

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MJM
7/21/92

RULE REVIEW CHECKLIST

File No. 1932
DATE RECEIVED ~~7-15-92~~ 7-8-92
REVIEW DATE 7-24-92
DUE DATE 7-29-92
(~~DIS~~)APPROVED 7-29-92
WITHDRAWN

Docket No. 050009 070
ADOPTED W/O HEARING
EMERGENCY RULE
TO REVISOR ON 7-21-92
REVISOR (DIS)APPROVED 7-23-92
FILED W/SEC. OF STATE 7-29-92
RETURNED TO AGENCY 7-29-92

✓ Rule as adopted (4 copies) no adopted rules

✓ Notice to Solicit Outside Information/Opinion (if applicable)
Oct 21, 1991 Date published in State Register
Comments

Petition ~~for Adoption of~~ a Rule

✓ Board's Authorizing Resolution
Feb 25, 1992 Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule missing a page
116.07 Statutory Authority
✓ Small Business Statement
Expenditure of public money statement
Feb 28, 1992 Signature

✓ Statement of Need and Reasonableness (if applicable)
✓ Small Business Statement
Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
~~Feb 28, 1992~~ Dated 30/25 days before adoption March 18, 1992
Notice attached indicates it is attached
Copy of rule or summary attached

✓ Publication in State Register
March 23, 1992 Date 30/25 days before adoption

✓ 180-day deadline from:
✓ Effective date of law requiring rule (14.12) (both rules) amendments don't apply may - not mandat
✓ end of comment period (§ 14.26) (rules without hearing)
effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting
5-25-92 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
5-27-92 Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Ann Cohen Name of SAAG representing agency

Notice of Submission to Attorney General (if applicable)

Affidavit of Mailing Notice to Attorney General (if applicable)

Pollution Control Agency

Adopted Permanent Rules Relating to Emission Facility Offsets

Rules as Adopted

7005.3020 SCOPE.

Parts 7005.3020 to 7005.3060 apply to persons who propose to construct a major stationary source or major modification in a nonattainment area and to persons who propose to construct a major stationary source or major modification in a designated attainment or unclassifiable area with emissions that would cause or contribute to a violation of a national ambient air quality standard in a nonattainment area.

7005.3030 DEFINITIONS.

Subpart 1. **Scope.** The definitions in Code of Federal Regulations, title 40, chapter I, part 51, appendix S, apply to the terms used in parts 7005.3020 to 7005.3060 unless the terms are defined in this part. For the purposes of parts 7005.3020 to 7005.3060, the following words have the meanings defined below.

Subp. 1a. [See repealer.]

Subp. 1b. [See repealer.]

Subp. 2. [See repealer.]

Subp. 2a. [See repealer.]

Subp. 2b. [See repealer.]

Subp. 3a. **Attainment area.** "Attainment area" means any geographic area that has been designated by the United States Environmental Protection Agency as "better than national standards" for any national ambient air quality standard in Code of Federal Regulations, title 40, chapter I, section 81.324, as amended.

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

Subp. 7. [See repealer.]

Subp. 7a. **Major stationary source.** "Major stationary

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source" means:

A. a major stationary source as defined in Code of Federal Regulations, chapter I, title 40, ~~section~~ part 51, appendix S, ~~as amended~~ (1990); or

B. a stationary source that emits or has the potential to emit 70 tons or more per year of PM10 and that is located or that will locate in an area classified as "serious" under United States Code, title 42, section 7513, as amended.

Subp. 7b. **National ambient air quality standards.** "National ambient air quality standards" means any air quality standard promulgated in Code of Federal Regulations, title 40, part 50, as amended.

Subp. 8. [See repealer.]

Subp. 9. [See repealer.]

Subp. 10. **Nonattainment area.** "Nonattainment area" means any geographic region that has been designated by the United States Environmental Protection Agency as violating a national ambient air quality standard in Code of Federal Regulations, title 40, section 81.324, as amended.

Subp. 11. [See repealer.]

Subp. 11a. **PM10.** "PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.

Subp. 12. [See repealer.]

Subp. 13. [See repealer.]

Subp. 14a. [See repealer.]

[For text of subp 19a, see M.R.]

Subp. 19b. **Unclassifiable area.** "Unclassifiable area" means any geographic area that has been designated by the United States Environmental Protection Agency as "cannot be classified" for any national ambient air quality standard in Code of Federal Regulations, title 40, chapter I, section 81.324, as amended.

[For text of subp 20, see M.R.]

7005.3040 CONDITIONS FOR PERMIT.

Subpart 1. **In general.** No person shall commence

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construction of a major stationary source or major modification in:

A. a nonattainment area; or

B. in an attainment area or unclassifiable area if that major stationary source or major modification would cause or contribute to a violation of a national ambient air quality standard in a nonattainment area as determined by the significance levels established in Code of Federal Regulations, title 40, chapter I, part 51, appendix S, part III, ~~as amended~~ (1991), unless the requirements of Code of Federal Regulations, title 40, chapter I, part 51, appendix S, as incorporated in subpart 2a, are first satisfied.

Subp. 2. [See repealer.]

Subp. 2a. **Modified federal standard.** Persons subject to subpart 1 must comply with Code of Federal Regulations, title 40, chapter I, part 51, appendix S, ~~as-amended~~ (1991), with the following exceptions:

A. Code of Federal Regulations, title 40, chapter I, part 51, appendix S, part IV, section A, condition 1, footnotes 4 and 5, ~~as-amended~~ (1991), do not apply;

B. Code of Federal Regulations, title 40, chapter I, part 51, appendix S, part IV, section A, condition 3, is amended to read:

> Emission reductions ("offsets") from existing sources in the same area of the proposed source (whether or not under the same ownership) are required such that there will be reasonable progress toward attainment of the applicable NAAQS. Offsets must be based on actual emissions as defined in Code of Federal Regulations, title 40, section 51.165(a)(3), as amended. Only intrapollutant emission offsets will be acceptable (e.g. hydrocarbon increases may not be offset against SO_2 reductions).

C. Code of Federal Regulations, title 40, part 51, appendix S, part IV, section A, condition 3, footnote 7, ~~as amended~~ (1991), does not apply.

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D. Code of Federal Regulations, title 40, part 51, appendix S, part IV, section A, footnote 8, ~~as-amended~~ (1991), does not apply.

E. Code of Federal Regulations, title 40, part 51, appendix S, part IV, section B, ~~as-amended~~ (1991), does not apply.

F. Code of Federal Regulations, title 40, part 51, appendix S, part IV, section C, ~~as-amended~~ (1991), applies except that, consistent with Code of Federal Regulations, title 40, section 51.165(3)(i)(A), as amended, the offset baseline shall be the actual emissions of the source from which offset credit is obtained.

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. [See repealer.]

Subp. 7. [See repealer.]

Subp. 8. [See repealer.]

~~7005.3050 BANKING.~~

~~A major stationary source that has reduced actual emissions shall be permitted to bank that reduction for future use as an offset as allowed by Code of Federal Regulations, title 40, part 51, appendix S, part IV, section C, (5), as amended.~~

RENUMBERING INSTRUCTION. References to Minnesota Rules, part 7005.3010, shall be changed to part 7005.3020 in Minnesota Rules.

REPEALER. Minnesota Rules, parts 7005.3010; 7005.3030, subparts 1a, 1b, 2, 2a, 2b, 5, 6, 7, 8, 9, 11, 12, 13, and 14a; ~~and~~ 7005.3040, subparts 2, 3, 4, 5, 7, and 8; and 7005.3050, are repealed.

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by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JUL 29 1992

Joan Anderson Growe
Secretary of State

10:00 AM
PRB

APPROVED AS TO FORM AND LEGALITY
July 29 1992
HUBERT H. HUMPHREY III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

Stat Authority 116.07 (subd 4- not cited)

Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the Pollution Control agency may adopt, amend and rescind rules and standards having the force of law.

end of comment period April 23, 1992

missing part of Notice of Intent
no adopted rules left a message for Norma

no statement on how many requested a hearing

7-15-92 talked to Norma Flowell
she said she would get the adopted rules to me by Monday.

Will send the middle page of the Notice of Intent

- she confirmed there was no statement about number of requests for a hearing in the findings of fact she did say they didn't receive any comments

sent in rules

STATE OF MINNESOTA

Office of the Attorney General

TO : NORMA L. FLORELL
Division of Air Quality
Minnesota Pollution Control Agency
520 Lafayette

DATE : July 29, 1992

FROM : MARY JO MURRAY
Special Assistant
Attorney General

PHONE : 296-3258

SUBJECT : In the Matter of the Adopted Rule Relating to Emission Facility Offsets

The above-referenced rule has been approved as to its legality by the Attorney General on July 29, 1992.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

Enclosures
cc: Ann E. Cohen
William Brown, Chief Judge
MaryAnn Hruby

MJM:jj.rules.ay7

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

PUBLIC RESOURCES SECTION
SUITE 200
520 LAFAYETTE ROAD
ST. PAUL, MN 55155
TELEPHONE: (612) 297-1075
FACSIMILE: (612) 297-4139

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

July 8, 1992

Rec 7-9-92

Patricia Nolte
Legal Assistant
Office of the Attorney General
Public Finance Division
525 Park Street, Suite 500
St. Paul, MN 55103

Re: In the Matter of Proposed Rules Governing the Minnesota Pollution Control Agency's Air Quality Permit Program for the Growth or Expansion of Industry in Nonattainment Areas, Minn. Rules Parts 7005.3010-7005.3060.

Dear Patty:

On May 27, 1992, the Minnesota Pollution Control Agency (MPCA) adopted the above-captioned rules governing the MPCA's Air Quality Permit Program for the Growth or Expansion of Industry in Nonattainment Areas. Enclosed for your review are the following:

1. Notice of Intent to Solicit Outside Information Regarding Proposed Amendments to Rules Governing Emission Offsets, 16 State Reg. 1044 (October 21, 1991) (photocopy).

2. Proposed Amendments to Rules Relating to Emission Offsets, 16 State Reg. 2098-2101, (March 23, 1992) (photocopy).

3. Statement of Need and Reasonableness.

4. Certificate of Authorization Resolution (photocopy).

5. Affidavit of Sending the Statement of Need and Reasonableness and Proposed Amendments to Rules to the Legislative Commission to Review Administrative Rules (photocopy).

6. Notice of Intent to Adopt Rules Without a Public Hearing, (Mailed Notice) (photocopy).

7. Notice of Intent to Adopt Rules Without a Public Hearing, 16 State Reg. 2098-2101, (March 23, 1992) (photocopy).

8. Comments Received During the Comment Period (photocopy).

9. Affidavit of Mailing the Notice of Intent to Adopt Rules Without a Public Hearing and Certificate of Mailing List, (photocopy).

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Printed on Recycled Paper

10. Mailing List (photocopy).

11. Findings of Fact, Conclusions and Order Adopting Rule Amendments (photocopy).

12. Resolution Adopting Rule Amendments (photocopy).

13. Certificate of Resolution Adopting Rules (photocopy).

14. Declaration of Counsel.

Very truly yours,

ANN E. COHEN
Special Assistant
Attorney General
(612) 296-7346

Environmental Protection
Division

Enclosure
COHE/.CQ8

PLEADINGS REGISTER FOR
Minn. Rules Parts 7005.3010-7005.3060 Offset Rule
Governing the Minnesota Pollution Control Agency's
Air Quality Permit Program for the Growth or Expansion
of Industry in Nonattainment Areas

Number	Title of Pleading
1.	Notice of Intent to Solicit Outside Information Regarding Proposed Amendments to Rules Governing Emission Offsets, 16 State Reg. 1044 (October 21, 1991) (photocopy)
2.	Proposed Amendments to Rules Relating to Emission Offsets, 16 State Reg. 2098-2101, (March 23, 1992) (photocopy)
3.	Statement of Need and Reasonableness
4.	Certificate of Authorization Resolution (photocopy)
5.	Affidavit of Sending the Statement of Need and Reasonableness and Proposed Amendments to Rules to the Legislative Commission to Review Administrative Rules (photocopy)
6.	Notice of Intent to Adopt Rules Without a Public Hearing, (Mailed Notice) (photocopy)
7.	Notice of Intent to Adopt Rules Without a Public Hearing, 16 State Reg. 2098-2101, (March 23, 1992) (photocopy)
8.	Comments Received During the Comment Period (photocopy)
9.	Affidavit of Mailing the Notice of Intent to Adopt Rules Without a Public Hearing and Certificate of Mailing List, (photocopy)
10.	Mailing List (phtocopy)
11.	Findings of Fact, Conclusions and Order Adopting Rule Amendments (photocopy)
12.	Resolution Adopting Rule Amendments (photocopy)
13.	Certificate of Resolution Adopting Rules (photocopy)
14.	Declaration of Counsel

Pollution Control Agency

Division of Air Quality

Notice of Intent to Solicit Outside Information Regarding Proposed Revision of *Minnesota Rules* Parts 7005.3010-7005.3060 Offset Rule Governing the Minnesota Pollution Control Agency's Air Quality Permit Program for the Growth or Expansion of Industry in Nonattainment Areas

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) is seeking information or comments from outside sources in preparing to propose amendments to the MPCA's Offset Rule.

The Offset Rule establishes conditions to be included in permits which the Division of Air Quality issues, in accordance with the requirements of *Minnesota Statutes*, section 116.07, subdivision 4a, which permits the MPCA to "issue, continue in effect or deny permits, under such conditions as the MPCA may prescribe for the prevention of pollution, for the emission of air contaminants, or for the installation or operation of any emission facility, air contaminant treatment facility, treatment facility, potential air contaminant storage facility, or storage facility, or any part thereof..."

Minnesota's current Offset Rule was adopted on October 27, 1981. Minnesota believed that its Offset Rule was approvable by the Environmental Protection Agency (EPA) at that time. However, the District of Columbia Circuit Court on August 17, 1982, vacated EPA's new source review regulations on the grounds that the regulations employed a definition of "source" that was contrary to the Clean Air Act. EPA then notified the MPCA that this decision directly affected the approvability of Minnesota's Offset Rule. Although the decision was later overturned by the U.S. Supreme Court in 1984, EPA continues to consider Minnesota's Offset Rule not approvable because several definitions in the rule are not consistent with 40 C.F.R. Part 51, Appendix S.

Since Minnesota does not have an approved Offset Rule, it does not have an approved State Implementation Plan (SIP). Therefore construction of major new sources or major modifications to existing sources in nonattainment areas is banned in Minnesota. In order to correct this the MPCA will be proposing to adopt by reference 40 C.F.R. Part 51, Appendix S with a few modifications.

The MPCA requests information and comments concerning the subject matter of this rule. Interested or affected persons or groups may submit statements of information or comments orally or in writing. Written statements should be addressed to:

Norma L. Florell
Division of Air Quality
Minnesota Pollution Control Agency
520 Lafayette Road N.
St. Paul, Minnesota 55155
(612) 296-7712

All written or oral statements will be accepted until November 20, 1991. Any written material received by the MPCA shall become part of the rulemaking record in the event that the rule is adopted.

Charles W. Williams
Commissioner

Pollution Control Agency

Air Quality Division

Public Notice and Opportunity to Comment on Proposed Revisions to Minnesota State Implementation Plan for Particulate Matter Under 10 Microns

NOTICE IS HEREBY GIVEN, that the Commissioner of the Minnesota Pollution Control Agency (MPCA) proposes to present to the MPCA Board modifications to the Minnesota State Implementation Plan (SIP) for Particulate Matter under 10 Microns (PM10) at its November 26, 1991, meeting at 520 Lafayette Road, St. Paul, Minnesota. Members of the public are invited to attend this meeting and may address the MPCA Board if they so wish. The public may also submit written comments to the MPCA regarding the proposed SIP, which is available for review. Written comments will be accepted until 4:30, November 6, 1991.

PM10 refers to small, airborne breathable particles. A SIP is a plan, required by the Clean Air Act, that states prepare to implement measures to attain and maintain national ambient air quality standards (NAAQS) and other requirements of the Clean Air Act. The MPCA is proposing to modify its PM10 SIP in response to requirements of law in § 107(d)(4)(B)(i) of the Clean Air Act Amendments of 1990.

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Emission Facility Offsets

AGENCY: Pollution Control Agency

MINNESOTA RULES: Chapter 7005

The attached rules are approved for publication in the State Register

Carla M. Riehle
Assistant Revisor

Pollution Control Agency

Proposed Permanent Rules Relating to Emission Facility Offsets

Rules as Proposed

7005.3020 SCOPE.

Parts ~~7005.3010~~ 7005.3020 to 7005.3060 apply to persons who propose to construct a major stationary source or major modification in a nonattainment area and to persons who propose to construct a major stationary source or major modification ~~the emissions from which would affect a nonattainment area~~ in a designated attainment or unclassifiable area with emissions that would cause or contribute to a violation of a national ambient air quality standard in a nonattainment area.

7005.3030 DEFINITIONS.

Subpart 1. **Scope.** The definitions in ~~part 7005.0100~~ Code of Federal Regulations, title 40, chapter I, part 51, appendix S, apply to the terms used in parts ~~7005.3010~~ 7005.3020 to 7005.3060 unless the terms are defined ~~herein~~ in this part. For the purposes of ~~these~~ parts 7005.3020 to 7005.3060, the following words have the meanings defined below.

Subp. 1a. [See repealer.]

Subp. 1b. [See repealer.]

Subp. 2. [See repealer.]

Subp. 2a. [See repealer.]

Subp. 2b. [See repealer.]

Subp. 3a. **Attainment area.** "Attainment area" means any geographic area that has been designated by the United States Environmental Protection Agency as "better than national standards" for any national ambient air quality standard in Code of Federal Regulations, title 40, chapter I, section 81.324, as amended.

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

Subp. 7. [See repealer.]

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Subp. 7a. **Major stationary source.**

~~A.~~ "Major stationary source" means:

~~(1) any stationary source that emits, or has the potential to emit, 100 tons per year or more of any criteria pollutant; or~~

~~(2) any physical change, change in the method of operation, or addition that is proposed to occur at a stationary source not qualifying under item A as a major stationary source if the change will result in additional emissions or potential emissions from the stationary source of 100 tons per year or more of any criteria pollutant.~~

~~B. A major stationary source that is major for volatile organic compounds must be considered major for ozone.~~

~~C. The fugitive emissions of a stationary source must not be included in determining whether the stationary source is a major stationary source unless the stationary source belongs to one of the categories listed in Code of Federal Regulations, title 40, section 51.165(a)(iv)(C)~~ A. a major stationary source as defined in Code of Federal Regulations, chapter I, title 40, section 51, appendix S, as amended; or

B. a stationary source that emits or has the potential to emit 70 tons or more per year of PM10 and that is located or that will locate in an area classified as "serious" under United States Code, title 42, section 7513, as amended.

Subp. 7b. **National ambient air quality standards.** "National ambient air quality standards" means any air quality standard promulgated in Code of Federal Regulations, title 40, part 50, as amended.

Subp. 8. [See repealer.]

Subp. 9. [See repealer.]

Subp. 10. **Nonattainment area.** "Nonattainment area" means any geographic region that has been:

~~A. designated by the agency as violating a state ambient air quality standard; or~~

~~B.~~ designated by the United States Environmental Protection Agency as violating a national ambient air quality

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standard in Code of Federal Regulations, title 40, section 81.324, as amended.

Subp. 11. [See repealer.]

Subp. 11a. **PM10.** "PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.

Subp. 12. [See repealer.]

Subp. 13. [See repealer.]

Subp. 14a. [See repealer.]

[For text of subp 19a, see M.R.]

Subp. 19b. **Unclassifiable area.** "Unclassifiable area" means any geographic area that has been designated by the United States Environmental Protection Agency as "cannot be classified" for any national ambient air quality standard in Code of Federal Regulations, title 40, chapter I, section 81.324, as amended.

[For text of subp 20, see M.R.]

7005.3040 CONDITIONS FOR PERMIT.

Subpart 1. **In general.** No person shall commence construction of a major stationary source or major modification in:

A. a nonattainment area; or ~~at a location where the emissions from the new or modified stationary source would affect a nonattainment area without obtaining an air emission permit and satisfying the conditions in subparts 2 to 4. All permits issued for major stationary sources or major modifications in a nonattainment area or at a location that would affect a nonattainment area shall contain the conditions in subpart 5~~

B. in an attainment area or unclassifiable area if that major stationary source or major modification would cause or contribute to a violation of a national ambient air quality standard in a nonattainment area as determined by the significance levels established in Code of Federal Regulations, title 40, chapter I, part 51, appendix S, part III, as amended, unless the requirements of Code of Federal Regulations, title

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40, chapter I, part 51, appendix S, as incorporated in subpart 2a, are first satisfied.

Subp. 2. [See repealer.]

Subp. 2a. **Modified federal standard.** Persons subject to subpart 1 must comply with Code of Federal Regulations, title 40, chapter I, part 51, appendix S, as amended, with the following exceptions:

A. Code of Federal Regulations, title 40, chapter I, part 51, appendix S, part IV, section A, condition 1, footnotes 4 and 5, as amended, do not apply;

B. Code of Federal Regulations, title 40, chapter I, part 51, appendix S, part IV, section A, condition 3, is amended to read:

> Emission reductions ("offsets") from existing sources in the same area of the proposed source (whether or not under the same ownership) are required such that there will be reasonable progress toward attainment of the applicable NAAQS. Offsets must be based on actual emissions as defined in Code of Federal Regulations, title 40, section 51.165(a)(3), as amended. Only intrapollutant emission offsets will be acceptable (e.g. hydrocarbon increases may not be offset against SO_2 reductions).

C. Code of Federal Regulations, title 40, part 51, appendix S, part IV, section A, condition 3, footnote 7, as amended, does not apply.

D. Code of Federal Regulations, title 40, part 51, appendix S, part IV, section A, footnote 8, as amended, does not apply.

E. Code of Federal Regulations, title 40, part 51, appendix S, part IV, section B, as amended, does not apply.

F. Code of Federal Regulations, title 40, part 51, appendix S, part IV, section C, as amended, applies except that, consistent with Code of Federal Regulations, title 40, section 51.165(3)(i)(A), as amended, the offset baseline shall be the actual emissions of the source from which offset credit is

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obtained.

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. [See repealer.]

Subp. 7. [See repealer.]

Subp. 8. [See repealer.]

7005.3050 BANKING.

A ~~person-who-has-obtained-a-reduction-in-the-lower-of-actual-or-allowable-emissions-a~~ major stationary source that has reduced actual emissions shall be permitted to bank that reduction for future use as an offset as allowed by ~~parts 7005.3010-to-7005.3060-under-the-following-circumstances, limitations, and-conditions~~ Code of Federal Regulations, title 40, part 51, appendix S, part IV, section C,(5), as amended.

~~A.--In-order-to-be-eligible-for-banking-and-to-assure-that-emission-trades-do-not-contravene-applicable-requirements-of-the-Clean-Air-Act, the-emission-reductions-shall-be-final-and-enforceable, either-through-the-terms-of-a-stipulation-agreement, permit, or-other-legal-instrument-obtained-by-an-owner-of-the-stationary-source-or-through-a-permanent, physical-alteration-of-the-stationary-source.-No-person-shall-cease-to-maintain-emission-reductions-that-were-obtained-to-provide-offsets-for-a-new-or-modified-stationary-source.~~

~~B.--In-order-to-be-able-to-bank-reductions-in-emissions, the-person-obtaining-those-reductions-shall-report-to-the-commissioner-the-amount-and-location-of-the-banked-emissions-and-the-time-at-which-the-banked-emissions-have-become-permanently-and-finally-implemented.~~

~~C.--A-person-may-bank-only-those-reductions-in-emissions-that:~~

~~(1)-were-obtained-after-August-1977, but-before-October-27, 1981, and-that-were-reported-to-the-agency-within-six-months-of-October-21, 1981, or~~

~~(2)-are-obtained-after-October-27, 1981, and-are-reported-within-six-months-after-the-reductions-have-become~~

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~~final and enforceable.~~

RENUMBERING INSTRUCTION. References to Minnesota Rules, part 7005.3010, shall be changed to part 7005.3020 in Minnesota Rules.

REPEALER. Minnesota Rules, parts 7005.3010; 7005.3030, subparts 1a, 1b, 2, 2a, 2b, 5, 6, 7, 8, 9, 11, 12, 13, and 14a; and 7005.3040, subparts 2, 3, 4, 5, 7, and 8, are repealed.

Approved
by Revisor _____

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments to the Air Quality Offset Rules, Minn. Rules Parts 7005.3010 to 7005.3060

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The Minnesota Pollution Control Agency (MPCA) is proposing to adopt amendments to the Air Quality Offset Rules, Minn. Rules parts 7005.3010 to 7005.3060. The Offset Rules set forth the procedure for trading emission credits between affected sources in nonattainment areas. Part D of the U.S. Clean Air Act requires states to adopt programs for permitting persons to expand or construct emission sources in areas not meeting ambient air quality standards. The U.S. Environmental Protection Agency (EPA) has adopted regulations to implement the provisions of the Clean Air Act regarding offset programs which are found in 40 C.F.R. Part 51, Subpart I and Appendix S. In order to be approvable by the EPA as part of the State Implementation Plan (SIP), the State of Minnesota's offset program must meet the requirements specified in these regulations.

On October 21, 1991 the MPCA published a Notice of Intent to Solicit Outside Information in preparing to propose amendments to the rules.

II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The MPCA's statutory authority to adopt the rule amendments is set forth in Minn. Stat. § 116.07, subd. 4 (1990). It provides:

> that the Pollution Control Agency may adopt, amend and rescind rules 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. Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances, or conditions in order to make due allowances for variations therein. Without limitations, rules or standards may relate to sources or emissions of air contamination or air pollution, to the quality or composition of such emissions, or to the quality of or composition of the ambient air or outdoor atmosphere or to any other matter relevant to the prevention, abatement or control of air pollution.

Under this statute the MPCA has the necessary statutory authority to adopt the proposed rule amendments.

III. STATEMENT OF NEED

Minn. Stat. sections 14.14, subd. 2, and 14.23 (1990) require the MPCA to make an affirmative presentation of facts establishing the need for and the reasonableness of the proposed amended rules. In general terms, this means that the MPCA must set forth the reasons for proposing rules and the reason must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the MPCA is a proper one. The need for the amended rules is discussed below.

The need to adopt the amended offset rules arises from the requirements of the Federal Clean Air Act, 42 U.S.C. section 7401, et seq.

The Clean Air Act is divided into four different subchapters. Subchapter I of the Clean Air Act, 42 U.S.C. section 7401, establishes a program for the prevention and control of air pollution from stationary sources of pollution.

Subchapter I is further divided into several parts. Part A of Subchapter I establishes the framework within which air pollution standards are set and existing stationary sources of air pollution are controlled. Part D of Subchapter I establishes the framework within which new stationary sources of air pollution in nonattainment areas (areas in which the National Ambient Air Quality Standards are exceeded) are to be constructed and operated.

The requirements of Part A and Part D of Subchapter I, along with more recent federal requirements, define the need for the amended offset rule. The discussion below addresses these requirements and the reasons why Minnesota is required to amend the existing Offset Rule.

A. Subchapter I, Part A of the Clean Air Act

The framework for the control of air pollution established in Subchapter I, Part A of the Clean Air Act is the following:

a. First, the Administrator of the EPA is required to publish (and revise, from time to time) a list which includes, among other things, each air pollutant "the emissions of

which . . . cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. section 7408(a)(1)(A). Pollutants appearing on this list are commonly referred to as "criteria pollutants". To date, the EPA has listed six criteria pollutants: sulfur oxides (measured as sulfur dioxide), particulate matter, carbon monoxide, ozone, nitrogen oxides and lead. 40 C.F.R. Part 50.

b. Second, the Administrator is required to adopt national primary ambient air quality standards and national secondary ambient air quality standards for each criteria pollutant. 42 U.S.C. section 7409(a). Ambient air quality standards establish the maximum levels of pollution which may be tolerated in the air around us, without reference to any particular source of pollution. Ambient standards are not the same as emission standards (or emission limitations), which, unlike ambient standards, establish the maximum levels of pollution that may be emitted from a discrete source of pollution (such as a stack). Primary ambient air quality standards are set at levels sufficient to protect the public health. 42 U.S.C. section 7409(b)(1). Secondary ambient air quality standards are set at levels sufficient to protect the public welfare. 42 U.S.C. section 7409(b)(2).

c. Third, each state is required to submit to the EPA a list classifying the entire state by air quality control regions, as being: (1) in attainment of the primary and secondary ambient air quality standards (attainment areas); (2) not in attainment

of the primary and secondary ambient air quality standards (nonattainment areas); and, (3) unclassifiable, due to lack of sufficient information to determine the status of the area with respect to the primary and secondary ambient air quality standards (unclassified areas). 42 U.S.C. section 7407(d)(1). The Administrator of the EPA reviews each state's list, makes such revisions as the Administrator deems necessary, and promulgates the list as a federal regulation. 42 U.S.C. section 7404(d)(2).

A region can be classified as attainment of a primary standard for a particular pollutant and nonattainment of the secondary standard for that pollutant. In addition, a region can be classified as attainment for some pollutants and nonattainment for others.

B. Subchapter I, Part D of the Clean Air Act

The framework for the control of air pollution established in Subchapter I, Part D of the Clean Air Act is the following:

a. Under 42 U.S.C. section 7502(b)(6), each state must include within its SIP a provision which requires certain new air pollution sources proposed to be located in nonattainment areas to obtain construction and operating permits in accordance with the requirements set out in 42 U.S.C. section 7503.

b. 42 U.S.C. section 7503 specified the four conditions that the owner or operator of a new stationary source must satisfy in order to be issued a construction or operating permit.

One condition is commonly referred to as the "reasonable further progress" requirement. 42 U.S.C. section 7503(1)(A).

The "reasonable further progress requirement" relates to the progress that is being made in bringing a given nonattainment area into compliance with a specific ambient air quality standard and is defined in 42 U.S.C. section 7501.

In order to ensure that a nonattainment area continues to make "reasonable further progress" toward attainment of a standard, even if proposed new stationary sources of air pollution are located in that area, the Clean Air Act establishes two specific permit programs that states may implement. A state may not issue a permit to any proposed new stationary source subject to these permit requirements unless the state has adopted one of these two permit programs.

These two "permit program" options flow from the requirements of 42 U.S.C. sections 7503(1)(A) and 7503(1)(B). The second option [established in 42 U.S.C. section 7503(1)(B)] is one in which a state would "build into" its SIP a "growth allowance." As long as the emissions from a proposed new stationary source would be within the allowance provided in the SIP, the state may permit that new stationary source to be constructed and operated.

The first option [established in 42 U.S.C. section 7503(1)(A)] is to adopt an "offset program" as a means of issuing permits to new sources. If adopted, the amendments to Minn.

Rules parts 7005.3020 through 7005.3060 and part 7005.0100 would establish this offset program.

At the heart of the offset program is the requirement that before a new stationary source of air pollution may be constructed or modified in a nonattainment area, it must obtain a reduction in emissions of specific pollutants from existing stationary sources of pollution in that area. One of the requirements of the "offset program" is a reduction in emissions in the area which would be affected by the new stationary source. This reduction in emissions "offsets" the additional pollution which would be contributed to the air if the new stationary source were to be constructed and operated.

C. Need to Amend Minnesota's Existing Offset Rule

Minnesota's first Offset Rule (APC-41) was adopted on October 27, 1981. The EPA conditionally approved this rule at 47 Fed. Reg. 32742 (July 29, 1982). Minnesota believed that its Offset Rule was approvable by EPA at that time. However, the District of Columbia Circuit Court on August 17, 1982, rendered a decision in the case of Natural Resources Defense Council (NRDC) v. Gorsuch, 685 F.2d 718, (D.C. Cir. 1982) in which the court vacated EPA's new source review regulations published at 46 Fed. Reg. 50766 (1981) on the grounds that the regulations employed a definition of "source" that was contrary to the Clean Air Act. EPA then notified the MPCA that this decision directly affected the approvability of Minnesota's Offset Rule. A memorandum from Region V EPA dated October 1, 1982 states:

> This court decision directly affects the approvability of the new source review regulation which the State of Minnesota submitted on December 22, 1982 as a SIP revision. The Minnesota rule has only a plant wide definition of source and now it appears that a definition of source is also needed which is limited to an identifiable piece of process equipment. Therefore, the December 22, 1981 submittal is no longer being processed according the August 27, 1982 memorandum from Bennett and Perry which states "Headquarters will freeze any SIP action not approved by the Administrator before August 17 to the extent the action would not comply with the court's ruling."

Although the NRDC decision was later overturned by the U.S. Supreme Court in Chevron U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837, 104 S.Ct. 2778 (1984), EPA continued to recommend the Offset Rule for disapproval.

On July 15, 1987, the MPCA initiated contact with EPA to revise the Offset Rule to address EPA concerns. MPCA staff discussed EPA's 1983 comments on APC-41 and indicated that they would use them as a starting point for the revisions. Between July 15, 1987 and the submittal of the Offset Rule to EPA on March 13, 1989, the MPCA was in frequent contact with EPA staff regarding the proposed Offset Rule. On November 30, 1988, the MPCA received EPA's final comments on the proposed revisions to the Offset Rule. EPA expressed concern regarding the MPCA's definition of "net air quality benefit" which required a reduction in ambient concentration of a pollutant in addition to offsetting emissions from old sources and the new source. EPA also believed that the MPCA should specify what constitutes a reduction in ambient concentrations. In response to EPA's comments, staff amended the definition of "net air quality

benefit". Contact with EPA staff indicated that these revisions satisfactorily addressed their concerns.

On December 19, 1988 the MPCA public noticed the revisions to the Offset Rule as revisions to Minnesota Rules and as a revision to the Minnesota SIP. The MPCA also submitted copies of the final proposed Offset Rule and the public notice to EPA staff on that date. No comments were received from EPA.

On October 14, 1989 the EPA notified the MPCA that they would provide the completeness review results on the proposed Offset Rule by October 15, 1989. On February 6, 1990 the MPCA received the EPA's draft comments. The EPA stated they would not approve Minnesota's proposed Offset Rule based on the following reasons:

a. Five definitions in the Offset Rule were not approvable.

b. The state had failed to demonstrate that its rule was equivalent to the EPA standard where different.

c. The EPA found the rule submittal unclear regarding what Minnesota submitted for a complete Offset Rule.

d. The rule was missing two key definitions.

On August 21, 1990, the MPCA withdrew the Offset Rule from further Federal rulemaking. Based on the State's withdrawal, EPA withdrew its proposed action on the rule as published at 55 Fed. Reg. 46829 (November 7, 1990).

On April 11, 1991 the MPCA held a conference call with William MacDowell of EPA Region V and Dennis Crumpler of EPA Headquarters concerning Minnesota's Offset Rule. The MPCA

proposed to adopt Appendix S of 40 CFR 51 as its Offset Rule. EPA stated that the MPCA would have to incorporate by reference Appendix S of 40 C.F.R. Part 51 with three revisions that would need to be made in order to make it approval for purposes of Section 173 of the Clean Air Act.

Under the Clean Air Act authorities, EPA has imposed a construction ban in Minnesota's nonattainment areas because Minnesota does not have an approved permitting program for new sources locating in a nonattainment area. The ban means that no major new source or major modification can be built in a nonattainment area if the new major source or modification emits a pollutant for which the area in which it is located is nonattainment, unless a plan is submitted to and approved by EPA showing that the source will not interfere with attainment of air quality standards as stated in 40 C.F.R. section 52.24(a). "Major" refers to amount of air pollution generated by the source, not the physical size of the facility. 40 C.F.R. section 52.24 (a) states:

> After June 30, 1979, no major stationary source shall be constructed in any nonattainment area as designated in 40 C.F.R. Part 81, Subpart C ("nonattainment area") to which any State Implementation Plan applies, if the emissions from such facility will cause or contribute to concentrations of any pollutant for which a national ambient air quality standard is exceeded in such area, unless, as of the time of application for a permit for such construction, such plan meets the requirements of Part D, Title I, of the Clean Air Act, as amended (42 U.S.C. 7501 et seq.) ("Part D"). This section shall not apply to any nonattainment area once EPA has fully approved the State Implementation Plan as meeting the requirements of Part D.

As stated above, the "growth program" is a necessary part of any SIP. Because Minnesota does not have an approved Offset Rule, it does not have an approved SIP. Therefore the construction ban of 40 C.F.R. section 52.24 (a) applies in Minnesota.

If adopted by the MPCA and approved by the EPA, the amended Offset Rule (i.e. Minn. Rules Parts 7005.3020 through 3060) would establish the necessary growth program and eliminate the no-growth sanction currently in effect in Minnesota's nonattainment areas.

IV. STATEMENT OF REASONABLENESS

The MPCA is required by Minn. Stat. ch. 14 to make an affirmative presentation of facts establishing the reasonableness of the proposed rule amendments. Reasonableness is the opposite of arbitrariness and capriciousness. It means that there is a rational basis for the MPCA's proposed action. The reasonableness of the proposed rule amendments is discussed below.

A. REASONABLENESS OF THE RULE AS A WHOLE

The following discussion provides an explanation and justification of the provisions of the rule amendments as a whole. The purpose of this section of the Statement is to demonstrate that the amendments are a reasonable approach to meeting the need identified in the Statement of Need.

As discussed in the Statement of Need, the MPCA has a need to address the fact that the existing Offset Rule is not approvable by EPA. Minnesota's SIP is therefore deficient and a

construction ban has been imposed under 40 C.F.R. section 52.24(a).

Minnesota has attempted to obtain EPA's approval of an offset rule based on language developed by MPCA staff without success. The proposed rule adopts federal language found in 40 CFR Part 51, Appendix S with certain changes needed to meet the requirements of 40 CFR Part 51.165, which establishes standards for approval of SIPs containing offset programs.

Because it is certain that EPA will approve the language of 40 CFR Part 51, Appendix S, the MPCA's overall approach to this rulemaking is reasonable.

B. REASONABLENESS OF INDIVIDUAL PARTS

Part 7005.3010. PURPOSE

Part 7005.3010 is deleted as redundant with the "scope" statement found under part 7005.3020.

Part 7005.3020 SCOPE

Part 7005.3020 is amended as follows:

> Parts 7005.3010 to 7005.3060 apply to persons who propose to construct a major stationary source or major modification in a nonattainment area and to persons who propose to construct a major stationary source or major modification ~~the emissions from which would affect a nonattainment area~~ in a designated attainment or unclassifiable area with emissions that would cause or contribute to a violation of a national ambient air quality standard in a nonattainment area.

This change is needed because the word "affect" was not adequate to establish when the offset rule would apply to sources locating in attainment or unclassifiable areas with emissions contributing to nonattainment problems in nonattainment areas. Under 40 CFR

Part 51.165(b)(1), a source must be subject to the offsetting program if its emissions affect nonattainment areas, regardless if it is physically located in an "attainment" or "unclassifiable" area. This change is reasonable because to obtain federal approval, Minnesota's rule must meet the standards established in 40 CFR Part 51.165.

7005.3030 DEFINITIONS

Subpart 1. Scope.

Subpart 1 is amended as follows:

> The definitions in ~~part 7005.0100~~ Code of Federal Regulations, title 40, chapter I, part 51, appendix S apply to the terms used in parts 7005.30~~1~~20 to 7005.3060 unless the terms are defined ~~herein~~ in this part. For the purposes of ~~these~~ parts 7005.3020 to 7005.3060, the following words have the meanings defined below.

This change is reasonable because the MPCA is adopting 40 CFR Part 51 Appendix S as the text of its rule. It is therefore reasonable to adopt the exact definitions found in 40 CFR Part 51, Appendix S. The other changes are reasonable because they improve the readability of the provision.

Subp. 1a.

Subpart 1a is deleted. It is reasonable to delete subpart 1a because the definition is redundant with the definitions found in 40 CFR Part 51, Appendix S.

Subp. 1b

Subpart 1b is deleted. It is reasonable to delete subpart 1b because the definition is redundant with the definitions found in 40 CFR Part 51, Appendix S.

Subp. 2

Subpart 2 is deleted. It is reasonable to delete subpart 2 because the definition is redundant with the definitions found in 40 CFR Part 51, Appendix S.

Subp. 2a

Subpart 2a is deleted. It is reasonable to delete subpart 2a because the definition is redundant with the definitions found in 40 CFR Part 51, Appendix S.

Subp. 2b

Subpart 2b is deleted. It is reasonable to delete subpart 2b because the definition is redundant with the definitions found in 40 CFR Part 51, Appendix S.

Subp. 3a. Attainment area.

Subpart 3a adds new definition as follows:

> "Attainment area" means any geographic area that has been designated by the United States Environmental Protection Agency as "better than national standards" for any national ambient air quality standard in Code of Federal Regulations, Title 40, Chapter I, Section 81.324, as amended.

It is reasonable to add a definition of "attainment area" because the term is used but not defined in 40 CFR Part 51, Appendix S. The definition is reasonable because it clearly references all areas officially designated as attainment for primary and secondary ambient air quality standards through its reference to those areas as listed in the Code of Federal Regulations.

Subp. 5

Subpart 5 is deleted. It is reasonable to delete subpart 5 because the definition is redundant with the definition found in 40 CFR Part 51, Appendix S.

Subp. 6

Subpart 6 is deleted. It is reasonable to delete subpart 6 because the definition is redundant with the definition found in 40 CFR Part 51, Appendix S.

Subp. 7. National ambient air quality standards.

Subpart 7 is amended as follows:

> Subp. 7. **National ambient air quality standards.** "National ambient air quality standards" means ~~the primary (health related) and secondary (welfare related) pollutant concentrations established by the administrator of the United States Environmental Protection Agency, pursuant to section 109 of the Clean Air Act of 1977, United States Code, title 42, section 7409 (1980)~~ any air quality standard promulgated in Code of Federal Regulations, title 40, part 50, as amended.

This amended definition is reasonable because it simplifies the original definition and makes it easier to apply. It is necessary to define "national ambient air quality standards" because the term is used in 40 CFR Part 51, Appendix S. The definition is reasonable because it references all federal primary and secondary ambient air quality standards listed in the Code of Federal Regulations. This definition is also reasonable because it will allow changes to listed federal standards without necessitating an amendment of this rule.

Subp. 7a. Major stationary source.

Subpart 7a is amended as follows:

Subp. 7a. **Major stationary source.** A. "Major stationary source" means~~:~~

~~(1) any stationary source that emits, or has the potential to emit, 100 tons per year or more of any criteria pollutant; or~~

~~(2) any physical change, change in the method of operation, or addition that is proposed to occur at a stationary source not qualifying under item A as a major stationary source if the change will result in additional emissions or potential emissions from the stationary source of 100 tons per year or more of any criteria pollutant.~~

~~B. A major stationary source that is major for volatile organic compounds must be considered major for ozone.~~

~~C. The fugitive emissions of a stationary source must not be included in determining whether the stationary source is a major stationary source unless the stationary source belongs to one of the categories listed in Code of Federal Regulations, title 40, section 51.165(a)(iv)(C)~~ A. a "major stationary source" as defined in Code of Federal Regulations, title 40, section 51, Appendix S; or

B. a stationary source that emits or has the potential to emit 70 tons or more per year of PM10 and that is located or that will locate in an area classified as "serious" under United States Code, title 42, section 7513, as amended.

This definition is reasonable because it incorporates changes that were made to the definition of "major stationary source" under the program to regulate PM10 found at 42 U.S.C. § 7513 as amended in 1990.

Subp. 8

Subpart 8 is deleted. It is reasonable to delete subpart 5 because the definition is redundant with the definition found in 40 CFR Part 51, Appendix S.

Subp. 9

Subpart 9 is deleted. It is reasonable to delete subpart 5 because the definition is redundant with the definition found in 40 CFR Part 51, Appendix S.

Subp. 10. Nonattainment area.

Subpart 10 is amended as follows:

> Subp. 10. **Nonattainment area.** "Nonattainment area" means any geographic region that has been:
>
> ~~A. designated by the agency as violating a state ambient air quality standard; or~~
>
> ~~B.~~ designated by the United States Environmental Protection Agency as violating a national ambient air quality standard in Code of Federal Regulations, title 40, section 81.324, as amended.

This definition is reasonable because it is consistent with definitions found in the Clean Air Act § 107(d). The definition is reasonable because it clearly references all areas officially designated as nonattainment for primary and secondary ambient air quality standards through its reference to those areas as listed in the Code of Federal Regulations.

Subp. 11

Subpart 11 is deleted. It is reasonable to delete subpart 5 because the definition is redundant with the definition found in 40 CFR Part 51, Appendix S.

Subp. 11a. PM10.

Subpart 11a is a new part proposed as follows:

> Subp. 11a. **PM10.** "PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

This definition is reasonable because it is consistent with the definition of PM10 found in 40 CFR Part 50.6 and 40 CFR Part 51.100(qq). A definition of PM10 is needed because EPA will be treating PM10 sources and nonattainment areas differently under regulations proposed under § 107(d)(4)(B) of the Clean Air Act, and Appendix S does not specifically address these areas. This definition, in combination with the definition of major stationary source, will address this deficiency.

Subp. 12

Subpart 12 is deleted. It is reasonable to delete subpart 5 because the definition is redundant with the definition found in 40 CFR Part 51, Appendix S.

Subp. 13

Subpart 13 is deleted. It is reasonable to delete subpart 5 because the definition is redundant with the definition found in 40 CFR Part 51, Appendix S.

Subp. 14a

Subpart 14a is deleted. It is reasonable to delete subpart 5 because the definition is redundant with the definition found in 40 CFR Part 51, Appendix S.

Subp. 19a

Subpart 19a is deleted. It is reasonable to delete subpart 5 because the definition is redundant with the definition found in 40 CFR Part 51, Appendix S.

Subp. 19b. Unclassifiable area.

Subpart 19b is added as follows:

Subp. 19b. **Unclassifiable area.** "Unclassifiable area" means any geographic area that has been designated by the United States Environmental Protection Agency as "cannot be classified" for any national ambient air quality standard in Code of Federal Regulations, Title 40, Chapter I, section 81.324 as amended.

This definition is needed because the term "unclassifiable area" is used in 40 CFR Part 51, Appendix S but no definition is referenced. The definition is reasonable because it clearly references all areas officially designated as unclassifiable for primary and secondary ambient air quality standards through its reference to those areas as listed in the Code of Federal Regulations.

7005.3040 CONDITIONS FOR PERMIT

Subp. 1

Subpart 1 is amended as follows:

Subpart 1. **In general.** No person shall commence construction of a major stationary source or major modification in:

A. a nonattainment area; or

B. in an attainment area or unclassifiable area if that major stationary source or major modification would cause or contribute to a violation of a national ambient air quality standard in a nonattainment area as determined by the significance levels established in Code of Federal Regulations, title 40, chapter I, part 51, appendix S part III, unless the requirements of Code of Federal Regulations, title 40, chapter I, part 51, appendix S, as incorporated below, are first satisfied. ~~at a location where the emissions from the new or modified stationary source would affect a nonattainment area without obtaining an air emission permit and satisfying the conditions in subparts 2 to 4. All permits issued for major stationary source or major modifications in a nonattainment area or at a location that would affect a nonattainment area shall contain the conditions in subpart 5.~~

This amendment is reasonable because it incorporates by reference the standards regarding offsetting found in 40 CFR Part 51, Appendix S. It is reasonable to incorporate the federal standards by reference to avoid inconsistencies between state and federal language and to obtain federal approval.

Subp. 2

Subpart 2 is deleted. It is no longer necessary to state this requirement as it is included in 40 CFR Part 51, Appendix S.

Subp. 2a

Subpart 2a is added to incorporate the federal standard. This federal standard is subject to some modifications as detailed below:

> Subp. 2a. **Modified federal standard.** Persons subject to part 7005.3040, subpart 1 must comply with Code of Federal Regulations, title 40, chapter 1, Part 51, Appendix S, as amended, with the following exceptions:
>
> A. Code of Federal Regulations, title 40, part 51, appendix S, part IV, section A, condition 1, footnotes 4 and 5, as amended, do not apply.
>
> B. Code of Federal Regulations, title 40, part 51, appendix S, part IV, section A, condition 3 is amended to read:
>
> Emission reductions ("offsets") from existing sources in the area of the proposed source (whether or not under the same ownership) are required such that there will be reasonable progress toward attainment of the applicable NAAQS. Offsets must be based on actual emissions as defined in Code of Federal Regulations, title 40, section 51.165(a)(3), as amended. Only intrapollutant emission offsets will be acceptable (e.g. hydrocarbon increases may not be offset against SO_2 reductions).
>
> C. Code of Federal Regulations, title 40, part 51, appendix S, part IV, section A, condition 3, footnote 7 as amended, does not apply.

D. Code of Federal Regulations, title 40, part 51, appendix S, part IV, Section A, footnote 8, does not apply.

E. Code of Federal Regulations, title 40, part 51, appendix S, part IV, section B, as amended, does not apply.

F. Code of Federal Regulations, title 40, part 51, appendix S, part IV, section C, as amended, applies except that, consistent with Code of Federal Regulations, title 40, section 51.165(3)(i)(A), as amended, the offset baseline shall be the actual emissions of the source from which offset credit is obtained.

[Subp. 3 - Subp. 8. Delete.]

These modifications are reasonable because they are necessary for an approvable program under 40 CFR Part 51.165.

7005.3050 Banking

Part 7005.3050 is amended to read as follows:

A major stationary source that has reduced actual emissions ~~person who has obtained a reduction in the lower of actual or allowable emissions a stationary source~~ shall be permitted to bank that reduction for future use as an offset as allowed by ~~parts 7005.3010 to 7005.3060 under the following circumstances, limitations, and conditions~~ Code of Federal Regulations, title 40, part 51, appendix S, part IV, section C, (5).

[A.- C. delete]

This amendment is reasonable because it corrects flaws in terminology and makes this part consistent with the federal rules. It is reasonable to reference reductions of actual emissions because actual emissions must be used in a program approvable under 40 CFR Part 51.165.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1990) requires the Agency, when proposing rules which may affect small businesses, to consider the following methods for reducing the impact 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 rules.

The proposed rules will not affect small businesses as defined in Minn. Stat. § 14.115 (1990). As proposed the rules only affect major new sources or major modifications in nonattainment areas. A major stationary source is defined as a stationary source that emits more than 100 tons per year of any pollutant subject to regulation under the Clean Air Act. A major modification is defined as a change that results in a significant net increase of emissions of pollutants from a major stationary source. Because of these definitions, is is unlikely that small businesses will be affected by this rule. However, even if a small business was affected, because the Agency is adopting this rule in response to federal mandate, and a federal rule with identical standards would apply if the Agency exempted small

businesses from compliance, there is nothing that the Agency could do to change the applicable standards.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. § 116.07, subd. 6 (1990) to give due consideration to economic factors. The statute provides:

> In exercising all its powers, the pollution control agency shall give due consideration to the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

In proposing the rules governing emission offsets, the Agency has given due consideration to available information as to any economic impacts the proposed rules would have. The Agency believes that the offset rule, if approved, would have a positive impact on the economy of the state because it would allow the U.S. EPA to lift the construction ban currently imposed. This construction ban will remain in effect until Minnesota submits a revised State Implementation Plan (SIP). An approvable offset rule is a necessary part of the SIP. Because the offset rule does not mandate any changes to emission limits, the rule will not negatively impact existing businesses.

VII. CONCLUSION

Based on the foregoing, the proposed amendments to Minn. Rules pts. 7005.3010 to 7005.3060 are both needed and reasonable.

Dated: 2/25, 1992.

Charles W. Williams
Commissioner

CERTIFICATE OF MPCA'S AUTHORIZATION RESOLUTION

I, Charles W. Williams, do hereby certify that I am the Commissioner 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 25th day of February, 1992, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

BE IT RESOLVED, that the Commissioner of the Minnesota Pollution Control Agency is hereby granted the authority to sign and to give notice of the Minnesota Pollution Control Agency's intent to adopt, without a public hearing, the attached amendments to Minn. Rules Parts 7005.3010 to 7005.3060, to all persons who have registered their names with the Minnesota Pollution Control Agency for that purpose and publish the notice and the proposed rules in the State Register, and to perform any acts incidental thereto, including making any form changes in the rules that the Revisor of Statutes requires the Minnesota Pollution Control Agency to make in order to obtain the Revisor's certification as required by Minn. Stat. § 14.07, subd. 2 (1990).

BE IT FURTHER RESOLVED, that the Commissioner of the Minnesota Pollution Control Agency is also granted the authority to call a hearing for the purpose of adopting the attached amendments to Minn. Rules Part 7005.3010 to 7005.3060, to sign the Notice thereof, to act as the Minnesota Pollution Control Agency's representative at the hearing, and to perform any acts incidental thereto, including making any form changes in the rules that the Revisor of Statutes requires the Minnesota Pollution Control Agency to make in order to obtain the Revisor's certification as required by Minn. Stat. § 14.07, subd. 2 (1990).

IN WITNESS WHEREOF, I have hereunto subscribed my name this 28 day of Feb, 1992.

Charles W. Williams
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments to Rules Governing Air Quality Emission Offsets, Minn. Rules Parts 7005.3010 to 7005.3060

AFFIDAVIT OF SENDING THE STATEMENT OF NEED AND REASONABLENESS AND PROPOSED AMENDMENTS TO RULES TO THE LEGISLATIVE COMMISSION TO REVIEW ADMINISTRATIVE RULES

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Kelly J. Better, being duly sworn says:

That on the 28 day of February, 1992, I mailed a copy of the Statement of Need and Reasonableness pursuant to Minn. Stat. §§ 14.131, along with proposed rules and the attached cover letter to the executive director of the Legislative Commission to Review Administrative Rules by depositing in the United States mail with first class postage prepaid.

Kelly J. Better

Subscribed and sworn to before me this 20th day of April, 1992.

Jodi D. Rasmussen
Notary Public

JODI D. RASMUSSEN
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires 10-23-94

Minnesota Pollution Control Agency
520 Lafayette Road, Saint Paul, Minnesota 55155-3898
Telephone (612) 296-6300

February 28, 1992

Ms. Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules
State Office Building, Room 55
100 Constitution Avenue
St. Paul, Minnesota 55155

Dear Ms. Hruby:

RE: Statement of Need and Reasonableness for Proposed Amendments to Rules Governing Air Quality Emission Offsets, (Minn. Rules Parts 7005.3010 to 7005.3060).

Enclosed for your review is a copy of the Statement of Need and Reasonableness for proposed amendments to rules governing air quality emission offsets, as required by Minn. Stat. § 14.115, subd. 8 (1990). If you have any questions please call me at 296-7712.

Sincerely,

Norma L. Florell

Norma L. Florell
Planning and Rule Coordinator
Air Quality Division

NF:jmd

Enclosure

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments to Rules Governing Air Quality Emission Offsets, Minn. Rules Parts 7005.3010 to 7005.3060

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

(1) **Notice is hereby given** that the Minnesota Pollution Control Agency (MPCA) intends to adopt amendments to the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minn. Stat. § 14.22 to 14.28 (1990). The MPCA's authority to adopt the amendments is set forth in Minn. Stat. § 116.07

(2) All persons have until 4:30 p.m. April 23, 1992, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the comment period. (4) If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. (6) Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed.

(7) If a public hearing is required, the MPCA will proceed pursuant to Minn. Stat. § 14.131 to 14.20 (1990).

Comments or written requests for a public hearing must be submitted to: (5)

Norma Florell
Minnesota Pollution Control Agency
Air Quality Division
520 Lafayette Road North
St. Paul, Minnesota 55155
(612) 296-7712

The proposed amendments may be modified if the modifications are supported by data and views submitted to the MPCA and do not result in a substantial change in the proposed amendments to the rules as noticed. (10)

(11) Minn. Rules parts 7005.3010 to 7005.3060 (Offset Rule), set forth the procedures for trading emission credits between affected sources in nonattainment areas. Part D of the U.S. Clean Air Act requires states to adopt programs for permitting persons to expand or construct emission sources in areas not meeting ambient air quality standards.

The U.S. Environmental Protection Agency (EPA) has adopted regulations to implement the provisions of the Clean Air Act regarding offset programs which are found in 40 C.F.R. Part 51, Subpart I and Appendix S. In order to be approvable by the EPA, the State of Minnesota's Offset Rule must meet the requirements specified in these regulations.

The MPCA is proposing to adopt amendments to the Offset Rule because the EPA will not approve the rules as currently adopted. The proposed amendments incorporate the federal standards of Appendix S as modified to meet the requirement of 40 C.F.R. Part 51 and recent amendments to the Clean Air Act. Because the MPCA now proposes to adopt the federal standard, the MPCA believes that the Offset Rule will be approved by the EPA, resulting in the removal of a "construction ban" currently enforced against Minnesota for failure to have an approvable Part D program.

Notice is also hereby given that once formal rulemaking is completed the MPCA intends to adopt the amended version of Minn. Rules Parts 7005.3010 to 7005.3060 as part the State Implementation Plan (SIP). A notice to amend the SIP will be published in the State Register following final adoption of the rule.

The proposed amendments are published below. One free copy of the rules is available upon request from Norma Florell at the address and telephone number stated above.

(12) A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available from Norma Florell upon request.

(13) You are hereby advised, pursuant to Minn. Stat. § 14.115 (1990), "Small business considerations in rulemaking," that the proposed amendments will not have an affect on small businesses. The proposed amendments only affect major new sources or major modifications in nonattainment areas. A major stationary source is defined as a stationary source that emits more than 100 tons per year of any pollutant subject to regulation under the Clean Air Act. A major modification is defined as a change that results in a significant net increase of emissions of pollutants from a major stationary source. Because of these definitions, it is unlikely that small businesses will be affected by this rule. However, even if a small business was affected, because the MPCA is adopting this rule in response to federal mandate, and a federal rule with identical standards would apply if the MPCA exempted small businesses from compliance, there is nothing that the MPCA could do to change the applicable standards.

(9) If no hearing is required, upon adoption of the amendments, the amended rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 amended rule as adopted, must submit a written request to Norma Florell.

Dated: Feb. 28, , 1992

CHARLES W. WILLIAMS
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments to Rules Governing Air Quality Emission Offsets, Minn. Rules Parts 7005.3010 to 7005.3060

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) intends to adopt amendments to the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minn. Stat. § 14.22 to 14.28 (1990). The MPCA's authority to adopt the amendments is set forth in Minn. Stat. § 116.07

All persons have until 4:30 p.m. April 23, 1992, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed.

If a public hearing is required, the MPCA will proceed pursuant to Minn. Stat. § 14.131 to 14.20 (1990).

Comments or written requests for a public hearing must be submitted to:

Norma Florell
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520 Lafayette Road North
St. Paul, Minnesota 55155
(612) 296-7712

The proposed amendments may be modified if the modifications are supported by data and views submitted to the MPCA and do not result in a substantial change in the proposed amendments to the rules as noticed.

Minn. Rules parts 7005.3010 to 7005.3060 (Offset Rule), set forth the procedures for trading emission credits between affected sources in nonattainment areas. Part D of the U.S. Clean Air Act requires states to adopt programs for permitting persons to expand or construct emission sources in areas not meeting ambient air quality standards.

who wish to receive a copy of the amended rule as adopted, must submit a written request to Norma Florell.

Dated: Feb. 28, , 1992

CHARLES W. WILLIAMS
Commissioner

Pollution Control Agency

Proposed Permanent Rules Relating to Emission Facility Offsets

Rules as Proposed

7005.3020 SCOPE.

Parts ~~7005.3010~~ 7005.3020 to 7005.3060 apply to persons who propose to construct a major stationary source or major modification in a nonattainment area and to persons who propose to construct a major stationary source or major modification the ~~emissions from which would affect a nonattainment area~~ in a designated attainment or unclassifiable area with emissions that would cause or contribute to a violation of a national ambient air quality standard in a nonattainment area.

7005.3030 DEFINITIONS.

Subpart 1. Scope. The definitions in ~~part 7005.0100~~ Code of Federal Regulations, title 40, chapter I, part 51, appendix S, apply to the terms used in parts ~~7005.3010~~ 7005.3020 to 7005.3060 unless the terms are defined ~~herein~~ in this part. For the purposes of ~~these~~ parts 7005.3020 to 7005.3060, the following words have the meanings defined below.

Subp. 1a. [See repealer.]

Subp. 1b. [See repealer.]

Subp. 2. [See repealer.]

Subp. 2a. [See repealer.]

Subp. 2b. [See repealer.]

Subp. 3a. Attainment area. "Attainment area" means any geographic area that has been designated by the United States Environmental Protection Agency as "better than national standards" for any national ambient air quality standard in Code of Federal Regulations, title 40, chapter I, section 81.324, as amended.

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

Subp. 7. [See repealer.]

Approved by Revisor

standard in Code of Federal Regulations, title 40, section 81.324, as amended.

Subp. 11. [See repealer.]

Subp. 11a. PM10. "PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.

Subp. 12. [See repealer.]

Subp. 13. [See repealer.]

Subp. 14a. [See repealer.]

[For text of subp 19a, see M.R.]

Subp. 19b. Unclassifiable area. "Unclassifiable area" means any geographic area that has been designated by the United States Environmental Protection Agency as "cannot be classified" for any national ambient air quality standard in Code of Federal Regulations, title 40, chapter I, section 81.324, as amended.

[For text of subp 20, see M.R.]

7005.3040 CONDITIONS FOR PERMIT.

Subpart 1. In general. No person shall commence construction of a major stationary source or major modification in:

A. a nonattainment area; ~~or at a location where the emissions from the new or modified stationary source would affect a nonattainment area without obtaining an air emission permit and satisfying the conditions in subparts 2 to 4. All permits issued for major stationary sources or major modifications in a nonattainment area or at a location that would affect a nonattainment area shall contain the conditions in subpart 5~~

B. in an attainment area or unclassifiable area if that major stationary source or major modification would cause or contribute to a violation of a national ambient air quality standard in a nonattainment area as determined by the significance levels established in Code of Federal Regulations, title 40, chapter I, part 51, appendix S, part III, as amended, unless the requirements of Code of Federal Regulations, title

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obtained.

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. [See repealer.]

Subp. 7. [See repealer.]

Subp. 8. [See repealer.]

7005.3050 BANKING.

A person who has obtained a reduction in the lower of actual or allowable emissions a major stationary source that has reduced actual emissions shall be permitted to bank that reduction for future use as an offset as allowed by parts 7005.3010 to 7005.3060 under the following circumstances, limitations, and conditions Code of Federal Regulations, title 40, part 51, appendix S, part IV, section C,(5), as amended.

A. In order to be eligible for banking and to assure that emission trades do not contravene applicable requirements of the Clean Air Act, the emission reductions shall be final and enforceable, either through the terms of a stipulation agreement, permit, or other legal instrument obtained by an owner of the stationary source or through a permanent, physical alteration of the stationary source. No person shall cease to maintain emission reductions that were obtained to provide offsets for a new or modified stationary source.

B. In order to be able to bank reductions in emissions, the person obtaining those reductions shall report to the commissioner the amount and location of the banked emissions and the time at which the banked emissions have become permanently and finally implemented.

C. A person may bank only those reductions in emissions that:

(1) were obtained after August 1977, but before October 27, 1981, and that were reported to the agency within six months of October 21, 1981, or

(2) are obtained after October 27, 1981, and are reported within six months after the reductions have become

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Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Pollution Control Agency

Proposed Permanent Rules Relating to Emission Facility Offsets

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) intends to adopt amendments to the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* § 14.22 to 14.28 (1990). The MPCA's authority to adopt the amendments is set forth in *Minnesota Statutes* § 116.07.

All persons have until 4:30 p.m. April 23, 1992, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed.

If a public hearing is required, the MPCA will proceed pursuant to *Minnesota Statutes* § 14.131 to 14.20 (1990).

Comments or written requests for a public hearing must be submitted to:

Norma Florell
Minnesota Pollution Control Agency
Air Quality Division
520 Lafayette Road North
St. Paul, Minnesota 55155
(612) 296-7712

The proposed amendments may be modified if the modifications are supported by data and views submitted to the MPCA and do not result in a substantial change in the proposed amendments to the rules as noticed.

Minnesota Rules parts 7005.3010 to 7005.3060 (Offset Rule), set forth the procedures for trading emission credits between affected sources in nonattainment areas. Part D of the U.S. Clean Air Act requires states to adopt programs for permitting persons to expand or construct emission sources in areas not meeting ambient air quality standards. The U.S. Environmental Protection Agency (EPA) has adopted regulations to implement the provisions of the Clean Air Act regarding offset programs which are found in 40 C.F.R. Part 51, Subpart I and Appendix S. In order to be approvable by the EPA, the State of Minnesota's Offset Rule must meet the requirements specified in these regulations.

The MPCA is proposing to adopt amendments to the Offset Rule because the EPA will not approve the rules as currently adopted. The proposed amendments incorporate the federal standards of Appendix S as modified to meet the requirement of 40 C.F.R. Part 51 and recent amendments to the Clean Air Act. Because the MPCA now proposes to adopt the federal standard, the MPCA believes that the Offset Rule will be approved by the EPA, resulting in the removal of a "construction ban" currently enforced against Minnesota for failure to have an approvable Part D program. Notice is also hereby given that once formal rulemaking is completed the MPCA intends to adopt the amended version of *Minnesota Rules* Parts 7005.3010 to 7005.3060 as part the State Implementation Plan (SIP). A notice to amend the SIP will be published in the *State Register* following final adoption of the rule.

The proposed amendments are published below. One free copy of the rules is available upon request from Norma Florell at the address and telephone number stated above.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available from Norma Florell upon request.

You are hereby advised, pursuant to *Minnesota Statutes* § 14.115 (1990), "Small business considerations in rulemaking," that the proposed amendments will not have an effect on small businesses. The proposed amendments only affect major new sources or major modifications in nonattainment areas. A major stationary source is defined as a stationary source that emits more than 100 tons per year of any pollutant subject to regulation under the Clean Air Act. A major modification is defined as a change that results in a significant net increase of emissions of pollutants from a major stationary source. Because of these definitions, it is unlikely that small businesses will be affected by this rule. However, even if a small business was affected, because the MPCA is adopting this rule in response to federal mandate, and a federal rule with identical standards would apply if the MPCA exempted small businesses from compliance, there is nothing that the MPCA could do to change the applicable standards.

If no hearing is required, upon adoption of the amendments, the amended rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 amended rule as adopted, must submit a written request to Norma Florell.

Charles W. Williams
Commissioner

Rules as Proposed

7005.3020 SCOPE.

Parts ~~7005.3010~~ 7005.3020 to 7005.3060 apply to persons who propose to construct a major stationary source or major modification in a nonattainment area and to persons who propose to construct a major stationary source or major modification ~~the emissions from which would affect a nonattainment area~~ in a designated attainment or unclassifiable area with emissions that would cause or contribute to a violation of a national ambient air quality standard in a nonattainment area.

7005.3030 DEFINITIONS.

Subpart 1. **Scope.** The definitions in ~~part 7005.0100~~ *Code of Federal Regulations*, title 40, chapter I, part 51, appendix S, apply to the terms used in parts ~~7005.3010~~ 7005.3020 to 7005.3060 unless the terms are defined ~~herein~~ in this part. For the purposes of ~~these~~ parts 7005.3020 to 7005.3060, the following words have the meanings defined below.

Subp. 1a. [See repealer.]

Subp. 1b. [See repealer.]

Subp. 2. [See repealer.]

Subp. 2a. [See repealer.]

Subp. 2b. [See repealer.]

Subp. 3a. **Attainment area.** "Attainment area" means any geographic area that has been designated by the United States Environmental Protection Agency as "better than national standards" for any national ambient air quality standard in Code of Federal Regulations, title 40, chapter I, section 81.324, as amended.

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

Subp. 7. [See repealer.]

Subp. 7a. **Major stationary source.**

~~A.~~ "Major stationary source" means:

~~(1) any stationary source that emits, or has the potential to emit, 100 tons per year or more of any criteria pollutant; or~~

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.

~~(2) any physical change, change in the method of operation, or addition that is proposed to occur at a stationary source not qualifying under item A as a major stationary source if the change will result in additional emissions or potential emissions from the stationary source of 100 tons per year or more of any criteria pollutant.~~

~~B. A major stationary source that is major for volatile organic compounds must be considered major for ozone.~~

~~C. The fugitive emissions of a stationary source must not be included in determining whether the stationary source is a major stationary source unless the stationary source belongs to one of the categories listed in *Code of Federal Regulations*, title 40, section 51.165(a)(iv)(C)~~ A. a major stationary source as defined in *Code of Federal Regulations*, chapter I, title 40, section 51, appendix S, as amended; or

B. a stationary source that emits or has the potential to emit 70 tons or more per year of PM10 and that is located or that will locate in an area classified as "serious" under *United States Code*, title 42, section 7513, as amended.

Subp. 7b. **National ambient air quality standards.** "National ambient air quality standards" means any air quality standard promulgated in *Code of Federal Regulations*, title 40, part 50, as amended.

Subp. 8. [See repealer.]

Subp. 9. [See repealer.]

Subp. 10. **Nonattainment area.** "Nonattainment area" means any geographic region that has been:

~~A. designated by the agency as violating a state ambient air quality standard; or~~

~~B.~~ designated by the United States Environmental Protection Agency as violating a national ambient air quality standard in *Code of Federal Regulations*, title 40, section 81.324, as amended.

Subp. 11. [See repealer.]

Subp. 11a. **PM10.** "PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.

Subp. 12. [See repealer.]

Subp. 13. [See repealer.]

Subp. 14a. [See repealer.]

[For text of subp 19a, see M.R.]

Subp. 19b. **Unclassifiable area.** "Unclassifiable area" means any geographic area that has been designated by the United States Environmental Protection Agency as "cannot be classified" for any national ambient air quality standard in Code of Federal Regulations, title 40, chapter I, section 81.324, as amended.

[For text of subp 20, see M.R.]

7005.3040 CONDITIONS FOR PERMIT.

Subpart 1. **In general.** No person shall commence construction of a major stationary source or major modification in:

A. a nonattainment area; or ~~at a location where the emissions from the new or modified stationary source would affect a nonattainment area without obtaining an air emission permit and satisfying the conditions in subparts 2 to 4. All permits issued for major stationary sources or major modifications in a nonattainment area or at a location that would affect a nonattainment area shall contain the conditions in subpart 5~~

B. in an attainment area or unclassifiable area if that major stationary source or major modification would cause or contribute to a violation of a national ambient air quality standard in a nonattainment area as determined by the significance levels established in *Code of Federal Regulations*, title 40, chapter I, part 51, appendix S, part III, as amended, unless the requirements of *Code of Federal Regulations*, title 40, chapter I, part 51, appendix S, as incorporated in subpart 2a, are first satisfied.

Subp. 2. [See repealer.]

Subp. 2a. **Modified federal standard.** Persons subject to subpart 1 must comply with *Code of Federal Regulations*, title 40, chapter I, part 51, appendix S, as amended, with the following exceptions:

A. *Code of Federal Regulations*, title 40, chapter I, part 51, appendix S, part IV, section A, condition 1, footnotes 4 and 5, as amended, do not apply:

B. *Code of Federal Regulations*, title 40, chapter I, part 51, appendix S, part IV, section A, condition 3, is amended to read:

Emission reductions ("offsets") from existing sources in the same area of the proposed source (whether or not under the same ownership) are required such that there will be reasonable progress toward attainment of the applicable NAAQS. Offsets must be based on actual emissions as defined in *Code of Federal Regulations*, title 40, section 51.165(a)(3), as amended. Only intrapollutant emission offsets will be acceptable (e.g. hydrocarbon increases may not be offset against SO_2 reductions).

C. *Code of Federal Regulations*, title 40, part 51, appendix S, part IV, section A, condition 3, footnote 7, as amended, does not apply.

D. *Code of Federal Regulations*, title 40, part 51, appendix S, part IV, section A, footnote 8, as amended, does not apply.

E. *Code of Federal Regulations*, title 40, part 51, appendix S, part IV, section B, as amended, does not apply.

F. *Code of Federal Regulations*, title 40, part 51, appendix S, part IV, section C, as amended, applies except that, consistent with *Code of Federal Regulations*, title 40, section 51.165(3)(i)(A), as amended, the offset baseline shall be the actual emissions of the source from which offset credit is obtained.

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. [See repealer.]

Subp. 7. [See repealer.]

Subp. 8. [See repealer.]

7005.3050 BANKING.

A ~~person who has obtained a reduction in the lower of actual or allowable emissions a~~ major stationary source that has reduced actual emissions shall be permitted to bank that reduction for future use as an offset as allowed by ~~parts 7005.3010 to 7005.3060 under the following circumstances, limitations, and conditions~~ *Code of Federal Regulations*, title 40, part 51, appendix S, part IV, section C.(5), as amended.

~~A. In order to be eligible for banking and to assure that emission trades do not contravene applicable requirements of the Clean Air Act, the emission reductions shall be final and enforceable, either through the terms of a stipulation agreement, permit, or other legal instrument obtained by an owner of the stationary source or through a permanent, physical alteration of the stationary source. No person shall cease to maintain emission reductions that were obtained to provide offsets for a new or modified stationary source.~~

~~B. In order to be able to bank reductions in emissions, the person obtaining those reductions shall report to the commissioner the amount and location of the banked emissions and the time at which the banked emissions have become permanently and finally implemented.~~

~~C. A person may bank only those reductions in emissions that:~~

~~(1) were obtained after August 1977, but before October 27, 1981, and that were reported to the agency within six months of October 21, 1981; or~~

~~(2) are obtained after October 27, 1981, and are reported within six months after the reductions have become final and enforceable.~~

RENUMBERING INSTRUCTION. References to *Minnesota Rules*, part 7005.3010, shall be changed to part 7005.3020 in *Minnesota Rules*.

REPEALER. *Minnesota Rules*, parts 7005.3010; 7005.3030, subparts 1a, 1b, 2, 2a, 2b, 5, 6, 7, 8, 9, 11, 12, 13, and 14a; and 7005.3040, subparts 2, 3, 4, 5, 7, and 8, are repealed.

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.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711
April 21, 1992

John Seltz
Minnesota Pollution Control Agency
Air Quality Division
520 Lafayette Road
St. Paul, Minnesota 55155

Dear John:

This is in response to our telephone conversation of April 9, 1992 with EPA Region V and a subsequent conversation with Ann Cohen on April 15, 1992, regarding the incorporation by reference of 40 CFR 51 Appendix S as a nonattainment new source review (NSR) rule for Minnesota's State Implementation Plan (SIP). Let me clarify an important point that may have been confused as a result of prior conversations with Region V and Dan deRoeck of this office and Bill McDowell's April 8, 1992 letter following-up those conversations. Bill's letter correctly states that Appendix S is acceptable for issuing permits in States that have not had an approved nonattainment area NSR SIP, but for which the construction ban has been lifted, until new State regulations are adopted pursuant to the requirements of the Clean Air Act (Act) as amended November 15, 1990 (1990 Amendments). Appendix S is not acceptable in its current state as a SIP rule that complies with the 1990 Amendments and the regulations in 40 CFR 51.165 that were not affected by 1990 Amendments.

Your draft rule of May 1991 eliminated all of the contentious provisions of Appendix S except for banking. The formation of a bank is a State's prerogative; however, the emissions reductions credits placed in a bank must meet the statutory and regulatory requirements of the programs in which the credits are applied. The Appendix S language simply does not have enough substance to ensure that the offsets contained in a State's bank will comply with the offset requirements of 40 CFR 51.165 or the Act.

Enclosed is a copy of several pages (in word processor format) from the General Preamble of the 1990 Amendments Nonattainment Area SIP provisions, which was published in the Federal Register on April 16, 1992 (page 13498). These pages, and in particular, the underlined passages should guide you in developing the Minnesota SIP's offset and banking requirements. I also suggested to Ann Cohen that the Emissions Trading Policy published in the Federal Register December 4, 1986 (page 43848) is still valid and is an excellent resource for developing language for banking provisions.

Should you have additional questions regarding banking provisions or offset requirements, Bill McDowell of Region V should continue to be your primary contact. You may want Region V to forward a draft of the regulations to EPA's Office of General Counsel and the Stationary Source Compliance Division. I would caution, however, that their available staff time, as well as mine, will be limited over the next several weeks due to the intense regulatory development effort that is underway. We will, therefore, be able to respond most rapidly to specific questions.

Sincerely,

Dennis Crumpler
New Source Review Section

Enclosures

cc: B. McDowell (Region V)
C. Poffenberger (SSCD)
G. Foote (OGC)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

MAY 04 1992

(AE-17J)

John Seltz, Supervisor
Program Development Unit
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155

Dear Mr. Seltz:

The United States Environmental Protection Agency (U.S. EPA) has the following comments on the proposed amendments to Minnesota Rules parts 7005.3010 to 7005.3060.

1. It is our understanding from conversations with our Headquarters that 40 CFR 51 Appendix S will no longer exist in its current form in future editions of the Code of Federal Regulations (CFR). If the Minnesota Pollution Control Agency (MPCA) intends to incorporate Appendix S by reference, it is necessary to specify the year of the CFR.

2. The requirements of Section 173 of the Clean Air Act as amended must be met in order for this rule to be approved.

3. At 7005.3050, MPCA has incorporated the banking provisions of Appendix S. The language of Appendix S does not have enough substance to ensure that the offsets contained in a State's bank will comply with the requirements of the Clean Air Act or 40 CFR 51.165. Dennis Crumpler of U.S. EPA's Office of Air Quality Planning and Standards has indicated this in his April 21, 1992, letter to you.

4. U.S. EPA Headquarters has indicated that if the particulate matter (PM) attainment demonstration has not been approved, the banking provisions cannot be approved because PM emission reduction credits could not be shown to be surplus. Therefore, it will be necessary to indicate in the State Implementation Plan that the banking provisions will not apply until after the attainment demonstration has been federally approved.

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If you have any question in regard to this letter, please contact me at (312) 886-6798, or Rachel Rineheart of my staff at (312) 886-7017.

Sincerely yours,

William L. MacDowell

William L. MacDowell, Chief
Regulation Development Section
Air Enforcement Branch

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments to Rules Governing Air Quality Emission Offsets, Minn. Rules Parts 7005.3010 to 7005.3060

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Norma L. Florell, being duly sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 (1990) that their names be placed on the Minnesota Pollution Control Agency's rulemaking mailing list is accurate, complete, and current as of this 18 day of March, 1992.

That on the 18 day of March, 1992, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System or in the United States mail for first class mailing a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Norma L. Florell

Subscribed and sworn to before me
this 24th day of April, 1992.

Jodi D. Rasmussen
Notary Public

JODI D. RASMUSSEN
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires 10-23-94

ON ANVILLE WALBURN
OP COMMISSIONER
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RENVILLE CO COMMISSIONER
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STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments to the Air Quality Offset Rules, Minn. Rules Parts 7005.3010 to 7005.3060

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (MPCA) on the 27 day of May, 1992. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the MPCA, in accordance with statutory requirements regarding the adoption of proposed rule amendments, after considering all of the evidence adduced upon the records, files and proceedings herein, the MPCA, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions, and Order Adopting Rules:

FINDINGS OF FACT

1. The MPCA finds that it received no written or oral comments on the proposed amended rule in response to the Notice of Intent to Solicit Outside Information Regarding Proposed Amendments to Rules Governing Emission Offsets, published in the State Register on October 21, 1991.

2. The MPCA finds that it received one written comment and one verbal comment on the proposed amended rule in response to the Notice of Intent to Adopt the above-entitled amended rule published in the State Register on March 23, 1992, and that was sent by mail to all persons on the list maintained by the MPCA pursuant to Minn. Stat. § 14.30 (1990), on March 18, 1992.

3. Copies of the proposed amended rule and Statement of Need and Reasonableness (SONAR) were sent to the Legislative Commission to Review Administrative Rules on February 28, 1992.

4. The SONAR was prepared prior to mailing and publication of the notice, and was made available to the public. (2)

5. All persons were given the opportunity to submit comments on the amended rule for 30 days after notice of proposed rulemaking. The 30 day comment period, as set out in the notice, expired on April 23, 1992.

6. No requests for notice of submission to the Attorney General were received by the MPCA. (1)

7. During the comment period the MPCA received one written and one oral comment, both from the United States Environmental Protection Agency (EPA). The MPCA finds that two modifications to the proposed amended rule are justified by the record in this proceeding, as follows:

a. Delete Part 7005.3050 Banking (6)

~~7005.3050 Banking~~

~~A major stationary source that has reduced actual emissions shall be permitted to bank that reduction for future use as an offset as allowed by Code of Federal Regulations, title 40, part 51, appendix S, part IV, section C, (5).~~

The MPCA received a letter from the EPA, Office of Air Quality Planning and Standards, on April 21, 1992. In its letter, the EPA indicated that the MPCA's adoption of Appendix S, as modified, was acceptable with the exception of the MPCA's proposed adoption of the Appendix S banking provision. The EPA indicated that the language of the Appendix S banking provision was too vague to comply with 40 CFR Section 51.165 or the Clean Air Act.

As a result of the EPA's comments, the MPCA finds that the banking provision should be deleted. The MPCA finds that banking is an optional

portion of an offset program, and that the loss of the ability to "bank" emissions reductions will affect few Minnesota sources. Because the State has not had an approved offset rule, to date sources have not been able to bank emissions. Thus, deletion of the banking provision will not change current practices.

This change is not "substantial" because it does not affect a new class of persons who would not have been expected to comment on the rule as noticed. The "class" of persons affected by this rule are those who are permitted by the MPCA to emit identified air pollutants. These sources will be affected by the rule regardless of changes in the banking provision. The change in the banking provision will affect no new sources not otherwise affected by the rule.

This change does not raise any new substantive issues that were not already raised by the original proposed amended offset rule in such a way as to invite public reaction. The SONAR supporting the proposed offset rule amendments made clear that the MPCA intended to adopt Appendix S (as modified) to have an approvable program under 40 CFR Section 51.165. The modification to the banking provision is consistent with the overall goal of the rulemaking. Few banking provisions have been approved by the EPA. Sources familiar with federal requirements will not be surprised by this federally mandated change to the amended rule as proposed.

b. Delete the References to "as amended" in the Citation of the Code of Federal Regulations, title 40, part 51, appendix S.

i. The MPCA amends Minn. Rules pt. 7005.3030, DEFINITIONS, as follows:

Subpart 7a. "Major stationary source" means: A. a major stationary source as defined in Code of Federal Regulations, chapter I, title 40, ~~section~~ part 51, appendix S, ~~as amended~~; (1991) or

ii. The MPCA amends Minn. Rules pt. 7005.3040, CONDITIONS FOR PERMIT, as follows:

Subpart 1. In general. B. in an attainment area or unclassifiable area if that major stationary source or major modification would cause or contribute to a violation of a national ambient air quality standard in a nonattainment area as determined by the significance levels established in Code of Federal Regulations, title 40, chapter I, part 51, appendix S, part III, ~~as amended~~, (1991) unless the requirements of Code of Federal Regulations, title 40, chapter I, part 51, appendix S, as incorporated in subpart 2a, are first satisfied.

Subpart 2a. Modified federal standard. Persons subject to part 7005.3040, subpart 1 must comply with Code of Federal Regulations, title 40, chapter I, part 51, appendix S, ~~as amended~~, (1991) with the following exceptions:

A. Code of Federal Regulations, title 40, part 51, appendix S, part IV, section A, condition 1, footnotes 4 and 5, ~~as amended~~, (1991) do not apply.

B. Item B has no modification from what was originally proposed and published in the State Register on March 23, 1992.

C. Code of Federal Regulations, title 40, part 51, appendix S, part IV, section A, condition 3, footnote 7 ~~as amended~~, (1991) does not apply.

D. Code of Federal Regulations, title 40, part 51, appendix S, part IV, section A, footnote 8, ~~as amended~~, (1991) does not apply.

E. Code of Federal Regulations, title 40, part 51, appendix S, part IV, section B, ~~as amended~~, (1991) does not apply.

F. Code of Federal Regulations, title 40, part 51, appendix S, part IV, section C, ~~as amended~~, (1991) applies except that, consistent with Code of Federal Regulations, title 40, section 51.165 (3)(i)(A), as amended, the offset baseline shall be the actual emissions of the source from which offset credit is obtained.

These modifications were suggested by the MPCA staff following discussions with the EPA staff. According to EPA staff, EPA will be recodifying or entirely deleting Appendix S from future editions of the CFR. As a result, if Minnesota's rule referred to updated codifications of Appendix S, it could be confusing to readers, particularly if Appendix S is deleted in its entirety. For this reason, the MPCA staff recommended that the rule be adopted with references to the current codifications of Appendix S. With this change, even if Appendix S is deleted, Minnesota's offset rule would continue to include a valid

reference. In addition, staff amended part 7005.3030, subp. 7a, "section 51" to state "part 51". This amendment provides consistency throughout the rule.

These modifications do not constitute a substantial change to the proposed amended rule because they do not change the effect of the rule but merely clarify what part and edition of the Code of Federal Regulations the MPCA is incorporating.

8. The above-captioned rule amendments are needed and reasonable. 8

CONCLUSIONS

A. The MPCA duly acquired and has jurisdiction over this proceeding.

B. The MPCA published and served due, timely, and adequate notice of the intent to adopt the rule amendments without a public hearing.

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

D. The modifications to the rule amendments are supported by the record and do not result in a substantial change in the offset rule.

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached amendments to the Air Quality Offset Rules, Minn. Rules pt. 7005.3010 to 7005.3060, are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. § 116.07, subd. 4 (1990).

MINNESOTA POLLUTION CONTROL AGENCY

Dated: 5/27/92

Charles W. Williams
Commissioner

Staff propose to delete "section 51" in Minn. Rules pt. 7005.3030, subp. 7a, and replace it with "part 51" to make the reference consistent throughout the rule.

This change is reasonable because it provides consistency throughout the rule. This change is not substantial because it does not change in any substantive way the effect of the rule.

III. Conclusions:

The MPCA staff believes that the proposed amended offset rules are needed and reasonable. Based on comments received during the comment period, the MPCA staff believes that the MPCA Board should adopt the proposed amendments to the offset rules with the changes set forth in the attached Findings of Fact, Conclusions, and Order Adopting Rules.

IV. Recommendation:

The staff recommends that the MPCA Board adopt the attached suggested staff resolution and Findings of Fact, Conclusions, and Order Adopting Rules.

SUGGESTED STAFF RESOLUTION

BE IT RESOLVED, that the Minnesota Pollution Control Agency hereby approves and adopts Minn. Rules pts. 7005.3010 to 7005.3060 governing Air Quality Emissions Offsets, under the authority set forth in Minn. Stat. § 116.07, subd. 4 (1990), as published in the State Register, Vol. 16, March 23, 1992, pages 2098 to 2101, with the changes specified in the attached Findings of Fact, Conclusions, and Order Adopting Rules.

BE IT FURTHER RESOLVED, in the event that the Office of the Attorney General disapproves the rules based on substantial change under Minn. Rules pt. 2010.1000, subd. D, (1991), that the Commissioner of the Minnesota Pollution Control Agency is authorized to sign and renotice the

Minnesota Pollution Control Agency's intent to adopt the attached proposed amendments to rules governing Air Quality Emissions Offsets, to all persons who have registered their names with the Minnesota Pollution Control Agency for that purpose and to publish the notice and the proposed amended offset rules in the State Register, and to perform any acts incidental thereto, and if no significant changes are made to the rules in response to the public comment period, the Commissioner is further authorized to resubmit the rules to the Office of the Attorney General for review.

BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Commissioner is authorized to make any form changes in the rules that the Revisor of Statutes requires the Minnesota Pollution Control Agency to make in order to obtain the revisor's certification as required by Minn. Stat. § 14.07, subd. 2 (1990).

BE IT FURTHER RESOLVED, that the Commissioner of the Minnesota Pollution Control Agency is authorized to sign the Findings of Fact, Conclusions, and Order Adopting Rules and further is authorized to modify the rules if necessary to obtain the approval of the rules by the Attorney General and to perform the necessary acts to provide that the rules shall have the force and effect of law.

CERTIFICATE OF RESOLUTION ADOPTING RULES

I, Charles W. Williams, do hereby certify that I am the Commissioner 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 27th day of May, 1992, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be 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 approves and adopts Minn. Rules pts. 7005.3010 to 7005.3060 governing Air Quality Emissions Offsets, under the authority set forth in Minn. Stat. § 116.07, subd. 4 (1990), as published in the State Register, Vol. 16, March 23, 1992, pages 2098 to 2101, with the changes specified in the attached Findings of Fact, Conclusions, and Order Adopting Rules.

BE IT FURTHER RESOLVED, in the event that the Office of the Attorney General disapproves the rules based on substantial change under Minn. Rules pt. 2020.1000, subd. D, (1991), that the Commissioner of the Minnesota Pollution Control Agency is authorized to sign and renotice the Minnesota Pollution Control Agency's intent to adopt the attached proposed amendments to rules governing Air Quality Emissions Offsets, to all persons who have registered their names with the Minnesota Pollution Control Agency for that purpose and to publish the notice and the proposed amended offset rules in the State Register, and to perform any acts incidental thereto, and if no significant changes are made to the rules in response to the public comment period, the Commissioner is further authorized to resubmit the rules to the Office of Attorney General for review.

BE IT FURTHER RESOLVED, that prior to publishing the rules as adopted in the State Register, the Commissioner is authorized to make any form changes in the rules that the Revisor of Statutes requires the Minnesota Pollution Control AGency to make in order to obtain the revisor's certification as required by Minn. Stat. § 14.07, subd. 2 (1990).

BE IT FURTHER RESOLVED, that the Commissioner of the Minnesota Pollution Control Agency is authorized to sign the Findings of Fact, Conclusions, and Order Adopting Rules and further is authorized to modify the rules if necessary to obtain the approval of the rules by the Attorney General and to perform the necessary acts to provide that the rules shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 27 day of May, 1992.

CHARLES W. WILLIAMS
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules
Governing the Minnesota Pollution
Control Agency's Air Quality Permit
Program for the Growth or Expansion
of Industry in Nonattainment Areas,
Minn Rules Parts 7005.3010-7005.3060.

DECLARATION OF COUNSEL

I, Ann E. Cohen, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rules and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules ch. 2010 have been followed. For Attorney General billing purposes, the four-digit docket client code is .0701.

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