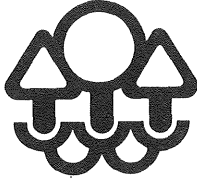


4/20/92 ✓



Minnesota Pollution Control Agency

520 Lafayette Road, Saint Paul, Minnesota 55155-3898

Telephone (612) 296-6300

March 31 , 1992

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

Dear Ms. Hruby:

Subject: State of Need and Reasonableness for Proposed Amended Rule
Governing Reconstructed Vehicles and Exchanged Engines
(Minn. Rule Part 7005.5030, subp. 10 and subp. 11)

Enclosed for your review is a copy of the Statement of Need and Reasonableness for proposed revisions to Minn. Rule part 7005.5030, subp. 10 (Reconstructed Vehicles) and subp. 11 (Exchanged Engines), as required by Minnesota Statutes, section 14.115 subd. 8. If you have any questions please call me at (612) 296-7712.

Sincerely,

A handwritten signature in cursive script that reads "Norma L. Florell".

Norma L. Florell
Planning and Rule Coordinator
Air Quality Division

NLF:jmd

Enclosure

The Legislative Commission to
Review Administrative Rules



STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In The Matter Of Proposed Rule
Amendments Governing; Reconstructed
Vehicles And Exchanged Engines,
Minn. Rules Part 7005.5030
Subpart 10 and Subpart 11

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The Minnesota Pollution Control Agency (MPCA) was authorized and directed by the 1988 Minnesota Legislature to adopt rules establishing a motor vehicle Inspection/Maintenance Program for the Twin Cities seven county metropolitan area. 1988 Minn. Laws ch. 661 (codified as Minn. Stat. §§ 116.60 to 116.65) required the MPCA to adopt standards and criteria governing the testing and inspection of motor vehicles for air pollution emissions and to hire a contractor to build and operate a network of inspection facilities.

As required by Minn. Stat. § 116.62, the MPCA adopted Minn. Rules pts. 7005.5010 to 7005.5105, which established standards and criteria governing the testing and inspection of motor vehicles for carbon monoxide and hydrocarbon emissions in the Twin Cities seven county metropolitan area.

As directed by Minn. Stat. §§ 116.60 to 116.65, the MPCA issued a Request for Proposal (RFP) to hire a contractor to build and operate a network of inspection facilities. Five proposals were received by the MPCA in response to the RFP. Upon completion of a review process, the MPCA awarded Systems Control, Inc. the contract during the summer of 1990. Vehicle testing then began on July 1, 1991.

Since implementation of the motor vehicle Inspection/Maintenance Program on July 1, 1991, the MPCA recognized a need to make a minor amendment to Minn. Rules pt. 7005.5030, subps. 10 and 11 to clarify the emission standards that

apply to vehicles with reconstructed vehicles and exchanged engines.

A Notice to Solicit Outside Opinion was published in the State Register on Monday, February 24, 1992. No comments were received by the MCPA.

II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The MPCA's statutory authority to adopt the rules is set forth in Minn. Stat. § 116.62, which provides in part:

Subd. 1. Establishment. The MPCA shall establish and administer a program to test and inspect for air pollution emissions the motor vehicles that are subject to the requirement of Minn. Stat. § 116.61.

Subd. 2. Criteria and Standards.

- (a) The MCPA shall adopt rules for the program under chapter 14 establishing standards and criteria governing the testing and inspection of motor vehicles for air pollution emissions.
- (b) The rules must specify maximum pollutant emission levels for motor vehicles, giving consideration to the levels of emissions necessary to achieve applicable federal and state air quality standards. The standards may be different for different model years, sizes, and types of motor vehicles.
- (c) The rules must establish testing procedures and standards for test equipment used for the inspection. The test procedures or procedures producing comparable results must be available to the automobile pollution equipment repair industry. The test equipment used for the inspection or comparable equipment must be available to the repair industry on the open market.
- (d) The rules must establish standards and procedures for the issuance of licenses for fleet inspection stations.

- (e) The rules must establish standards and procedures for the issuance of certificates of compliance and waiver.

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

III. STATEMENT OF NEED

Minn. Stat. §§ 14.131, 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 rules. In general terms, this means that the MPCA must set forth the reasons for proposing rules 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, and reasonableness means that the solution proposed by the MPCA is a proper one. The need for the changes to the Minn. Rules pt. 7005.5030, subps. 10 and 11 is discussed below.

The need for these changes to Minn. Rules pt. 7005.5030 subps. 10 and 11 arises from the MPCA's experience in implementing the motor vehicle Inspection/Maintenance Program. Specifically subp. 10 addresses the issue of a reconstructed vehicle and subp. 11 addresses the issue of exchanged engines as currently written.

Minn. Rules pt. 7005.5030. subp. 10 and subp. 11 do not explicitly establish which emission standards will be applied to cars made from a kit (Kit cars), and do not contain procedures for determining the proper emission standard to apply to motor vehicle which have exchanged engines.

To assist it in implementing the Inspection/Maintenance Program in accordance with Minn. Stat. §§ 116.60 to 116.65, there is a need for the MPCA to adopt changes to Minn. Rules pt. 7005.5030 subps. 10 and 11 in order to clarify that a Kit car is a form of a reconstructed vehicle and to establish a

procedure for determining the appropriate emission standards for testing vehicles containing an exchanged engine.

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 rules. 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 rules is discussed below.

The amendment to Minn. Rules pt. 7005.5030 subp. 10 clarifies that a Kit vehicle is a reconstructed vehicle, and therefore shall be tested using the standards applicable to the year of manufacture of the engine installed in the vehicle. A Kit vehicle is a vehicle that has been built from several components and may not be easily classified by any particular model year. The engine, however, usually has an identifiable date of manufacture. Therefore, it is reasonable to clarify that a Kit vehicle is considered to be a reconstructed vehicle, so that the emission standard applied to it will correspond to the date of manufacture of the engine.

The amendment to Minn. Rules pt. 7005.5030 subp. 11 states that if a vehicle has an exchanged engine, the vehicle shall be classified by the model year of and the manufacturer's make of the exchanged engine or in some cases the model year of the chassis.

Item A of the proposed rule change states that except as provided in item B, a motor vehicle shall be tested for compliance with the exhaust emission standards in part 7005.5030, subp. 3, table 1 or 2, whichever is in effect, using the standards applicable to the model year of the vehicle's chassis.

Item B of the proposed rule change states that any vehicle manufactured in model year 1991 or older that has received an exchanged engine or rebuilt engine, or other vehicle made from manufactured Kit bodies (Kit cars), shall be tested for compliance with the exhaust emission standards in subpart 3, table 1 or 2, whichever is in effect, using the standards applicable to the model year of the vehicle's chassis, unless the owner of the vehicle complies with the procedure outlined in item C.

Items A and B are reasonable because they clearly establish the standards to be used in testing Kit cars and vehicles with exchanged engines. A vehicle with an exchanged engine would be tested to the standards applicable to the model year of the chassis for all 1991 and older vehicles. The establishment of the 1991 model year as the cut off date is reasonable because it is easily determined by looking at the vehicle's registration and clarifies which vehicles are tested to standards applicable to the model year of the chassis. The use of 1991 as the cut off date is also reasonable because it places new car purchasers on notice that exchanged engines placed in cars after model year 1991, must not affect the car's compliance with emission standards applicable to the car's model year. Older cars may already have exchanged engines in which case application of the emission standards to the chassis year of the car could require a new engine, which would be very expensive. Therefore, it is reasonable to apply to these older vehicles the standards applicable to the model year of the engine.

Item C states that if a vehicle containing an exchanged engine described above in item B as being a model year 1991 or older, has not been inspected or has failed to meet the emission standards applicable to the vehicle's chassis, the MPCA representative upon request by the motorist shall certify the year the engine was manufactured by checking the identification number of the engine

block and by reviewing documentation provided by the vehicle owner. The vehicle will then be tested using the standards applicable to the year of the engine as certified by the MPCA representative.

Checking the identification number of the engine block and reviewing documentation provided by the vehicle owner to certify the year the engine was manufactured is reasonable because most engines have an easily identifiable date of manufacture on the engine block. Where there is no identification number on the engine block, it is reasonable to review documentation provided by the vehicle owner to certify the date of manufacture. It would be unreasonable to require the use of the identification number on the engine block to determine the age of the engine when none exists.

Item C also states that if the identification number on the block of the engine is absent and the vehicle owner is unable to provide documentation as to the engine year, the vehicle shall be tested for compliance with exhaust emission standards for model year 1976. Where there is no identification number on the engine block or documentation to certify the date of manufacture, it is reasonable to test to standards for model year 1976 for two reasons. First, the MPCA representative would have to conclude that the vehicle is required to be tested because the MPCA representative is unable to certify that the age of the engine is older than 1976. Vehicles older than 1976 are not subject to the emission test. See Minn. Stat. § 116.61, subd. 2(1). Second, since the vehicle will be tested and the age of the engine cannot be determined, it is reasonable to use test standards for 1976 because 1976 test standards are easier to meet therefore providing a benefit to the motoring public.

Item C is also reasonable, because it establishes clear procedures for identifying the emission standard that would apply to vehicles tested to the

model year of the engine under the different possible scenarios: engine year ascertainable, engine year not ascertainable, and engine year that renders the car exempt from testing. By establishing clearly the emission standards that apply to vehicles with exchanged engines, this amendment will reduce disputes about applicable standards, thereby making the overall program easier to administer.

The unamended text of this subpart acknowledges that engine switching is done by the public and provides a means of classifying a motor vehicle for purposes of the inspection and maintenance program required by parts 7005.5010 to 7005.5105, but does not relieve the owner of a motor vehicle from the requirements of Minn. Stat. § 325E.0951 or Minn. Rules pt. 7005.1190, which prohibit, in part, removing, altering, or otherwise rendering inoperative any air pollution control system on a motor vehicle.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1990) requires the MPCA, 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 rule.

In proposing these rule amendments, the MPCA considered the feasibility of establishing lesser requirements for inspection of vehicles owned by small businesses but concluded that, because air pollutant emissions from vehicles owned by small business have an equally deleterious impact on air quality as any other vehicles, the purposes of the rules would be defeated by such a measure. Also, the rule amendment clarifies the emission standards which apply to vehicles, but does not change which vehicles are subject to testing under current rules, and is therefore not expected to increase costs of compliance for small businesses.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the MPCA 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 Minnesota 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 changes to part 7005.5030. subps. 10 and 11 the MPCA has given due consideration to available information as to any economic impacts the proposed changes would have. No significant adverse economic impacts are anticipated to result from the adoption of the proposed rule changes, which are clarifying amendments designed to identify the emission standards which apply

to certain vehicles that, because of their configuration, are difficult to classify as to model year.

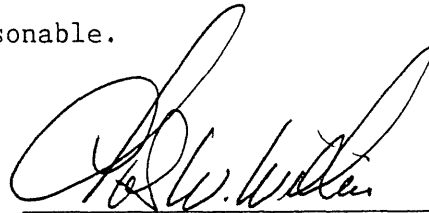
VII. AGRICULTURAL LANDS

This proposed rule amendment will not have a direct and substantial adverse impact on agricultural land in the state. See Minn. Stat. § 14.11, subd. 2 (1990).

VIII. CONCLUSION

Based on the foregoing, the proposed changes to Minn. Rules, pt. 7005.3050 subs. 10 and 11 are both needed and reasonable.

Dated: March 24, 1992



Charles W. Williams
Commissioner