

STATE OF MINNESOTA  
POLLUTION CONTROL AGENCY

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

STATEMENT OF NEED  
AND  
REASONABLENESS

I. INTRODUCTION

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

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

## II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

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

that the Pollution Control Agency may adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1969, Chapter 1046, for the prevention, abatement, or control of air pollution. Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances, or conditions in order to make due allowances for variations therein. Without limitations, rules or standards may relate to sources or emissions of air contamination or air pollution, to the quality or composition of such emissions, or to the quality of or composition of the ambient air or outdoor atmosphere or to any other matter relevant to the prevention, abatement or control of air pollution.

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

## III. STATEMENT OF NEED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Need to Amend Minnesota's Existing Offset Rule

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

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

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

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



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

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

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

- a. Five definitions in the Offset Rule were not approvable.
- b. The state had failed to demonstrate that its rule was equivalent to the EPA standard where different.
- c. The EPA found the rule submittal unclear regarding what Minnesota submitted for a complete Offset Rule.
- d. The rule was missing two key definitions.

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

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

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

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

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

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

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

#### IV. STATEMENT OF REASONABLENESS

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

##### A. REASONABLENESS OF THE RULE AS A WHOLE

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

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

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

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

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

B. REASONABLENESS OF INDIVIDUAL PARTS

Part 7005.3010. PURPOSE

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

Part 7005.3020 SCOPE

Part 7005.3020 is amended as follows:

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

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

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

**7005.3030 DEFINITIONS**

**Subpart 1. Scope.**

Subpart 1 is amended as follows:

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

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

**Subp. 1a.**

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

**Subp. 1b**

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

**Subp. 2**

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

**Subp. 2a**

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

**Subp. 2b**

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

**Subp. 3a. Attainment area.**

Subpart 3a adds new definition as follows:

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

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

**Subp. 5**

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

**Subp. 6**

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

**Subp. 7. National ambient air quality standards.**

Subpart 7 is amended as follows:

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

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

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

Subpart 7a is amended as follows:

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

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

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

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

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

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

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

**Subp. 8**

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



**Subp. 9**

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

**Subp. 10. Nonattainment area.**

Subpart 10 is amended as follows:

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

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

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

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

**Subp. 11**

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

**Subp. 11a. PM10.**

Subpart 11a is a new part proposed as follows:

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

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

**Subp. 12**

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

**Subp. 13**

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

**Subp. 14a**

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

**Subp. 19a**

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

**Subp. 19b. Unclassifiable area.**

Subpart 19b is added as follows:

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

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

7005.3040 CONDITIONS FOR PERMIT

Subp. 1

Subpart 1 is amended as follows:

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

A. a nonattainment area; or

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

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

**Subp. 2**

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

**Subp. 2a**

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

Subp. 2a. Modified federal standard. Persons subject to part 7005.3040, subpart 1 must comply with Code of Federal Regulations, title 40, chapter 1, Part 51, Appendix S, as amended, with the following exceptions:

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

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

Emission reductions ("offsets") from existing sources in the area of the proposed source (whether or not under the same ownership) are required such that there will be reasonable progress toward attainment of the applicable NAAQS. Offsets must be based on actual emissions as defined in Code of Federal Regulations, title 40, section 51.165(a)(3), as amended. Only intrapollutant emission offsets will be acceptable (e.g. hydrocarbon increases may not be offset against SO<sub>2</sub> reductions).

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

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

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

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

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

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

**7005.3050 Banking**

Part 7005.3050 is amended to read as follows:

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

[A.- C. delete]

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

**V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING**

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

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

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

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

#### VI. CONSIDERATION OF ECONOMIC FACTORS

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

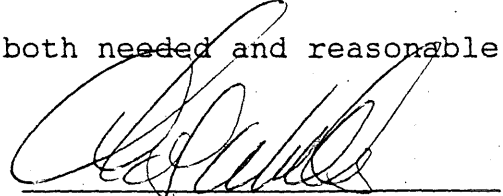
In exercising all its powers, the pollution control agency shall give due consideration to the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any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

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

VII. CONCLUSION

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

Dated: 9/25, 1992.

  
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Charles W. Williams  
Commissioner