

Minnesota Pollution Control Agency

Environmental Analysis and Outcomes Division

NOTICE OF INTENT TO ADOPT TEMPORARY RULES UNDER THE GOOD CAUSE EXEMPTION, MINNESOTA STATUTES SECTION 14.388, Subdivision 1, Clause 2.

Adopted Temporary Exempt Rules Relating to Air Quality Definitions and Abbreviations, *Minnesota Rules*, chapter 7005 and Permits and Offsets, *Minnesota Rules*, chapter 7007.

Introduction. The Minnesota Pollution Control Agency (MPCA), Division of Environmental Analysis and Outcomes, intends to adopt rules under the good cause exemption rulemaking process in the Administrative Procedure Act, *Minnesota Statutes*, section 14.388, and the rules of the Office of Administrative Hearings, *Minnesota Rules*, part 1400.2400. This rule revision will incorporate new federal permit requirements for greenhouse gas (GHG) emissions.

Interested parties have five business days after the date of this notice to submit comment to the Office of Administrative Hearing. You may submit comment until 4:30 PM on December 6, 2010. The MPCA requests that any person submitting comment to the Office of Administrative Hearings also submit a copy of the comment to the MPCA's contact person.

Contact Persons. The Office of Administrative Hearings contact person is: Maria Lindstrom, Office of Administrative Hearings, P.O. Box 64620, St. Paul, MN 55164-0620, phone (651) 361-7841, FAX (651) 361-7936, and email rulecomments@state.mn.us.

The MPCA's contact person is Barbara Conti, MPCA, 520 Lafayette Road N., St. Paul, MN 55155-4194, phone (651) 757-2288, FAX: 651-297-8324, and email barbara.conti@state.mn.us. TTY users may call the MPCA at 651-292-5332 or 800-657-3867.

Subject of the Exempt Rules and Statutory Authority. The proposed exempt rule is about amending *Minnesota Rules*, chapters 7005 and 7007, which govern how Minnesota implements portions of the federal Part 70 operating permit program and the federal New Source Review/Prevention of Significant Deterioration (NSR/PSD) pre-construction permitting program. The statutory authority to adopt the rules under the good cause exemption rulemaking process is *Minnesota Statute*, section 14.388, subdivision 1, clause 2.

The MPCA is proposing to revise its rules to incorporate any new federal GHG permit thresholds for GHGs as a regulated pollutant and to adopt a schedule for permit applications to be submitted. As an exempt rule, this rule will be in effect for a maximum of two years from the date of publication in the State Register. The MPCA is currently developing a permanent rule to replace this temporary rule. The permanent rule will be subject to the full rulemaking procedures under the Minnesota Administrative Procedures Act, which provides for public notice and participation.

New Federal Requirements. On May 13, 2010, the Environmental Protection Agency (EPA) issued a final rule to define GHG and to establish new permit thresholds for GHG emissions. This rule affects two permit programs, these are: 1) the PSD program for construction permits; and 2) the Part 70 operating permit program, also called the Title V program.

The federal rule has several new definitions, including a definition of GHGs as an aggregate group of 6 gases. They are: Carbon dioxide; nitrous oxide; methane; hydrofluorocarbons; perfluorocarbons and sulfur hexafluoride. The proposed rule incorporates the federal definition.

The new Part 70 and PSD permit threshold for GHG emissions is a potential to emit (PTE) of 100,000 tons per year (tpy) of GHGs calculated as carbon dioxide equivalent (CO₂-e). The new PSD significance level for modifications that result in an increase of GHG is 75,000 CO₂-e.

Starting January 2, 2011, GHG permit requirements will apply to new or modifying PSD and Part 70 sources if they have GHG emissions above the thresholds. The new permit rules will apply to all facilities with emissions above the thresholds starting July 1, 2011.

Minnesota's part 70 permit rule refers to the Clean Air Act for applicability, which defines the major source threshold as 100 tpy. The current rule also specifically lists the permit threshold as 100 tpy. The existing rule language needs to be revised to conform to the new threshold in the federal rule. Additionally, requirements for registration permits, capped permits and insignificant activities need to be modified to ensure that they are permitted appropriately under the federal rules.

Exempt Rulemaking Process. The MPCA plans to use the exempt rulemaking process provided in *Minnesota Statutes*, section 14.388, subdivision 1(2) to implement GHG permitting. The statute allows an expedited process if agencies need to comply with a requirement in federal law in a manner that does not allow for compliance with the usual rulemaking process. The exempt rulemaking process must be completed in 2010 to meet the effective date of the federal permit rule, January 2, 2011. The MPCA finds that it is impracticable and not in the public interest to adopt the proposed rules using the usual rulemaking process. If the amendments were to go through the usual rulemaking process, the rule would not be complete by the federal effective date and thousands of small sources in Minnesota would be subject to major source permitting. The cost to these small sources would be very high, particularly in light of the fact that eventually the new GHG threshold would nullify the requirements to obtain a major source permit. The MPCA would also be faced with the prospect of permitting small sources beginning January 2, 2011, only to re-permit them as minor sources or to void their permits entirely after the new GHG threshold becomes effective. It is contrary to the public interest to put small sources through unnecessary permitting and impracticable for the MPCA to face permitting sources twice.

A copy of the proposed rule is attached to this notice as mailed or emailed. In accordance with *Minnesota Statutes*, section 16E.07, the proposed exempt rule may also be viewed at: <http://www.pca.state.mn.us>, then click on the "regulations" tab at the top of the page.

Comments. You have until 4:30 PM on Monday, December 6, 2010, to submit comment to the Office of Administrative Hearings in support of or in opposition to the proposed good cause exempt rule, or to the legality of the proposed rule. Your comment must be in writing and received

by the Office of Administrative Hearings contact person by the due date. Comment is encouraged. The MPCA requests that any person submitting written comment to the Office of Administrative Hearings' contact person also submit a copy of the comment to the MPCA's contact person.

Alternative Format. Upon request, the MPCA can make this Notice available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact the MPCA's contact person at the address or telephone number listed above.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You may direct questions regarding this requirement to the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, MN 55155, telephone (651) 296-5148 or 1-800-657-3889.

Review and Adoption of Exempt Rules. The rule and supporting documents have been submitted to the Office of Administrative Hearings for a review of its legality. The Administrative Law Judge has 14 days to approve or disapprove the rule. If the rule is approved the MPCA will adopt the rule and publish it in the *State Register*. The rule will take effect on the date the rule is published in the *State Register*.

If the Administrative Law Judge disapproves the rule, the MPCA has the option to resubmit the rule with any necessary changes. If the rule is resubmitted the corrected rule will be reviewed and approved or disapproved within five working days. The MPCA also has the option of challenging a disapproval to the Chief Administrative Law Judge within five working days of receiving the disapproval. If the MPCA ask for a review, the MPCA will send you a notice of its requests. The Chief Administrative Law Judge will then have 14 days to make a decision to either approve or disapprove the rule. If the rule is approved after a disapproval, the MPCA will adopt the rule and publish it in the *State Register*. The rule will take effect on the date the rule is published in the *State Register*.

If you want to receive a copy of the adopted rule, or want to register with the MPCA to receive notice of future rule proceedings, submit your request to the MPCA's contact person listed above.

Paul Eger
Commissioner