained from the agency to undertake certain alterations and modifications to emission facilities and control equipment.

(6) Reconstruction

(aa) The owner or operator of an existing affected facility who reconstructs the facility shall comply with the applicable new source performance standard for the reconstructed affected facility.

(bb) "Reconstruction" means the replacement of components of an existing facility to such an extent that:

(i) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility, and

(ii) It is technologically and economically feasible to meet the applicable standards set forth in this part.

(iii) "Fixed capital cost" means the capital needed to provide all the depreciable components.

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.

~~(iv) If an owner or operator of an existing facility proposes to replace components, and the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility, he shall notify the agency of the proposed replacements. The notice must be postmarked 60 days (or as soon as practicable) before construction of the replacements is commenced and must include the following information:~~

~~1. Name and address of the owner or operator.~~

~~2. The location of the existing facility.~~

~~3. A brief description of the existing facility and the components which are to be replaced.~~

~~4. A description of the existing air pollution control equipment and the proposed air pollution control equipment.~~

~~5. An estimate of the fixed capital cost of the replacements and of constructing a comparable entirely new facility.~~

~~6. The estimated life of the existing facility after the replacements.~~

~~7. A discussion of any economic or technical limitations the facility may have in complying with the applicable standards of performance after the proposed replacements.~~

~~(cc) The agency shall consider the following in determining whether an existing facility has been reconstructed:~~

~~(i) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;~~

~~(ii) The estimated life of the facility after the replacements compared to the life of a comparable entirely new facility;~~

~~(iii) The extent to which the components being replaced cause or contribute to the emissions from the facility; and~~

~~(iv) Any economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.~~

~~(d) Access to premises and information~~

~~(1) The owner or operator of an emission facility shall allow the agency, or any authorized employee or agent of the agency, upon presentation of proper credentials, to examine and copy any books, papers, records or memoranda pertaining to the operation of the emission facility.~~

~~(2) The owner or operator of an emission facility shall allow the agency, or any authorized employee or agent of the agency, upon presentation of proper credentials, to enter upon the property of the owner or operator for the purpose of obtaining information or examining records or conducting surveys or investigations, whenever such entrance is necessary for the purpose of these regulations.~~

~~(e) Variances. Whereupon written application of the responsible person or persons the agency finds that by reason of exceptional circumstances strict conformity with any provisions of the emission standards contained herein would cause undue hardship, would be unreasonable, impractical or not feasible under the circumstances, the agency may permit a variance from these emission standards upon such conditions and within such time limitations as it may prescribe for prevention, control or abatement of air pollution in harmony with the intent of the state and any applicable Federal laws.~~

1. Existing facility. An owner or operator of an existing emission facility shall comply with all applicable state air pollution control rules for existing emission facilities.

2. New facility. An owner or operator who constructs, modifies, or reconstructs an emission facility shall comply with the New Source Performance Standards, if applicable, or the standards of performance for a new emission facility set forth in the state air pollution control rules.

3. Exception. For the purpose of the state air pollution control rules, the use of an alternative type of fuel or raw material is not a modification if the existing facility was designed to accommodate the alternative type of fuel or raw material. An emission facility is considered to be designed to accommodate an alternative type of fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change.

D. Opacity standard adjustment.

1. Application for permit modification. An owner or operator of an emission facility may file an application for a permit modification under Minnesota rule APC 3 for adjustment of the opacity standard applicable to an emission source. In addition to the items required under Minnesota rule APC 3, the application must contain data that demonstrates that:

a. based on tests conducted under 6 MCAR § 4.0021, the emission source is in compliance with the applicable standard of performance for particulate matter and all other standards of performance, except the opacity standard;

b. the total emission facility is in compliance with all applicable standards of performance except the opacity standard at the emission source for which adjustment is being sought; and

c. the total emission facility was operated in a manner to minimize the opacity of emissions at the emission source during the performance tests conducted under a.

2. Atmospheric dispersion modeling. If the data submitted under 1. indicates that an adjustment of the opacity standard may cause or contribute to a violation of an ambient air quality standard, the agency shall require the owner or operator to conduct atmospheric dispersion modeling and include the results of the modeling in the application for a permit modification. However, a total emission facility that has potential emissions of particulate matter of less than 25 tons per year is not required to conduct modeling. Modeling must be performed according to Guidelines on Air Quality Models (OAQPS) No. 1.2-080, United States Environmental Protection Agency, Office of Air Quality Planning and Standards, 1978) or methods that the director finds to be comparably reliable.

3. Opacity adjustment determination and permit modification. The agency shall set an adjusted opacity standard at the most restrictive level which the performance tests conducted under 1.a. and c. demonstrate the emission source is capable of meeting and shall modify the permit to establish the adjusted opacity standard, if the requirements of 1. and 2. are met and the total emission facility, with the adjusted opacity standard, would meet any one of the following:

a. not cause or contribute to a violation of an ambient air quality standard;

b. have potential emissions of particulate matter of less than 25 tons per year and less than one ton per day; or

c. contribute less than one $\mu g/m^3$ to an annual ambient particulate matter standard violation or less than five $\mu g/m^3$ to a 24-hour ambient particulate matter standard violation.

~~(f)~~ E. Circumvention. ~~No person shall cause or permit the installation or use of any device or any means which, without resulting in reduction in the total amount of air contaminants emitted, conceals or dilutes an emission of air contaminant which would otherwise violate an air pollution control regulation.~~

~~(g) Severability. If any provision of any regulation or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or application of any other part of such regulation or any other regulation which can be given effect without the invalid provision or application, and to this end the provisions of all regulations and the various applications thereof are declared to be severable.~~

1. Concealment or dilution. No owner or operator may install or use a device or means that conceals or dilutes emissions, which would otherwise violate a federal or state air pollution control rule, without reducing the total amount of pollutant emitted.

2. Dispersion techniques. An owner or operator may only use dispersion techniques allowed under the Clean Air Act, United States Code, title 42, section 7423, as amended, and implemented in Code of Federal Regulations, title 40, parts 51.1 (ii) and 51.12 (j)-(1) (1982) to calculate compliance with the ambient air quality standards set out in 6 MCAR § 4.0001 or with the regulations regarding prevention of significant deterioration (PSD) set out in Code of Federal Regulations, title 40, part 52.21 (1982).

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ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.13-14.28 have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under § 14.18.

State Board of Education
Department of Education
Special Services Division

Adopted Temporary Rule Governing Public Library Construction Grants

The temporary rule proposed and published at *State Register*, Volume 8, Number 5, pages 144-149, August 1, 1983 (8 S.R. 144) is adopted with the following modifications:

5 MCAR § 1.0807 [Temporary] Public library construction grants.

C. Application contents. The application must include the following:

1. A copy of:

c. a building program ~~statement~~. This is a guide for the project's architect to the purposes, functions, and operations of the library building that is to result from the project in terms of space and environmental requirements and characteristics and relationships among spaces within the library building;

d. when the project involves new construction or renovation of an existing building for new use as a public library, a report of a library building consultant. The consultant may be an employee of the applicant's library system and must be a professional librarian with at least a master's degree in library science, five years of public library experience, and the experience of having supervised the planning and construction of at least ~~two~~ one public library building within the past ~~five~~ three years;

g. preliminary plans for the project, including a site plan and vicinity maps, subsurface soil analysis, ~~and preliminary design drawings~~ schematic design studies, and outlined specifications prepared by a Minnesota registered architect;

G. Minimum project sizes.

1. For new construction ~~and for renovation of an existing building for use as a public library,~~ the minimum project size is a total project cost of at least $50,000 ~~and a~~. The resultant building ~~of at least 2,500 square feet.~~ shall have a minimum total floor space in relation to population to be served as follows:

Population	Minimum Total Floor Space
Up to 4,999	2,500 square feet or 0.7 square feet per capita, whichever is greater
5,000-9,999	3,500 square feet or 0.7 square feet per capita, whichever is greater
10,000-24,999	7,000 square feet or 0.7 square feet per capita, whichever is greater
25,000-49,999	15,000 square feet or 0.6 square feet per capita, whichever is greater
50,000 and above	0.6 square feet per capita

If library functions such as acquisitions, cataloging, and processing are provided elsewhere, the minimum total floor space may be reduced by five percent. If a community meeting room is available for library use in a nonlibrary portion of the building or in an adjacent building, or if heating and cooling equipment are housed outside the library building, or both, the minimum total floor space may be reduced by five percent.

2. For ~~an~~ renovation of an existing building for use as a public library, addition to a public library building, renovation of

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Minn. Rule APC 2, Definitions, Abbreviations, Applicability of Standards, Access to Premises, Variances, Circumvention, Severability to be retitled Definitions, Abbreviations, Applicability of Standards, Opacity Standard Adjustment and Circumvention

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (Agency or MPCA) on the 28th day of February, 1984. After affording all interested persons the 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, after considering all of the evidence adduced upon the records, files and proceedings herein, the Agency, being fully advised in the premises, hereby adopts the following Findings of Fact and Conclusions.

FINDINGS OF FACT

1. The Agency published its notice of intent to adopt the above-captioned amendment, together with the proposed amendments, in the State Register on October 17, 1983 (8 S.R. 682).

2. On October 17, 1983, 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. §14.14 (1982).

3. The notice of the Agency's intent to amend the rules afforded all interested persons at least 30 days to submit data

and views on the proposed amendments and to request a hearing on the proposed amendments. The notice was in all respects in compliance with the requirements of Minn. Stat. § 14.22 (1982).

4. The Agency prepared a Statement of Need and Reasonableness and made it available to the public upon the date of mailing of the notice of intent to adopt the rules.

5. The 30 day comment period, as set out in the notice, expired on November 17, 1983.

6. During the comment period, the Agency received seven identical requests for hearing. The seven persons submitting these requests were all represented by the North American Water Office which, by letter dated February 10, 1984, withdrew all the requests for hearing. The MPCA received no requests for hearing other than the ones which have been withdrawn.

7. During the comment period, the Agency received the comments from the U.S. Environmental Protection Agency (EPA); U.S. Steel; Pickands Mather and Company; 3M and the MPCA staff. The MPCA's findings regarding each of these comments is set forth in findings 8-12, below.

8. EPA submitted a letter, dated November 10, 1983, and received by the MPCA on November 14, 1983. In this letter, EPA made two comments:

<u>The proposed incorporation of the federal tall stack regulations</u>

First, EPA commented that the MPCA should expand the references to the federal tall stack regulations to include a

more complete listing of the applicable regulations. However, since the time of EPA's comment, the U.S. Court of Appeals for the District of Columbia Circuit struck down EPA's tall stack regulations. See Sierra Club and Natural Resources Defense Council, Inc. v. EPA (Court File No. 82-1384) and Commonwealth of Pennsylvania v. EPA (Court File No. 82-1412), slip op. (D.C. Cir. October 11, 1983). In light of this Court decision, the MPCA finds that it is reasonable to withdraw all amendments relating to the federal tall stack regulations and, therefore, deletes proposed section E.2. from the adopted amendments and renumbers E.1. accordingly.

The proposed opacity adjustment amendments

Second, EPA commented that the proposed opacity adjustment amendments would be acceptable provided that: (a) in those instances in which the opacity standards function as Reasonably Available Control Technology (RACT), the State must not permit a relaxation in the opacity limits for boilers and (b) the State must establish a specific procedure, acceptable to EPA, for ensuring that opacity adjustments are, in fact, established at the most restrictive level which the performance tests demonstrate. (Section D.3. of the proposed amended rule states that "[t]he agency shall set an adjusted opacity standard at the most restrictive level which the performance tests . . . demonstrate the emission source is capable of meeting . . . ." EPA simply seeks assurance that this will be the practice of the MPCA.)

The comments of EPA in regard to the opacity adjustment section relate to the MPCA's implementation of the rule, rather than to the actual requirements of the rule itself. The MPCA staff have had several conversations with EPA in this regard, and have satisfied EPA that its concerns can be addressed adequately through the State Implementation Plan (SIP) submittal process established under the Clear Air Act, 42 U.S.C. § 7410. (The adopted amendments to Minn. Rule APC 2 will be submitted to EPA as a SIP submittal under the Clean Air Act. EPA is satisfied that its concerns can be adequately addressed in the narrative portion of that SIP submittal.)

In light of the above, the MPCA concludes that no change in the proposed amendments are needed to satisfy this concern of EPA.

9 U.S. Steel made an oral comment to the MPCA staff on November 15, 1983. That comment was memorialized in an MPCA staff memorandum to the file, dated November 16, 1983, and submitted into the record on that date. (U.S. Steel's comment was later confirmed by a letter from U.S. Steel dated November 16, 1983, and received by the MPCA on November 21, 1983.)

U.S. Steel commented that the proposed amendments could be read to disallow opacity adjustments if more than one emission source within a total emission facility are not meeting the opacity standards. To remedy this ambiguity, U.S. Steel suggested language revising section D.1.b. of the proposed amended rule.

The MPCA agrees that the proposed rule needed to be clarified and basically accepts U.S. Steel's proposal. However, the MPCA finds that U.S. Steel's proposed revision could be further clarified and, instead of U.S. Steel's proposal, adopts the following modication to the proposed amendments:

D. Opacity standard adjustment.

1. Application for permit modification. An owner or operator of an emission facility may file an application for a permit modification under Minnesota rule APC 3 for adjustment of the opacity standard applicable to the emission source. In addition to the items required under Minnesota rule APC 3, the application must contain data that demonstrates that:

a. [No change]

b. the total emission facility is in compliance with all applicable standards of performance except the opacity standard at the emission ~~source for which adjustment is being sought~~ sources for which adjustments are being sought or have already been permitted by the agency; and

c. [No change]

10. Pickands Mather made four oral comments to the MPCA staff on November 15, 1983. Those comments were memorialized in an MPCA staff memorandum to the file, dated November 16, 1983, and submitted into the record on that date. (Pickands Mather's four comments were later confirmed by a letter from Pickands Mather dated November 17, 1983, and received by the MPCA on November 21, 1983. In that letter, Pickands Mather also raised a fifth comment):

The Definition of the Term Emission

First, Pickands Mather stated that:

We are concerned that the term "emission," which is not defined in the rule, is subject to an interpretation which

would be too broad. It should be defined so as to connect it with particulate matter and to disassociate it from steam or water vapor.

Pickands Mather's comment implies that the definition of "emission" as used in the proposed amendments applies only to particulate matter. This is not true. Minn. Rule APC 2 as it exists and as it is proposed to be amended is a background rule of the MPCA and defines a number of terms which are used throughout the MPCA air quality rules. Thus, the definition of "emissions" is intentionally general in nature and does not only refer to particulate matter. Therefore, the Agency disagrees with Pickands Mather's comment that the definition of emissions as used in the rule is "too broad."

Further, the Agency finds that Pickands Mather's concern seems less related to the term "emissions" than it does to the way in which the opacity of a particulate plume is determined. Steam and water vapor, which may accompany particulate matter in a plume, theoretically could be considered in making an opacity determination. If they were considered, the opacity of the plume would be increased. Pickands Mather's comment seems to be that the MPCA should not include steam and water vapor in making opacity readings.

As a matter of practice and as the MPCA's rules already provide, steam and water vapor are specifically excluded in determining the opacity of a plume: (1) 6 MCAR § 4.0021B.7.a. provides that "Opacity readings of portions of plumes which contain condensed, uncombined water vapor shall not be used for

purposes of determining compliance with opacity standards." (2) 6 MCAR § 4.0021 B.2.i. requires that Reference Method 9 be used for determining the opacity of a plume. Reference Method 9 provides that "Opacity observations shall be made at the point of greatest opacity in that portion of the plume where condensed water vapor is not present." These two provisions make it plain that water vapor and steam are not used in determining the opacity of a plume and Pickands Mather's concern is already fully addressed in the existing rules of the MPCA. The Agency, consequently, finds that there is no need to revise the proposed amendments.

Ambiguity in Section D.1. of the Proposed Amendments

Second, Pickands Mather commented that:

> The reference to "emission source" in paragraph D.1. could be restrictively interpreted to require a permit modification for each individual stack within a facility. We feel that the reference should be changed to read "emission source or sources."

This concern is the same as that expressed by U.S. Steel and is answered in Finding 9, above.

Use of Opacity to Measure Fugitive Emissions

Third, Pickands Mather commented that:

> We object to the new definition of fugitive emissions to the extent that it implies that visual opacity readings are a reliable method of measurement. . .

Fugitive emissions, like point source emissions, are required to meet specified opacity limitations. Reference Method 9, which establishes procedures for visually determining the opacity of a source, is the only method available for determining the

compliance of a fugitive emission source with its opacity limitations. If the Agency were to agree with Pickands Mather's comment, there would be no mechanism for determining the compliance of a fugitive emission source.

Since the Agency believes that opacity can be reliably determined using Reference Method 9, the staff disagree with Pickands Mather's comment. Further, the proposed amendments are consistent with federal rules which also provide for the use of visual opacity readings as a method for measuring the opacity of a fugitive emissions source. See e.g. 40 C.F.R. Part 60.302, which establishes opacity standards for fugitive emissions and 40 C.F.R Part 60.11(b) which makes visual opacity readings the method for measuring opacity.

For these reasons, the Agency disagrees with Pickands Mather's third comment.

Consistency of Minn. Rule APC 2 and Minn. Rule APC 1

Fourth, Pickands Mather commented that:

> The definition of standard conditions which contains a temperature of 20 degrees Celsius is inconsistent with the standard of 25 degrees Celsius in APC 1.

Pickands Mather's comment that Minn. Rule APC 2 is inconsistent with Minn. Rule APC 1 is apparently based on its review of a version of Minn. Rule APC 1 which is no longer current. The prior version of Minn. Rule APC 1 (the one in existence before the 1982 amendments) contained a footnote that provided that "all measurements of ambient air quality are corrected to a reference temperature of 25° C. . . ." When

Minn. Rule APC 1 was amended in 1982, all footnotes (including the reference to "25° C") were deleted. Thus, there is no inconsistency between the current version of Minn. Rule APC 1 and Minn. Rule APC 2.

Further, it should be noted that the MPCA has neither proposed nor adopted an change in the definition of "standard conditions." That definition remains the same as in the version of Minn. Rule APC 2 preceding the adoption of these amendments.

Eliminate Opacity as a Measurement Technique

Fifth, Pickands Mather commented that:

> Rather than amending the rules to make opacity limits flexible according to specific circumstances, we feel that what the MPCA should really do is eliminate opacity standards where the emission source is in compliance with other applicable standards. Opacity may be useful as an indicator when nothing else is available, but it is irrelevant when stack testing shows that a source is operating within the standards of performance and ambient standards are not being violated.

(This comment was not made in precisely these words duirng the comment period, but is really a variation on Pickand Mather's third comment. Since the comment simply raises a philosophical issue related to the use of opacity as a measurement technique, the MPCA finds it useful and reasonable to respond to the comment in these findings.)

If companies were required to perform stack tests on a continuous basis, the Agency might agree with the position stated by Pickands Mather. However, at present, stack tests are only required to be performed, at most, every six months, and sometimes far less frequently than that. Given this fact,

opacity serves as a general indicator, even when some other test method is available to confirm the concentration of pollutants being emitted.

Further, the operation of the facility can influence the results of stack emissions. For instance, if waste is fed into an incinerator at a faster rate than the incinerator is designed to handle, the emissions from that incinerator may be significantly increased. This increase in emissions may not be registered during a stack test, since the operation of the facility during stack tests are carefully monitored by the source. For this reason, opacity readings still serve as a tool which the enforcement division of the MPCA can use in determining how the facility is being operated on an everyday basis.

For the above reasons, the MPCA does not agree with Pickands Mather's claim that opacity is irrelevant.

11. 3M made one oral comment regarding the proposed amendment to the MPCA staff on November 15, 1983. That comment was memorialized in an MPCA staff memorandum to the file, dated November 15, 1983, and submitted into the record on that date. (3M later confirmed that comment by a letter dated November 18, 1983, and received by the MPCA on November 18, 1983.)

3M's comment is as follows:

> As you know from our several conversations, I have been concerned about the ramifications of the proposed addition of a definition of "emission source" to APC-2. My concern is that it defines "emission source" as a

> single emitting unit and thus prejudges the outcome of the present Supreme Court review of the Court of Appeals (D.C. Circuit) rejection of a dual source definition.

3M's comment refers to the fact that the D.C. Circuit Court of Appeals struck down the EPA's definition of "emission source" as it is used in the regulations of the EPA applicable to the growth of new sources in nonattainment and attainment areas. NRDC v. Gorsuch, 17 ERC 1825 (D.C. Cir. 1982). Under EPA's 1981 revised definition of source, it was possible for some facilities to "net out" of certain federal requirements by reducing emissions at one point in the facility to accommodate increases at another. The D.C. Circuit Court opinion referenced above did away with this possibility.

The MPCA's definitions in current rules do not operate to rewrite federal rules, nor will they necessarily be applied when future rules of the MPCA are adopted. Consequently, no change in the proposed amendments is required by 3M's comment.

12. The MPCA staff made one comment on the proposed amendments to Minn. Rule APC 2. That comment was made in a memorandum dated November 14, 1983, and submitted into the record on that date. That memorandum states that the word "or" should be made "and" in section D.3.c. of the proposed amendments. This change is shown by cross-out and underlining below:

> 3. Opacity adjustment determination and permit modification. The agency shall set an adjusted opacity standard at the most restrictive level which the performance tests conducted under 1.a. and c.

demonstrate the emission source is capable of meeting and shall modify the permit to establish the adjusted opacity standard, if the requirements of 1. and 2. are met and the total emission facility, with the adjusted opacity standard, would meet any one of the following:

a. not cause or contribute to a violation of an ambient standard;

b. have potential emissions of particulate matter of less than 25 tons per year and less than one ton per day; or

c. contribute less than one ug/m^3 to an annual ambient particulate standard violation ~~or~~ and less than five ug/m^3 to a 24-hour ambient particulate matter standard violation.

The MPCA intended the "de minimus" contribution exception set out in section D.3.c. to apply only if the contribution to both the annual and the 24-hour standards is de minimus. This intention is apparent from the general purpose of the provision and the discussion of the opacity adjustment standard set forth in the Statement of Need and Reasonableness and the MPCA concurs with the staff recommendation that the change be made.

13. The Agency adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the amendments to the rules. The Agency hereby incorporates the Statement of Need and Reasonableness into these findings.

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 intent to adopt amendments to the rules without a public hearing.

3. All relevant legal and procedural requirements of statute and rule have been complied with.

4. The modifications to the proposed rule amendments are supported by the data and views submitted to the Agency within the comment period and do not result in a substantial change in the proposed rule amendments.

MINNESOTA POLLUTION CONTROL AGENCY

Cynthia C Jepsen

CYNTHIA JEPSEN
Chairperson

for Sandra S. Gardebring

SANDRA S. GARDEBRING
Executive Director

Dated: February 28, 1984

(C)

CERTIFICATE OF AGENCY'S RESOLUTION ADOPTING RULES

I, Cynthia Jepsen, do hereby certify that I am a member and the Chairperson of the Minnesota Pollution Control Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Agency duly and properly called an held on the 28th day of February, 1984, that a quorum was present at said meeting, that a majority of those present voted for the attached resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 28th day of February, 1984.

Cynthia C Jepsen
CYNTHIA JEPSEN
Chairperson

Dean A Dahlen
Attest by one other Agency member

RESOLUTION

BE IT RESOLVED, that the Minnesota Pollution Control Agency (Agency) hereby approves and adopts the proposed amendments to Minn. Rule APC 2 as described in the attached Order Adopting Amendments;

BE IT FURTHER RESOLVED, that prior to publishing in the State Register the amendments as hereby adopted, the Executive Director is authorized to make any form changes in the rule that the Revisor of Statutes requires the Agency to make in order to obtain the Revisor's Certificate as required in Minn. Stat. § 14.08 (1982);

BE IT FURTHER RESOLVED, that the Agency adopts and authorizes the Chairperson and Executive Director to execute the attached Findings of Fact and Conclusions and Order Adopting Amendments to Minn. Rule APC 2.

STATE OF MINNESOTA
COUNTY OF RAMSEY

MINNESOTA POLLUTION
CONTROL AGENCY

In the Matter of the Proposed
Revisions to Minn. Rule APC 2,
6 MCAR 4.0002, Relating to
Definitions, Abbreviations, Applicability of Standards, Opacity Standard
Adjustment, and Circumvention.

STATEMENT OF NEED
AND REASONABLENESS

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I. Introduction

The subject of this rulemaking is the proposed amendments to an existing rule of the Minnesota Pollution Control Agency (Agency or MPCA), Minn. Rule APC 2 entitled "Definitions, Abbreviations, Applicability of Standards, Access to Premises, Variances, Circumvention, Severability". This rule will be renumbered as part of this rulemaking to correspond with the Minnesota Code of Administrative Rules (MCAR) system as 6 MCAR §4.0002 but throughout this Statement will be referred to as APC 2.

II. Legal and Historical Background

The legislature of the State of Minnesota has designated the MCPA as the state body with primary responsibility for improving air quality and for dealing with the various problems relating to air pollution. Minn. Stat. 116 (1982). Subdivision 4 of Minn. Stat. 116.07 states that the Agency has the authority to

> . . . adopt, amend and rescind regulations and standards having the force of law relating to any purpose within the provisions of Laws 1969, Chapter 1046, for the prevention, abatement or control of air pollution . . .

APC 2 was originally promulgated on July 7, 1969, and was amended on June 5, 1970, June 28, 1974 and May 7, 1976. The rule presently covers definitions, abbreviations, applicability of standards, access to premises, variances, circumvention and severability (Exhibit 1). The definitions and abbreviation which are listed in APC 2 are terms which are usually used in more than one of the State air pollution control rules. The explanation of

a term or abbreviation within APC 2 establishes a common use for the term or abbreviation and eliminates the need to redefine the term in every rule in which it is used. The section of the rule covering applicability of standards explains how certain aspects of the rules are applied to existing, new, modified, or reconstructed facilities. The section of the rule headed Access to Premises, Variances, Circumvention and Severability establish how these topics are handled by the Agency under statute authority.

In March, 1979, the Agency received from the Minnesota Association of Commerce and Industry (MACI), a petition, pursuant to Minn. Stat. §15.0415, which, among other things, requested the Agency to amend APC 2 by revising the definition of opacity and adopting a new section on adjustment of opacity guidelines for new sources (Exhibit 2). This petition triggered the review of APC 2 and the opacity standards in the air pollution control rules, Minn. Rules APC 1-41. Ultimately, the Agency responded to the petition by directing the staff to review the use of opacity in the air pollution control rules after addressing the issues raised in the petition relative to Minn. Rule APC 1.

The Agency staff made the decision to actively review all aspects of APC 2 and not limit the review to the opacity issues raised in the MACI petition.

III. Summary of the Proposed Amendments.

The existing Minn. Rule APC 2 is divided into seven major sections: (a) Definitions; (b) Abbreviations; (c) Applica-

bility of Standards of Performance; (d) Access to Premises; (e) Variances; (f) Circumvention; and (g) Severability. As proposed the amended rule would be divided into five major sections: A. Definitions; B. Abbreviations; C. Applicability of standards of performance; D. Opacity standard adjustment; and E. Circumvention. As is evident by comparison, three sections of the existing rule (Access to Premises, Variances; and Severability) are proposed to be deleted.

Several of the definitions and abbreviations in the existing rule are proposed to be clarified, others to be deleted and others to be substantively changed. There are also new definitions and abbreviations added to the proposed rule as amended.

The definitions proposed to be revised for the sole purpose of clarification (including renumbering) are the following (the numbering shown below refers to the proposed new numbers):

A.1. Agency;

A.2. Alternative Method;

A.3. Breakdown;

A.4. Commenced;

A.5. Construction;

A.6. Continuous monitoring system;

A.7. Control equipment;

A.8. Director;

A.9. Emission facility;

A.11. Equivalent method;

A.14. Minneapolis - St. Paul Air Quality Control Region;

A.16. Monitoring device;

A.19. Nitrogen oxides;

A.20. One-hour period;

A.21. Opacity;

A.22. Owner or operator;

A.23. Particulate matter;

A.24. Performance specification;

A.25. Person;

A.28. Reference method or Method;

A.29. Run;

A.30. Shutdown;

A.31. Smoke;

A.32. Standard conditions;

A.33. Standard of performance; and

A.34. Startup

The definitions proposed to be deleted in their entirety are the following (the numbering shown below refers to existing numbers):

(a)(11)	Isokinetic sampling;
(a)(12)-(22)	Method 1-11;
(a)(31)-(33)	Performance specification 1-3;
(a)(35)	Proportional sampling; and
(a)(37)	Six minute period.

The following definitions have been substantively changed in the proposed amendments to the rule (the numbering shown below refers to proposed new numbers):

A.12. Existing facility;

A.15. Modification;

A.17. New facility;

A.18. New source performance standard; and

A.27. Reconstruction.

The following new terms have been added to the rule as proposed (the numbers refer to proposed new numbers):

A.10. Emission source;

A.13. Fugitive emissions;

A.26. Potential emissions;

A.35. State air pollution control rules; and

A.36. Total emission facility.

In the abbreviation section two new abbreviations have been added, J. for joule and scf for cubic feet at standard conditions. In addition 36 abbreviations have been deleted from this section.

The changes in section C. Applicability of standards of performance, of the proposed amendments to APC 2 primarily are made to remove those provisions which constitute definitions and place them in the definitions section of the rule. The changes also involve deletion of a portion of the rule which contradicts federal requirements established by the U. S. Environmental Protection Agency (EPA) (see discussion below) and addition of language specifying which rules apply to new, modified, reconstructed or existing facilities.

Section D. of the rule as proposed is entitled Opacity standard adjustment and is an entirely new section in the rule.

The section would allow the owner or operator of a facility that is meeting emission standards that limit the emissions from its facility to apply for and receive a relaxed opacity limitation under certain circumstances. The new language is drafted in such a manner as to make available the relaxed opacity limitation only in instances in which the emissions from the facility would be controlled by other air pollution control rules and the facility would not cause or significantly contribute to a violation of the ambient air quality standards.

The section of the rule entitled Circumvention has been expanded to add a new provision incorporating the federal "tall stack" requirements established in the Clean Air Act.

IV. Need for the Proposed Amendments.

Minn. Stat. §14.14 Subd. 2 (1982) requires the agency to make an affirmative presentation of facts establishing the need for and the reasonableness of the rules or amendments proposed. In general terms this means that the agency must set forth the reasons for its proposal and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate tests, need has come to mean that there is a problem that exists that requires administrative attention and reasonableness means that the Agency's proposal is a sensible solution to the problem.

The problem in this case is that the rule has become outdated because it has not been amended during the past seven years. During this time period other rules impacted by this rule

have changed, programs have changed and new information has become available. The Agency staff believes that this problem establishes the need for the proposed revisions to APC 2.

V. Reasonableness of the Proposed Amendments.

A. Definitions. The terms defined in APC 2 are terms common to more than one of the state air pollution control rules or are used as an integral part of APC 2 itself. Following is a statement of the reasonableness of the action taken in deleting, modifying or adding terms and associated definitions, other than changes as to form (e.g., renumbering or changes by the Revisor's Office), for the terms listed in section A.:

"Alternative method" The definition of alternative method is proposed to be modified by changing the approving authority of an alternative testing method from the Agency Board to the director who is the chief executive officer of the agency. This is reasonable because it provides for a quicker response to a technical determination.

"Breakdown" The definition of breakdown is proposed to be clarified by replacing the phrase "or of a process to operate in a normal or usual manner" with "to operate as designed". This change is reasonable for two reasons. First, a process cannot breakdown, only the equipment which is used to carry out the process can actually fail to operate in a proper manner and second, the change to "operate as design" clarifies what is meant by "in a normal or usual manner". The second sentence of the definition which states, "Failures that are caused entirely or in

part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered breakdowns." is proposed to be deleted because it is presently covered in 6 MCAR §4.0021 where it is more properly addressed (Exhibit 3).

"Commenced" The definition for commenced is proposed to be modified by adding the word "reconstruction" following the terms "construction" and "modification". This action is reasonable because it moves toward establishing consistency throughout the rules with respect to the general use of the words construction, modification or reconstruction as a common thought or idea. The term was also moved to place it in alphabetical order.

"Construction" The definition of construction is proposed to be modified by dropping the term "affected facility". This is necessary because the term "affected facility" is being eliminated from the rule as proposed. For a discussion of the reasonableness of this action see page 18.

"Continuous monitoring system" The definition for a continuous monitoring system is proposed to be clarified with the addition of the word "continuous" within the text of the definition. This action is reasonable because the term continuous describes the fundamental nature of the monitoring intended to be required and is therefore critical to a complete understanding of what is required in the use of a continuous monitoring system.

"Control equipment" The definition for this term is proposed to be corrected by changing the term "air containment treatment facility" to "air contaminant treatment facility" as is specified in Minn. Stat., section 116.06, subdivision 6.

"Director" The definition for director is proposed to be modified to accurately reflect the wording used in the statute and to make reference to the subdivision of the statute which establishes the position.

"Emission facility" The definition of the term emission facility is proposed to be modified by deleting the words "building, facility, installation". This change is being proposed to make the definition consistent with the definition in Minn. Stat., section 116.06, subdivision 5. It is necessary to repeat the statute definition within the rule due to its importance in understanding the applicability of the state air pollution control rules to various types of facilities throughout the state. Authorization for duplication of the statutory language in this specific situation has been granted by the Office of the Revisor.

"Emission source" The term emission source is a new term used in the rule to distinguish a single emission source within a total emission facility from other emission sources within the same facility. The term along with the new term "Total emission facility" are subsets of the term "Emission facility" which does not provide for a distinction between a single source and an entire facility. The addition of the terms is reasonable in that they provide clarification to the

identification of different aspects of an emission facility without conflicting with the statutory definition of "emission facility" as defined in Minn. Stat. section 116.06, subdivision 5.

"Equivalent method" The definition of equivalent method is proposed to be modified by changing the approving authority of an equivalent test method from the Agency Board to the director. See "Alternative method" on page 7 for a statement of the reasonableness of the proposed modification.

"Isokinetic sampling" This term is proposed to be deleted from the definition section of APC 2 because all other references to the term in other state air pollution control rules have been deleted in earlier amendments to those rules.

"Method 1 - Method 11" See the discussion of "Reference method or Method" on page 15.

"Existing facility" The definition for existing facility is currently contained in the Applicability of Standards of Performance section of the existing APC 2. In the proposed amendments to the rule all defined terms are proposed to be moved to the definition section of the rule. This move is reasonable because it improves the organizational structure of the rule. The definitions for "existing facility" and "new facility" are also proposed to be modified to correct a conflict between the defined terms and the use of these terms in the state air pollution control rules. In the existing APC 2 the determination of whether a facility is existing or new is based on the effective date of the federal New Source Performance Standards. However, the text in some of the state air pollution control

rules implies that the determination of whether a facility is existing or new is based on the promulgation date of the state air pollution control rule. An example of this can be seen in APC 29 which establishes standards of performance for grain handling facilities.

The federal New Source Performance Standards for grain handling facilities became effective on August 3, 1978 which, according to APC 2, would be the date that is used in determining whether a facility is new or exisitng. However, APC 29, which was promulgated March 12, 1976 establishes standards for existing and new facilities and the determination of whether a facility must meet the standards for a new or existing facility has been based on the March 12, 1976 promulgation date.

The proposed amendments to APC 2 define "existing facility" and "new facility" based on the effective date of the federal rule, if one is applicable, and, if one is not, based on the effective date of the state rule. This action is reasonable because it eliminates the conflict between the existing APC 2 and the other state air pollution control rules and is consistent with the intent and enforcement of the existing rules.

"Fugitive emissions" The term fugitive emissions and the associated definition are new in the rule as proposed. The definition for the term is taken primarily from the definition used by the U. S. EPA in 40 CFR Part 52.21 (b)(20) (Exhibit 4). The inclusion of the term in the proposed APC 2 is reasonable because it is a term common to more than one of the state air pollution control rules and has a specific meaning in the area of

air pollution control. The definition as adopted from the federal rules is reasonable because it provides a clear meaning of the term. The definition in the proposed APC 2 is further clarified with the addition of the phrase "at which a measurement of the emissions can be made using a Reference method other than Method 9". This phrase specifies what is meant by a "functionally equivalent opening" as used in the definition.

"Minneapolis - St. Paul Air Quality Control Region" For clarification purposes the word "territorial" is proposed to be dropped from the definition of Minneapolis - St. Paul Air Quality Control Region.

"Modification" The definition for modification is currently contained in the Applicability of Standards of Performance section of the existing APC 2. As is proposed to be done with all defined terms the term modification and associated definition are proposed to be moved to Section A. Definitions. The definition for modification is proposed to be changed in the amended rule by excluding from the definition those activities which are provided for in an applicable permit, stipulation agreement or air pollution control rule. This addition to the definition is reasonable because the exclusion is for changes which have already undergone review and are consistent wih the air quality control plan for the state.

"Monitoring device" The definition for monitoring device is proposed to be expanded to include the equipment used to measure and record control equipment parameters as well as process parameters. This amendment to the rule is reasonable

because the technological development of control equipment has made it as important to measure parameters on the control equipment, as well as on process equipment, to determine proper operation.

"New facility" See discussion of "Existing facility" on page 10.

"New Source Performance Standard" The definition for this term is proposed to be amended to reference the section of the Clean Air Act which gives the Administrator of the U.S. EPA the authority to establish standards of performance for new stationary sources. The amendment to the definition of new source performance standard in APC 2 is reasonable because it refers to the commonly understood meaning of the term and therefore will reduce confusion which arose under the existing definition.

"Nitrogen oxides" No changes are proposed in the term or definition.

"One-hour period" No changes are proposed in the term or definition.

"Opacity" No changes are proposed in the term or definition.

"Owner or operator" The definition of this term is proposed to be modified by dropping the term "affected facility". This is necessary because the term "affected facility" has been eliminated from the rule as proposed. For a discussion of the reasonableness of this action see page 18.

"Particulate matter" In the proposed amendments to the rule the word "uncombined" is proposed to be dropped from the definition of particulate matter. This action is reasonable because the word "uncombined" is not commonly understood and deletion of the term from the definition will not change the intended interpretation of the term.

"Performance Specification" In the existing rule three separate definitions are given for Performance Specifications 1, 2, and 3. In the proposed amendments to the rule the three definitions are proposed to be combined under the term "Performance Specification" which is defined to reference all the performance specifications which are established in Appendix B of the Code of Federal Regulations, title 40, part 60. This proposed change is reasonable becuase it condenses the definitions of the three specific Perfomance Specifications while still providing the information necessay to understand and find reference to the Performance Specifications as established in the Code of Federal Regulations.

"Person" No changes are proposed in the term or definition.

"Proportional sampling" The term proportional sampling is proposed to be deleted from the definition section of APC 2 because the term is no longer used in the state air pollution control rules.

"Potential emissions" This term is a new term which is proposed to be used in the amendments to APC 2 and also in the amended permit rule currently being drafted by the Agency. The

term as defined delineates the specific parameters which will be considered when determining emissions from a facility. The addition of the term as defined is reasonable because it provides clarification of the parameters which will be used in determining emissions so that a common and comparable emission factor is available for all calculations and decisionmaking processes. The definition used is that developed by the U.S. EPA and published in the Code of Federal Regulation, title 40, part 51.24 (b)(4) (Exhibit 5). Use of that definition will enhance consistency between the federal and state programs.

"Reconstruction" The term "reconstruction" and the definition are proposed to be moved from the Applicability of Standards of Performance section of the existing rule to the Definition section of the proposed rule, for consistency purposes.

"Reference method or Method" In the proposed amendments to APC 2 the list of Methods 1-11 is proposed to be deleted and replaced with the terms "Reference method or Method". The change is made for consolidation purposes and accomplishes that without removing critical information from the definitions. The definition provides reference to the Code of Federal Regulation, title 40, part 60, appendix A, where the testing methods are presented.

"Run" The term "run" is proposed to be moved to place it in alphabetical order. Also the second sentence of the definition is proposed to be dropped. This deletion is proposed because it is already covered under 6 MCAR §4.0021 B.3.a. where it more properly belongs.

"Shutdown" Two changes are proposed to be made in the definition of the term "shutdown". First, the reference to affected facility is proposed to be deleted for the reasons expressed on page 18. Second, control equipment is proposed to be added to the definition to clarify what equipment is included in determining whether a shutdown has occurred. It is reasonable to add control equipment to the definition of shutdown because that definition is intended to describe all activities which may increase emissions due to the cessation of any activity or equipment at an emission facility.

"Six minute period" The term six minute period is proposed to be deleted from the definition section of APC 2 because the term is no longer used in the state air pollution control rules.

"Smoke" No changes are proposed in the term or definition.

"Standard conditions" No changes are proposed in the term or definition.

"Standard of performance" The definition is proposed to be amended by deleting the word "affected" and adding the word "emission". The reasonableness of this amendment is discussed on page 18.

"Startup" The term startup and the associated definition is proposed to be changed by placing the term in alphabetical order and making the deletions related to the term "affected facility" as discussed on page 18.

"State air pollution control rules" This term is proposed to be added and defined to eliminate the need to continually make reference to 6 MCAR §4.0001-4.0041 (Minnesota Rules APC 1-41). This approach to shortening the state's rules has been recommended by the Office of the Revisor and makes the inclusion of this definition reasonable.

"Total emission facility" This is a new term and definition used to distinguish the difference between all sources of emissions at a facility and a single emission source. See the discussion on page 9 under "emission source".

B. Abbreviations. The abbreviations listed and defined in APC 2 as proposed to be amended are utilized throughout the state air pollution control rules. The amendments proposed in this section of the rule involve the deletion of 36 abbreviations and the addition of two new ones.

The large number of abbreviations proposed to be deleted fall into one of two categories: (1) they are no longer or never have been used in the state air pollution control rules; or (2) they are common abbreviations. Because this rule is designed to provide assistance in understanding the other state air pollution control rules there is no need to list abbreviations which are not used and therefore it is reasonable to delete them from this section. With regard to the usage of common abbreviations (e.g., avg.), the instructions in the Revisor's Office, Temporary Rule Drafting Mannual (Exhibit 6) concerning definitions was applied to the listing of abbreviations. The basic directive is to not define terms that are self-explanatory. It is reasonable to

apply this same concept to abbreviations and not to explain common abbreviations.

The two new abbreviations added to this section of the rule are J - joule and scf - cubic feet at standard conditions. These abbreviated terms have been added to the rules since the latest amendments to APC 2.

C. Applicability of standards of performance. The existing section (c) of APC 2 is proposed to be deleted in its entirety and replaced with three new subdivisions: Existing facility, New facility, and Exemptions. In part the existing material is being deleted because section (c) currently includes far more than a statement of the applicability of the standards of performance (see discusion below). The proposed replacement to the rule only describes the applicability of the standards of perfomance and thereby corrects the structural deficiencies in the previous version of the rule..

In this portion of the Statement of Need and Reasonableness the Agency first sets forth its reasons for deleting the existing section (c) and then explains its reasons for adding the proposed new language.

Section (c)(1) of the existing Minn. Rule APC 2 defines the term "affected facility". The Agency proposes to replace this term with three other terms - "emission facility", "new facility", and "existing facility". In general, the use of these terms rather than affected facilty provides a more precise and meaningful description of the facilities required to meet various air quality standards. In addition, the inclusion of these three

terms in the definitions section rather than in the applicability section is more appropriate and is consequently reasonable.

Section (c)(2) and (c)(3) of the existing APC 2 define the term "existing facility" and "new facility". The Agency proposes to move these terms to the definition section (for the reasons described above) and to amend these terms as described in other portions of the Statement of Need and Reasonableness. See page 10.

Section (c)(4) of the existing APC 2 establishes the effective dates of the federal New Source Performance Standards. These dates were used in conjunction with the definitions for "existing facilities" and "new facilities" in determining whether a facility is required to meet new source performance standards. With the change in the definitions for "existing facilities" and "new facilities" as discussed above the system for determining the effective date of new source requirements has been simplified and the existing section (c)(4) is deleted. The simplified system is accomplished by defining "new facility" to mean those facilities on which construction, modification or reconstruction was commenced after the effective date of the New Source Performance Standard (as defined in the proposed amendments to the rule - see A.18.) or state air pollution control rule, whichever is applicable. See proposed A.17. Thus, the proposed deletion of Section (c)(4) is reasonable.

Section (c)(5) of the existing APC 2 defines and addresses the requirements applicable to modifications. The definition of the term, set out in existing (c)(5)(aa) is

proposed to be moved to the definitions section and amended. See proposed amendment A.15. The reasonableness of that amendment is decribed above at page 12.

Section (c)(5)(bb) defines the applicability of new source requirements to modifications of facilities. As drafted, this section is somewhat confusing and is proposed to be clarified and amended. The amended language is contained in proposed C.2. and is further discussed below.

Section (c)(5)(cc) of the existing rule requires that emission rates be expressed in a specific form (kg/hr) and describes the methods to be used in determining the emission rate of a facility. The Agency proposes to delete the requirement that emission rates be expressed in kg/hr because the Agency is willing to accept other units of measurements. For two reasons, the Agency also proposes to delete the remainder of this section which establishes methods to be used in determining emission rates. First, the listing of methods provided in the existing rule is not complete and the agency is willing to accept any method which is based on good engineering practices. Second, other rules of the Agency, 6 MCAR §4.0021, and U.S. EPA 40 CFR Part 60, Appendices A and C, set forth test methods and procedures which establish the level of analysis necessary to demonstrate to the Agency that a change in an emission rate has occurred. Thus, the deletion of all of section (c)(5)(cc) is reasonable because it will result in greater latitude for a permit applicant in documenting the emission rate for its facility while preserving (through other existing rules) a

statement of the level of detail needed by the Agency in reviewing documentation regarding the emission rates of a facility.

Section (c)(5)(dd) of the existing rule is proposed to be deleted. That section currently allows sources to "bubble" out of new source requirements. What this means is that, under existing section (c)(5)(dd), if a facility decreases its emissions from one emission source and simultaneously increases its emissions from another source, that facility can avoid new source requirements if the decrease is larger than the increase.

The U.S. EPA published in the December 11, 1979 Federal Register at pages 71780-71787 (Exhibit 7) a Policy Statement in which the "bubble" concept is established and explained. On April 7, 1982 in the Federal Register at pages 15076-15086 (Exhibit 13) a Proposed Policy Statement was published which is to replace the original "bubble" policy published on December 11, 1979. Both of these policy statements contain specific language that disallows the use of the "bubble" concept to avoid application of the Federal New Source Performance Standards. To the extent that a new facility in Minnesota is subject to Federal New Source Performance Standards, the EPA Policy Statement preempts section (c)(5)(dd). In addition, section (c)(5)(dd) has never been used in the history of the existing APC 2. If a situation would arise where a facility could use the "bubble" concept to avoid new source requirements under the state air pollution control rules the "bubble" could be obtained under the existing variance rules. (Exhibit 8) Given the inconsistency

between (c)(5)(dd) and the EPA Policy Statement and the fact that this section of the rule has not been used, it is reasonable to delete all of (c)(5)(dd).

Section (c)(5)(ee) of the existing rule lists the following seven activities which the rule characterizes as modifications and then provides that these seven activities are exempt from the requirements ordinarily applicable to modifications:

(i) Maintenance, repair, and replacement which the Agency determines to be routine.

(ii) An increase in production rate, if that increase can be accomplished without a major capital expenditure. "Capital expenditure" means an expenditure for a physical or operational change to an existing facility which exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in Internal Revenue Service Publication 534 and the existing facility's basis, as defined by section 1012 of the Internal Revenue Code.

(iii) An increase in the hours or production.

(iv) Use of an alternative fuel or raw material if, prior to the effective date of the application new source performance standard, the existing facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if provisions for that use were included in the final construction specifications.

(v) Conversion to coal required by state or federal law for energy considerations.

(vi) The addition or use of any control equipment, except when control equipment is replaced with other control equipment which the Agency determines to be less environmentally beneficial.

(vii) The relocation or change in ownership of an existing facility.

Subsection (c)(5)(ee)(i), (vi) and (vii) are proposed to be deleted because they describe activities which do not result in increases in emissions and therefore are not modifications as defined in proposed A.15. of Minn. Rule APC 2.

Subsection (c)(5)(ee)(ii) is proposed to be deleted because it has never been used. Further, to the extent that persons wish to avoid application of new source performance standards, such request is more appropriately handled as a vairance request under the Agency's variance rules (Exhibit 8).

Subsection (c)(5)(ee)(iii) is proposed to be deleted because the Agency believes that increases in hours of production which are not covered by a permit should be subject to new source requirements. The definition for modification as proposed (see A.15.) does not include any changes at a facility which are covered by a permit. This approach to the issue of hours of production is reasonable because as permits are drafted by the Division of Air Quality if a specific restriction is not placed on the hours of production, in the permit, it is interpreted that the facility can be operated 24 hours per day, 365 days per year. If a restriction on the hours of production is placed in a permit it is there to avoid degredation of the ambient air quality and an increase in hours of production would threaten the air

quality. For this reason the proposed deletion of (c)(5)(ee)(iii) is reasonable.

Section (c)(5)(e)(iv) is proposed to be amended and made part of the new C.3. See discussion regarding Exceptions, below.

Section (c)(5)(ee)(v) is proposed to be deleted because it was intended simply to duplicate the exemption provided in other federal laws. See Section 125 of the Clean Air Act (Exhibit 9) These exemptions would apply regardless of the language of APC 2. To avoid possible inconsistency with those laws if they are amended, this section is proposed to be deleted.

Section (c)(6) of the existing APC 2 in subsection (aa) provides that those activities constituting reconstruction shall meet new source requirements, subsection (bb) defines the term reconstruction and establishes notification requirements for facilities undergoing reconstruction, and subsection (cc) describes those factors which the Agency is to consider in determining whether an existing facility has been reconstructed.

Subsection (c)(6)(aa), providing that reconstructions shall meet new source performance standards is proposed to be retained and clarified in the new C.2. (see discussion below).

As with all other definitions, the definition of reconstruction is proposed to be moved to the definitions section. See proposed new section A.27.

Subsection (c)(6)(cc) is proposed to be deleted because the criteria established in that section are unrelated to the method for determining whether a change in a facility constitutes

reconstruction as the term is defined in A.27. Thus, the deletion of (c)(6)(cc) is reasonable.

The proposed new section C. of APC 2 includes three subdivisions: 1. Existing facility; 2. New facility; and, 3. Exceptions. These three subdivisions explain which rules of the Agency are applicable to existing facilities, new facilities, modifications and reconstructions, and also establishes an exemption for those modifications resulting from the use of alternative fuels or raw materials. This applicability section does not constitute a change from the requirements of existing APC 2, but merely amounts to a reorganization and clarification of the current requirements of the rule. This reorganization and clarification are reasonable because they make the rule more understandable to those persons impacted by the rule.

D. Access to Premises and Information. Section (d) of the existing APC 2 requires the owner and operator of an emission facility to allow the Agency access to premises and information. This section is proposed to be deleted because it merely duplicates Minn. Stat. Sections 115.04 subd. 3 and 116.091. Such duplication of statutory language is contrary to Minn. Stat. Section 14.07 subd. 5 (1982).

E. Variances. Section (e) of the existing APC 2 establishes procedures for obtaining variances from air quality rules. Section (e) is proposed to be deleted because the subject matter is fully covered in 6 MCAR §4.3007 Variances (Exhibit 8). Becuase it is addressed in the MPCA Rules of Procedure it is reasonable to delete it from APC 2.

F. Opacity standard adjustment. Section D. of the proposed revisions to APC 2 is all new material. If adopted, Section D. would allow the owner or operator of an emission facility that is otherwise meeting standards that limit emissions from the facility to apply for and receive a relaxed opacity limitation under certain circumstances. The amendment is drafted in such a manner as to ensure that a facility receiving an adjusted opacity limitation will be controlled by another air pollution control rule and would not cause or significantly contribute to a violation of an ambient air quality standard.

The adoption of an opacity standard adjustment procedure is reasonable because the basic function of the state air pollution control rules and associated programs are not being compromised. The basis for the air pollution control program is the ambient air quality standards established in 6 MCAR §4.0001. The other state air pollution control rules establish procedures and emission limitations for emission facilities and are designed to attain and maintain the ambient air quality standards. Historically the emission limitations established for various air emission sources have undergone detailed review to assure the proper level of control is established to protect the ambient air quality standards. Unfortunately the same detailed review of opacity limits has not occurred and situations have arisen where the opacity limit does not correspond with the emission limit. In these situations even though a facility is in compliance with the emission limitation which has been carefully established for the facility they may violate the opacity limit which would then

require additional control of the particulate emissions. This is very evident in two of the existing state air pollution control rules, 6 MCAR §4.0004 and APC 24. In 6 MCAR §4.0004 which establishes standards for fossil fuel burning equipment two different standards are established for particulate emissions from existing facilities depending on whether the facility is in Duluth or the Minneapolis - St. Paul Air Quality Control Region or in other areas of the State (the emission limitations are 0.4 and 0.6 lbs. per million BTU respectively). Even though the standard for the outstate facilities is significantly less restrictive than the standard for Duluth or the Minneapolis - St. Paul Air Quality Control Region all existing facilities in the state must meet a 20 percent opacity limitation.

In APC 24 which establishes standards of performance for petroleum refineries both existing and new facilites must meet a 30 percent opacity limitation but the emission limitations are 10 times more restrictive for a new facility than an existing facility.

Another reason for adjusting opacity limits arises due to the fact that the physical characteristics of an emission point (smoke stack) can affect the opacity of the plume. This is most evident in examining the diameter of a smoke stack. Because opacity is the degree to which emissions reduce the transmission of light and obscure the view of an object in the background the greater the path of particulate emissions through which the light must travel the greater the opacity will be even with a constant rate of emissions. This means that facilities with large

diameter stacks are penalized relative to opacity measurements. The U.S. EPA in 40 CFR Part 60.11(e) has addressed this concern by providing an affected facility the opportunity to establish its opacity limitation based on the initial performance test conducted at the facility (Exhibit 10).

Based on these facts it is reasonable to provide for an opacity adjustment procedure and the method proposed in the amendments to APC 2 address the problems stated above but retains control of all affected emission sources through the emission limitations and the ambient air quality standards.

Section D.1. of APC 2 as proposed establishes how a person should make application for an opacity adjustment and the information which must be included in the application. Three specific data requirements are listed: (1) demonstration of compliance of the specific emission source in question with standards of performance for particulate matter and all other standards of performance except the opacity standard; (2) demonstration of compliance by the total emission facility with all standards except the opacity limit for the specific emission source in question; and (3) demonstration that the facility was operated in such a manner as to minimize opacity emissions. The request for this information is reasonable because it will allow the Agency to determine if the violations of the opacity standard are related to pollution concerns other than aesthetic matters. Opacity can be an indication that health and welfare regulations are being violated. Where, however, emission limitations and established health and welfare

regulations are being met opacity is basically an aesthetic issue.

Subdivision D.2. of APC 2 as amended requires that atmospheric dispersion modeling be conducted by the owner or operator of an emission facility making application for an opacity standard adjustment if the proposed adjustment may cause or contribute to a violation of an ambient air quality standard. Because ambient air quality standards are established to protect the public health and welfare it is reasonable to ensure that relaxation of an opacity standard will not cause or contribute to a violation of these standards.

Subdivision D.3. provides for the establishment of an adjusted opacity standard provided any one of three conditions are met; a) the action would not cause or contribute to a violation of an ambient air quality standard; b) the total emission facility would have potential emissions of particulate matter of less than 25 tons per year and less than one ton per day; or c) the total emission facility would contribute less than one ug/m^3 to an annual ambient particulate matter standard violation and less than five ug/m^3 to a 24-hour ambient particulate matter standard violation. These three conditions all limit the establishment of a relaxed opacity standard to situations which would have no contribution or an insignificant contributions to a violation of an ambient air quality standard. The first condition allows adjustment of the opacity standard because the facility would not cause or contribute to a violation. The second condition allows for adjustment of the

opacity standard because the emissions from the total facility are less than 25 tons per year and one ton per day. Facilities with criteria pollutants, other than lead, with emissions of less than 25 tons per year generally fall into the classification of area sources. For modeling purposes area sources are handled as a class and it is not reasonable to attempt to calculate culpability for pollutant impacts from such small sources. Facilities which meet this condition would also usually comply with the third condition given in Subdivision D.3. Because of the limited impact of small facilities on ambient TSP concentrations, specific exemption under this subdivision enables the exclusion of these small facilities from the modeling requirements in subdivision D.2. For these reasons it is reasonable to grant opacity standard adjustments to facilities with annual particulate emissions of less than 25 tons and 24-hour particulate emissions of less than one ton, provided the facility is meeting emission limitations, regardless of the ambient concentrations.

The third condition allows for adjustment of the opacity standard for an emission source if the modeled ambient concentration attributable to the total emission facility is below 1 ug/m^3 and 5 ug/m^3 for an annual and 24-hour violation respectively. This condition is being proposed because the requirement to apply additional air pollution control technology to a facility to achieve the opacity standard is not economically justified in light of the very limited improvement in the ambient air quality which would be achieved by the requirement for

additional control. The 1 ug/m^3 and 5 ug/m^3 values selected were derived from 40 CFR Part 51 Appendix S entitled Emission Offset Interpretative Ruling (Exhibit 11). Part III.A. of Appendix S requires specific action if the modeled impacts would exceed significant levels of 1.0 ug/m^3 annually or 5.0 ug/m^3 for a 24-hour averaging time of the national ambient air quality standards. The requirements of Appendix S, Part III, are not directly applicable, but the determination that modeled impacts of less than 1.0 ug/m^3 and 5.0 ug/m^3 of the annual and 24-hour standards respectively in that appendix is relevant. If such impacts are not viewed as significant levels of contribution to violations of the ambient air quality standards for Total Suspended Particulate (TSP) under the Offset rule it is reasonable to also assume they are not significant for the purpose of establishing a relaxed opacity limitation.

Provided an emission facility can meet any one of the three conditions specified in the rule, the impact on the ambient air quality is not significant and it is reasonable to establish an adjusted opacity standard for the emission source.

G. Circumvention. The APC 2 existing section (g) is entitled circumvention. In the proposed amendments, this section is proposed to be modified by restating the existing language in a different format and adding a new subdivision on "tall stacks". (See proposed APC 2 section E.) The format change has not resulted in any substantive change in the existing circumvention language. The requirement has been placed under a new heading entitled "Concealment or dilution". (E.1.) The proposed changes

are reasonable because they provide clarification to the section on circumvention in light of the new material added.

Subdivision E.2. is entitled "Dispersion techniques" and incorporates the federal "tall stack" provisions required under the Clean Air Act. Section 123 of the Clean Air Act (Exhibit 9) provides that the degree of emission limitation required for control of any air pollutant under an applicable implementation plan shall not be affected by stack height which exceeds good engineering practice or any other dispersion techniques. In order for the state to develop an acceptable State Implementation Plan it must incorporate into the plan rules which address this subject matter as is required in 40 CFR Part 51.12(j) (Exhibit 12). For this reason it is reasonable to adopt by reference to the Clean Air Act and the regulations implementing that act the federal "tall stack" or "dispersion technique" requirements.

H. Severability. Section (g) of the existing rule, entitled Severability is proposed to be deleted. This is because that section merely duplicates Minn. Stat. Section 645.20 (1982) which states:

> Unless there is a provision in the law that the provisions shall not be severable, the provisions of all laws shall be severable. If any provision of a law is found to be unconstitutional and void, the remaining provisions of the law shall remain valid, unless the court finds the valid provisions of the law are so essentially and inseparably connected with, and so dependent upon, the void provisions that the court cannnot presume the legislature would have enacted the remaining valid provisions without the void one; or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Minn. Stat. Section 645.001 (1982), makes this provision applicable to rules. Since under Minn. Stat. 14.07, Subd. 5 (1982), rules should not duplicate statutes, it is reasonable to delete the severability statement from APC 2.

VI. Small Business Consideration.

Minn. Laws 1983, ch. 188 (to be codified as Minn. Stat. §15.115) reqires the Agency, when proposing amendments to an existing rule which may affect small businesses, to consider the following methods for reducing the impact of the rule on small businesses:

(a) the establishment of less stringent compliance or reporting requirements for small businesses;

(b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) the consolidation or simplification of compliance or reporting requirements for small businesses;

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

(e) the exemption of small businesses from any or all requirements of the rule.

Other than the opacity section, the amendments to APC 2 are intended as procedure clarifications and do not raise small business issues. In section D. of the rule which is entitled Opacity standard adjustment, special consideration is proposed for small emission sources (less than 25 tons per year), i.e., small sources are eligible for an opacity adjustment without being required to conduct atmospheric dispersion modeling as is

required of larger sources. This provision is consistent with (a) listed above if the small emission source is also a small business.

The Agency actively sought the input of the regulated community, including small businesses, during the drafting of the proposed rule amendments. The Agency believes that the rule as proposed takes into consideration the unique situation of the small business, as described above, and provides relief where possible without circumventing the statutory responsibilities of the Agency.

VII. Conclusion. Based upon the information provided in this document the Agency believes that it has made an affirmative presentation of facts showing the need for and reasonableness of the proposed amendments to APC 2.

MINNESOTA POLLUTION
CONTROL AGENCY

Sandra Gardebring

Sandra S. Gardebring
Executive Director

Appendix A

Exhibit List

1. Minn. Rule APC 2
2. Minnesota Association of Commerce and Industry (MACI) Petition
3. 6 MCAR §4.0021
4. 40 CFR Part 52.21
5. 40 CFR Part 51.24 (b)
6. Revisor's Office, Temporary Rule Drafting Manual
7. U.S. EPA Policy Statement, Federal Register, Dec. 11, 1979 pp. 71780-71787
8. 6 MCAR §4.3007
9. Clean Air Act
10. 40 CFR Part 60.11
11. 40 CFR Part 51 Appendix S
12. 40 CFR Part 51.12
13. U.S. EPA Proposed Policy Statement, Federal Register April 7, 1982, pp. 15076-15086.

(M)

[OFFICIAL USE ONLY]

PROPOSED RULES AMENDMENTS

MINNESOTA POLLUTION CONTROL AGENCY

DATE RECEIVED _____
DATE RESPONDED TO _____
ACTION TAKEN _____
DATE _____

PETITIONERS: Minnesota Association of Commerce and Industry, (hereinafter "MACI") on behalf of its members in general and by and through the technical expertise provided by its Air Pollution Control Task Force including representatives from the following companies and associations:

Ashland Oil, Inc.
Boise Cascade Corporation
Cargill, Inc.
Ford Motor Company
General Mills, Inc.
The Greater Minneapolis Chamber of Commerce
Hoerner Waldorf Champion International Corporation
Honeywell, Inc.
Koch Refining Company
Minnesota Gas Company
Minnesota Mining and Manufacturing Company
Minnesota Petroleum Council
Minnesota Power and Light Company
National Can Corporation
Northern States Power Company
Potlatch Corporation (Northwest Paper Division)
Rochester Public Utilities
The Saint Paul Area Chamber of Commerce
SIGMA Associates, Inc. (on behalf of Minnesota/Wisconsin Power Suppliers Group)
Whirlpool Corporation

GROUP REPRESENTED: MACI Task Force on Air Pollution Control

ADDRESS: 480 Cedar Street, St. Paul, Minnesota 55101

Petitioners hereby request that the Agency named above:

1) Amend APC-1 with regard to the ambient air quality standards for photochemical oxidants and sulfur oxides.

2. Amend APC-2 by revising the definition of opacity and adopting a new section on adjustment of opacity guidelines for new sources.

3) Amend APC-21(b)(7) relating to performance tests for opacity.

4) Amend APC-24(C)(1)(aa)(ii) with regard to opacity standards for petroleum refineries to conform the Rule with federal new source performance standards

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See Exhibit 1 attached hereto for the proposed rules which are to be amended or repealed, with all wording that is to be deleted shown with a line drawn through the words and all proposed new wording is underscored.

See Exhibit 2 attached hereto for reasons for each requested change.

Respectfully submitted,

POPHAM, HAIK, SCHNOBRICH, KAUFMAN & DOTY, LTD.

By _____
G. Robert Johnson

And _____
Robert S. Burk

And _____
D. William Kaufman

4344 IDS Center
Minneapolis, Minnesota 55402
(612)335-9331

Attorneys for Petitioners

this new standard and request the standard to be set at 0.25 ppm. In the event the federal standard is changed to a concentration different from the .12 ppm adopted by EPA, Petitioners seek to have the standard set at the federal level.

APC-2 Definitions, Abbreviations, Applicability of Standards, Access to Premises, Variances, Circumvention, Severability

.Amend APC-2 by adding two new sections as follows:

(a)(28) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background, and is a guideline for determining the source operator's success in maintaining and operating the particulate air quality control system in meeting the applicable particulate emission rate. As such, it is not a standard but merely is used as a guideline for implementation of the applicable particulate source testing.

(c)(7) Adjustment of Opacity Guidelines - Any facility subject to opacity regulation may request the Agency to determine opacity of emissions during a performance test under this section. If the affected facility meets all other applicable air quality standards but fails to meet opacity guidelines, the affected facility may petition the Agency to make appropriate adjustment to the opacity guideline for the affected facility.

The Agency shall grant such a petition upon demonstration that:

1. The facility was maintained and operated in such a manner as to minimize opacity during performance tests.

2. The performance tests were performed under the conditions established by the Agency.

3. The affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard.

If the above-mentioned criteria are met, the Agency shall set an opacity level which the facility can attain while meeting the other emissions standards.

APC-21 Emission Source Monitoring, Performance Tests, Reports, Shutdowns and Breakdowns

Amend APC-21(b)(1)

(1) Testing Requirements. The Agency or the Director may order the owner or operator of an emission facility to conduct or have conducted performance tests to determine the characteristics and amount of emissions of air contaminants from any affected facility. Where non-compliance with opacity guidelines is at issue, the owner or operator of the facility may request a performance test pursuant to APC-2(c)(7).

EXHIBIT 2

MINNESOTA
POLLUTION CONTROL AGENCY

In Re:

Petition for Amendment of Rules Governing Ambient Air Quality Standards for Photochemical Oxidant and Sulfur Dioxide, and Repeal and Amendment of Rules Governing Opacity Limitations

BRIEF IN SUPPORT OF PETITION

Petition of Minnesota Association of Commerce and Industry, (hereinafter "MACI") on behalf of its members in general and by and through the technical expertise provided by its Air Pollution Control Task Force including representatives from the following companies and associations: Ashland Oil, Inc., Boise Cascade Corporation, Cargill, Inc., Ford Motor Company, General Mills, Inc., The Greater Minneapolis Chamber of Commerce, Hoerner Waldorf Champion International Corporation, Honeywell, Inc., Koch Refining Company, Minnesota Gas Company, Minnesota Mining and Manufacturing Company, Minnesota Petroleum Council, Minnesota Power and Light Company, National Can Corporation, Northern States Power Company, Potlatch Corporation (Northwest Paper Division), Rochester Public Utilities, The Saint Paul Area Chamber of Commerce, SIGMA Associates, Inc. (on behalf of Minnesota/Wisconsin Power Suppliers Group), Whirlpool Corporation; for Review, Amendment and Repeal

---

POPHAM, HAIK, SCHNOBRICH, KAUFMAN
& DOTY, LTD.

By _____
G. Robert Johnson

And _____
Robert S. Burk

And _____
D. William Kaufman

4344 IDS Center
Minneapolis, Minnesota 55402
(612)335-9331

Dated March 21, 1979.

with the stricter state ambient standards. Without resulting in a health or welfare benefit, industry will incur excessive costs for additional control equipment, which puts Minnesota industry at a competitive disadvantage when compared with industry in most other states which have adopted federal standards.

c. Opacity

Opacity standards, which are contained in fourteen different Minnesota Air Quality regulations, are not controlled to the same extent in the federal regulatory scheme. The federal regulations apply only to new sources and contain an adjustment provision if other emission limitations which protect health and welfare are being met. Opacity is not directly related to the public health and welfare. Furthermore, it is not an accurate measure of pollutants which are regulated by the air quality standards. In numerous instances, a source may be well within emissions limitations for the regulated pollutants but not within the opacity limitations. Therefore, industry is subjected to limitations and possible modifications of facilities for reasons not based upon any human health or public welfare considerations.

2. Background of Air Quality Standards

The first federal funds were allotted for air pollution studies in 1955 and the first Clean Air Act was passed by Congress in 1963. Funds were provided to local agencies to help implement their control efforts. Federal automotive pollution controls were first authorized in 1965 when the Clean Air Act was amended. Further amendments in 1967 called for detailed plans for the states to follow in setting and achieving their own air quality standards. At this time the State of

3. Opacity

The federal Clean Air Act and its corresponding regulations and the Minnesota Air Pollution Control statutes and rules can only be premised and defended upon protection of the public health and welfare. But opacity standards are not predicated on health considerations. Rather, opacity measures "the degree to which emissions reduce the transmission of light and obscure the view of an object in the background." 40 CFR §60.2(j). Minn. Reg. APC-2(a)(28). The measurement of opacity serves as a shorthand method of alerting the Agency of a possible discharge of excessive levels of regulated pollutants. However, the measurement fails as a reliable indicator of potential health hazards because:

1. Many of the factors which affect the stack plume's opacity are not harmful to human health.

2. The actual measurement of opacity is an imprecise art rather than an exacting science and, as such, is plagued by a variability which results in a substantial margin of error.

As a result, a Minnesota source which meets all health based air quality standards can be penalized simply because it emits a stack plume which exceed the opacity limitation.

There are many physical parameters which can affect opacity without adversely impacting public health. These include:

1. The particulate size distribution within the smoke plume.

2. The diameter of the smoke stack - which fixes the optical path length across the plume.

3. Stack gas temperature.

4. Fuel characteristics.

5. Particle index of refraction.

6. Plume color.

7. Color contrast ratio between the plume and the background.

8. Water vapor content.

9. Stack velocity.

10. Wind direction, velocity and turbulence.

11. Position of the sun.

12. Distance of the observer from the stack.

13. The elevation of the observer.

14. The observation angle.

15. The geographic location (latitude).

In analyzing this list, it is important to realize that opacity is a measurement of the observer's ability to see through a stack plume. Thus many small particles will create a denser plume than a lesser number of large particles. A plume containing a large amount of water vapor - steam - will have a higher opacity rating than a plume with a low degree of water vapor. A smoke stack with a large diameter emits a large plume and, therefore, has a lower opacity rating than a source emitting the same level of pollutants through a smoke stack with a smaller diameter. In addition, a whole range of natural factors, such as wind direction and velocity, sky color, and the position of the sun at the time of the observation, will affect the opacity - but not the quantity of air contaminents.

These problems are exacerbated by the uncertainties surrounding the process of measuring opacity. Individuals are trained to subjectively observe plumes and then attempt to assign an opacity rating. However, federal studies have shown that it is virtually impossible for an individual to accurately measure opacity. A 1967 study concluded that the human eye cannot reliably distinguish opacity differences of less than 5%. Optical Properties and Visual Effects of Smoke Stack Plumes, U.S. Public Health and Service Publication 999 AP 30, 1967. In its testing methods, EPA permits observer error of 15% opacity on single readings and 7.5% opacity on average readings. At a level of 20% opacity, EPA allows observer errors of up to 37.5% of the standard when readings are averaged!

Because the opacity test may not be probative of the violation of health based emissions standards and because the subjective method of testing is so inherently arbitrary, the Court of Appeals for the District of Columbia Circuit remanded the opacity standards, requiring further study by the EPA. In Portland Cement Association v. Ruckelshaus, 486 F.2d 375 at 401 (D.C. Cir. 1973) the court stated:

> [I]t is one thing to use a method of testing to observe possible violations of a standard; it is another to constitute that method as the standard itself. If the opacity test is to be a standard, and if violations can result in enforcement actions without further testing, the standard must be consistent with the statute and congressional intent.

It should be noted that as a result of this case, the EPA promulgated 40 C.F.R. 60.11(e) providing for an opacity standard adjustment procedure similar to the one urged by Petitioners in amended rule APC-2(c)(7).

Petitioners recognize the utility of the opacity test, but urge that the state re-evaluate the role of opacity measurements in its overall pollution control framework. Opacity is an inexpensive and fast method of determining if a source is adequately operating its pollution control equipment or process systems. If viewed as an intermediate tool, a guideline - and not a standard in itself - opacity measurements can properly aid the state and the source operator in achieving permit compliance.

In order to correct this situation, petitioners urge that:

1. The definition of opacity be revised to clearly state that opacity is a guideline for determining the success in meeting applicable particulate emission standards.

2. That APC-2(c) be amended to include the following provision:

> (7) Adjustment to Opacity Guidelines - Any facility subject to opacity regulation may request the Agency to determine opacity of emissions during a performance test under this section. If the affected facility meets all other applicable standards but fails to meet opacity guidelines, the affected facility may petition the Agency to make appropriate adjustments to the opacity guideline for the affected facility.

The Agency shall grant such a petition upon demonstration that:

1. The facility was maintained and operated in such a manner as to minimize opacity during performance tests.

2. The performance tests were performed under the conditions established by the Agency.

3. The affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard.

If the above-mentioned criteria are met, the Agency shall set an opacity level which the facility can attain while meeting the other emissions standards.

3. That APC-21(b)(1) be amended to provide for a performance test in accordance with APC-2(c)(7).

4. That opacity rule relating to petroleum refineries be changed to conform with the federal regulations. Specifically, that the standards set forth in APC-24(c)(1)(aa)(ii) and APC-24(c)(3)(bb)(ii) be changed to: "no greater than 30 percent opacity, except for one six-minute average opacity reading in any one hour."

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION V
230 SOUTH DEARBORN ST
CHICAGO ILLINOIS 60604

(N)

10 NOV 1983

REPLY TO ATTENTION OF:
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RECEIVED

NOV 14 1983

MINN POLLUTION CONTROL AGENCY

Richard J. Sandberg
Division of Air Quality
Minnesota Pollution Control Agency
1935 West County Road, B-2
Roseville, Minnesota 55113

Dear Mr. Sandberg:

This letter is in response to Minnesota's Notice of Intent to Adopt Amendments to APC 2, as submitted to this office on October 20, 1983.

Our position on the proposed amendments to APC-2, which deal with setting alternative opacity limitations, has been stated in my May 31, 1979 and April 23, 1982, letters to the Minnesota Pollution Control Agency (MPCA). The major points which we made are:

1. In general, a relaxation of specific opacity limitations can be obtained provided that an acceptable procedure is used to relate simultaneous particulate stack testing and opacity readings.

2. The opacity limit should not be relaxed for boilers because it is Minnesota's opacity limit, and not the mass limit, which constitutes RACT for boilers.

The proposed amendments which you submitted are deficient in that there is no test procedure for correlating mass and opacity readings and also because there is no provision for ensuring that the mass and opacity limits, after the revision, would constitute RACT for boilers in TSP nonattainment areas.

Ohio's engineering guides #13, #14 and #15 constitute an acceptable test procedure for correlating mass and opacity readings. These engineering guides are enclosed for your information.

A July 29, 1983, policy memo from Sheldon Meyers, former Director of the U.S. Environmental Protection Agency's (U.S. EPA) Office of Air Quality Planning and Standards, presents requirements for site-specific SIP revisions. This policy memo states that a modeling demonstration using reference modeling techniques and best available data is required to obtain a relaxation for a particulate source in a TSP nonattainment area.

EPA's position is that an opacity relaxation can be granted to a source provided that an acceptable reference modeling demonstration performed at the corresponding relaxed mass emission level shows that all of the modeled receptors, within the impact area of the source, are at attainment for TSP.

Any opacity relaxations would need to be submitted as site-specific SIP revisions. However, if and when an alternative opacity test precedure is submitted by Minnesota and approved by EPA as part of the SIP, there would be no further requirement to submit opacity relaxations that do not result in increases in actual emissions from (1) non-boiler sources or (2) boiler sources in attain-

ment areas. These opacity adjustments should be submitted to Region V for information purposes only. For boiler sources in nonattainment areas, SIP submittals would be required and none could be approved without an impact area attainment demonstration.

Our remaining comments are in regard to the proposed amendments to APC-2 which deal with dispersion techniques.

Minnesota, in proposed amendments to APC 2 (6 MCAR S 4.002), Part E.2 (Circumvention-Dispersion Techniques) has incorporated parts of the above rule by reference to 40 CFR Parts 51.1(ii) and 51.12(j)-(l) (1982). This reference should be expanded to include the definitions of: "stack", "a stack in existence", "dispersion technique", "nearby", "excessive concentrations", "plume inpaction", and "elevated terrain." These definitions could be included by expanding the reference to read 40 CFR Parts 51.1(ff)-(mm).

Thus, we recommend that Minnesota's reference to 40 CFR Parts 51.1(ii) and 51.12 (j)-(l) (1982) be changed to read 40 CFR Parts 51.1(ff)-(mm) and 51.12 (j)-(l) (1982). Alternatively, a shorter reference to "U.S. EPA rules published February 8, 1982, (47 FR 5864)" would be acceptable. We can recommend approval of Minnesota's proposed amendments to APC 2 (6 MCAR S 4.002), Part E.2, if these recommended changes are made.

If and when U.S. EPA approves Minnesota's rules, Minnesota must review existing limitations to determine whether these limitations have been affected by stack height credit above GEP levels or any other dispersion technique. If so, Minnesota must revise the emission limitation to be consistent with its revised rules.

However, please note that any submittal of State proposed stack height regulations to address U.S. EPA rules published February 8, 1982, (47 FR 5864) will be held by the Agency until such time that the Agency responds to the U.S. District Court's remand (copy enclosed) of U.S. EPA's Stack Height Regulation.

If you have any questions regarding these comments, please contact Steve Rosenthal at (312) 886-6052.

Sincerely,

Steve Rothblatt, Chief
Air and Radiation Branch

Enclosure

Pickands Mather .

Pickands Mather & Co
Suite 811 - 200 West Superior Street
Duluth MN 55802

November 17, 1983

Richard J. Sandberg
Minnesota Pollution Control Agency
Division of Air Quality
1935 West County Road B2
Roseville, Minnesota 55113

Dear Mr. Sandberg:

With regard to the MPCA's proposed revisions to Rule APC 2, we have the following comments:

1. We are concerned that the term "emission," which is not defined in the rule, is subject to an interpretation which would be too broad. It should be defined so as to connect it with particulate matter and to disassociate it from steam or water vapor.

2. The reference to "emission source" in paragraph D.1. could be restrictively interpreted to require a permit modification application for each individual stack within a facility. We feel that the reference should be changed to read "emission source or sources."

3. We object to the new definition of fugitive emissions to the extent that it implies that visual opacity readings are a reliable method of measurement. It is impossible to visibly assess relative densities of fugitive dust. Each plume has a different relative depth, backgrounds are inconsistent from one situation to the next, there is no assurance that the observer is standing perpendicular to the plume, and there is great variability in particle size and color. The standard training for opacity reading involves plumes of a standard depth, of a standard color and viewed against a consistent background. These conditions are never present in fugitive dust situations.

4. The definition of standard conditions which contains a temperature of 20 degrees Celsius is inconsistent with the standard of 25 degrees Celsius in APC 1.

5. Rather than amending the rules to make opacity limits flexible according to specific circumstances, we feel that what the MPCA should really do is eliminate opacity standards where the emission source is in compliance with other applicable standards. Opacity may be useful as an indicator when nothing else is available, but it is irrelevant when stack testing shows that a source is operating within the standards of performance and ambient standards are not being violated.

Yours truly,

PICKANDS MATHER & CO.

Charles B. Hoffman

Charles B. Hoffman
Environmental Counsel

MOORE McCORMACK RESOURCES

United States Steel Corporation

MINNESOTA ORE OPERATIONS

P. O. BOX 417
MT. IRON, MINNESOTA 55768

November 16, 1983

Mr. Richard Sandberg
Division of Air Quality
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113

Re: Comments on Proposed
Amendment of Rule APC-2

Dear Sir:

United States Steel Corporation, Minnesota Ore Operations, wishes to at this time make formal comment on the above subject proposed rule change.

Our specific comments deal with 6 MCAR 4.0602D.1.b. which was published in the October 17, 1983, State Register. We are recommending a revision to this section to read as follows:

b. "The total emission facility is in compliance with all applicable standards of performance except the opacity standard at the emission" ~~source for which adjustment is being sought; and~~ sources for which adjustments are being sought or have already been received by prior application; and

We feel it was the intention of the opacity standard adjustment to allow permit modification for opacity for more than one stack or point emission source at a total emission facility, provided all other applicable standards of performance are met and the facility would not cause or contribute to a violation of an ambient air quality standard. This would allow two or more emission sources at a large facility or a group of identical sources to be eligible for permit modification within the framework of a State total emission facility operating permit.

The above concerns were previously expressed to you by phone on 11/15/83 by Mr. Paul Haataja of our staff. This letter is to further explain our feelings and concerns. If you should have any questions regarding these comments, please contact Jon L. Christofferson at 218-749-7532. We appreciate the opportunity to provide these comments.

Very truly yours,

R. E. Koski, Manager - Engineering
Ore and Stone

JLC/dao

CC: D. F. Widmayer
R. R. Ross
F. J. Boinski
P. G. Haataja
J. R. Latich
M. D. VanDelinder

Environmental Engineering
and Pollution Control 3M

PO Box 33331
St. Paul, Minnesota 55133
612/778 4791

RECEIVED

NOV 18 1983

MINN. POLLUTION
CONTROL AGENCY

3M

November 18, 1983

Mr. Richard Sandberg
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, MN 55113

RE: Comments on Proposed Amendments to APC-2

Dear Mr. Sandberg:

As you know from our several conversations, I have been concerned about the ramifications of the proposed addition of a definition of "emission source" to APC-2. My concern is that it defines "emission source" as a single emitting unit and thus prejudges the outcome of the present Supreme Court review of the Court of Appeals (D.C. Circuit) rejection of a dual source definition.

The difference between treating an emission source as a single unit versus the entire plant can be important particularly when applied to certain federal rules or PSD rules when adopted in the future by the MPCA. However, based upon your representations to me on November 15, 1983 and confirmed by Jocelyn Olson, MPCA attorney, to G. Robert Johnson on the same date, that the proposed source definition in APC-2 would not be applicable to any federal rules or future state rules, 3M will not take steps to ensure that a hearing will be held on the proposed rule.

I do want to express my appreciation for your candor and demonstrated willingness to meet with me relative to these concerns.

Sincerely,

Thomas W. Zosel
Senior Specialist
Bldg. 21-2W-06

TWZ/jp

SF-00006-02

DEPARTMENT

STATE OF MINNESOTA

Office Memorandum

TO : Comment File on 6 MCAR § 4.0002

DATE: 11/13/83

FROM : Richard J. Sandberg
Rule Review Coordinator
Division of Air Quality

PHONE: -7316

SUBJECT: Change in the conjunction linking requirements in 6 MCAR §4.0002 D.3.c. from "or" to "and".

As approved for noncontroversial rulemaking by the Agency Board on July 26, 1983, the amend 6 MCAR §4.0002 D.3.c., as proposed, stated:

> c. contribute less than one ug/m^3 to an annual ambient particulate matter standard violation or less than five ug/m^3 to a 24-hour ambient particulate matter standard violation. (emphasis added)

In drafting the rule the DAQ staff did not intend to grant an opacity standard adjustment if a facility met only one of the requirements listed in D.3.c. The two increments listed in D.3.c. address the two different averaging periods for the ambient particulate matter standard and it is necessary for a facility to meet both averaging period requirements before an adjustment to the opacity standard would be granted. To correct this deficiency in the rule the DAQ staff proposes the following modification:

> c. contribute less than one ug/m^3 to an annual ambient particulate matter standard violation ~~or~~ and less than five ug/m^3 to a 24-hour ambient particulate matter standard violation.

RJS/jew

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT

Office Memorandum

TO : Comment File on 6 MCAR §4.0002

DATE: 11/15/83

FROM : Richard J. Sandberg
Rule Review Coordinator
Division of Air Quality

PHONE: 7316

SUBJECT: Oral Comments on the Proposed Amendments to APC 2
Received from Thomas W. Zosel, Representing 3M

On Novmeber 15, 1983, Thomas Zosel, representing 3M verbally expressed a comment on the proposed amendments to APC 2. The subject of Mr. Zosel's comment was the definition of "emission source" in the proposed amendments to APC 2. Mr. Zosel expressed concern that the term "emission source", as defined in the proposed rule, would at a future date be used as the definition of this term as used in certain federal rules when and if these federal rules were adopted by the Agency.

RJS:jew

SF-00006-02

DEPARTMENT

STATE OF MINNESOTA

Office Memorandum

TO : Comment File on 6 MCAR §4.0002

DATE: 11/16/83

FROM : Richard J. Sandberg
Rule Review Coordinator
Division of Air Quality

PHONE: 7316

SUBJECT: Oral Comments on the Proposed Amendments to APC 2 Received from Paul Haataja Representing United States Steel Corporation

On November 15, 1983, Paul Haataja verbally expressed comments on the proposed amendments to APC 2 by telephone. Mr. Haataja informed me that the comments would be put in writing and submitted to the Agency. The subject area addressed by Mr. Haataja in his telephone conversation was the restriction on the number of sources which could receive an opacity adjustment. He recommended that the term "emission source" in 6 MCAR §4.0002 D.1.b. be changed to "emission sources".

RJS:jew

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT

Office Memorandum

TO : Comment File on 6 MCAR §4.0002 DATE: 11/16/83

FROM : Richard J. Sandberg
Rule Review Coordinator
Division of Air Quality PHONE: 7316

SUBJECT: Oral Comments on the Proposed Amendment to APC 2 Received from Charles B. Hoffman Representing Pickands Mather & Company

On November 15, 1983, Charles Hoffman vebally expressed comments on the proposed amendments to APC 2. Mr. Hoffman informed me that the comments would be put in writing and submitted to the Agency. The subject areas addressed by Mr. Hoffman included the following:

1. The term "emissions" was not defined and could be interpreted to include steam or water vapor.

2. The term "emission source" as used in D.1. limits an opacity adjustment to only one emission source at an emission facility.

3. Opacity should only be used as a guideline and not as a standard, especially in situations where an emission limit applies to a source.

4. The definition of "fugitive emissions" should not imply that an opacity reading can be made of a fugitive emission.

RJS:jew



North American Water Office

1519A East Franklin Ave
Minneapolis, MN 55404

(612) 872-1097

February 10, 1984

Mr. Richard J. Sandberg
Rule Review Coordinator
Division of Air Quality
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, MN 55113

Dear Mr. Sandberg:

With this letter, the North American Water Office withdraws its request for public hearings regarding proposed APC-2 amendments to relax opacity standards.

This withdrawl is with the understanding that DAQ staff will include the Emission Reduction Program questionaire to all applicants for opacity adjustment where the adjustment will result in increased particulate emissions. The questionaire will cover those matters discussed at the February 8, 1984 meeting (see attached letter).

This letter represents those seven individuals who requested the public hearing.

Sincerely,

Lea Foushee

George Crocker



North American Water Office

1519A East Franklin Ave
Minneapolis, MN 55404

(612) 872-1097

February 8, 1984

Mr. Richard J. Sandberg
Rule Review Coordinator
Division of Air Quality
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, MN 55113

Dear Mr. Sandberg:

Apparently the PCA is willing and ready to accept dirtier air in exchange for some increased consistancy in its rules. It strikes us as a poor bargain for reasons not unfamiliar to you, but we remain constant in our desire to aviod taking the matter into a public hearing.

We also recognize the difficulty bureaucracies such as yours have in dealing with the relevant issues at the appropriate times, and so we do not expect the language of the proposed amendments to leave the constraints arbitrated by caprecious authority of whatever sort.

However, we are hopeful of finding a constructive path out of this ill-conceived indisgression. We know intuitively, and from increasing amounts of experience, that it is impossible to maintain a healthy economy unless the environment is also healthy. This means that it is ultimately in the best interests of every business and industry to operate as cleanly as possible. It is possible to help industry understand its own best long-term interests in this regard by establishing positive incentives that reflect the ultimate dependence of a healthy economy on a clean and productive environment.

Through the information solicited by the PCA from owners/operators of facilities seeking an opacity adjustment, the PCA can help create an atmosphere in which emission reductions are fostered and encouraged rather than one that sanctions the release of increasing amounts of filth.

This could be done by presenting the above "cleanliness is in your own best interest" concept as a Statement of Purpose, and by including the following questions in the application:

1. What pollution control investments have been made at this facility in the past?

2. What benefits have resulted from these investments -
   a. to the owner/operator?
   b. to employees?
   c. to the host community?

3. What types of pollution control equipment could be installed at this facility to reduce emissions below present levels?

4. Are there operational changes or energy efficiency improvements that could be made that would reduce emissions?

5. What benefits could result from investments into pollution control equipment, or emission reducing operational changes and energy efficiency improvements -
   a. to the owner/operator?
   b. to the employees?
   c. to the host community?

6. What types of incentives, sponsored by private organizations or through local, state, or federal units of government, would result in a decision to invest in improvements that would reduce emissions?

7. What types of problems may be created for owners, for employees, and for the host community if emission increases are permitted?

Sincerely,

Lea Foushee

George Crocker

Lea Foushee

George Crocker

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NOV 14 1983

MINN. POLLUTION
CONTROL AGENCY

November 10, 1983

Richard Sandberg
Minnesota Pollution Control Agency
1935 West County Road B - 2
Roseville, Minnesota 55113

Dear Mr. Sandberg:

Pursuant to the provisions set forth in Minn. Stat. §14.21 - 14.28 (1982) or whatever statute ensures my ability to do so, I request a public hearing regarding Proposed Amendment of Minn. Rule APC 2, Definitions, Abbreviations, Applicability of Standards, Opacity Standard Adjustment and Circumvention. This request will be withdrawn if the issues raised below are resolved to my satisfaction outside a formal hearing process. The issues arise from the changes proposed for 6 MCAR §4.0002 D., Opacity Standard Adjustment, 1 - 3.

The PCA Staff rationale for the proposed changes are contained beginning on p. 26, Sec. F, of the "Statement of Need and Reasonableness".

The underlying question raised by that rational is whether or not existing pollution control laws, codes, rules, regulations and permits are presently adequate to protect the public health and welfare. In this time when the water, air and land are experiencing increasing loading of pollution, and when that loading threatens ecological disaster from every quarter, the answer to that underlying question, obviously, is that existing pollution control measures are not adequate. Specifically, deaths from asthma, bronchitis, and emphysema are significantly related to the number of respirable particles in the ambient air, and the estimates of the number of deaths per year in the US from exposure to air pollution range from 15,000 to upwards of 100,000.

From this foundation, the specific questions arise:

1. Will the proposed relaxation of opacity limitations result in increases in particulate emissions, regardless of potential for emissions to cause or contribute to a violation of ambient air quality standards either before or after relaxation?

2. Will the proposed relaxation allow facilities to operate installed pollution control equipment at reduced efficiencies?

If the answer to either question is "yes", the policy question becomes: Should an increase in particulate emissions be allowed when the technology to reduce emissions is available and/or in-place, and when the destruction caused by that emission is documented and substantial?

This policy question and the two preceding ones are not "non-controversial".

If the answer to any of these questions is "yes", a public hearing is in order, and is hereby requested. If the answers are "no", I request a 30 day extension of the 30 day limit beyond November 17, 1983, to allow time for me to understand the Staffs' reasons for the negative responses, and to determine if those reasons are satisfactory.

From the above, it follows that the proposed amendment should include the clause:

> adjustments of the opacity standard may be made if the adjustment will not result in increased emission of particulate matter and will not cause in-place pollution control equipment to be operated at reduced efficiencies.

Thank you.

Sincerely,

EARTH PROTECTOR
1138 PLYMOUTH BLDG.
MPLS, MN. 55402
375-0202

RECEIVED

NOV 14 1983

MINN. POLLUTION
CONTROL AGENCY

November 10, 1983

Richard Sandberg
Minnesota Pollution Control Agency
1935 West County Road B - 2
Roseville, Minnesota 55113

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Thank you.

Sincerely,

619 20th Ave. S.
Minneapolis, MN 55454

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NOV 14 1983

MINN. POLLUTION
CONTROL AGENCY

November 10, 1983

Richard Sandberg
Minnesota Pollution Control Agency
1935 West County Road B - 2
Roseville, Minnesota 55113

Dear Mr. Sandberg:

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Thank you.

Sincerely,

Lee Loushe

2619 South 8th Street #A
Minneapolis, MN 55454

RECEIVED

NOV 14 1983

MINN. POLLUTION
CONTROL AGENCY

November 10, 1983

Richard Sandberg
Minnesota Pollution Control Agency
1935 West County Road B - 2
Roseville, Minnesota 55113

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From the above, it follows that the proposed amendment should include the clause:

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Thank you.

Sincerely,

Juanita Espinoza
2434 Ogema Ave #307
Minneapolis, MN 55404

RECEIVED

NOV 14 1983

MINN. POLLUTION
CONTROL AGENCY

November 10, 1983

Richard Sandberg
Minnesota Pollution Control Agency
1935 West County Road B - 2
Roseville, Minnesota 55113

Dear Mr. Sandberg:

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Thank you.

Sincerely,

RECEIVED

NOV 14 1983

MINN. POLLUTION
CONTROL AGENCY

Box 5
Lowry, MN 56349

November 10, 1983

Richard Sandberg
Minnesota Pollution Control Agency
1935 West County Road B - 2
Roseville, Minnesota 55113

Dear Mr. Sandberg:

Pursuant to the provisions set forth in Minn. Stat. §14.21 - 14.28 (1982) or whatever statute ensures my ability to do so, I request a public hearing regarding Proposed Amendment of Minn. Rule APC 2, Definitions, Abbreviations, Applicability of Standards, Opacity Standard Adjustment and Circumvention. This request will be withdrawn if the issues raised below are resolved to my satisfaction outside a formal hearing process. The issues arise from the changes proposed for 6 MCAR §4.0002 D., Opacity Standard Adjustment, 1. - 3.

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Thank you.

Sincerely,

Judy Fairbanks
2434 Ogema Pl. #201
Mpls, Mn 55409

RECEIVED

NOV 14 1983

MINN. POLLUTION
CONTROL AGENCY

November 10, 1983

Richard Sandberg
Minnesota Pollution Control Agency
1935 West County Road B - 2
Roseville, Minnesota 55113

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Thank you.

Sincerely,

George Crocker

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Minn. Rule APC 2, Definitions, Abbreviations, Applicability of Standards, Access to Premises, Variances, Circumvention, Severability to be retitled Definitions, Abbreviations, Applicability of Standards, Opacity Standard Adjustment and Circumvention

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Lisa R. Tiegel, do hereby declare that I have examined the proposed rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed.

LISA R. TIEGEL
Special Assistant
Attorney General

DATED: March 7, 1984

(P)

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Minn. Rule APC 2, Definitions, Abbreviations, Applicability of Standards, Access to Premises, Variances, Circumvention, Severability to be retitled Definitions, Abbreviations, Applicability of Standards, Opacity Standard Adjustment and Circumvention

AFFIDAVIT REGARDING TRANSMITTAL OF RULE TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Richard Sandberg, being duly sworn on oath deposes and says:

1. I am a member of the staff of the Minnesota Pollution Control Agency (MPCA).

2. In the Notice of Intent to Adopt Amendments Without A Public Hearing for the above-entitled rule, which Notice appeared in the October 17, 1983, State Register, (8 S.R. 682) and was mailed to persons on the MPCA's rulemaking mailing list, I was listed as the contact person for the above-entitled rule.

3. In the comments we received, no person requested that they be notified of submission of the rule to the Attorney General.

Richard J. Sandberg

Subscribed and sworn to before me this 7th day of March, 1984.

Carol T. Groppoli
Notary Public

CAROL T. GROPPOLI
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Jun.23, 1987