

Minnesota Pollution Control Agency

Dual Notice: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing are Received

Proposed Amendment to Agency Rules Implementing Permanent Federal Air Permit Threshold Regulatory Relief for Greenhouse Gases (GHGs), and Clarifying when Permits Apply to Owners & Operators, *Minnesota Rules*, chs. 7005 Definitions and Abbreviations, 7007 Permits and Offsets, and 7011 Standards For Stationary Sources (parts 7005.0100, 7007.0050, 7007.0100, 7007.0150, 7007.0200, 7007.0250, 7007.0300, 7007.0325, 7007.0350, 7007.0400, 7007.0500, 7007.0750, 7007.0800, 7007.0950, 7007.1050, 7007.1100, 7007.1105, 7007.1107, 7007.1110, 7007.1115, 7007.1120, 7007.1125, 7007.1130, 7007.1140, 7007.1141, 7007.1142, 7007.1145, 7007.1146, 7007.1150, 7007.1300, 7007.1400, 7007.1450, 7007.1500, 7007.1850, 7011.2305, 7011.2310 and possibly related parts)

Introduction

The Minnesota Pollution Control Agency intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on August 10, 2012, the Agency will hold a public hearing in the boardroom, of its St. Paul office at 520 Lafayette Road, St. Paul, Minnesota 55155, starting at 2:00 p.m. on Thursday, August 30, 2012. To find out whether the Agency will adopt the rules without a hearing or if it will hold the hearing, you should contact the Agency contact person after August 10, 2012, and before August 30, 2012.

Agency Contact Person

Submit any comments or questions on the rules or written requests for a public hearing to the Agency contact person. The Agency contact person is: Nathan Cooley at the Minnesota Pollution Control Agency, 520 Lafayette Road, St. Paul, Minnesota 55155, and telephone: 651-757-2290, Fax: 651-297-8676, and e-mail: nathan.cooley@state.mn.us. TTY users may call the Minnesota Pollution Control Agency at 651-282-5332 or 800-657-3864.

Subject of Rules and Statutory Authority

The Agency proposes to make permanent certain amendments to *Minnesota Rules*, chapters 7005, 7007, and 7011 that it first adopted temporarily in January 2011. These rules implemented United States Environmental Protection Agency-promulgated regulations under the federal Clean Air Act. The EPA regulations required air permits to address the emission of "greenhouse gas" (GHG) emissions.

The Agency's air permitting programs require federal approval and the Agency must ultimately maintain alignment of its air permitting programs with the corresponding federal programs. For program consistency, the Agency proposes adopting the GHG amendments. The proposed amendments also limit applicability of the GHG permit requirements to larger sources. Without the increased GHG thresholds in these proposed rules, many small sources such as residences, hospitals, schools or restaurants would require a GHG permit.

In January, 2011, the Agency had temporarily adopted these federal GHG permitting rules using an expedited process and is now using its standard rulemaking process to make those temporary rules permanent. The Agency also proposes the following amendments not included in the temporary rules:

1. The Agency proposes adopting recently-promulgated federal performance standards for new, stationary, spark-ignition internal combustion engines to further align Agency and federal air permitting programs. Adopting these performance standards will allow these sources to hold a more streamlined registration permit instead of being subject to a more complicated individual facility permit.
2. Existing *Minnesota Rule* part 7007.0500, subpart 2, requires both owners and operators of potential air emission sources to apply jointly for an air permit. The Agency proposes clarifying this throughout existing rules by revising applicable rules to read "owner(s) ~~or~~ and operator(s)." Current language has resulted in improper permit applications. Proposed clarifications reflect the original intent of the rules. This clarification addresses only the need to jointly apply and to jointly hold an air permit; the day-to-day compliance activities such as maintenance, monitoring, testing and reporting may be conducted by either the owner or the operator.

The Agency's statutory authority to adopt these rules is found in Minnesota Statute § 116.07, subdivision 4(a). The Agency posted proposed rules on its public notices website: www.pca.state.mn.us/index.php/about-mpca/mpca-news/public-notice/public-notice.html and provides a link to proposed rules in the e-mailed notice. A free copy of the rules is available upon request.

Comments

You have until 4:30 p.m. on Friday, August 10, 2012, to submit written comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the Agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change that you desire. You must also make any comments about the legality of the proposed rules during this comment period.

Request for a Hearing

In addition to submitting comments, you may also request that the Agency hold a hearing on the rules. You must make your request for a public hearing in writing, which the Agency contact person must receive by 4:30 p.m. on Friday, August 10, 2012. You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the Agency cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests

If 25 or more persons submit a valid written request for a hearing, the Agency will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the Agency must give written notice of this to all persons who requested a hearing, explain the actions the Agency took to affect the withdrawal, and ask

for written comments on this action. If a public hearing is required, the Agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Alternative Format/Accommodation

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the Agency contact person at the address or telephone number listed above.

Modifications

The Agency may modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted to the Agency or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the Agency follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the Agency encourages you to participate in the rulemaking process.

Cancellation of Hearing

The Agency will cancel the hearing scheduled for August 30, 2012, if the Agency does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the Agency will notify you before the scheduled hearing whether the hearing will be held. You may also call the Agency contact person at 651-757-2290 after August 10, 2012, to find out whether the hearing will be held. On the scheduled day, you may check for whether the hearing will be held by calling 651-757-2290.

Notice of Hearing

If 25 or more persons submit valid written requests for a public hearing on the rules, the Agency will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The Agency will hold the hearing on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge, the Honorable Manuel J. Cervantes, is assigned to conduct the hearing. Judge Cervantes can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone: 651-361-7945, and Fax: 651-361-7936.

Hearing Procedure

If the Agency holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the Administrative Law Judge may order that this five-day comment period be extended for a longer period but not more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period when the Agency and any interested person may respond in writing to any new information submitted. No one may submit additional evidence during the five-day rebuttal period. The Office of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Office of Administrative Hearings. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge.

The Agency requests that any person submitting written views or data to the Administrative Law Judge before the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the Agency contact person at the address stated above.

Statement of Need and Reasonableness

The statement of need and reasonableness summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the Agency contact person. You may review or obtain copies for the cost of reproduction by contacting the Agency contact person. The Agency also posted the SONAR on its public notices website: www.pca.state.mn.us/index.php/about-mpca/mpca-news/public-notices/public-notices.html.

Lobbyist Registration

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Ask any questions about this requirement of the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone 651-296-5148 or 1-800-657-3889.

Adoption Procedure if No Hearing

If no hearing is required, the Agency may adopt the rules after the end of the comment period. The Agency will submit the rules and supporting documents to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the rules are submitted to the office. If you want either to receive notice of this, to receive a copy of the adopted rules, or to register with the Agency to receive notice of future rule proceedings, submit your request to the Agency contact person listed above.

Adoption Procedure after a Hearing

If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the Agency adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by writing to the Agency contact person stated above.

Order: I order that the rulemaking hearing be held at the date, time, and location listed above.

Date

Michelle Beeman
Deputy Commissioner
Minnesota Pollution Control Agency