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STATE OF MINNESOTA
COUNTY OF RAMSEY

MINNESOTA POLLUTION
CONTROL AGENCY

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

STATEMENT OF NEED
AND REASONABLENESS

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I. Introduction

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

II. Legal and Historical Background

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

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

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

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

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

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

III. Summary of the Proposed Amendments.

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

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

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

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

- A.1. Agency;
- A.2. Alternative Method;
- A.3. Breakdown;
- A.4. Commenced;
- A.5. Construction;
- A.6. Continuous monitoring system;
- A.7. Control equipment;
- A.8. Director;
- A.9. Emission facility;
- A.11. Equivalent method;
- A.14. Minneapolis - St. Paul Air Quality Control Region;

- A.16. Monitoring device;
- A.19. Nitrogen oxides;
- A.20. One-hour period;
- A.21. Opacity;
- A.22. Owner or operator;
- A.23. Particulate matter;
- A.24. Performance specification;
- A.25. Person;
- A.28. Reference method or Method;
- A.29. Run;
- A.30. Shutdown;
- A.31. Smoke;
- A.32. Standard conditions;
- A.33. Standard of performance; and
- A.34. Startup

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

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

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

- A.12. Existing facility;
- A.15. Modification;
- A.17. New facility;
- A.18. New source performance standard; and
- A.27. Reconstruction.

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

- A.10. Emission source;
- A.13. Fugitive emissions;
- A.26. Potential emissions;
- A.35. State air pollution control rules; and
- A.36. Total emission facility.

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

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

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

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

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

IV. Need for the Proposed Amendments.

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

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

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

V. Reasonableness of the Proposed Amendments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) An increase in the hours of production.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

regulations are being met opacity is basically an aesthetic issue.

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

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

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

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

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

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

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

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

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

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

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

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

VI. Small Business Consideration.

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

- (a) the establishment of less stringent compliance or reporting requirements for small businesses;
- (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (c) the consolidation or simplification of compliance or reporting requirements for small businesses;
- (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
- (e) the exemption of small businesses from any or all requirements of the rule.

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

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

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

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

MINNESOTA POLLUTION
CONTROL AGENCY


Sandra S. Gardebring
Executive Director

Exhibit List

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

(M)

[OFFICIAL USE ONLY]

PROPOSED RULES
AMENDMENTS

MINNESOTA POLLUTION
CONTROL AGENCY

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

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

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

GROUP REPRESENTED: MACI Task Force on Air Pollution Control

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

Petitioners hereby request that the Agency named above:

- 1) Amend APC-1 with regard to the ambient air quality standards for photochemical oxidants and sulfur oxides.
2. Amend APC-2 by revising the definition of opacity and adopting a new section on adjustment of opacity guidelines for new sources.

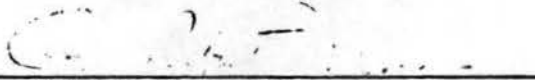
- 3) Amend APC-21(b)(7) relating to performance tests for opacity.
- 4) Amend APC-24(C)(1)(aa)(ii) with regard to opacity standards for petroleum refineries to conform the Rule with federal new source performance standards

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

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

Respectfully submitted,

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

By 
G. Robert Johnson

And 
Robert S. Burk

And 
D. William Kaufman

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

Attorneys for Petitioners

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

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

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

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

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

The Agency shall grant such a petition upon demonstration that:

1. The facility was maintained and operated in such a manner as to minimize opacity during performance tests.
2. The performance tests were performed under the conditions established by the Agency.
3. The affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard.

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

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

Amend APC-21(b)(1)

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

MINNESOTA
POLLUTION CONTROL AGENCY

In Re:

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

BRIEF IN
SUPPORT OF PETITION

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

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

By _____
G. Robert Johnson

And

Robert S. Burk

And

D. William Kaufman

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

Dated March 21, 1979.

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

c. Opacity

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

2. Background of Air Quality Standards

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

3. Opacity

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

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

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

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

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

1. The particulate size distribution within the smoke plume.
2. The diameter of the smoke stack - which fixes the optical path length across the plume.

3. Stack gas temperature.
4. Fuel characteristics.
5. Particle index of refraction.
6. Plume color.
7. Color contrast ratio between the plume and the background.
8. Water vapor content.
9. Stack velocity.
10. Wind direction, velocity and turbulence.
11. Position of the sun.
12. Distance of the observer from the stack.
13. The elevation of the observer.
14. The observation angle.
15. The geographic location (latitude).

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

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

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

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

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

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

In order to correct this situation, petitioners urge that:

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

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

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

The Agency shall grant such a petition upon demonstration that:

1. The facility was maintained and operated in such a manner as to minimize opacity during performance tests.
2. The performance tests were performed under the conditions established by the Agency.
3. The affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard.

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

3. That APC-21(b)(1) be amended to provide for a performance test in accordance with APC-2(c)(7).
4. That opacity rule relating to petroleum refineries be changed to conform with the federal regulations. Specifically, that the standards set forth in APC-24(c)(1)(aa)(ii) and APC-24(c)(3)(bb)(ii) be changed to: "no greater than 30 percent opacity, except for one six-minute average opacity reading in any one hour."



10 NOV 1983

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

REPLY TO ATTENTION OF.

5AR

RECEIVED

NOV 14 1983

AIR QUALITY
CONTROL AGENCY

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

Dear Mr. Sandberg:

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

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

1. In general, a relaxation of specific opacity limitations can be obtained provided that an acceptable procedure is used to relate simultaneous particulate stack testing and opacity readings.
2. The opacity limit should not be relaxed for boilers because it is Minnesota's opacity limit, and not the mass limit, which constitutes RACT for boilers.

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

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

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

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

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

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

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

Minnesota, in proposed amendments to APC 2 (6 MCAR S 4.002), Part E.2 (Circumvention-Dispersion Techniques) has incorporated parts of the above rule by reference to 40 CFR Parts 51.1(ii) and 51.12(j)-(1) (1982). This reference should be expanded to include the definitions of: "stack", "a stack in existence", "dispersion technique", "nearby", "excessive concentrations", "plume impaction", and "elevated terrain." These definitions could be included by expanding the reference to read 40 CFR Parts 51.1(ff)-(mm).

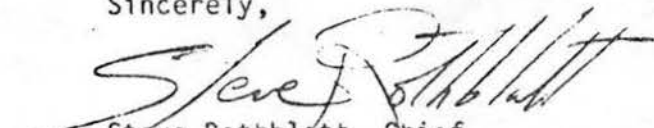
Thus, we recommend that Minnesota's reference to 40 CFR Parts 51.1(ii) and 51.12 (j)-(1) (1982) be changed to read 40 CFR Parts 51.1(ff)-(mm) and 51.12 (j)-(1) (1982). Alternatively, a shorter reference to "U.S. EPA rules published February 8, 1982, (47 FR 5864)" would be acceptable. We can recommend approval of Minnesota's proposed amendments to APC 2 (6 MCAR S 4.002), Part E.2, if these recommended changes are made.

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

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

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

Sincerely,



Steve Rothblatt, Chief
Air and Radiation Branch

Enclosure

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Duluth MN 55802

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193/13

November 17, 1983

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

Dear Mr. Sandberg:

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

1. We are concerned that the term "emission," which is not defined in the rule, is subject to an interpretation which would be too broad. It should be defined so as to connect it with particulate matter and to disassociate it from steam or water vapor.
2. The reference to "emission source" in paragraph D.1. could be restrictively interpreted to require a permit modification application for each individual stack within a facility. We feel that the reference should be changed to read "emission source or sources."
3. We object to the new definition of fugitive emissions to the extent that it implies that visual opacity readings are a reliable method of measurement. It is impossible to visibly assess relative densities of fugitive dust. Each plume has a different relative depth, backgrounds are inconsistent from one situation to the next, there is no assurance that the observer is standing perpendicular to the plume, and there is great variability in particle size and color. The standard training for opacity reading involves plumes of a standard depth, of a standard color and viewed against a consistent background. These conditions are never present in fugitive dust situations.
4. The definition of standard conditions which contains a temperature of 20 degrees Celsius is inconsistent with the standard of 25 degrees Celsius in APC 1.
5. Rather than amending the rules to make opacity limits flexible according to specific circumstances, we feel that what the MPCA should really do is eliminate opacity standards where the emission source is in compliance with other applicable standards. Opacity may be useful as an indicator when nothing else is available, but it is irrelevant when stack testing shows that a source is operating within the standards of performance and ambient standards are not being violated.

Yours truly,

PICKANDS MATHER & CO.

Charles B. Hoffman
Charles B. Hoffman
Environmental Counsel

MOORE
RESOURCES
McCORMACK



United
States
Steel
Corporation

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

November 16, 1983

MINNESOTA ORE OPERATIONS

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

Re: Comments on Proposed
Amendment of Rule APC-2

Dear Sir:

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

Our specific comments deal with 6 MCAR 4.0002D.1.b. which was published in the October 17, 1983, State Register. We are recommending a revision to this section to read as follows:

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

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

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

Very truly yours,

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

JLC/dao

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

Environmental Engineering
and Pollution Control 3M

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

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NOV 18 1983

3M

November 18, 1983

MINN. POLLUTION
CONTROL AGENCY

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

RE: Comments on Proposed Amendments to APC-2

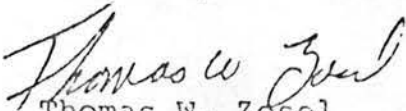
Dear Mr. Sandberg:

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

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

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

Sincerely,



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

TWZ/jp

Office Memorandum

DEPARTMENT

TO : Comment File on 6 MCAR § 4.0002

DATE: 11/13/83

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

PHONE: -7316

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

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

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

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

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

RJS/jew

Office Memorandum

DEPARTMENT

TO : Comment File on 6 MCAR §4.0002

DATE: 11/15/83

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

PHONE: 7316

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

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

RJS:jew

Office Memorandum

DEPARTMENT

TO : Comment File on 6 MCAR §4.0002

DATE: 11/16/83

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

PHONE: 7316

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

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

RJS:jew

Office Memorandum

DEPARTMENT

TO : Comment File on 6 MCAR §4.0002

DATE: 11/16/83

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

PHONE: 7316

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

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

1. The term "emissions" was not defined and could be interpreted to include steam or water vapor.
2. The term "emission source" as used in D.1. limits an opacity adjustment to only one emission source at an emission facility.
3. Opacity should only be used as a guideline and not as a standard, especially in situations where an emission limit applies to a source.
4. The definition of "fugitive emissions" should not imply that an opacity reading can be made of a fugitive emission.

RJS:jew

North American Water Office

1519A East Franklin Ave
Minneapolis, MN 55404

(612) 872-1097

February 10, 1984



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

Dear Mr. Sandberg:

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

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

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

Sincerely,

Lea Foushee
Lea Foushee


George Crocker
George Crocker

North American Water Office

1519A East Franklin Ave
Minneapolis, MN 55404

(612) 872-1097

February 8, 1984



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

Dear Mr. Sandberg:

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

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

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

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

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

1. What pollution control investments have been made at this facility in the past?
2. What benefits have resulted from these investments -
 - a. to the owner/operator?
 - b. to employees?
 - c. to the host community?
3. What types of pollution control equipment could be installed at this facility to reduce emissions below present levels?
4. Are there operational changes or energy efficiency improvements that could be made that would reduce emissions?
5. What benefits could result from investments into pollution control equipment, or emission reducing operational changes and energy efficiency improvements -
 - a. to the owner/operator?
 - b. to the employees?
 - c. to the host community?
6. What types of incentives, sponsored by private organizations or through local, state, or federal units of government, would result in a decision to invest in improvements that would reduce emissions?
7. What types of problems may be created for owners, for employees, and for the host community if emission increases are permitted?

Sincerely,

Lea Foushee
Lea Foushee

George Crocker
George Crocker

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NOV 14 1983

MINN. POLLUTION
CONTROL AGENCY
November 10, 1983

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

Dear Mr. Sandberg:

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

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

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

From this foundation, the specific questions arise:

1. Will the proposed relaxation of opacity limitations result in increases in particulate emissions, regardless of potential for emissions to cause or contribute to a violation of ambient air quality standards either before or after relaxation?
2. Will the proposed relaxation allow facilities to operate installed pollution control equipment at reduced efficiencies?

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

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


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

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

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

Thank you.

Sincerely,


Linda D. Anderson
EARTH PROTECTOR
1138 PLYMOUTH BLVD.
Mpls, MN. 55402
375-0202

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NOV 14 1983

MINN. POLLUTION
CONTROL AGENCY

November 10, 1983

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

Dear Mr. Sandberg:

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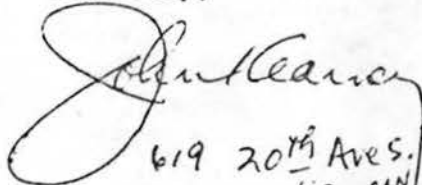
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ulate matter and will not cause in-place pollution control
equipment to be operated at reduced efficiencies.

Thank you.

Sincerely,


619 20th Ave S.
Minneapolis, MN 55454

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NOV 14 1983

MINN. POLLUTION
CONTROL AGENCY

November 10, 1983

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

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equipment to be operated at reduced efficiencies.

Thank you.

Sincerely,

Leu Fouska
2619 South 8th Street #A
Minneapolis, MN 55454

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NOV 14 1983

MINN. POLLUTION
CONTROL AGENCY

November 10, 1983

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

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equipment to be operated at reduced efficiencies.

Thank you.

Sincerely,

Juana Espinosa
2434 Ogden Ave #307
Minneapolis, MN 55404

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NOV 14 1983

MINN. POLLUTION
CONTROL AGENCY

November 10, 1983

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

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equipment to be operated at reduced efficiencies.

Thank you.

Sincerely,

W. B. Fudge
1000 ...
1 ...
55301

RECEIVED

NOV 14 1983

MINN. POLLUTION
CONTROL AGENCY

Box 5
Lowry, MN 56349

November 10, 1983

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

Dear Mr. Sandberg:

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Thank you.

Sincerely,

Judy Fairbanks
2434 Ogema Pl. #201
Eugene, OR 97404

RECEIVED

NOV 14 1983

MINN. POLLUTION
CONTROL AGENCY

November 10, 1983

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

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Thank you.

Sincerely,

George Crocker