STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments to Air Quality Rules Definitions, Minn. Rules Part 7005.0100, and Amendment to the Offset Rules, Minn. Rules Parts 7005.3010 to 7005.3060

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The Minnesota Pollution Control Agency (Agency or MPCA) is proposing to adopt amendments to the Air Quality Rules definitions, Minn. Rules part 7005.0100, and amendments to the 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. The Offset Rules were first promulgated in 1981. However, as discussed in the Statement of Need, these amendments to the rules are necessary for the Rules to be approvable by the United States Environmental Protection Agency (EPA) as part of the State Implementation Plan.

II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority to adopt the rule amendments is set forth in Minn. Stat. section 116.07, subd. 4 (1986), which provides, in relevant part:

> 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 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 allowance for variations therein. Without limitation, 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 Agency has the necessary statutory authority to adopt the proposed rule amendments.

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1986) requires the Agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rule amendments as 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, need has come to mean that a problem exists which requires administrative attention. Reasonableness means that the solution proposed by the Agency appropriately addresses the need. The need for the rule amendments is discussed below.

The need to adopt the amended offset rule arises from the requirements of 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 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 7407(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.

d. Fourth, each state is required to develop and submit to the EPA, for approval, a State Implementation Plan (SIP). These SIPs describe the control strategy that the state will implement to bring its nonattainment areas into compliance with federal ambient air quality standards. In developing their SIPs, the states are relatively free to choose any strategy which will result in attainment of the national ambient air quality standards by the required deadlines. However, the states' control strategies must satisfy the eleven enumerated Clean Air Act requirements, including, among other things, the establishment of a program for permitting the growth of industry in nonattainment areas. 42 U.S.C. section 7410(a)(2): see in particular, section 7410(a)(2)(I). The basic framework of this "growth" program is set out in Chapter I, Part D of the Clean Air Act and is further discussed below.

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 specifies 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".[1] As long as the emissions from a proposed

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[1] The EPA has adopted regulations to implement the provisions of the Clean Air Act regarding offset programs. See 40 C.F.R. Part 51, Subpart I. See also Appendix S to 40 C.F.R. Part 51. In order to be approved by the EPA, the State of Minnesota's offset program must meet the requirements specified in these regulations.

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 7005.3010 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 from existing stationary sources of pollution in that area, a reduction in emissions of specific pollutants. 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 current Offset Rule was adopted on October 27 1981. 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 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 Agency that this decision directly affected the approvability of Minnesota's Offset Rule. A memorandum from Region five 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 to 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 continues to consider Minnesota's Offset Rule not approvable for reasons discussed in the Statement of Reasonableness. See Exhibit. 1.

Since Minnesota's Offset Rule is not approvable as part of Minnesota's SIP, construction of major new sources or major modifications to existing sources in nonattainment areas is banned in Minnesota if the new major source major modification emits a pollutant for which the area in which it is located is nonattainment. 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 Agency and approved by the EPA, the amended Offset Rule (i.e. Minn. Rules parts 7005.3010 through 7005.3060 and part 7005.0100) would establish the necessary growth program and eliminate the no-growth sanction currently in effect in Minnesota's nonattainment areas.

Several definitions in Minnesota's existing Offset Rule are not consistent with 40 C.F.R. section 51.165 and 40 C.F.R. Part 51, Appendix S. In addition, the definitions used in Minnesota's present Offset Rule are confusing and difficult to understand when attempting to apply the Offset Rule in the Agency's permitting process. On Thursday December 4, 1986, the EPA published in the Federal Register the "Emissions Trading Policy Statement; General Principles for Creation, Banking and Use of Reduction Credits," which "crystallized" some of the more elusive ideas concerning Offset Rules and EPA requirements for new rules. 51 Fed. Reg. 43814 (Exhibit 2). The statement establishes general guidance and will be used in rulemaking actions which will be judicially reviewable. The proposed

amendments to the Offset Rule follow EPA requirements quite closely and render the Offset Rule more easily understood.

D. Conclusion.

The need for the proposed amended Offset Rule arises out of (1) the need to satisfy the requirements of the federal program established to ensure the attainment and maintenance of ambient air quality standards in nonattainment areas, and (2) the need to conform the language of the Offset Rule to that used in EPA regulations, which will make the rules easier to understand and interpret in light of EPA regulations and policy statements. EPA has notified the Agency that the existing Offset Rule is not consistent with the federal offset regulations or federal guidance. Therefore, there is a need to amend the Offset Rules to satisfy the requirements of the Clean Air Act and of EPA. If an approvable Offset Rule is adopted and made a part of Minnesota's SIP, the construction ban of 40 C.F.R section 52.24(a) will be removed in Minnesota.

IV. STATEMENT OF REASONABLENESS

The Agency 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 or capriciousness. It means that there is a rational basis for the Agency's proposed action. The reasonableness of the proposed rule amendments is discussed below.

A. Reasonableness Of The Rule Amendments 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 Agency has a need to address two problems: 1) the fact that the existing Offset Rule is not approvable by EPA, which results in Minnesota's SIP being deficient and imposing a construction ban under 40 C.F.R. section 52.24(a); and 2) the fact that the existing Offset Rule is confusing and difficult to understand when attempting to apply the rule in the Agency's permitting process. The Agency's overall approach to solving these problems consisted of 1) determining EPA's objections to the existing rules; 2) identifying rule language which causes difficulties with understanding and applying the rules; and 3) proposing rule amendments which would remove EPA's objections and make the rules easier to understand and apply. The Agency's overall approach is reasonable because it is designed to lead to an approvable Offset Rule and a revised SIP which will, when approved, end the construction ban under 40 C.F.R. section 52.24(a).

The discussion which follows addresses: 1) EPA's specific comments on the existing Offset Rule and the Agency's proposed action in response to the comments; and 2) the types of changes the Agency is proposing to make the rules easier to understand and apply.

1. <u>EPA Comments on the Existing Rules</u>

On December 27, 1983, Bradley J. Beckham of the MPCA

sent to Stephen Rothblatt of Region V, EPA, a letter reiterating from past conversations the problems concerning the approvability of Minnesota's existing Offset Rule. (Exhibit 1.) Most of Region V's concerns centered around the fact that the definitions used in Minnesota's Offset Rule differ significantly from the federal definitions used in 40 C.F.R. section 51.165 and Appendix S. Since the definitions in Minnesota's present Offset Rule differ significantly from the Federal definitions, it is difficult to decipher the intent of and attempt to apply or use Minnesota's existing Offset Rule.

The December 27, 1983, letter outlines EPA's major concerns regarding approvability of Minnesota's existing Offset Rule. EPA's first comment deals with the issue of "federal enforceability." The existing Offset Rule contains no definition of "federally enforceable" and therefore "federally enforceable" is not used anywhere in the existing rule to delineate federally enforceable conditions. The definition of "federally enforceable" is needed in order to establish and make clear which conditions are "federally enforceable." In the proposed amended Offset Rule, the term "federally enforceable" is defined and is reasonable because it is consistent with 40 C.F.R. section 51.165(a)(1)(xii)(B)(xiv). The use of the term "federally enforceable" in the proposed Offset Rule should render the rule approvable by the EPA and therefore part of Minnesota's SIP for the review of new sources.

The second comment submitted by Region V addresses the topic of "shutdown offsets." Region V's comment states that

"offsets derived from permanent curtailments and shutdowns cannot be used as offsets unless they are used to offset a replacement. See 40 C.F.R. section 51.18 (a)(3)(ii)(c)." Subpart 12.B. of the proposed amended Offset Rule, Minn. Rules part 7005.3030 (the definition of "Offsets"), states:

> Credit for offsets achieved by shutting down an existing stationary source or permanently curtailing production or operating hours below baseline levels is governed by Code of Federal Regulations, title 40, section 51.165 (a)(3)(ii)(c), as amended.

This requirement is needed in order to specify in accordance with EPA the conditions applicable to "shutdown offsets." This requirement is reasonable because it is consistent with the requirement set forth in 40 C.F.R. section 51.165 (a)(3)(ii)(C). The proposed addition of this language to Minnesota's existing Offset Rule should make the rule approvable by EPA.

Region V's next comment addresses the definition of "net increase in emissions." Region V is concerned because the definition of "net increase in emissions" is needed in determining which net increases or decreases are "significant emissions increases" or "significant emissions decreases" and are subject to "lowest achievable emission rate" (LAER) and offset requirements. The proposed amended Offset Rule includes a definition of "net increase or decrease in emissions" which is reasonable because it closely corresponds to the definition set forth in 40 C.F.R. section 51.165 (a)(1)(vi)(A). The proposed Offset Rule contains a definition of "significant emissions increase" which is needed in order to determine emission rates of pollutants which would impact the air quality. The proposed

definition of "significant emissions increase" is reasonable because it corresponds to the definition set forth in 40 C.F.R. Part 51, Appendix S, Part II.A.10(i).

Region V's fourth comment addresses the issue of compliance certification. The existing Offset Rule does not explicitly specify with what regulations or standards the new or modified stationary source must comply in order to locate in a nonattainment area. The proposed amended Offset Rule, Minn. Rules part 7005.3040, subp. 4 (Requirement for compliance) has additional language which states that new or modified stationary sources wishing to locate in a nonattainment area, or at a location where the emissions from a new or modified stationary source would affect a nonattainment area, must be in compliance with or on a compliance schedule "to meet all applicable emissions limitations and standards established under the Clean Air Act, United States Code, title 42, sections 7401 to 7626 and in the State Implementation Plan." Although compliance with the Clean Air Act and the State Implementation Plan is implied in the existing rule, it is necessary to specify that stationary sources will be expected to comply with provisions of the Clean Air Act and the State Implementation Plan in order to prevent confusion.

The bulk of EPA's fifth comment addresses the lack of limitations placed upon "offsets" in the existing Offset Rule. The main criticism of the existing rule is that offsets can come from reducing a stationary sources "restricted emissions" (the existing equivalent of "allowable emissions"). In the proposed amended Offset Rule, offsets means "any documented reduction in

the lower of actual or allowable emissions of nonattainment criteria pollutants...." Minn. Rules part 7005.7030, subp.12.A. This language is needed because it clearly defines which emission reductions will be considered offsets. This language is reasonable because it is consistent with EPA's fifth recommendation and with 51 Fed. Reg. 43814 (December 4, 1986), "Emissions Trading Policy Statement; General Principles for Creation, Banking and Use of Emission reduction Credits." Region V also suggested adding needed language which will not allow offsets to be granted from the emission difference in a stationary source's capacity to burn a dirtier fuel if the stationary source is currently burning a cleaner fuel. The proposed amended Offset rule contains language which states:

> For an existing fuel combustion source, credit shall be based on the lower of actual or allowable emissions under the applicable state implementation plan for the type of fuel being burned at the time the application to construct is filed. If the existing stationary source commits to switch to a cleaner fuel at some future date, emissions offsets based on the cleaner fuel shall not be credited unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reductions should the stationary source switch back to a dirtier fuel at some date. The commissioner shall not grant emissions offset credit for fuel switches unless the owner or operator of the fuel combustion source has demonstrated that adequate long-term supplies of the cleaner fuel are available.

Minn. Rules part 7005.3030, subp. 12.H. This requirement is reasonable because it is consistent with 40 C.F.R. section 51.165 (a)(3)(ii)(B).

Region V's sixth comment addresses the fact that under the existing Offset Rule, stationary sources locating in a

nonattainment area for a time period of two years or less are exempt from the requirement to obtain offsets and demonstrate reasonable further progress. The Agency proposes to delete this exemption from the existing Offset Rule. This exemption is needed in order to have the proposed Offset Rule approved by EPA.

The seventh and eighth comments received from Region V state that in the existing Offset Rule, the definition of "modification" does not contain all of the restrictions contained in the federal definition of "major modification." The definition of "modification or modified" in the existing Offset Rule is supposed to parallel the federal definition of "major modification." In the proposed amended Offset Rule, Minn. Rules part 7005.3030, subpart 6, the definition of "modification or modified" is deleted and the federal definition of "major modification" as set forth in 40 C.F.R. section 51.165 (a)(1)(V) is proposed. This addition is needed in order to fully outline which changes will or will not be considered a "major modification." This definition is reasonable because it is no more or less stringent than the federal definition of "major modification" set forth by EPA in 40 C.F.R. section 51.165 (a)(1)(V).

The next concern addressed by Region V is the omission of the word "Classification" between the words "Standard Industrial" and "Code" in the definition of "plant" found in the existing Offset Rule. Since the definition of "plant" is repealed in the proposed version of the Offset Rule, this problem is resolved. See Repealer of Minn. Rules part 7005.3030, subp. 14.

The tenth comment submitted by Region V requests the inclusion of the words "or plant" following the use of the words "emission facility" so that the requirements of the Offset Rule would more closely parallel federal regulations. This comment is being addressed by the Agency in the proposed amendments by changing the terminology of the rules to that used by EPA in 40 C.F.R. section 51.165. The Agency proposes to repeal the definition of "plant" in existing Minn. Rules part 7005.3030, subp. 14 and is eliminating the use of that term throughout the rules. At the same time, the Agency is proposing to add to Minn. Rules part 7005.0100, Definitions, the terms "stationary source" and "emissions unit" and to use these terms in the proposed amended Offset Rule. The proposed definitions of "emissions unit" and "stationary source" are consistent with the definitions set forth in 40 C.F.R. sections 51.165 (a)(1)(ii) and 51.165 (a)(1)(vii). These changes make the proposed amended Offset Rule consistent with EPA regulations and address EPA's tenth comment.

The next comment submitted by Region V requests that Minnesota's existing Offset Rule be amended to require a modeling analysis for carbon monoxide offsets. The proposed amended Offset Rule would require that a modeling analysis be performed for emissions of any nonattainment criteria pollutant except for ozone and nitrogen oxide. This requirement in the proposed Offset Rule is needed because, compared to nitrogen oxide and ozone, carbon monoxide is a more site-dependent pollutant and requires a modeling analysis in order to appropriately determine air quality impacts. The requirement of a modeling analysis for

dealing with carbon monoxide emissions is reasonable because it is consistent with 40 C.F.R. Part 51, Appendix S, section III.C.

Region V's 12th comment states that the definition of "restricted emissions" should include enforceability by the reviewing authority as well as federal enforceability. In the proposed amended Offset Rule, the definition of "restricted emissions" has been deleted. See Repealer of Minn. Rules part 7005.3030, subp.16. The proposed amended Offset Rule uses instead the terms "allowable emissions" and "potential emissions or potential to emit." Because the definition of "restricted emissions" has been deleted, the comment is moot.

Region V's final comment refers again to the definition of "net emissions increase." Region V is concerned that the existing definition does not clearly specify a contemporaneous time period in which increases and decreases in emissions can be creditable and does not clearly state that decreases which have been relied upon as a permit condition are not creditable. The proposed amended Offset Rule contains the definition of "net increase or decrease in emissions" which closely resembles the federal definition set forth in 40 C.F.R. section 51.165 (a)(1)(vi). The proposed definition is needed in order to clarify which net increases and decreases in emissions are creditable and that decreases previously relied upon in issuing a permit are not creditable. The proposed definition is reasonable because it is consistent with the requirements set forth in 40 C.F.R. section 51.165 (a)(1)(vi).

C. Changes to Make the Rules Easier to Understand

In the interval between adoption of the Offset Rule in 1981 and the present, the Agency has had an opportunity to work with the language of the rule to see how it works. The Agency found that one of the major problems with the Offset Rule is that the Agency had chosen to use terminology in the rule which was intended to have the same meaning as EPA regulations but did not use the same words. For example, where EPA regulations refer to "stationary sources" and "emissions units," Agency rules refer to "total emission facilities" and "emission sources." Where the federal regulations refer to "allowable emissions," the Agency rules refer to "restricted emissions." These terminology differences became a problem for the Agency whenever the rules required interpretation. Because the offset program is basically a federal program which the state is implementing, the Agency looked to EPA guidance in interpreting its own rules. However, the lack of consistency between EPA and Agency language made it more complicated to apply EPA guidance. As a result of these difficulties, the Agency is proposing to change its rules to make its terminology the same as EPA's. This is reasonable because it will make the Offset Rule easier for the Agency, EPA, and the public to understand.

C. Reasonableness Of Individual Amendments To The Rules

The following discussion addresses the specific provisions of the proposed amendments to the Rules.

1. Proposed Amendments to General Air Quality Rules

The Agency is proposing to make substantive changes

to three existing definitions in Minn. Rules part 7005.0100 and to add new definitions of the words "commissioner," "criteria pollutant," "emissions unit," "federally enforceable," "secondary emissions," and "stationary source." These changes and additions are discussed below. In addition, the Agency proposes to make nonsubstantive changes to the language of Minn. Rules parts 7005.0010 subparts 3 ("alternative method") and 11 ("equivalent method"): specifically, to change the word "director" to "commissioner." This is reasonable because in 1987 the Minnesota Legislature changed the title of the Director of the Agency to "Commissioner." Minn. Laws 1987, ch. 186, section 15. The substantive changes are discussed below.

Part 7005.0100, subp. 4a, Definition of "Commenced, commencement"

The Agency is proposing to amend the definition of the term "commence" or "commencement" to conform it to the corresponding definition set forth in EPA regulations, 40 C.F.R. section 51.165 (a)(1)(xvi). This provision, which is a part of the general Air Quality Rules definitions, automatically applies to the Offset Rules due to the provision of Minn. Rules part 7005.3030, subp. 1, which states that the definitions in Minn. Rules part 7005.0100 apply to the Offset Rules.

It is reasonable to amend the definition of "commence" or "commencement" for the purposes of the Offset Rules to conform to the federal definition set forth in 40 C.F.R. section 51.165 because it is no more or less stringent than EPA requirements and is approvable by EPA. It is reasonable to place this amended definition within the general Air Quality Rules

definitions to promote fairness and consistency among all air quality permitting programs. For example, if entering into binding agreements or contractual obligations constitutes "commencement" of construction for the purposes of the offset program, the same activities should constitute "commencement" of construction for any other air emission facility.

Part 7005.0100, Subp. 4b, Definition of "Commissioner"

The Agency is proposing to add a definition of the term "commissioner" to mean the commissioner of the Agency. This definition is reasonable because in 1987 the Minnesota legislature changed the title of the Director of the Agency to "Commissioner." Minn. laws 1987, ch. 186, section 15.

Part 7005.0100, Subp. 5, Definition of "Construction"

The Agency is proposing to amend the definition of the term "construction" to conform it to the corresponding definitions of "construction" and "begin actual construction" set forth in EPA regulations, 40 C.F.R. section 51.165 (a)(1)(xviii) and section 51.165 (a)(1)(xv), respectively. This provision, which is a part of the general Air Quality Rules definitions, automatically applies to the Offset Rules due to the provision of Minn. Rules part 7005.3030, subp. 1, which states that the definitions in Minn. Rules part 7005.0100 apply to the Offset Rules.

It is reasonable to amend the definition of "construction" for the purposes of the Offset Rules to conform it to the federal definition set forth in 40 C.F.R. section 51.165 (a)(1)(xviii) because it is no more or less stringent than EPA

requirements and is approvable by EPA. It is reasonable to include part of the federal definition of "begin actual construction" in the proposed definition of "construction" because the proposed addition further clarifies which activities constitute construction. It is reasonable to place this amended definition within the general Air Quality Rules definitions to promote fairness and consistency among all air quality permitting programs. For example, if a change in the method of operation constitutes "construction" for the purposes of the offset program, the same activities should constitute "construction" for any other air emission facility.

Part 7005.0010, Subpart 8a, Definition of "Criteria Pollutant"

The Agency is proposing to add the definition of "criteria pollutant" to the general Air Quality definitions. Presently, the definition of "criteria pollutant" exists in the definitions that apply only to the Offset Rule. It is reasonable to place this definition within the general Air Quality definitions to insure consistency among all air quality rules.

"Criteria pollutant" is defined in the existing Offset Rule as any of the following: sulfur dioxide, particulate matter, nitrogen oxides, carbon monoxide, ozone, nonmethane hydrocarbons, and lead. The Agency is proposing to delete from this list nonmethane hydrocarbons. This is reasonable because EPA amended 40 C.F.R. Part 50 to delete nonmenthane hydrocarbons from the list of pollutants for which there are national ambient air quality standards. The Agency also proposes to amend the definition of "criteria pollutant" to add to the list of

pollutants any other pollutants for which national ambient air quality standards have been established in 40 C.F.R. Part 50, as amended, or for which state ambient air quality standards have been established in Minn. Rules parts 7005.0010 to 7005.0080. This change is needed because the EPA or the state may add or delete criteria pollutants in the future. This change is reasonable because it will allow the rule to automatically incorporate any new criteria pollutants promulgated by EPA or by the state without the need for rule amendment.

Part 7005.0100, Subpart 10b, Definition of "Emissions Unit"

The Agency is proposing to add the definition of "emissions unit" which is generally consistent with the definition found in 40 C.F.R. section 51.165 (a)(1)(vii). The proposed definition of "emissions unit" is "each activity that emits or has the potential to emit any air contaminant or pollutant. This includes each piece of equipment, machinery, device, apparatus, activity or any other means whereby an emission is caused to occur or has the potential to occur."

The proposed definition is not exactly like the federal definition because the federal definition would not have the broad applicability needed within the Agency's applicable Air Quality Rules. The proposed definition is reasonable because it is consistent with the rest of the definitions found in the applicable Air Quality rules and at the same time fulfills the requirements of the federal definition (i.e. it includes each activity that has the potential to emit any air pollutant or contaminant).

Part 7005.0100, Subpart 11b, Definition of "Federally Enforceable"

The Agency proposes to add a definition of the term "federally enforceable," which means enforceable by the Administrator of the EPA. In addition to stating that federally enforceable means enforceable by the Administrator of the Environmental Protection Agency, the proposed definition states that federally enforceable limitations, conditions, and requirements include requirements set forth in or developed pursuant to 40 C.F.R. parts 60 and 61, requirements within any applicable state implementation plan, and any permit requirements established pursuant to 40 C.F.R. sections 51.166 or 52.21 or 40 C.F.R. Part 51, subpart I.

This definition is reasonable because it is consistent with the definition of "federally enforceable" set forth in 40 C.F.R. section 51.165 (a)(1)(xiv). This definition is reasonable because it is no more or less stringent than EPA requirements and is approvable by EPA.

Part 7005.0100, Subpart 11b, "Fugitive Emissions"

The Agency proposes to amend the definition of "fugitive emissions" to change two aspects of the rules. First, the phrase "discharges which do not pass through a stack is amended to read "discharges that could not reasonably pass through a stack [etc.]". This change is reasonable because the proposed language is consistent with 40 C.F.R. section 51.165 (a)(1)(ix).

Second, the Agency proposes to eliminate from the

definition the statement "at which a measurement of the emissions can be made using a Reference Method other than Method 9." This change makes the rule consistent with the definition of "fugitive emissions" in 40 C.F.R. section 51.165(a)(1)(ix). This amendment is reasonable because it is no more or less stringent than EPA requirements and is approvable by EPA.

The proposed amended definition will now apply to the Offset Rule because the Agency is proposing to repeal the special definition of "fugitive emissions" set forth in Minn. Rules part 7005.3030, subp. 4 of the existing Offset Rule. The amended definition will also apply generally to the Agency's Air Quality Rules. This is reasonable because it promotes fairness and consistency among all air quality permitting programs.

Part 7005.0100, Subpart 35a, "Potential Emissions, Potential to Emit"

The Agency is proposing to amend the existing definition of "potential emissions" and redefining it in terms of "potential emissions, potential to emit." The proposed definition of "potential emissions, potential to emit" means the maximum capacity while operating at the maximum hours of operation of an emissions unit, emission facility, or stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restriction on hours of operation or on the type of amount of material combusted, stored, or processed must be treated as part of its

design if the limitation of the effect it would have on emissions is federally enforceable. Secondary emissions must not be counted in determining the potential to emit of an emissions unit, emission facility, or stationary source.

The proposed definition is needed to enable new or modified stationary sources to determine the future emissions from emissions units, emission facilities, or stationary sources not yet constructed or operating. By determining the future emissions from an emissions unit, emission facility, or stationary source, the necessary offsets can also determined.

The proposed definition is reasonable because it incorporates the idea of federal enforceability and establishes the limitations on counting secondary emissions found in the federal definition of potential to emit in 40 C.F.R. section 51.165 (a)(1)(iii). The language in the proposed definition remains consistent with the language found in the rest of the applicable Minnesota Rules.

Part 7005.0100, Subpart 36a, "Secondary Emissions"

The Agency is proposing to add a definition of the term "secondary emissions," which means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but which do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do

not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel in transit. The proposed rule also provides that in calculating the net increases in emissions from secondary emissions from a particulate change or change in the method of operation, secondary emissions must not be included unless they are specific, well defined, quantifiable, and impact the same general area as the stationary source or modification that causes the secondary emissions.

The definition is reasonable because it is consistent with the definition found in 40 C.F.R. section 51.165 (a)(1)(X) and should be approvable by the EPA.

Part 7005.0100, Subpart 42c, "Stationary Source"

The Agency is proposing to add a definition of the term "stationary source" which means an assemblage of all emissions units and emission facilities which belong to the same industrial grouping, are located at one or more contiguous or adjacent properties and are under the control of the same person (or persons under common control). Emissions units or emission facilities must be considered as part of the same industrial grouping if they belong to the same "major group" (that is, which have the same two-digit code as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (United States Government Printing Office Stock Numbers 4101-0066 and 003-005-00176-0, respectively). This definition is reasonable because it combines EPA's definitions of "building, structure, facility, or installation" and "stationary

source" [40 C.F.R. sections 51.165 (a)(1)(ii) and 51.165 (a)(1)(i), respectively] and the words used in the proposed definition remain consistent with words defined in applicable Minnesota Rules.

2. Proposed Amendments to the Offset Rules, Parts 7005.3010-7005.3060

The Agency is proposing to make a number of substantive changes to Minn. Rules parts 7005.3020 to 7005.3060. In addition, the Agency proposes to change the word "director" wherever it appears in the rules to the word "commissioner." This is reasonable because in 1987 the Minnesota Legislature changed the title of Director of the Agency to "commissioner." Minn. Laws 1987, ch. 186, section 15. This change appears in Minn. Rules part 7005.3030, subpart 8, item B; part 7005.3040, subp.3, items A and B; Minn. Rules part 7005.3040, subp. 5; and Minn. Rules pt. 7005.3050, item B. The substantive changes to the rules are discussed below.

Part 7005.3020, Scope

The Agency is proposing to amend Minn. Rules part 7005.3020, "Scope" in several respects. First, the Agency is proposing to change the word "subject emission facility" to "major stationary source." This is reasonable because it makes the language of the rule consistent with the rest of the rule and conforms the language to that adopted by EPA in 40 C.F.R. Part 51, Subpart I.

Second, the Agency is deleting a cross reference to the definition of "subject emission facility." This is

reasonable because the term "subject emission facility" has been deleted in the entire rule.

Third, the Agency is proposing to eliminate certain exceptions to the applicability of the Offset Rules. The existing rule states that the Offset Rule does not apply in nonattainment areas of the state for which a SIP has been developed and approved by the Agency and by EPA as providing significant emission reductions to both bring the area into attainment with National Ambient Air Quality Standards (NAAQS) by December 31, 1982, and allow for an increase in emissions in the nonattainment area during that period of time the area is designated as nonattainment. It is reasonable to eliminate this exception because it was applicable to nonattainment areas with approved SIPs prior to December 31, 1982, and is no longer applicable. Section 172(a)(1) of the Clean Air Act Amendments of 1977, 42 U.S.C. section 7504, requires that any SIP developed in a nonattainment area provide for attainment of the national ambient air quality standards no later than December 31, 1982. This exemption is no longer applicable because it applied to an area which, under this exemption, would be in attainment by December 31, 1982. Therefore, any area to which this exemption applies should already be in attainment.

Fourth, the Agency is proposing to add language that states that the Offset Rule applies 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. This addition is reasonable because Minnesota's SIP is required by 40 C.F.R. section 51.165(b) and the Emission Interpretive Ruling set forth in 40 C.F.R., Part 51, Appendix S to include a preconstruction review program for major stationary sources or major modifications proposing to locate in nonattainment areas and to major stationary sources or major modifications proposing to locate in an unclassifiable or attainment area which impact the nearby attainment area by exceeding the significant concentration levels set forth for the ambient air. It is reasonable to state this in the scope section of the Offset Rule in order to immediately clarify the applicability of the rule.

Part 7005.3030, subp. 1, Definitions, Scope

The Agency is proposing to amend subpart 1 of Minn. Rules part 7005.3030 by correcting a reference to the definitions in the general Air Quality Rules. The existing rules state the definitions in parts 7005.0100 to 7005.0180 apply to the Offset Rules unless the terms are defined in part 7005.3030 of the Offset Rules. However, the definitions set forth in parts 7005.0010-7005.0180 refer to definitions set forth in a variety of Air Quality Rules. Only the definitions set forth in part 7005.0100 have broad applicability to all Air Quality Rules. Therefore it is reasonable to amend the rule to refer only to the definitions in part 7005.0100 as being applicable to the Offset Rules.

Part 7005.3030, subp. 1a, Definition of "Actual Emissions"

The Agency is proposing to add a definition of

"actual emissions" to the rules. Under the proposed rule, "actual emissions" means the actual rate of emissions of a pollutant from an emissions unit as determined in accordance with three sets of conditions. Under item A of the rule, actual emissions as of a particular date equal the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during a two-year period which precedes a particular date and which is representative of normal operation. The Commissioner of the Agency shall allow the use of a different time period upon a determination that it is more representative of normal stationary source operation. Actual emissions shall be calculated using the stationary source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

Under item B of the proposed rule, the Commissioner shall presume that the stationary sources' specific allowable emissions are equal to the actual emissions unless there is reliable evidence available which shows actual emissions differ from allowable emissions.

Under item C of the proposed rule, actual emissions for any emissions unit which has not been normal operations on a particular date equal the potential to emit of the unit on that date.

The proposed definition of "actual emissions" is reasonable because it is generally consistent with the definition of 40 C.F.R. section 51.165(a)(1)(xii). Item B, however, adds a concept to the federal definition by stating that the

Commissioner may presume that the stationary source's specific allowable emissions are equal to the actual emissions unless there is reliable evidence available which shows the actual emissions differ from the allowable emissions. This is reasonable because the actual emissions of a stationary source do not always equal the allowable emissions of the stationary source. In proposing this language, Minnesota is following the State of Illinois' language in its rule governing Major Stationary Sources Construction and Modification (part 203.103), adopted on March 10, 1988, and approved by EPA. The proposed definition is no more or less stringent than EPA requirements and should be approvable by EPA.

Part 7005.3030, subp. 1b., Definition of "Affected"

The Agency is proposing to add a definition of "affect" or "affected" to the Offset Rule. Proposed item A states that for a new or modified stationary source proposed to be located in a nonattainment area, "affect" or "affected" means that the emissions from the new or modified source have ambient air quality impacts which are equal to or exceed the levels in 40 C.F.R. section 51.165(b)(2), as amended. This definition of "affected" is reasonable because it incorporates by reference the concentration levels approved by EPA which are defined as causing or contributing to a violation of national ambient air quality standards where the major stationary source or major modification is located. The Agency needs to set pollutant concentration levels in the rule so that it will be approvable by EPA. The levels set forth in the proposed Offset Rule are the same

concentration levels used by the EPA and are neither arbitrary or capricious.

Proposed item B of the definition states that for a new or modified stationary source proposed to be located adjacent to a nonattainment area, "affect" or "affected" means that the emissions from the new or modified stationary source have ambient air quality impacts which are equal to or exceed the levels in 40 C.F.R. section 51.165(b)(2), as amended, at a location within a nonattainment area that exceeds ambient air quality standards or will exceed ambient air quality standards due to the emissions from the new or modified stationary source. The Agency needs a mechanism to evaluate air emissions from areas outside nonattainment areas which would affect the location in a nonattainment area where the ambient air quality standards are or will be exceeded. Item B is reasonable because it is consistent with 40 C.F.R. Part 51, Appendix S, section III.A. and clarifies how "affected" is defined for a new or modified stationary source locating outside a nonattainment area.

Proposed item C defines the area that would be affected by a major stationary source or major modification. The affected area is defined differently depending on the pollutant involved. Subpart 1 provides that if the nonattainment area involved in nonattainment for nitrogen oxide or ozone, the "affected area" is the nonattainment area where the new or modified source is located or to which it is adjacent. This is reasonable because nitrogen oxide and ozone are pollutants which usually affect a large area, and this requirement is consistent with 40 C.F.R. Part 51, Appendix S, section IV.D.

Subpart 2 provides that if the nonattainment area involved is nonattainment for criteria pollutants other than nitrogen oxide or ozone (currently under 40 C.F.R. Part 50, sulfur dioxide, particulate matter, carbon monoxide, and lead), the "affected area" is determined by modeling analysis performed in accordance with Minn. Rules part 7005.3040, subpart 3. This is reasonable because these pollutants may impact the air quality over an area smaller than the entire nonattainment area. For example, carbon monoxide may affect a street intersection. Modeling analysis can define the specific area affected and will allow for requiring offsets in the areas which are more truly affected by the major stationary source or major modification.

In the existing Offset Rule, the definition of "area that would be affected" is contained in the definition of "net air quality benefit," Minn. Rules part 7005.7030, subp. 8, items A and B. It is reasonable to remove this language and create a specific definition of "affected" because a person reading the rules would naturally look under the "A's" to find the defintion of "affected" rather than under the definition of "net air quality benefit."

The new definition of "affected area" makes three changes to the existing definition of "affected area" that was found under the existing definition of "net air quality benefit." First, carbon monoxide was moved from existing item A to existing item B. This is reasonable because, as mentioned above, carbon monoxide emissions affect a small area. Second, nonmethane hydrocarbons were deleted from existing item A. This is

reasonable because nonmethane hydrocarbons are no longer a criteria pollutant under 40 C.F.R. Part 50. Third, the existing item B contained a list of pollutants, which has been replaced by a reference to "any criteria pollutants not listed in item A." This is reasonable because criteria pollutants may change as EPA and the Agency amend 40 C.F.R. Part 50 and Minn. Rules parts 7005.0010 to 7005.0080. By referencing "other criteria pollutants" the Offset Rule can adapt to these changes without the need to amend the Offset Rule each time a change is made.

The Agency is proposing to add language in the definition of "affected area" which would take into account the emissions from new or modified stationary sources which are not themselves located in a nonattainment area but which are located adjacent to a nonattainment area. This is reasonable because stationary sources need not be located only in nonattainment areas in order to have air quality impacts which equal or exceed the levels specified in 40 C.F.R. section 51.165 (b)(2). Under proposed Minn. Rules parts 7005.3020 and 7005.3040 new or modified sources that "affect a location in a nonattainment that exceeds ambient air quality standards or may exceed ambient air quality standards due to the emissions from the new or modified stationary source" are subject to the offset requirements. Therefore, this addition to the rule is needed because a criterion needs to be identified which will allow stationary sources or major modifications located outside of a nonattainment area to determine whether they are subject to the requirement to obtain offsets, and if so, where those offsets must be obtained.

This addition is reasonable because it is consistent with 40 C.F.R. section 51.165(b) and 40 C.F.R. Part 51, Appendix S, section III.A.

Part 7005.3030, subp. 2, Definition of "Air Quality Control Region"

The Agency proposes to amend the definition of "air quality control region" to correct a reference to that portion of the Code of Federal Regulations where the seven Minnesota air quality control regions are described. The existing rule cites 40 C.F.R. section 52.1221 as the reference; the Agency proposes to change the reference to 40 C.F.R. section 81.324, as amended. This is reasonable because it will allow the rule to automatically incorporate any new air quality regions which may be designated in the future by EPA. The proposed amended rule is consistent with current EPA designations in the Code of Federal Regulations.

Part 7005.3030, subp. 2a, Definition of "Allowable emissions"

The Agency proposes to add a definition of "allowable emissions" to the Offset Rule. Under the proposed amended Offset Rule, "allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the stationary source (unless the stationary source is subject to federally enforceable limits) and the most stringent of the following: 1) the applicable standards in 40 C.F.R. Parts 60 and 61; 2) the applicable State Implementation Plan emissions limitation, including those with a future compliance date, or 3) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

The Agency proposed definition is reasonable because it is consistent with the definition of "allowable emissions" as set forth in 40 C.F.R section 51.165. It is reasonable to include a definition of "allowable emissions" because it distinguishes which emissions are considered "actual emissions" by the Agency and which emissions would be considered "allowable emissions" as those terms are used in other portions of the rules, such as in the definition of "offsets" in proposed amended Minn. Rules part 7005.3030, subp.12.

Part 7005.3030, subp. 2b, Definition of "Ambient air quality standards"

The Agency proposes to add a definition of "ambient air quality standards" to the Offset Rule. Under the proposed amended Offset Rule, "ambient air quality standards" means any of the national ambient air quality standards or state ambient air quality standards relating to the primary (health related or secondary (welfare related) air pollution concentrations in: A. 40 C.F.R. part 50, as amended; and B. Minn. Rules parts 7005.0010 to 7005.0080. This definition of "ambient air quality standards" is needed because the term is used frequently in other portions of the rules, such as in the definition of "nonattainment area," Minn. Rules part 7005.3030, subp.10. Defining "ambient air quality standards" by referencing the federal regulation and the state rules is reasonable because the amended Offset Rule will adapt automatically in the event that future federal or state rulemaking changes ambient air quality standards.

Part 7005.3030, subp. 5, Definition of "Lowest Achievable Emission Rate"

The Agency proposes to amend the definition of "lowest achievable emission rate" in several ways. First, the Agency proposes to change the term "emission facility" to "stationary source". This change is reasonable because it conforms the rule's terminology to that used in EPA's definition of "lowest achievable emission rate" set forth in 40 C.F.R. section 51.165 (a)(1)(xiii).

Second, the Agency proposes to define "lowest achievable emission rate" as the more stringent of two alternative emission limitations. The first of the two options, item A, is the most stringent emission limitation contained in the SIP of any state for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable. Under this provision, the owner or operator is given the opportunity to rebut the presumption that the limitations appearing in other states' SIP's are achievable in practice. It appears that some states adopt emission limitations which are not achievable in order to prevent certain industries from locating in the state. The second of the two options, item B, is the most stringent emission limitation that is achieved in practice by that class or category of stationary source. When applied to a modification, the limitation of item B means the lowest achievable emission rate for the new or modified emission units within the stationary source. This amendment is reasonable because it conforms Minnesota's definition of "lowest achievable emission rate" to the definition set forth in the Clean Air Act,

42 U.S.C. section 7501(3) and the EPA definition set forth in 40 C.F.R. section 51.165 (a)(1)(xiii).

Third, the Agency proposes to amend the definition to make it clear that the application of the term "lowest achievable emission rate" may not be applied to permit a proposed new or modified stationary source to emit any pollutant in excess of the amounts allowable under an applicable New Source Performance Standard (NSPS) as promulgated under the Clean Air Act of 1977, United States Code, title 42, section 7411. This amendment is needed to be consistent with 42 U.S.C section 4501 and 40 C.F.R. section 51.165 (a)(1)(xiii). This amendment is reasonable because all applicable NSPS are intended to be the upper limits for emissions regardless of whether a new or modified source is located in an attainment or nonattainment area.

Finally, the Agency proposes to eliminate the following statement that the emission limitation specified in any other states' plan "shall be presumed to be achievable in practice unless a person demonstrates to the director that the emission limitation or standard of performance is not achievable for reasons other than economic costs." It is reasonable to eliminate this sentence from the rule because it was applicable to nonattainment areas with approved SIPs prior to December 31, 1982, and is not consistent with current EPA regulations.

Part 7005.3030, subp. 6, Definition of "Major modification"

The Agency proposes to amend the existing definition of "modification" or "modified" in several respects. First, the reference to an "emission facility" is amended to refer to a

"major stationary source". This amendment is reasonable because it conforms the terminology of this part to the terminology used in the remainder of the rules, which use the words "stationary source" or "major stationary source" as used by EPA. Second, the Agency proposes to change the term "net increase in emissions" to "significant net emissions increase of any criteria pollutant." This change is reasonable because it conforms the Offset Rule to 40 C.F.R. section 51.165(a)(1)(v)(A) in which only a "significant net emissions increase" in pollutant emissions renders a modification "major." Third, the Agency proposes to add language which states any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone. This addition is reasonable because it conforms the Offset Rule to 40 C.F.R. section 51.165 (a)(1)(v)(B). Fourth, the Agency proposes to change the list of items that are excluded from the phrase "physical change or change in the method of operation." These exclusions are discussed below.

Item A of the rule remains unchanged: A physical change or change in the method of operation does not include routine maintenance, repair, or replacement.

Proposed item B states that a physical change or change in the method of operation shall not include use of a alternative fuel or raw material by reason of an order under sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination act of 1974, United States Code, Title 15, Section 792 (1980), as amended, or by reason of a natural gas curtailment

plan pursuant to the Federal Power Act, United States Code, Title 16, section 791a et. seq. as amended. (Proposed item B closely resembles the language of existing item F of the rule.) Proposed item B is reasonable because it is consistent with 40 C.F.R. section 51.165 (a)(1)(v)(A)(2) and should be approvable by EPA.

Proposed item C states that a physical change or change in the method of operation does not include use of an alternative fuel by reason of an order or rule adopted or issued under section 125 of the Clean Air Act of 1977, United States Code, title 42, section 7425 (1980), as amended. This language is reasonable because it is consistent with the definition of major modification as set forth in 40 C.F.R. section 51.165 (a)(1)(v)(A)(3).

Proposed item D states that a physical change or change in the method of operation does not include use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste. New item D replaces existing item D of the current Offset Rule. New item D is reasonable because it is consistent with 40 C.F.R. section 51.165 (a)(1)(v)(A)(4) and 40 C.F.R. Part 51, Appendix S.

Proposed item E states that a physical change or change in the method of operation does not include use of an alternative fuel or raw material by a stationary source which: (1) the stationary source was continuously physically capable of accommodating before, on, and after December 21, 1976, unless the change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976, in

accordance with 40 C.F.R. section 52.21, or under regulations approved pursuant to 40 C.F.R. Part 51, subpart I, or section 51.166; or (2) the stationary source is authorized to use under an Agency permit issued pursuant to parts 7005.3010 to 7005.3060. Proposed item E is reasonable because it is consistent with 40 C.F.R. section 51.165 (a)(1)(v)(5).

Proposed item F states that a physical change or change in the method of operation shall not include an increase in the hours of operation or in the production rate, unless such change is prohibited by any of the following: (1) a federally enforceable permit condition established after December 21, 1976, pursuant to 40 C.F.R. section 51.166 or 52.21 or under regulations approved pursuant to 40 C.F.R. part 51, subpart I; (2) an Agency rule approved by the EPA under 40 C.F.R. sections 51.160 to 51.166; (3) a stipulation agreement; (4) an order of the Agency or the EPA, or (5) a court order. Proposed item F replaces existing items B and C of the current Offset Rule. Proposed item F is reasonable because it is consistent with section 51.165 (a)(1)(v)(C)(6).

New item G states that a physical change or change in the method of operation does not include any change in ownership at stationary source. New item G replaces existing item E of the current Offset Rule. New item G is reasonable because it is consistent with 40 C.F.R. section 51.165 (a)(1)(v)(C)(7), and also because a change in ownership, by itself, does not necessarily result in an increase in emissions of criteria pollutants.

Part 7005.3030, subp. 7a, Definition of "Major stationary source"

The Agency proposes to replace the existing definition of "subject emission facility" with a definition of "major stationary source" in order to conform the language in the proposed Offset Rule to the language used in 40 C.F.R. section 51.165 (a)(iv). The existing definition of "subject emission facility" in the Offset Rule no longer conforms to the EPA definition of "major stationary source" and is difficult to understand and interpret. It is reasonable to adopt the federal terminology and federal definition because by doing so, the proposed amended Offset Rule becomes more understandable and logical.

Proposed item A provides that "major stationary source" means: (1) any stationary source which 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. Proposed item A is reasonable because it is consistent with 40 C.F.R. section 51.165 (a)(1)(iv)(A).

Proposed item B states that a major stationary source that is major for volatile organic compounds must be considered major for ozone. This requirement is consistent with 40 C.F.R. section 51.165 (a)(1)(iv)(B). It is reasonable to consider sources which are major for volatile organic compounds major for

ozone because volatile organic compounds contribute to the formation of ozone.

Proposed item C states that the fugitive emissions of a stationary source must not be included in determining whether it is a major stationary source unless the stationary source belongs to one of the categories listed in 40 C.F.R. section 51.165 (a)(iv)(c). This requirement is needed because the existing Offset Rule does not address fugitive emissions in any manner. This requirement is reasonable because it addresses the topic of fugitive emissions in a manner consistent with 40 C.F.R. section 51.165 (a)(iv)(c).

Part 7005.3030, subp. 13, Definition of "Net Air Quality Benefit"

The Agency proposes to make several changes to the definition of "net air quality benefit". First, the Agency proposes to change the first sentence of the rule to replace the term "subject emission facility" with the term "stationary source." This change is reasonable because it conforms the terminology of this part to the remainder of the rules, which use the terms "stationary source" and "major stationary source."

The Agency proposes to clarify the existing rule to state that a stationary source will demonstrate net air quality benefit if, among other conditions, there is a reduction in the ambient concentration of nonattainment criteria pollutants. The existing language states that there will be a net air quality benefit if, among other conditions, there is a reduction in "both the rate of emissions and the concentration of nonattainment criteria pollutants." It is reasonable to add the word "ambient"

before the word "concentration" of nonattainment criteria pollutants because the reader might otherwise read "concentration" as the concentration of pollutants in stack gases. It is reasonable to eliminate the reference to "the rate of emissions" because the proposed rule more clearly delineates equally stringent requirements to demonstrate a net air quality benefit.

Third, the Agency proposes to add a new sentence to the definition, as follows: "The commissioner shall determine whether the net air quality benefit represents reasonable further progress toward compliance with ambient air quality standards". This amendment is needed because the Clean Air Act, 42 U.S.C. section 7502 (b)(3) requires state SIP requirements for nonattainment areas to require reasonable further progress toward National Ambient Air Quality Standards. It is reasonable to require the Commissioner to make this determination so that the Agency may act in accordance with the Clean Air Act. The term "ambient air quality standards" allows the Commissioner to also determine if the net air quality benefit represents reasonable further progress towards compliance with state ambient air quality standards.

Fourth, the Agency proposes to move items A and B of the existing rule to the definition of "affected." Items A and B are part of a description of the area that would be "affected" by the major stationary source or major modification. It is reasonable to move items A and B under the definition of "affected" because the reader is more likely to look for a

definition of that term under the "A's" rather than under the definition of "net air quality benefit."

Fifth, the Agency proposes to add language which states that in or near nonattainment areas with no state implementation plan, or at a location where the emissions from the major stationary source or major modification would affect a nonattainment area, the Commissioner shall not find that there will be a net air quality benefit unless Y divided by X is equal to or greater than 1.2. The formula in the existing rule requires a finding of a net air quality benefit if Y divided by X is equal or greater than 1.1. X in the existing equation is the restricted emission to which the subject emission facility will be limited, and Y is the offsets to be provided by the person proposing the subject emission facility. The Agency proposes to change the formula so that Y divided by X must be equal or greater than 1.2. The proposed change in the formula is needed because 40 C.F.R. Part 51, Appendix S, section IV requires that, in addition to obtaining equivalent offsets of new emissions, the ambient air quality also be improved. This proposed change in the formula is reasonable because it is consistent EPA's "Emissions Trading Policy Statement; General Principles for Creation, Banking, and Use of Emission Reduction Credits," 51. Fed. Reg. 43814 (December 4, 1986). Specifically, as stated on 51 Fed. Reg. 43839, bubble applications in primary nonattainment areas which require but lack approved demonstrations of attainment, must:

> Produce a substantial net reduction in actual emissions (i.e. of at least 20% in the emissions

remaining after application of the baselines specified above).

It is reasonable to require all major stationary sources affected by this rule to obtain an equal percentage (120%) of emission offsets to ensure reasonable further progress in achieving ambient air standards. The offset requirement over and above a one-to-one ratio is proposed to be raised from ten percent to twenty percent to ensure attainment of ambient standards as "expeditiously as practicable" in light of the December 31, 1987 deadline mandated by the Clean Air Act, 42 U.S.C. section 7502(a)(2). The new ratio is consistent with the requirement of 42 U.S.C. section 7501(1) that requires the state to make "reasonable further progress in attaining ambient air quality standards."

The Agency also proposes to amend the definitions of the variables "X" and "Y" to state that "X" is the potential to emit on a tons per year and a pounds per hour basis to which the major stationary source or major modification will be limited, and that "Y" is equal to the offsets in the lower of actual or allowable emissions, on a tons per year and a pounds per hour basis, to be provided by the person proposing the major stationary source or major modification. The proposed replacement of the term "restricted emissions" with the term "potential to emit" in the definition of "X" is reasonable in order to make the definition of "X" consistent with the terminology used in the rest of the rule. The proposed definition of "potential to emit" in Minn. Rules part 7005.0100, subp. 35a

encompasses some of the main ideas of the existing definition of "restricted emissions." Both definitions, in essence, mean the maximum capacity of a stationary source to emit pollutants. It is reasonable to define "X" in terms of "potential to emit" because a proposed stationary source that is not yet operational does not have actual emissions. The proposed change in the phrase defining term "offsets" as "the lower of actual or allowable emissions" in the definition of "Y" is reasonable because the "lower of actual or allowable emissions" defines specifically the emissions that would be eligible for offsets. The proposed changes in the definition of "Y" are reasonable because the actual emissions of a stationary source may be greater than the allowable emissions of the stationary source, and the changes make clear that owner or operators of stationary sources who are required to provide offsets must reduce their emissions below the lowest of these two emission levels.

Part 7005.3030, subp. 9, Definition of "Net Increase or Decrease in Emissions"

The Agency proposes to replace the definition of "net increase in emissions" with a new definition of "net increase or decrease in emissions" that is divided into items A through G. Items A through G are needed to ensure that a stationary source's increases or deceases in emissions may be used as potential offsets or may provide potential offsets to another stationary source.

The proposed definition of "net increase or decrease in emissions" starts off by stating that a net increase or

decrease in emissions means any net increase or decrease in actual emissions from a particular change or change in the method of operation at a stationary source.

Item A states that a net emissions increase is the amount by which the sum of the following exceeds zero: (1) any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and (2) any other increases and decreases in actual emissions at the stationary source that are contemporaneous with the particular physical change and are otherwise creditable. This requirement is reasonable because it is consistent with 40 C.F.R. section 51.165 (a)(1)(vi)(A).

Item B provides that an increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the increase or decrease in actual emissions occurs before the date that the increase from the particular change occurs. This statement is reasonable because it is consistent with 40 C.F.R. section 51.165 (a)(1)(vi)(B).

Item C provides that an increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between: (1) the date five years before construction on the particular change commences; and (2) the date that the increase from the particular change occurs. Item C is reasonable because it is consistent with 40 C.F.R. Part 51, Appendix S, section II.A. (6)(i)(b)(ii).

Item D provides that an increase or decrease in actual emissions is creditable only if the Commissioner has not

relied on it in issuing a permit for the stationary source pursuant to rules approved by the EPA pursuant to 40 C.F.R. Part 51, Subpart I where the permit is in effect when the increase in actual emissions from the particular change occurs. This requirement is reasonable because it is consistent with 40 C.F.R. section 51.165 (a)(1)(vi)(C)(2).

Item E provides that an increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level. This requirement is reasonable because it is consistent with 40 C.F.R. section 51.165 (a)(1)(vi)(D).

Item F provides that a decrease in actual emissions is creditable only to the extent that all of the following conditions are met: (1) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions; (2) it is federally enforceable at and after the time that actual construction on the particular change begins; (3) the Commissioner has not relied on it in issuing any permit pursuant to rules approved by the EPA pursuant to Code of Federal Regulations, title 40, part 51, subpart I or relied on it in demonstrating attainment or reasonable further progress; and (4) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change. Item F is reasonable because it is consistent with 40 C.F.R. section 51.165 (a)(1)(vi)(E).

Item G provides that an increase that results from a

physical change at a stationary source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit which requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days. This requirement is reasonable because it is consistent with 40 C.F.R. section 51.165 (a)(1)(vi)(F).

Items A through G are needed to ensure that the procedure used by stationary sources in determining what emission credits are allowed to be used as potential offsets or need to be offset by other emission credits and are consistent with the definition of "net emissions increase" in 40 C.F.R. section 51.165 (a)(1)(vi) and are, therefore approvable by EPA.

Part 7005.3030, subp. 10, Definition of "Nonattainment Area"

The Agency proposes to change the definition of nonattainment area in two respects. First, it adds to the definition those areas which violate state ambient air quality standards. This is reasonable because state ambient air quality standards are in certain cases more stringent than National Ambient Air Quality Standards, and thus referring only to the national standards is not sufficient to cover all nonattainment areas in Minnesota. It is reasonable for the requirements of the Offset Rule to apply to areas which are nonattainment with respect to state ambient air quality standards because the state has an interest in seeing that those areas' air quality is improved, not further degraded, when growth is proposed to occur there. The state ambient air quality standards represent

Minnesota's judgment as to what pollutant levels protect public health and welfare.

Second, the Agency proposes to provide a reference to 40 C.F.R. section 81.324, which sets forth the specific areas designated by EPA as nonattainment for National Ambient Air Quality Standards. This addition is reasonable because it does not add any requirements to stationary sources but it tells the reader how to find out what areas are nonattainment areas.

Part 7005.3030, subp. 11, Definition of "Nonattainment Criteria Pollutants"

The Agency is proposing to make two changes to the definition of "nonattainment criteria pollutants." First, the Agency proposes to delete nonmethane hydrocarbons as a nonattainment criteria pollutant for those areas that are nonattainment for ozone. This is reasonable because nonmethane hydrocarbons have been deleted by EPA in 40 C.F.R. Part 50.

Second, the Agency proposes to add volatile organic compounds as a nonattainment criteria pollutant for those areas that are nonattainment for ozone. This addition is reasonable because volatile organic compounds are considered the important precursor to the formation of ozone. This addition is needed because 40 C.F.R. section 51.165 (a)(1)(v)(B) states: "Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone." This statement shows how significant volatile organic compounds are in the formation of ozone.

Part 7005.3030, subp. 12, Definition of "Offsets"

The definition of "Offsets" is central to the Offset Rule because it determines many of the basic requirements of the rule.

The Agency proposes to amend the definition of "offsets" in several respects. First, the Agency proposes to replace the phrase "reductions in restricted emissions" with "reduction in the lower of actual of allowable emissions." It is reasonable to delete the term "restricted emissions" from the rule because the Agency is conforming its terminology to that used by EPA, and EPA does not use that term in 40 C.F.R. Part 51. It is reasonable to define offsets in terms of reductions in the "lower of actual or allowable emissions" because this is consistent with EPA's "Emissions Trading and Policy Statement; General Principles for Creation, Banking and Use of Emission Reduction Credits," Part II.D., 51 Fed. Reg. 43814, 43852 (December 4, 1986). The word "reduction" as used in item A is limited by the language of items A(1) through (4).

Second, the Agency proposes to amend the existing language limiting the term "reduction" to those that are "legally enforceable." The amended language states that the reduction must, for pollutants for which National Ambient Air Quality Standards have been established, be federally enforceable. This change is reasonable because it makes the rule consistent with 40 C.F.R. section 51.165 (a)(3)(E) and is approvable by EPA.

Third, the Agency proposes to add items A(3) and A(4) to require that the reduction must: (3) occur prior to start of

operation of the proposed major stationary source or major modification and (4) if needed to meet the ozone standard, results from reductions in volatile organic compounds. These conditions are reasonable because they make the rule consistent with 40 C.F.R. Part 51, Appendix S, section II.A.(10)(i) and 40 C.F.R. section 51.165 (a)(1)(v)(B), respectively.

Fourth, the Agency proposes to add items B through H to the rule. These items are discussed below.

Proposed item B states that offsets achieved by shutting down an existing stationary source or permanently curtailing production or operation hours below baseline levels is governed by 40 C.F.R. section 51.165(a)(3)(ii)(C), as amended. It is reasonable to incorporate this regulation and future amendments by reference because it is the Agency's understanding that EPA intends to amend 40 C.F.R. section 51.165 (a)(3)(ii)(C) in the future. The incorporation by reference allows the Offset Rule to incorporate any future changes without amending the Offset Rule.

Item C states that credit for an emission reduction can be claimed to the extent that the Agency has not relied on it in issuing any permit in accordance with Minn. Rules parts 7005.3010 to 7005.3060 or the Commissioner has not relied on it in demonstrating to EPA attainment or reasonable further progress. Item C is reasonable because it is consistent with 40 C.F.R. section 51.165 (a)(3)(G) and is required to be included in the rule to be approvable by EPA.

Item D states that no emissions credit may be allowed

for replacing one volatile organic compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" set forth in 42 Fed. Reg. 35314 (July 8, 1977), as amended. Item D is reasonable because it is consistent with 40 C.F.R. section 51.165 (a)(3)(D) and is required to be included in the rule to be approvable by EPA.

Item E states that no emissions credit may be allowed unless procedures relating to the permissible location of offsetting emissions have been followed which are at least as stringent as those set forth in 40 C.F.R. Part 51, Appendix S, Section IV.D., as amended. Item E is reasonable because it is consistent with 40 C.F.R. section 51.165 (a)(3)(F) and is required to be included in the rule to be approvable by EPA.

Item F states that the offset baseline is either the stationary source's actual emissions, or the potential to emit, as determined by the SIP in effect on the date the Commissioner determines that a complete application to construct is filed, except that the offset baseline is the actual emissions of the stationary source from which offset credit is obtained where: (1) the demonstration of reasonable further progress and attainment of ambient air quality standards is based upon actual emissions from stationary sources located within a designated nonattainment area, or (2) there is no applicable SIP approved by the EPA or the SIP does not contain an emissions limitation for that stationary source or stationary source category. Item F is reasonable because it is consistent with 40 C.F.R. section 51.165

(a)(3)(i)(A) and (B) and is required to be included in the rule to be approvable by EPA.

Item G states that, if the emission limit under the applicable SIP allows greater emissions than the potential to emit of the stationary source, emissions credit shall be allowed only for control below the potential to emit of the stationary source. Item G is reasonable because it is consistent with 40 C.F.R. section 51.165 (a)(3)(ii)(A). Item G is reasonable because any emissions allowed by the SIP which are greater than the potential to emit of the stationary source physically cannot be emitted; hence, they are not "real" reductions. EPA regulations allow emission reductions to be used as offsets which are "real", as determined from actual emissions of the stationary source, or from allowable emissions when actual emissions are not known.

Item H states that for an existing fuel combustion source, credit shall be based on the lower of actual or allowable emissions under the applicable SIP for the type of fuel being burned at the time the application to construct is filed. If the existing stationary source commits to switch to cleaner fuel at some future date, emissions offsets based on the cleaner fuel must not be credited, unless the permit is conditioned to require the use of a specified alternative
control measure which would achieve the same degree of emissions reduction should the stationary source switch back to a dirtier fuel at some later date. The Commissioner must ensure that adequate long-term supplies of the new fuels are available before

granting emissions offset credit for fuel switches. This requirement relating to fuel switching is reasonable because it is consistent with C.F.R., section 51.165 (a)(3)(ii)(B).

Part 7005.3030, subp. 13 Definition of "Plan, State Implementation Plan"

The Agency proposes to amend the definition of "plan, state implementation plan" in several respects. First, the existing rule refers to "laws, rules, permits, stipulation agreements and procedures developed to insure compliance with state and national ambient air quality standards". The Agency proposes to replace the word "developed" with the phrase "adopted or issued by Minnesota". This amendment is reasonable because it clarifies that in order to be a part of the SIP, regulatory documents must have been adopted or issued by Minnesota and not just in draft or proposed form. Second, the Agency proposes to delete the reference in the quoted phrase to "state and national" ambient air quality standards. This is reasonable because the definition of "ambient air quality standards" in the proposed amended rule refers to both state and national ambient air quality standards, thus making the phrase "state and national" redundant in this rule. Finally, the Agency proposes to add to the definition the fact that the SIP must be approved by EPA pursuant to Section 110 of the Clean Air Act, 42 U.S.C. section 7410. This is reasonable because the Agency has no unilateral power to adopt SIP provisions. Under 42 U.S.C. section 7410, SIP revisions adopted by a state are not part of the state's SIP until promulgated as federal law by EPA.

Part 7005.3030, subp. 14a, Definition of "Reasonable Further Progress"

The Agency proposes to add a new definition of the term "reasonable further progress." Under the proposed definition, "reasonable further progress" means annual incremental reductions in emissions of the applicable air pollutant that:

A. the administrator of EPA has determined are sufficient to provide for attainment of the applicable NAAQS in 40 C.F.R. Part 50; and

B. the Commissioner has determined are sufficient to provide for attainment of the applicable state ambient air quality standards as set forth in Minn. Rules parts 7005.0010 to 7005.0080.

The proposed definition of "reasonable further progress" is reasonable because the Clean Air Act requires that reasonable further progress in achieving and maintaining ambient air standards be demonstrated by the states, and 40 C.F.R. Part 51, Appendix S, Part IV.A requires, as a condition of approval for a major stationary source or major modification in an nonattainment area, that offsets be required "such that there will be reasonable progress toward attainment of NAAQS." The proposed definition is reasonable because it is consistent with the Clean Air Act, 42 U.S.C. section 7501 (1).

Part 7005.3030, subp. 19a. Definition of "Significant Emissions Increase"

The Agency is proposing to add a definition of "significant emissions increase" which means a net increase in

emissions or the potential of a stationary source to emit any of the listed pollutants that would equal or exceed any of the rates of emissions set forth in 40 C.F.R. Part 51, Appendix S, section II.A.(10)(i), as amended. Any net emissions increase that is considered significant for volatile organic compounds must be considered significant for ozone.

This definition of significant emissions increase is reasonable because it defines specifically the emission rates of specific compounds that the Agency will consider significant and is consistent with 40 C.F.R. Part 51, Appendix S, section II.A.(10)(i)

Part 7005.3030, subp. 20, Definition of "Volatile Organic Compounds"

The Agency is proposing to add a new definition of the term "volatile organic compounds". Under the proposed definition, "volatile organic compounds" means any organic compound that participates in atmospheric photochemical reaction; that is, any organic compound other than those which EPA has designated as having negligible photochemical reactivity. Volatile organic compounds must be measured by a reference method, an equivalent method, an alternative method, or by procedures specified under 40 C.F.R. Part 60. In cases where a reference method, equivalent method, or alternative method also measures nonreactive organic compounds, an owner or operator may exclude the nonreactive organic compounds when determining compliance with a standard. The proposed definition specifies that for the purposes of the Offset Rule, volatile organic

compounds include the specific compounds listed in items A through M and any other compound listed in Table 1, as amended, of EPA's "Recommended Policy on Control of Volatile Organic Compounds," 42 Fed. Reg. 35314 (July 8, 1977) and any other compound determined by the EPA to be negligibly photochemically reactive. These determinations are published in the Federal Register.

The proposed definition of "volatile organic compounds" is reasonable because it is consistent with EPA regulations regarding volatile organic compounds, 40 C.F.R Part 51, Appendix S, section IV (C)(4). EPA may add additional volatile organic compounds by publishing them in EPA's "Recommended Policy on Control of Volatile Organic Compounds" originally set forth in 42 Fed. Reg. (July 8, 1977). EPA may also publish a list of the compounds it considers volatile organic compounds in the Federal Register.

The proposed definition is reasonable because it identifies those volatile organic compounds to which these rules apply and is consistent with EPA regulations applicable to all affected stationary sources in the State.

Part 7005.3040, Conditions for Permit

Part 7005.3040 establishes the conditions under which permits for major stationary sources and major modifications shall be issued, requires that certain conditions be contained in permits issued to major stationary sources and major modifications, and establishes limited exclusions from some of these requirements. The proposed amendments are discussed below.

Part 7005.3040, subp. 1, In General

The Agency proposes to amend subpart 1 to delete the introductory phrase "[e]xcept as provided in subpart 6". This amendment is needed because the Agency is proposing to repeal subpart 6. This amendment is reasonable because deletion of the reference makes the rule internally consistent. The Agency is also proposing to replace the opening phrase "The Agency shall not issue permits for" with "No person shall commence construction." This change does not add any requirements to permittees which are not already stated in the Agency's permit rule, Minn. Rules parts 7001.0030 and 7001.1210. However, adding this statement is reasonable because it reminds permittees of the requirement not to commence construction before obtaining a permit. The Agency is also proposing to replace the term "subject emission facility" with references to a major stationary source or major modification located in a nonattainment area or at a location where the emissions from the new or modified stationary source would affect a nonattainment area. It is reasonable to delete references to "subject emission facility" because the Agency is conforming the language of the Offset Rule to the language used by EPA in its regulations: "major stationary source" and "major modification." It is reasonable to subject major stationary sources and major modifications whose emissions would affect a nonattainment area to the permit conditions in subparts 2 to 4 of the rule because it would defeat the purposes of the Offset Rule to allow unchecked growth in emissions outside of nonattainment areas if the emissions from the new or modified source would significantly affect the nearby nonattainment area.

Part 7005.3040, subp. 2, Requirement to Obtain Offsets

The Agency is proposing several changes to subpart 2 of the rule. First, the Agency proposes to change the terminology on the existing Offset Rule to the terminology used in EPA regulations; specifically, changing "subject emission facility" to "major stationary source" and "major modification." This is reasonable because it will make the Offset Rules easier to understand and interpret.

The Agency also proposes to change language specifying the time frame in which offsets are required. The existing rule requires Offsets to be obtained "prior to constructing or modifying" a facility, while the proposed amended rule requires that offsets be obtained before "commencement of construction" of a major stationary source or major modification. This change is reasonable because it is consistent with the proposed change in subpart one and clarifies the requirement not to commence construction prior to permit issuance.

The Agency also proposes to eliminate the exemption in the first sentence of existing subpart 2 for stationary sources intended to be located in a nonattainment area for less than two years. This amendment is needed because this exemption is not contained in 40 C.F.R. section 51.165 and is considered by EPA to be less stringent than federal requirements and, therefore, is not approvable. This amendment is reasonable because it is highly unlikely that a major stationary source would be constructed and operated for a period of only two years. It is reasonable that all major new stationary sources should comply with the same requirements for obtaining offsets.

The Agency also proposes to require offsets for a major stationary source or major modification at a location where the emissions from the new or modified stationary source would affect a nonattainment area. As previously discussed, this is reasonable because it would defeat the purposes of the Offset Rule to allow unchecked growth in emissions outside of nonattainment areas if the new or modified source would significantly affect the nearby nonattainment area.

The Agency also proposes to require offsets "in order to achieve reasonable further progress." It is reasonable to require an owner or operator to obtain offsets in order to achieve reasonable further progress because 42 U.S.C. section 7502 (b)(3) of the Clean Air Act requires that "reasonable further progress" be demonstrated in nonattainment areas (see the discussion concerning proposed Minn. Rules parts 7005.3030, subpart 8 and 7005.3030, subpart 14b). Reasonable further progress is defined in proposed Minn. Rules part 7005.3030, subpart 14a and involves annual incremental reductions in emissions of nonattainment criteria pollutants. This amendment is reasonable because existing stationary sources located in nonattainment areas have the burden, under Minnesota's SIP, of reducing emissions to attain National Ambient Air Quality Standards, and it is only fair to require new and expanded stationary sources who want to emit pollutants in a nonattainment area to contribute to attainment of these standards. To allow new emissions to be offset at a ratio of one to one is to allow maintenance of the status quo and the status quo is unacceptable

because a nonattainment area by definition has unacceptably high concentrations of ambient air pollution.

The purpose of the requirement to achieve "reasonable further progress" is to improve the air quality of the nonattainment area once the new or modified stationary source is located in that area. This is accomplished in the rules (Part 7005.3040, subp.3) by requiring the permit applicant to demonstrate a "net air quality benefit." Under the amended definition, a net air quality benefit is a ratio of offsets to new emissions of 1.2 to 1. In other words, offsets must exceed new emissions by 20 percent. Absent such a ratio, major stationary sources could be constructed without significantly and expeditiously contributing to attainment of ambient standards. For example, consider a major stationary source which emits 100 tons per year which could otherwise obtain an offset of 110 tons per year. The first 100 tons per year of offset prevents a net air quality degradation and only the last 10 tons per year contribute to attainment of standards. With the ratio specified at 1.2 to 1, the offset required in this example would be 120 tons per year, with 20 tons per year contributing to attainment of ambient standards and a net quality benefit.

The Agency also proposes to specify that offsets must be obtained for emissions of nonattainment criteria pollutants "for which the construction or modification will result in a significant net emissions increase." This requirement is reasonable because it is consistent with 40 C.F.R. section 51.165 (a)(1)(v)(A), the definition of "major modification," which

states that "major modification" means "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the act." It is reasonable to require owners and operators to obtain offsets of those nonattainment criteria pollutants which, because they are significant, will have an adverse impact on the nonattainment area. The rule language is also reasonable as applied to new major stationary sources which, under the proposed Minn. Rules part 7005.3030, subp. 7a, emit 100 tons per year of more of a criteria pollutant, since the "significance levels" established in 40 C.F.R. Part 50, Appendix S, section II.A.(10)(i) equal 100 tons per year or less. In other words, new major stationary sources by definition have "significant" net emissions increases.

Finally, the Agency proposes to delete the last sentence of the rule, which states: "An emission facility that was intended to be located in a nonattainment area for less than two years but that remains for two years or more shall be subject to all the applicable requirements of these parts". This language is unnecessary in light of the elimination of the exception for stationary sources intended to be located in a nonattainment area for less than two years; therefore, it is reasonable to delete it.

Part 7005.3040, subp. 3, Requirement to Demonstrate a Net Air Quality Benefit

The Agency proposes to amend subpart 3 in several respects. First, the Agency proposes to change the phrase "prior

to constructing or modifying" to "prior to commencement of construction." This amendment is reasonable because, read along with the definitions of "commencement" and "construction" set forth in Minn. Rules part 7005.0100, subps. 1a and 2 (as proposed for amendment), it maintains internal consistency in the rules.

The Agency also proposes to replace the term "subject emission facility" with the terms "major stationary source" and "major modification." This is reasonable because, by changing to EPA terminology, the amended rule will be easier to understand and interpret.

The Agency also proposes to extend the requirement to demonstrate a net air quality benefit to owners and operators of major stationary sources or major modifications the emissions from which would affect a nonattainment area. This requirement is reasonable because it is consistent with 40 C.F.R. section 51.165(b) and 40 C.F.R. Part 51, Appendix S, Part III.A. It is reasonable for the further reason that it would defeat the purposes of the Offset Rules to allow unchecked growth in emissions outside of nonattainment areas if the new or modified sources would significantly affect the nearby nonattainment area.

The Agency proposes to amend item A of the rule in three respects. The Agency proposes to replace the term "subject emission facility" with the terms "major stationary source" and "major modification." This is reasonable because, by changing to EPA terminology, the amended rule will be easier to understand and interpret. The Agency also proposes to delete carbon monoxide and nonmethane hydrocarbons from the list of nonattainment

pollutants for which modeling analysis is not required. It is reasonable to delete carbon monoxide from the list of pollutants that do not require a modeling analysis since carbon monoxide affects specific areas and a modeling analysis may be required in order to determine the extent of its effects. It is reasonable to delete nonmethane hydrocarbons from this list because nonmethane hydrocarbons are no longer criteria pollutants under 40 C.F.R Part 50. The Agency also proposes to add language which addresses major stationary sources and major modifications at a location where the emissions from the new or modified stationary source would affect a nonattainment area. This addition is needed and keeps the rule internally consistent with other parts requiring offsets for these types of new or modified stationary sources. Finally, the Agency proposes to change "director" to "commissioner." This is reasonable because it reflects the new title of the chief executive officer of the Agency.

The Agency proposes to amend item B in several respects. The Agency proposes to add an introductory phrase, "[e]xcept as provided in item C." This addition is reasonable because it alerts the reader that item C contains other conditions related to modeling analyses. The Agency also proposes to replace the term "subject emission facilities" with "major stationary sources or major modifications." This is reasonable because, by changing to EPA terminology, the amended rule will be easier to understand and interpret. The Agency also proposes to replace references to "sulfur dioxide or particulate or lead nonattainment areas" to "nonattainment areas other than nitrogen

oxide or ozone nonattainment areas." This language is reasonable because it incorporates the criteria pollutants listed in 40 C.F.R. Part 50 now and in future amendments thereto. The Agency proposes to add language which addresses major stationary sources or major modifications at a location where the emissions from the new or modified stationary source would affect a nonattainment area other than a nitrogen oxide or ozone nonattainment area. This addition is needed and reasonable because it keeps the rule internally consistent with other parts requiring offsets for these types of new or modified sources. The Agency also proposes to amend the reference to "Guidelines on Air Quality Model" from its former number and date (OAQPS No. 1.2 080 1978) to its updated number and date EPA-450/2-78-027R, July, 1986, as amended. This is reasonable because EPA has updated this document since the Agency's Offset Rule was adopted in 1981.

Finally, the Agency proposes to change "director" to "commissioner." This is reasonable because it reflects the new title of the Agency's chief executive.

The Agency proposes to add a new item C to the rule. Proposed item C provides that if a major stationary source or major modification is located or proposed to be located in a nonattainment area other than a nitrogen oxide or ozone nonattainment area, or at a location where the emissions from the new or modified stationary source would affect a nonattainment area other than a nitrogen oxide or ozone nonattainment area, the permit applicant is exempt from the requirement to perform a modeling analysis to demonstrate net air quality benefit if all

of the following conditions apply: (1) the emission offsets are obtained from an existing stationary source on the same premises or within 250 meters of the new or modified stationary source; (2) the pollutants increased do not disperse from any emissions unit with a lower effective plume height (as determined under EPA's guidelines on air quality modeling) than the emissions unit from which the decrease in pollutants is made; and (3) the offset is equal to or greater than 120 percent of the potential to emit of the proposed major stationary source.

Item C is based in part on EPA's "Emissions Trading Policy Statement; General Principles for Creation, Banking and Use of Emission Reduction Credits," 51 Fed. Reg. 43814, 43844 (December 4, 1986). Part I.B.1 of that document discusses when modeling is not needed to determine the ambient equivalence of emission trades. Items C(1) and (2) of the proposed rule are reasonable because they are consistent with Part I.B.1 (2)(b) and (c) of that document with respect to particulate matter, sulfur dioxide, carbon monoxide, and lead.

Item 3 is reasonable because any offset which is greater than or equal to 120 percent of the potential to emit of the proposed major stationary source automatically demonstrates a net air quality benefit as defined in this rule. It is reasonable to exclude nitrogen dioxide and ozone from the exemption created by item C of the proposed rule because nitrogen dioxide and ozone generally impact larger areas, as opposed to source specific areas, thus making modeling analysis desirable to determine the impacts on ambient air quality. Item C also provides that a

permit applicant who is exempt from the requirement to perform a modeling analysis must demonstrate net air quality benefit in the manner described in item A. This statement is reasonable because it does not impose any new obligations; it merely references the reader to the obligations imposed by item A.

Part 7005.3040, subp. 4, Requirement for Compliance

The Agency is proposing to make several changes to subpart 4. First of all, the Agency is proposing to change the title of subpart 4 from "Requirement to Certify Compliance" to "Requirement for Compliance." This change is nonsubstantive. This change is reasonable because anyone can certify that his or her major stationary source or major modification is in compliance even if it is noncompliance. The Agency also proposes to change the phrase "the permit applicant shall certify compliance" to the "permit applicant shall demonstrate compliance." This change is reasonable because again, anyone can certify compliance even if they are noncompliance. The term "demonstrate" makes clear that an owner or operator of a major stationary source or major modification shall not just certify compliance, but be in compliance. The Agency proposes to change the time frame in which permit applicants must demonstrate compliance. The existing rule requires certification prior to constructing or modifying a facility while the proposed amended rule requires demonstration before issuance of a permit to construct a new or modified stationary source. It is reasonable to require demonstration of compliance of an owner's or operator's existing sources prior to permit issuance in order to

be consistent with 40 C.F.R. Part 51, Appendix S, section IV.A.(2).

The Agency is also proposing to replace the term "subject emission facility" with "major stationary source or major modification." This is reasonable because by changing to EPA terminology, the amended rule will be easier to understand and interpret. The rule is also being amended to apply to new or modified stationary sources to be constructed at a location where the emissions from the new or modified stationary source would affect a nonattainment area. This change is reasonable. It is fair to apply the same requirements to all stationary sources who are required to obtain offsets, not just to those stationary sources located in nonattainment areas.

The Agency is proposing to change the last segment of subpart 4 to require the permit applicant to demonstrate that all existing stationary sources in Minnesota which are either owned or operated in whole or in part by the same person for whom the application is made or which are operated under the common control of the same person for whom the application is made are in compliance with or on a federally approved compliance schedule "to meet all applicable emission limitations and standards established under the Clean Air Act, United States Code, title 42, sections 7401 to 7626 and in the state implementation plan." With respect to the requirement to demonstrate compliance with federal requirements, this change is consistent with 40 C.F.R., Part 51, Appendix S, section IV. condition 2. It is reasonable to require, in addition, that permit applicants be in compliance

with the state implementation plan because this is consistent with 40 C.F.R Part 51, Appendix S, section II. B.

Part 7005.3040, subp. 5, Permit Conditions

The Agency is proposing to make some minor changes to subpart 5. The Agency is proposing to replace the terms "facility" and "subject emission facility" with "stationary source" and "major stationary source or major modification." This is reasonable because, by changing to EPA terminology, the amended rule will be easier to understand and interpret. The Agency also proposes to apply the rule to new or modified stationary sources at a location where the emissions from the new or modified stationary source would affect a nonattainment area. This change is reasonable because it would defeat the purposes of the Offset Rule to allow unchecked growth outside of nonattainment areas if the new or modified sources would significantly affect the nearby nonattainment area.

The Agency is also proposing, in section A(1), to change the word "technology" to "control equipment." This change is reasonable because the word "control equipment" is the more commonly used word that describes the equipment required to control emissions.

The Agency is proposing, in section A.(2), to change the word "director" to "commissioner." This change is reasonable because it reflects the new title of the chief executive officer of the Agency. The Agency is also proposing to change the phrase "requirement of this subpart" to "requirement of an emission rate." This change is reasonable because the "requirement of this

subpart" is an emissions rate, so the change results in clarifying the rule.

Finally, the Agency proposes to amend item B in three respects: 1) to reflect that the "owner or operator" obtains offsets; 2) to change "these parts" to "parts 7005.3010 to 7005.3060"; and 3) to change "legally enforceable...by the United States Environmental Protection Agency" to "federally enforceable at and after the time the permit is issued." These changes are reasonable because they clarify the rule and do not add any new requirements to it.

Part 7005.3040, subp. 7, Stationary Source Obligation.

The Agency proposes to add a new subpart 7 to the rule providing that, "when a particular stationary source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation that was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on the hours of operation, then the requirements of parts 7005.3010 to 7005.3060 apply to the owner or operator as though construction had not commenced on the stationary source or modification." This requirement is reasonable because it is consistent with 40 C.F.R. section 51.165 (a)(5)(ii) and is required to be included in the Offset Rule so that the rule will be approvable.

Part 7005.3040, subp. 8, Incorporation by reference

The Agency is proposing to add subpart 8 which incorporates by reference EPA's "Guidelines on Air Quality

Models," EPA-450/2-78-027R, as amended by supplemental updates. This is needed because proposed amended Minn. Rules part 7005.3040, subp 3, item B, references this document, thus triggering the requirement of Minn. Stat. section 14.07, subd.4 (1986) to include a statement of incorporation which "must identify by title, author, publisher, and the date of publication the standard or material to be incorporated; must state whether the material is subject to frequent change; and must contain a statement of availability." The proposed rule is reasonable because it meets all of the requirements of Minn. Stat. section 14.07, subd. 4 (1986).

Part 7005.3050, Banking

The Agency is proposing to make some changes to the banking provision in the existing Offset Rule. The first part of the existing rule states: "A person who has obtained a reduction in the amount of restricted emissions emitted from an emission facility shall be permitted to bank that reduction for future use as an offset as allowed by these parts under the following set of circumstances, limitations, and conditions." The Agency proposes to amend this subpart to state: "A person who has obtained a reduction in the lower of actual or allowable emissions of 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 limitations and conditions." It is reasonable to delete the words "restricted emissions" and "emission facility" and to replace them with "the lower of actual or allowable emissions" and "stationary source," respectively, in

order to assure that stationary sources which have actual emissions above their allowable emissions cannot claim credit for reducing their emissions to the level of their allowable emissions. For example, if a stationary source exceeds its allowable emissions of 10 tons per year so that it has actual emissions of 20 tons per year, and the stationary source commits to reduce its actual emissions to 10 tons per year, it will not be able to bank a 10 tons per year reduction because its allowable emissions were 10 tons per year. This stationary source would not have any reductions to bank. However, if this stationary source commits to reduce its actual emissions to 5 tons per year, it would be allowed to bank 5 tons per year because its allowable emissions were 10 tons per year. This requirement is reasonable because it is consistent with EPA's "Emissions Trading Policy Statement; General Principles for Creation, Banking and Use of Emission Reduction Credits," 51 Fed. Reg. 43814 (December 4, 1986) and is needed in order for the Offset Rule to be approvable. The last sentence of the first part of 7005.3050 states: "Parts 7005.3010 to 7005.3060 authorize a person to bank only those emissions that:" and goes on to specify the conditions in items A and B. The Agency proposes to move this sentence and the language of existing items A and B and label them as subpart C. This change is reasonable because the portion being moved represents a separate thought from the first sentence.

The Agency proposes to relabel the existing second paragraph of the rule as item A and to make some changes to the

language. First, the Agency proposes to add the thought that emission reductions must be final and enforceable "to assure that emission trades do not contravene applicable requirements of the Clean Air Act." This addition is reasonable because, while it does not add any requirements not already imposed on the new or modified stationary source by the Clean Air Act, it reminds the persons seeking to bank emissions reductions of the obligation to comply with the Clean Air Act. This language is consistent with Part II.A. of EPA's "Emissions Trading Policy Statement; General Principles for Creation, Banking, and Use of Emission Reduction Credits, 51 Fed. Reg. 43814, 43831 (December 4,1986). Second, the Agency proposes to replace the term "facility" with "stationary source." This change is reasonable because it conforms the language of the Offset Rule to EPA regulations. Third, the Agency proposes to add: "No person shall cease to maintain emission reductions that were obtained to provide offsets for a new or modified stationary source." This addition is reasonable because it would defeat the purposes of the Offset Rule if owners and operators were to eliminate the emission offsets obtained after the Agency had approved a new or modified source on the basis of those emission reductions.

The Agency proposes to relabel the third un-numbered paragraph of the existing rule as item B. The Agency is proposing to change the word "director" to "commissioner." This is reasonable to reflect the new title of the chief executive officer of the Agency.

Proposed item C is a combination of existing subparts A and B. Proposed item C states that "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 27, 1981; or (2) are obtained after October 27, 1981, and are reported within six months after the reductions have become final and enforceable." This language is fundamentally the same as existing rule language, with the exception that the phrase "the effective date of these parts" is changed to "October 27, 1981." It is reasonable to state the effective date of these parts so that the reader is not required to research what the "effective date of these parts" was.

Part 7005.3060, Limitation on Use of Offsets

The Agency proposes to make some grammatical corrections to part 7005.3060. The Agency proposed to change the word "creates" to "create," the word "allows" to "allow," and the words "these parts" to "parts 7005.3010 to 7005.3060." These changes are reasonable because they correct the word usage in the rule and do not change the content of the rule.

REVISOR INSTRUCTION

The proposed rule contains a Reviser Instruction to change "director" to "commissioner" wherever it refers to the chief executive officer of the agency. This is reasonable because it reflects the requirement of Minn. Laws 1987, ch. 186, section 15.

REPEALER

The Agency proposes to repeal Minn. Rules part 7005.0100, subparts 9, the definition of "director," 10a, the definition of "emission source," and 44, the definition of "total emission facility;" Minn. Rules part 7005.3030 subparts 3, the definition of "criteria pollutant," 4, the definition of "fugitive emissions," 14, the definition of "plant," 15, the definition of "resource recovery facility," 16, the definition of "restricted emissions," 17, the definition of "state ambient air quality standards," 18, the definition of "subject emission facility," 19, the definition of "thirty-day rolling average," and Minn. Rules part 7005.3040, subpart 6, "Exception from requirement to get offsets." The proposed repeals are discussed below.

The Agency proposes to repeal Minn. Rules part 7005.0100, subp. 9, the definition of "director." This change is reasonable because the legislature changed the title of the Director to "Commissioner." Minn. Laws 1987, ch. 186 section 15.

The Agency proposes to repeal Minn. Rules part 7005.0100, subp. 10a, the definition of "emission source." The existing definition of "emission source" was meant to be the state equivalent for the federal definition of "emissions unit." Both definitions are meant to refer to a single piece of process equipment. The use of the word "emissions source" causes confusion because of the federal definition of "stationary source." The federal definition of "stationary source" refers to an entire source, not a single piece of process equipment. It is

reasonable to repeal the existing definition of "emission source" and add the definition of "emissions unit" to prevent confusion. This change does not significantly change the content of the rule.

The Agency is proposes to repeal Minn. Rules part 7005.0100, subpart 44, the definition of "total emission facility." The definition of "total emission facility" was added in an attempt to provide a state equivalent for the federal definition of "stationary source." The existing definition of "total emission facility," however, differs from the federal definition of "stationary source" to some degree. It is reasonable to repeal the definition of "total emission facility" and add the definition of "stationary source" to prevent confusion and make the Minnesota Air Pollution Control Rules consistent within themselves.

The Agency proposes to repeal Minn. Rules part 7005.3030, subpart 3, the definition of "criteria pollutant." It is reasonable to repeal the definition of "criteria pollutants" from the definitions section of the Offset Rule because a definition of the term which is consistent with EPA language has been proposed in Minn. Rules part 7005.0100, subpart 8a, making this rule redundant.

The Agency proposes to repeal Minn. Rules part 7005.3030, subpart 4, the definition of "fugitive emissions." It is reasonable to repeal the definition of "fugitive emissions" because this definition has been replaced with the proposed definition of "fugitive emissions" in part 7005.0100, subpart 11b.

The Agency proposes to repeal Minn. Rules part 7005.3030, subpart 14, the definition of the word "plant." It is reasonable to repeal the definition of "plant" because the proposed definition of "stationary source" encompasses the important ideas in the existing definition of "plant." The use of the words "plant," "subject emission facility," and "emission facility" in the existing rule make the rules difficult to understand and interpret. Deleting the word "plant" and adding "stationary source" to encompass the definitions of "plant" and "emission facility" greatly clarifies the applicability of the proposed amended rules.

The Agency proposes to repeal Minn. Rules part 7005.3030, subpart 15, the definition of the word "resource recovery facility." The definition of "resource recovery facility" was needed in the existing rules due to the use of the term in Minn. Rules part 70056.3040, subd. 6. "Exceptions from the requirement to obtain offsets," which exempted a permit applicant from the requirement to obtain offsets under certain circumstances. The Agency is proposing to repeal part 7005.3040, subd. 6. Due to the elimination of this exception for resource recovery facilities, the term "resource recovery facility" is no longer used in the Offset Rules. Therefore, the definition is no longer needed and it is reasonable to eliminate that definition from the rules.

The Agency proposes to repeal Minn. Rules part 7005.3030, subpart 16, the definition of the word "restricted emissions." It is reasonable to eliminate the definition of

"restricted emissions" from the rules because this definition has been replaced with the definition of "potential to emit" as previously discussed with respect to part 7005.0100 subpart 35a.

The Agency proposes to repeal Minn. Rules part 7005.3030, subpart 17, the definition of the word "state ambient air quality standards." It is reasonable to eliminate this definition because the proposed definition of "ambient air quality standards" in part 7005.3030 subpart 2b includes the existing definition of state ambient air quality standards.

The Agency proposes to repeal Minn. Rules part 7005.3030, subpart 18, the definition of the word "subject emission facility." It is reasonable to repeal the definition of "subject emission facility" because this definition has been replaced with the federal definition of "major stationary source" and "major modification" in part 7005.3030 subparts 7a and 6, respectively.

The Agency proposes to repeal Minn. Rules part 7005.3030, subpart 19, the definition of "thirty-day rolling average." It is reasonable to eliminate the definition of "thirty day rolling average" because EPA has informed the Agency that it will not approve this method of averaging emissions when demonstrating compliance.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. section 14.115, subd. 2 (1986) 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 this rule; and

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

The proposed rules will not affect small businesses as defined in Minn. Stat. section 14.115 (1986). The proposed rules only affect major new sources or major modifications in nonattainment areas as defined in proposed Minn. Rules part 7005.3030 subp. 7a and 6, respectively. A major stationary source is defined as a stationary source which either emits more than 100 tons per year of a nonattainment criteria pollutant or a major modification of an existing major stationary source which results in a significant net emission increase in nonattainment criteria pollutants. To be a major modification of an existing major stationary source the range of changes in the net emissions must be greater than 25 to 100 tons per year, depending on the specific criteria pollutant. By this definition of major stationary source, only large industrial sources will be affected by the proposed amended rule. Small businesses will most likely be excluded because they will not fall under the definition of "major stationary source" or "major modification" as set forth in the proposed rule amendments.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. section 116.07, subd. 6 (1986) 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 emissions offsets, the Agency has given due consideration to available information as to any economic impacts the proposed rule amendments would have. The proposed amendments to the Offset Rule will have positive impacts on the economy of Minnesota because, by making the Offset Rules approvable by EPA, Minnesota will be able to obtain approval of its SIP. Approval of Minnesota's SIP will, in turn, remove the construction ban for major stationary sources that now applies to Minnesota by operation of 40 C.F.R. section 52.24(a).

Finally, in considering the reasonableness of the proposed rule, some mention should be given to the overall economic impact of the effect of the rule. The Offset Rule creates an economic mechanism through which new stationary sources will be permitted to locate in nonattainment areas of the State, while at the same time air quality in those nonattainment areas is improved. It is difficult (if not impossible) to assess the actual economic

impact of this rule since the extent to which persons may actually buy and sell offsets depends entirely on the plans of different industries to locate in various nonattainment areas of the State some time in the future. In any event, it should be understood that the rule itself does not require any owner of any existing facility to spend any monies for the control of their existing emissions.

VII. CONCLUSION

Based on the foregoing, the proposed amendments to the Air Quality Rules definitions, Minn. Rules part 7005.0100, and amendments to the Offset Rule, Minn. Rules parts 7005.3010 to 7005.3060, are both needed and reasonable.

Dated: September 16, 1988

Barbara Sanders Sims
for Gerald L. Willet
Commissioner

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