MINNESOTA POLLUTION CONTROL AGENCY
STATEMENT OF NEED AND REASONABLENESS (SONAR)

Proposed Amendments to Rules Governing Air Emissions Permits, Minnesota Rules (Minn. R.) Chapters 7005, 7007 - Greenhouse Gas Permitting Rules ("Tailoring" or "GHG" Rules) and 7011.

Introduction

The Minnesota Pollution Control Agency (MPCA) is proposing amendments to *Minnesota Rules*, chapters 7005, 7007, and 7011 to incorporate new federal rules. These new federal rules govern the inclusion of Greenhouse Gases (GHG) in air emissions permitting and stationary spark-ignition internal combustion engines. These rules primarily relate to federally mandated air emission permits.

Under new rules from the Environmental Protection Agency, GHGs must be addressed in air emission permits issued on or after January 2, 2011. The MPCA must amend its permitting rules to align with the new federal GHG permit thresholds and avoid requiring small sources to obtain operating permits. Many residences, hospitals, schools or restaurants that did not need a permit before would need one if the MPCA did not take action to amend its permitting rules.

The MPCA also proposes to adopt a recent federal New Source Performance Standard (NSPS) that applies to new Stationary Spark Ignition Internal Combustion Engines. The MPCA includes NSPS regulations in the body of state rules. Finally, the MPCA proposes to clarify the existing requirement in chapter 7007 that Minnesota's air emissions permitting requirements apply to all owners and operators of air emission sources. The clarification requires minor changes to several parts of the rules.

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List of abbreviations and acronyms used in this document:

1. Clean Air Act (CAA)
2. Greenhouse Gases (GHG or GHGs)
3. Minnesota Rules (Minn. R.) chapter 7007 (chapter 7007)
4. Statement of Need and Reasonableness (SONAR)
5. Minnesota Pollution Control Agency (MPCA or Agency)
6. Greenhouse Gas Permitting Rules ("Tailoring" or "GHG" Rules)
7. National Ambient Air Quality Standards (NAAQS)
8. Tons per year (TPY)
9. New Source Review (NSR)
10. Prevention of Significant Deterioration (PSD)
11. Code of Federal Regulations, title 40, Part 70 (40 CFR 70)
12. U.S. Environmental Protection Agency (EPA)
13. Carbon dioxide (CO2)
14. Carbon dioxide equivalent (CO2e)
15. Potential to emit (PTE)
16. New Source Performance Standard (NSPS)
17. Minnesota Statutes chapter or section (Minn. Stat. ch. or §)
18. Regulatory Impact Analysis (RIA)
19. Part 70 permits (also called Title V permits)
20. Illinois Compiled Statutes (ICS)
21. Indiana Administrative Code (IAC)
22. State Implementation Plan (SIP)
23. Federal Register (FR)
24. Ohio Administrative Code (OAC)
25. Standard rule distribution list (the MPCA's M-List)
26. Air and Waste Management Association (AWMA)
27. Minnesota Management and Budget (MMB)
28. Minnesota State Register, volume 35, number 30, pages 1097-1108 (Cite 35 SR 1097)
29. July 20, 2011, Federal Register (76 FR 43490-43508)
30. Environmental Management System (EMS)

Overview of Air Emission Permits

Under the Clean Air Act (CAA) (CAA; 42 USC § 7401 – 7671q), air emission permitting authorities issue two types of air emission permits to large stationary sources of air pollutants. Construction permits authorize the construction or modification of air emission sources. Operating permits impose conditions for the ongoing operation of a source. Under the CAA, owners and operators of stationary sources must obtain these federal permits if the source's potential to emit specified pollutants exceeds established emission thresholds. The CAA requires federal permits, rather than state-only permits, if potential emissions of any one of these pollutants exceed 100 or 250 tons per year (TPY), depending on the type of source.

At the federal level, the construction permitting program known as New Source Review (NSR) and has two parts. Nonattainment NSR applies to sources emitting specified pollutants in an area that does not meet the National Ambient Air Quality Standards (NAAQS) for those pollutants. Prevention of Significant Deterioration (PSD) is designed to prevent changes to existing air emission sources or construction of new emission sources from degrading air quality in areas that attain all the NAAQS.

The federal operating permit program is known as the Title V or Part 70 program. Title V of the CAA Amendments of 1990 requires that all major stationary sources of air pollutants obtain a permit to operate. The purpose of Title V was to establish a consistent permitting program across the country, to reduce violations of air-pollution laws, and to improve the enforcement of those laws. Title V of the CAA was codified in rule as *Code of Federal Regulations*, title 40, Part 70 (40 CFR 70). The purpose of a Part 70 Permit is to gather all applicable air-pollution requirements for a major stationary source into one site-specific, legally enforceable permit.

The U.S. Environmental Protection Agency (EPA) gives authority to the states to operate both the NSR and Part 70 programs.

Minnesota currently operates the PSD program as a "delegated" state, meaning that the MPCA does not have an EPA-approved program, but issues permits on behalf of EPA and must follow the federal rules laid out in 40 CFR 52.21. Failure to do so would result in the EPA's taking over Minnesota's PSD program.

By contrast, the EPA has approved the MPCA to implement its own Part 70 operating permit program, as being as stringent as the federal program. The MPCA rules that incorporate the requirements for the 40 CFR Part 70 operating permit rules are found in chapter 7007. The current rulemaking adopts the EPA's GHG-related definitions and permit threshold into *Minnesota Rules*.

It is also important to note that Minnesota operates a combined permitting program whereby it issues one permit that authorizes both construction and operation. Minnesota's combined program saves public resources by preventing the need to issue each construction permit and each operating permit separately.

Greenhouse Gas Permitting – the "Tailoring" Rule

Under new rules from the EPA, GHGs must be addressed in air emission permits issued on or after January 2, 2011. Starting on January 2, 2011, new or modified sources that were already subject to Part 70 or PSD under the previous rules must address GHGs in their permits if their GHG emissions meet or exceed the new thresholds. Starting July 1, 2011, new, modified and existing facilities are subject to the new thresholds.

Prior to the EPA's rulemaking, GHGs were not regulated pollutants and were not included in the pollutants assessed for purposes of determining whether emission sources required air emissions permits.

The proposed changes to chapters 7007 and 7005, concern the inclusion of GHGs in air emission permits. The EPA recognized in its rulemaking that GHGs are emitted in far larger amounts than historically regulated pollutants. It promulgated a rule to "tailor" the existing permitting thresholds to accommodate the inclusion of GHGs as a pollutant that triggers air emissions permitting requirements. The MPCA proposes to adopt these federal provisions. Without "tailoring" the existing emission thresholds, Minnesota's air permitting requirements would newly apply to thousands of sources that have not historically been required to obtain permits.

These "tailoring" provisions were temporarily added to the MPCA's air emissions permitting rules in 2010, by use of an exempt rulemaking process allowed under Minn. Stat. § 14.388. These exempt rules are only effective for two years, but the need for these rules remains as important into the future as it was in 2010. Therefore, the MPCA is proposing to make the "tailoring" rules a permanent part of its air emissions permitting rules.

GHGs are emitted mainly from sources burning fossil fuels. Sources using plant materials as fuel or that have fermentation processes emit "biogenic" carbon dioxide (CO_2). This rulemaking also includes a new federal regulation that defers biogenic carbon dioxide from permitting requirements.

Note that the EPA also promulgated a GHG emissions reporting rule with a different emissions threshold. Under the reporting rule, facilities must report their GHG emissions if their actual emissions are 25,000 TPY carbon dioxide equivalent (CO_2e) or more. Therefore, some facilities will report GHG emissions although they will not need permit changes provided their potential to emit (PTE) for GHGs is less than 100,000 TPY CO_2e.

Miscellaneous Rule Changes

In addition to the changes related to the federal "tailoring" rule, the MPCA proposes to clarify the existing requirement in chapter 7007 that Minnesota's air emissions permitting requirements apply to all owners and operators of air emission sources. The clarification requires minor changes to several parts of the rules.

Finally, the MPCA proposes to incorporate a new federal New Source Performance Standard (NSPS) into its body of rules. With this rulemaking, MPCA proposes to add to its rules a new NSPS that applies to stationary spark ignition internal combustion engines. The NSPS is a federal requirement that all states must implement.

Alternative Format

Upon request, this information can be made available in an alternative format, such as large print, Braille, or audio. To make a request, contact the MPCA at 651-296-6300 or 800-657-3864, TTY users may call the MPCA at 651-282-5332.

Statutory Authority

The MPCA relies on the statutory authority provided by Minn. Stat. § 116.07, subdivision 4(a) to adopt these rules:

> *"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 1967, chapter 882, 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."

Regulatory Analysis of the Clarification that Owners and Operators are Subject to Air Emission Permitting Rules, Incorporation of the NSPS, and Biogenic CO_2 Emissions Deferral.

The MPCA provides the regulatory analysis of the owner and operator permitting obligations and the NSPS in this section rather than discussing this in each of the subtopics below.

Owners and Operators Subject to Permitting

The proposed rules clarify that owners and operators of stationary sources are subject to permitting requirements. The proposal does not alter the effect of existing rules, but only clarifies applicability. As such, the rules affect owners and operators of currently-permitted facilities, and those owners and operators that intend to apply for air emission permits in the future. Most owners and operators are already aware that they are subject to air emissions permitting rules. There may only be a few owners or operators who mistakenly believed that the permitting rules applied to either owners or operators, but not both.

The owner and operator obligation already existed. Minn. R. ch. 7007.0500, subp. 2. specifies that "Applicants shall submit the following information as required by the standard application form: A. Information identifying the stationary source **and** its owners and operators" (emphasis added).The clarification does not impose a new or more intrusive obligation. The confusion arose because other subparts in Minn. R. ch. 7007 that discussed situations when a permit application should be submitted said "owners or operators." Since this rulemaking is necessary to "tailor" the rules to include GHGs, including the owner/operator clarification in the subparts that were not consistent with Minn. R. ch. 7007.0500, subp. 2 does not result in additional cost to the agency and does not impose additional compliance costs. Additionally, the existing federal permitting requirements include owners and operators, so the proposed rule is no more stringent than federal rules or existing Minnesota Rules.

The alternative to clarifying that owners and operators are subject to the permitting rules is to retain the existing rule language. The existing rules resulted in a few instances of confusion for permittees which will be resolved with the proposed rules. If the MPCA does not clarify that owners *and* operators are subject to the air emissions permitting rules, a few owners and operators may continue to be confused on the point. This confusion can result in enforcement action against owners or operators who fail to join in the permit application process as required by Minn. R. ch. 7007.0500, subp. 2.

NSPS for Stationary Spark Ignition Internal Combustion Engines

This NSPS applies to new Stationary Spark Ignition Internal Combustion Engines. The MPCA includes NSPSs in the body of Minnesota Rules. Since this rulemaking is necessary to "tailor" the rules to include GHGs, incorporating the NSPS by reference prospectively does not result in additional cost to the Agency and does not impose additional compliance costs.

The MPCA does not have the discretion to vary the NSPS. Because the NSPSs are a federal requirement that all states must implement to maintain the EPA's approval of the air program, the MPCA did not evaluate alternatives to adopting the NSPS.

The MPCA's failure to adopt the NSPS could result in the EPA objecting to Minnesota's air program.

Biogenic CO_2 Emissions Deferral

In response to comments received and a petition on the subject of biogenic CO_2, the EPA decided that further analysis is needed. The EPA promulgated a rule to exclude biogenic CO_2 from GHG permitting for a period of three years while it evaluates the issue in more depth. This deferral lasts until July 21, 2014. The owners and operators of sources with biogenic CO_2 emissions will benefit from a three-year deferral from including those emissions in their potential-to-emit calculations for permitting purposes. The alternative to deferring is to leave the emissions in the calculation. Minnesota did not select this option because it would likely put Minnesota sources among only a few in the nation to include such emissions at this time. Since the biogenic CO_2 emissions deferral relieves part of an air emission source's obligations, it is likely the least costly and least intrusive option.

1. Description of the classes of persons who probably will be affected, including classes that will bear costs of the proposed rule and classes that will benefit from the proposed rule

Under Part 70 and PSD rules, an air emission permit as a "major source" is required when potential emissions are 100 TPY or 250 TPY, depending on the source type. At those thresholds, many small sources such as residences, schools, hospitals, restaurants and apartment buildings, would be required to obtain a permit as a major facility. With a new GHG permitting threshold, owners and operators of sources with the potential to emit 100 or 250 TPY of GHGs are relieved of the obligation to obtain a permit to address their GHG emissions. These rules obligate only owners and operators of sources with the potential to emit more than 100,000 TPY of GHG to address GHGs in their air emissions permits. Additionally, owners and operators of sources with biogenic CO_2 emissions will gain a deferral from including those emissions in their calculation of potential emissions for purposes of determining whether their GHG emissions exceed the permitting threshold.

According to the EPA's Regulatory Impact Analysis (RIA) for the Final Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, the main benefit to these rules is avoiding undue costs. Without the regulatory relief offered by a higher permit threshold for GHGs, many small sources would be required to obtain air emissions permits as major sources solely because of their GHG emissions. Permitting authorities would also be unduly burdened by the large number of new permit applications.

In the temporary rule, the MPCA added emission thresholds for GHGs to the capped permit and registration permit provisions of the existing rule. This benefits smaller sources that are subject to permitting to keep or obtain a simpler, more streamlined permit rather than having to obtain a Part 70 permit. The MPCA proposes to continue these streamlined permit provisions in the permanent rulemaking. Owners and operators holding a capped or registration permit will have to ensure that they continue to qualify for their existing permit type based on actual GHG emissions and insignificant activities as defined in Minn. R. ch. 7007.1300.

Others who will benefit from the rule are Minnesota residents generally. While these rules only define who must include GHGs in their permits and does not impose requirements to control GHG emissions, it is likely that some owners and operators will implement energy efficiency measures to reduce their GHG emissions in order to remain minor sources of GHGs. Energy efficiency measures benefit owners and operators by saving them money. Energy efficiency benefits the public generally by reducing the amount of energy used, which in turn reduces emissions of the pollutants associated with energy production and consumption. Reducing the amount of pollutants in the air also benefits public health and welfare. Both ozone and particulates cause respiratory effects. Fine particulates can also contribute to coronary impacts and premature deaths.

2. Probable costs to the Agency and to any other agency of the implementation and enforcement of the proposed rule and anticipated effect on state revenues

The MPCA charges fees for issuing permits. These fees are neutral regarding overall state revenues (e.g., the fees are intended to cover the cost of issuing the permits and not to create a new source of generally available revenue).

The EPA provided national cost estimates for the implementation of the tailoring rule. Minnesota's costs can be estimated as approximately two percent of the national figure. Two percent is a reasonable estimate as Minnesota produces slightly less than two percent of total national output, has somewhat less than two percent of the total United States population, and has somewhat more than two percent of total national personal income.

Using two percent of the EPA's national cost data for the phase-in period of the rule (January 2, 2011 – July 1, 2013), without the new threshold, Minnesota would likely have approximately 120,000 facilities newly subject to major source permitting (RIA, page 8). By sources avoiding these additional permits, the regulatory relief benefits to facilities generally in Minnesota would be about $3.872 billion. The MPCA's avoided costs to issue these Part 70 permits (also called Title V permits) would be approximately $42 million annually for that period (EPA RIA, page 70, scaled for Minnesota).

The EPA also estimates the avoided costs of obtaining a permit because of GHGs. For owners and operators of individual facilities who would now have to obtain a permit for GHGs, these estimated costs would be incurred rather than avoided. To obtain a Part 70 operating permit, the EPA estimates the cost to be $46,400 for industrial sources and $23,000 for commercial and residential sources. For a Part 70 permitting revision, the cost is estimated as $1,677.

3. Determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule

Because the proposed rule relieves a significant regulatory burden on small sources of GHGs, the rule is the less costly and burdensome option for the majority of facilities in Minnesota. Without these rules, thousands of small sources, such as residences, schools, hospitals, restaurants and apartment buildings would be required to obtain a permit as a major facility. The proposed revisions to rules for state-only permits will enable most owners and operators of smaller facilities to obtain or retain a simpler, more streamlined permit.

MPCA staff estimate that only a small number of existing sources will need to obtain an air emission permit for the first time as a result of these rules. A few sources will have to change their permit category or modify their permit to take into account new permit limits.

4. Description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule

The only adequate mechanism to protect small sources from the requirement to obtain an air emissions permit is to promulgate these rules. Without a specific measure to raise the permitting threshold for small sources, approximately 120,000 sources would be newly subject to the requirement to obtain an air emissions permit. The MPCA has chosen to promulgate these rules because they are less burdensome than requiring small sources to obtain air emission permits and because the MPCA does not have the resources to issue 120,000 new air emission permits.

5. Probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, business or individuals

If the MPCA were to fail to make the temporary GHG permit threshold permanent, it would require the Agency to issue permits to all sources with GHG emissions over 100 or 250 TPY. This would make thousands of facilities become major sources under PSD or Part 70. The avoided costs discussed above would be incurred costs. In review, permitting these additional sources would cost the facilities about $3.872 billion during the phase-in period of the rule. It is more appropriate to adopt these rules and save these additional sources the expense of permitting. Additionally, MPCA's costs to issue these Part 70 permits during that time would be approximately $42 million annually. As current budget constraints limit the MPCA's ability to hire new staff, the large number of new GHG permit applications could result in a backlog that would be extremely difficult to overcome.

6. Probable cost or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of governmental units, business or individuals

The new permit threshold for GHGs is intended to offer regulatory relief to small sources. The MPCA's experience with small sources is that if a permit were still required under the proposed rule, a small business or small city would most likely be eligible for a registration permit. A registration permit is an option when actual emissions are relatively low. The cost to submit an application for a registration permit is estimated to be approximately $570. Under the permit application point system in chapter 7002, a registration permit application is two points and the fee is currently $285 per point.[1] A stationary source with somewhat higher actual emissions may qualify for a capped permit. The fee for a capped permit application is based on four points, or $1,140. To apply for either a registration or capped permit, the regulated entity would also likely incur some additional engineering and administrative costs to prepare the application.

In the unlikely event that a small business or small city would have to apply for a Part 70 permit, the total cost would be considerably higher than for a registration permit. The MPCA's permit application fee for a typical Part 70 permit is $21,375. Under the permit application point system in chapter 7002, a Part 70 permit application is 75 points and the fee is currently $285 per point. In addition, the facility would likely incur costs for staff time and engineering consultants to prepare the application. As described above, the EPA estimates in its RIA that to obtain a Part 70 operating permits, the cost would be $46,400 for industrial sources and $23,000 for commercial and residential sources.

7. Assessment of any differences between the proposed rule and existing Federal Regulations and a specific analysis of the need for and reasonableness of each difference

EXECUTIVE ORDER 11-04 and HF No. 1 Comparison of this rulemaking to federal requirements

2011 Minnesota Session Laws Chapter 4 requires that for proposed rules relating to air quality, the Statement of Need and Reasonableness must include an assessment of any differences between the proposed rule and existing federal standards adopted under the Clean Air Act, United States Code, title CFR 40, §§ 52.21 and 70.1; similar standards in states bordering Minnesota; and similar standards in

[1] Minnesota, like all states that operate an approved air emissions permitting program, is required to impose fees on air emissions sources to support the cost of the permitting program. Minnesota's point system in Minn. R. ch. 7002 is a mechanism to support the air emissions permitting program.

states within the EPA's Region 5; and a specific analysis of the need for and reasonableness of each difference.

Prevention of Significant Deterioration (40 CFR 52.21) applies to new major sources or major modifications at existing sources. PSD is designed to protect public health and welfare and preserve or improve air quality. Because Minnesota does not have its own federally-approved PSD program, the MPCA implements the federal rule as-is, just as EPA would implement it.

However, the MPCA implements its own Part 70 operating permit program, as approved by EPA. The current rulemaking adopts the EPA's GHG-related definitions and permit threshold into Minnesota's Part 70 operating permit program. In addition, the MPCA will also incorporate a deferral for biogenic CO_2 per the EPA's regulation promulgated on July 20, 2011.

The MPCA's operating permit program includes streamlining elements for state-only permits in addition to Part 70 requirements. The MPCA proposes to modify some of these operating permit rules to address GHGs. One component of these rule changes is to provide regulatory relief to facilities by preserving streamlined permits and insignificant activities options. The proposed additional rule changes would:

- Allow facilities to keep or obtain a permit as a non-major source of GHGs provided their actual emissions are below certain thresholds
- Allow facilities to continue treating certain equipment or operations as insignificant activities due to their very low emissions of GHGs

Regulatory relief under these options includes reduced recordkeeping and/or reporting as well as the opportunity to hold a permit that does not expire.

EXECUTIVE ORDER 11-04 and HF No. 1 Comparison of Minnesota's rule to neighboring states EPA Region V states

Because the addition of GHGs as regulated pollutants under the CAA is a national requirement, almost all states and local districts are implementing this program. The MPCA has reviewed GHG permitting rules for the states that border Minnesota (Iowa, Wisconsin, South Dakota, North Dakota and Michigan) and non-border states in EPA Region V (Ohio, Illinois, and Indiana).

State	Implementation Status of GHG Permit Regulation
Illinois	Illinois is a delegated state for PSD, similar to Minnesota. Illinois can implement federal PSD requirements on the effective date and additional rulemaking is not needed. The operating permit rule was effective July 12, 2011, in Illinois Compiled Statutes (ICS) at 415 ICS 5/9.15. These rules reference the federal definitions of "subject to regulation" for PSD and CAA Permit Program (Part 70) permits, defines GHGs, includes GHGs as a regulated pollutant, and excludes GHGs from pollutants subject to fees. Illinois is reviewing the biogenic CO_2 deferral. The legislation addressing GHGs references the federal rules and staff believes biogenic sources may not be "subject to regulation" while deferred.

Indiana	Indiana adopted emergency rules on December 1, 2010, (effective January 3, 2011), to include GHGs as a pollutant and incorporate EPA's definition of subject to regulation. Final rules were effective March 16, 2011: Rule 326 Indiana Administrative Code (IAC) Article 2. The EPA approved Indiana's State Implementation Plan (SIP) on October 28, 2011. The public notice for another rule modification to defer biogenic CO_2 was September 7, 2011. The biogenic deferral language is currently contained in an emergency rule that is in effect (LSA#11-680). The full rulemaking that will put this language into Indiana's Administrative Code is LSA#11-251. These rules are scheduled for preliminary adoption at the February 1, 2012, Air Pollution Control Board meeting. The second Notice of Comment Period for that rule was published in the Indiana Register on Wednesday, December 14, 2011. Final adoption is expected in May or June of 2012, with an effective date in early fall of 2012.
Iowa	Iowa adopted rules on October 20, 2010, to amend the state's PSD and Part 70 rules to match the EPA's rule language. The effective date of the rule was December 22, 2010: Iowa Administrative Code rule numbers 567 IAC 22 and 567 IAC 33. The rule adopts the definitions of subject to regulation, GHGs, and CO_2e. The EPA approved the revisions into the state's SIP effective November 30, 2011. The Environmental Protection Commission approved adoption of the biogenic CO_2 deferral on November 15, 2011, and it became effective on November 16, 2011.
Michigan	The Michigan State Office of Administrative Hearings and Rules approved a Request for Rulemaking on December 9 and December 20, 2010. Michigan is proposing changes to R 336.1211 of its Air Pollution Control Rules to address GHGs and Part 70 permits. The new rules will address the biogenic CO_2 deferral. The rules are expected to be final prior to July 1, 2012. Michigan is currently working on guidance to help facilities submit a Part 70 opt out permit if their GHG potential emissions are above the major source threshold but their actual emissions are below the threshold.
North Dakota	North Dakota incorporated into its rules the provisions of 40 CFR 52.21 as they existed on July 2, 2010. This includes revisions to the rules that were published as final in the *Federal Register* (FR) by this date but had not been published in the CFR. The rule changes were dated April, 2011: North Dakota Administrative Code 33-15-15-01.2. North Dakota also adopted the definition of subject to regulation for operating (Part 70) permits, in a rule dated April 1, 2011: North Dakota Administrative Code 33-15-14-06.1.cc. North Dakota plans to adopt the GHG biogenic deferral for both the PSD and Part 70 programs in the next rule revision.
Ohio	The governor of Ohio issued Executive Order 2010 – 15S on December 30, 2010, to authorize immediate rule adoption and implementation of two emergency rules regarding thresholds for the installation of new or modified sources of GHGs and regarding Part 70 operating permits for sources of GHGs. The emergency rules increase the GHG emission levels that trigger permitting to those levels set forth in the EPA's greenhouse gas tailoring rule. Ohio Administrative Code (OAC) rule 3745-31-34, "Permits to install for major stationary sources and major modifications of sources emitting GHGs" and OAC rule 3745-77-11, "Title V permits for major sources emitting GHGs." The rules were effective for ninety days. Final rules were adopted and are dated March 21, 2011. Ohio is working to amend the rules to reflect the three year deferral of biogenic CO_2. Rule making activity was expected in late December 2011.

South Dakota	South Dakota adopted final rules which are dated April 20, 2011. The rules adopt the definition of "subject to regulation," as defined in 40 CFR § 70.2 (July 1, 2009), as revised in publication 75 Fed. Reg. 31607 (June 3, 2010), in accordance with EPA requirements. The rules incorporate 40 CFR 52.21 provisions by reference and define the pollutant GHGs. See South Dakota Administrative Rules 74:36:01:01.73 and 74:36:09:02. South Dakota's rules include a clause to stop regulating GHGs if the federal rules are vacated. *"If EPA stays or withdraws the regulation of greenhouse gases as identified in publication 75 Fed. Reg. 31606 and 31607 (June 3, 2010), or a court issues an order vacating or otherwise invalidating EPA's regulation of greenhouse gases for any reason, the regulation of greenhouse gases by Article 74:36 are void as of the date of such administrative or judicial action and shall have no further force and effect."*
Wisconsin	Wisconsin adopted an emergency order on December 15, 2010. The state later adopted final (permanent) rules amending PSD/NSR rule to define GHGs as subject to regulation, establish permit thresholds that trigger permitting and control requirements, and establish global warming potential factors. Permanent rules were published in August, 2011, and were effective on September 1, 2011: NR 400.02(74m), NR 405.07(9), and NR 407.075. Wisconsin Department of Natural Resources is not presently planning to adopt the biogenic CO_2 deferral.

The 2011 Minnesota Session Laws, Chapter 4 also requires a specific analysis of the need for and reasonableness of each difference from federal and neighboring state air quality standards. The specific need and reasonableness of each of the listed criteria is fully described in this SONAR. Air quality standards address highly mobile pollutants. It is necessary and reasonable to require a high degree of national consistency to have the desired effect for all American citizens.

Performance Based Rules

Minn. Stat. §§ 14.002 and 14.131, require that the SONAR describe how the Agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the Agency's regulatory objectives and maximum flexibility for the regulated party and the Agency in meeting those goals. As noted earlier in this document, the MPCA's operating permit program includes streamlining elements for state-only permits in addition to Part 70 requirements. The MPCA proposes to modify some of these operating permit rules to ensure that they remain available to sources with low actual emissions of GHGs.

Additional Notice

Pursuant to Minn. Stat. § 14.14, subdivision 1a, the MPCA believes that its standard means of notice, including publication in the *State Register* and on the MPCA's public notice webpage provide reasonable notice of this rulemaking to persons interested in or regulated by these rules. However, Minn. Stat. §§ 14.131 and 14.23, require that the SONAR describe the MPCA's efforts to provide additional notice under section 14.22 to persons or classes of persons who may be affected by the proposed rules or explain why these efforts were not made.

On August 29, 2011, the MPCA published a notice requesting comments on its plan to amend Minnesota Rules, chapters 7005, 7007, 7011, 7017 and 7019. The same notice was also placed on the MPCA's public notice webpage. This notification also announced a public informational meeting, held on September 29, 2011, at the MPCA's office in St. Paul. The MPCA gathered a list of interested parties resulting from its request for comments and from the informational meeting.

In the meantime, the MPCA implemented an electronic alert system for public and rule notices in 2012. This alert system called GovDelivery allows users to customize what topics they would like updates on

and the frequency of those updates from the MPCA. This system is designed to provide additional notification to parties that we were not reaching before.

The MPCA alerted all parties on its former notification list of those who wished to register to receive notices under MS 14 (the M-List) to register on our GovDelivery system. It made the option available for people to still receive paper copies via U.S. mail if they would like, but had very few requests for paper copies. The MPCA's former M-List had about 300 subscribers for whom it was difficult to maintain accurate contact information. Now, interested parties can maintain their own contact information and easily self-subscribe/unsubscribe to specific topics or rules of interest.

In the new system, the MPCA created a topic that alerts interested parties to all new rulemaking activities so users can add these to their subscription list if they are interested. The MPCA now has more than 14,550 subscriptions for rule notices in the new system. With this new strategy/system, the MPCA believes it is likely to reach far more people with rules notices than in the past (currently 14,550 vs. 300).

The MPCA hosts a GovDelivery subscription system topic for these proposed rules on its website under "GovDelivery/Public Notices and Rulemaking/Rulemaking – Active Projects/Air/Federal Air Permit Thresholds for Greenhouse Gases Rule." The MPCA plans to send its notice of intent to adopt rules to all parties registered with the GovDelivery system for this and related topics. The MPCA plans to certify a list of persons registered to receive these rules on its GovDelivery system at the time of the notice.

Also, the MPCA will send the proposed rule amendments, SONAR, and notice to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule amendments as required by Minn. Stat § 14.116.

This statute also states that if the mailing of the notice is within two years of the effective date of the law granting the Agency authority to adopt the proposed rules, the Agency must make reasonable efforts to send a copy of the notice and SONAR to all sitting house and senate legislators who were chief authors of the bill granting the rulemaking. This requirement does not apply because the MPCA is using its general rulemaking authority for these rules and is not relying on special authority granted within the past two years for this rulemaking.

In addition, the MPCA plans to post a copy of the notice, proposed rule amendments and SONAR on the MPCA's public notice webpage at this link: http://www.pca.state.mn.us/iryp3c9.

The following notifications were used during the exempt rulemaking (temporary rules) to alert potentially affected facilities of the new GHG permit requirement.

- Mailing to standard rule distribution list (the MPCA's M-List) via United States Mail
- E-mail notification to the MPCA's Air Quality Listserve distribution list
- E-mail notification to all permit holders who had provided an e-mail address to the MPCA's Air Permits Section, categorized by permit type (registration permit, individual permit and individual general permits)
- Letter notification by United States Mail to holders of capped permits
- Insert included with Emission Inventory forms sent by United States Mail
- Notice placed on the MPCA's public notice webpage
- Notice and rule placed on MPCA's webpage for the Tailoring Rule
- Presentations made to conferences and industry groups (for example: the Air and Waste Management Association (AWMA) Permits 101 training, the AWMA Conference on the

Environment, the Minnesota Chamber of Commerce, the Hennepin County Bar Association, the Ethanol Work Group, the Next Generation Energy Board, legislators, other departments and representatives of the agriculture community)

- Information added to air permitting webpages, new forms created for GHG applications

The above notifications raised awareness and helped prepare regulated parties for the proposed permanent rules for GHG permitting. The MPCA will make efforts to assure that these contacts have been redirected to subscribing, as interested, under the new GovDelivery system, and will provide notices as allowed where GovDelivery is not practicable.

Impact on Farming Operations

If the rule has an impact on agricultural land, Minn. Stat. § 14.111 requires the Agency to provide a copy of the proposed rule changes to the Commissioner of Agriculture no later than thirty days before publication of the proposed rule in the State Register. The Agency does not expect these rules to impact agricultural land or farming operations, so will not notify the Commissioner of Agriculture.

Impact on Chicano/Latino People

If the proposed rules have their primary effect on Chicano/Latino people, Minn. Stat. § 3.9223, subdivision 4 requires agencies to give notice to the State Council on Affairs of Chicano/Latino People for review and recommendation at least five days before initial publication in the State Register. The Agency does not expect these rules to have a primary effect on Chicano/Latino people, so will not notify the State Council on Affairs of Chicano/Latino People.

Notification of the Commissioner of Transportation

Minn. Stat. § 174.05, requires the MPCA to inform the Commissioner of Transportation of all rulemakings that concern transportation, and requires the Commissioner of Transportation to prepare a written review of the rules. The Agency does not expect these rules to impact or concern transportation, so will not notify the Commissioner of Transportation.

Consultation with Minnesota Management and Budget (MMB)

As required by Minn. Stat. § 14.131, the MPCA will consult with MMB to help evaluate the fiscal impact and benefits of proposed rules on local governments. The MPCA plans to send MMB copies of the same documents on the same day that it sends to the Governor's Office documents for review and approval prior to publishing the Notice of Intent to Adopt. The documents will include: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The MPCA will submit a copy of the cover correspondence and any response received from MMB to the Office of Administrative Hearings for its review of procedural compliance.

The MPCA plans to use the FINANCE-LTR Form from the Rulemaking Manual and to document this consultation in this SONAR.

Determination about Rules Requiring Local Implementation

As required by Minn. Stat. § 14.128, the Agency has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The statute defines "local government" as "a town, county or home rule charter or statutory city." If the proposed rule requires the local government to adopt or amend an ordinance, and there is not an exception, the rule's effective date may be delayed.

In Minnesota, these rules are administered by the MPCA as there are no local air districts that issue Part 70 air emission operating permits. Permits for facilities on tribal land are issued by EPA. The MPCA believes that adopting these rules will not require adding or amending any local ordinances.

Cost of Complying for Small Business or City

Agency Determination of Cost

Minn. Stat. § 14.127 requires the MPCA to determine if the cost to comply with the proposed rules would exceed $25,000 in the first year for a small business or small city. A small business is defined as a business (either for profit or nonprofit) with less than 50 full-time employees and a small city is defined as a city with less than ten full-time employees. As described in this SONAR, above, the MPCA evaluated the possible costs of these rules to a small business or a small city. The new permit threshold for GHGs will offer regulatory relief to small sources by raising the GHG permit threshold. The MPCA's experience with small sources is that if a permit were still required under the proposed rule, a small business or small city would most likely be eligible for a registration permit. A registration permit is an option when actual emissions are relatively low. The MPCA estimates the cost to submit an application for a registration permit to be approximately $570. Sources with somewhat higher actual emissions might qualify for a capped permit, with an application fee of $1,140. The regulated entity would also likely incur some additional engineering and administrative costs to prepare the application. It is unlikely, however, that the total costs would even approach $25,000.

By providing a mechanism for local governments and school districts to keep their registration or general permits, they will avoid costs related to applying for and complying with a Part 70 permit. Because facilities holding permits will now have to calculate and track greenhouse gas emissions, there will be some additional compliance costs. However, as permitted facilities are already tracking fuel use and other pollutants, this additional effort is not expected to be significant.

The MPCA anticipates that, under these regulatory relief rules, there still may be one small business required to apply for a Part 70 permit. In the unlikely event that a small business (or small city) would have to apply for a Part 70 permit, the total cost would likely exceed $25,000. The MPCA's permit application fee for a typical Part 70 permit is $21,375. In addition, the facility would likely incur costs for staff time and engineering consultants to prepare the application. As described above, the EPA estimates in its RIA that to obtain a Part 70 operating permits, the cost would be $46,400 for industrial sources and $23,000 for commercial and residential sources.

The Part 70 permit requirements apply in all states either under the authority of a delegated state program authorized by the EPA as equivalent to the federal program, or directly by the EPA under its federal authority. The EPA recognizes the MPCA's air-permitting program to be as stringent as the federal program, so, the EPA has delegated its air-permitting activity in Minnesota to the MPCA.

The MPCA proposes its rules in part in order to maintain its program delegation. The MPCA must adopt recent changes to the federal air permitting program in order to maintain its program delegation. If the MPCA fails to adopt these rules, the EPA would apply the same requirements in Minnesota under federal authority with the same expected costs.

Under Minn. Stat. § 14.127, subd. 3., legislative approval is required, if the cost of complying with rules in the first year exceeds $25,000 for a small business (<50 employees) or for a small city (<10 emloyees). Such business (or city) may file a written statement with the Agency claiming a temporary exemption from the rules. Upon filing this statement, the rules do not apply to that business (or city) until the rules are approved by a law (or an administrative law judge disapproves). However, subd. 4 states that subd.

3 does not apply if the administrative law judge approves an agency's determination that the rule has been proposed pursuant to a specific federal statutory or regulatory mandate.

The MPCA believes that this exception applies because its proposed rules are proposed to maintain its federally delegated authority to issue air permits and because the mandate to acquire a Part 70 permit would apply under either state or federal authority.

Bear in mind that an overall result of adopting these rules is to provide regulatory relief for a large majority of smaller sources. A large majority of facilities will avoid the costs related to Part 70 permitting because these rules raise the permit threshold for GHGs, incorporates GHGs into the MPCA's streamlined permit options, and includes the deferral of biogenic CO_2 until required by federal rules.

Effect of Cost Determination

If the cost of complying with the proposed rules during the first year would exceed $25,000 for a small business or a small city, that small business or small city can generally file a statement with the MPCA and be individually exempt from the rules until the Minnesota Legislature passes a law approving the applicability of the rules. There are some situations, however, when the small business or small city would not be exempt as described below.

1. The Minnesota Legislature has appropriated money to sufficiently fund the expected cost of the proposed rules upon each small business and/or small city identified with first-year costs exceeding $25,000. Therefore, under Minn. Stat. § 14.127, subdivision 4(a), no small business and/or city can claim a temporary exemption from the proposed rules.
2. The rules are being proposed under a specific federal (regulatory) mandate. Therefore, under Minn. Stat. § 14.127, subdivision 4(b), no small business or small city can claim a temporary exemption from the proposed rules. The MPCA believes that this exception applies to these rules as described in more detail above.
3. The Governor has issued a waiver of the requirement that a law be passed approving the proposed rules. Therefore, under Minn. Stat. § 14.127, subdivision 4, paragraph (e); no small business or small city can claim a temporary exemption from the proposed rules.

Rule-by-Rule Analysis: Statement of Need for the Proposed Rules

Greenhouse Gas Rules

Minn. Stat. ch. 14 requires the MPCA to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the MPCA must set forth reasons for its proposal that are not arbitrary and capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention. This portion of the SONAR lays out the need for these rules.

Under the new rules from the EPA, GHGs must be addressed in air emission permits issued on or after January 2, 2011. Starting on January 2, 2011, new or modified sources that were already subject to Part 70 or PSD under the previous rules must address GHGs in their permits if their GHG emissions meet or exceed the new thresholds. As of July 1, 2011, existing facilities were also subject to the new thresholds.

For the PSD program, Minnesota is a delegated state. The new federal PSD permit threshold, therefore, is effective here immediately upon GHGs becoming "subject to regulation" on January 2, 2011. No changes to state rules are needed to apply the federal GHG permit threshold or biogenic deferral to Minnesota's PSD permits. Facilities may choose to take enforceable limitations to remain below the significance threshold.

The situation for Minnesota's Part 70 operating permit program is different because Minnesota operates an approved state program for operating permits. To determine the applicability of the Part 70 program, Minnesota Rules refer to and mirror the definition of a major source in the Clean Air Act. Existing Minnesota Rules set the permit threshold at 100 TPY.

As a result, the MPCA must amend its permitting rules to avoid requiring small sources to obtain operating permits. A fairly small furnace or boiler – such as in a 3,500 square foot building, for example – could exceed the prior 100 TPY permit threshold for GHGs. Many residences, hospitals, schools or restaurants that did not need a permit before would need one if the MPCA did not take action to amend its permitting rules.

The MPCA has revised the applicability requirements in part 7007.0200 using the exempt rulemaking process under Minn. Stat. § 14.388 to implement the Part 70 GHG permit threshold and make related revisions. The rule was published on January 24, 2011, in the Minnesota *State Register*, volume 35, number 30, pages 1097-1108 (35 SR 1097).

Under Minn. Stat. § 14.388 (b) (2010), rules passed using the expedited process are effective for a maximum of two years. Therefore, the MPCA is now conducting this rulemaking process to make the exempt rule changes permanent. The MPCA will also undertake the approval process with the EPA for its State Implementation Plan to include the revised rules as quickly as resources and time permit.

The deferral of biogenic CO_2 emissions is necessary to prevent Minnesota from being one of the few states that would require GHG emission sources to include biogenic CO_2 emissions in their calculation of potential-to-emit for permitting purposes. The EPA is reviewing whether and how to include biogenic CO_2 emissions in potential-to-emit calculations. Until such time as the EPA finalizes its approach, it is prudent for the MPCA to adopt the deferral and be consistent with federal regulations and other states.

New Source Performance Standard Rules

The CAA § 111(c) requires performance standards for source categories that have significant air pollution impacts. Additionally, under this section, states may accept delegation to implement and enforce these standards. Minnesota has accepted delegation for NSPS regulations and incorporates them by reference in chapter 7011. The MPCA proposes to incorporate a new NSPS regulation in the same way as it has for previously promulgated NSPSs. Adoption and incorporation by reference of NSPS subpart JJJJ, Standards of Performance for Stationary Spark Ignition Internal Combustion Engines is necessary for the MPCA to implement and enforce this new federal standard. The MPCA's failure to adopt the NSPS could result in the EPA objecting to Minnesota's air program.

Housekeeping Rules

The MPCA proposes to clarify the existing requirement in various subparts in chapter 7007 that Minnesota's air emissions permitting requirements apply to all owners and operators of air emission sources. The clarification requires minor changes to several parts of the rules. As described on page 3, the proposal does not alter the existing rule, but only clarifies it. As described earlier, Minn. R. ch. 7007.0500, subp. 2, specifies that "Applicants shall submit the following information as required by the standard application form: A. Information identifying the stationary source **and** its owners and operators." The need for clarification is because other subparts in ch. 7007 that discussed situations when a permit application should be submitted said "owners or operators." The existing rule resulted in a few instances of confusion for permittees which will be resolved with the proposed rule. If the MPCA does not clarify that both owners and operators are subject to the air emissions permitting rule, a few

owners and operators will continue to be confused on the point. This confusion can result in enforcement action against owners or operators who fail to join in the permit application process.

Rule-by-Rule Analysis: Statement of Reasonableness for the Proposed Rules

Minn. Stat. § 14 requires the MPCA to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. Reasonableness has generally been held to mean that the MPCA's proposed solution to that problem is appropriate.

Reasonableness of the Rules as a Whole

GHGs as Regulated Pollutants

The MPCA will implement rule changes to add GHG to operating permits to remain consistent with federal law.

As explained in the introduction to this SONAR, the CAA requires federal permits for air emission sources if potential emissions will exceed 100 or 250 TPY. The EPA realized that these emission thresholds would require thousands of existing, unregulated stationary sources to obtain air emission permits as major sources solely as a result of GHGs becoming a regulated pollutant. Many of the sources would be residences, apartment buildings, restaurants, schools and similar sources. The EPA acknowledged that regulating GHGs at 100 or 250 TPY is not practical or desirable and adopted its "tailoring" rule to reasonably address the problem. The "tailoring" rule establishes a 100,000 TPY CO_2e permitting threshold for both the NSR/PSD and Part 70 permit programs.

Additionally, in response to comments received and a petition on the subject of biogenic CO_2 emissions, the EPA decided that further analysis is needed related to permitting requirements for biogenic CO_2 emissions. Consequently, the EPA promulgated a new rule on July 20, 2011, which reasonably defers CO_2 emissions from biogenic and bioenergy sources in permitting. Under the federal deferral, biogenic CO_2 emissions will be excluded when determining whether a stationary source meets the PSD and Part 70 applicability thresholds. This deferral lasts until July 21, 2014. See more information: July 20, 2011, *Federal Register* (76 FR 43490-43508).

It is reasonable for the MPCA to adopt the same "tailoring" and biogenic CO_2 emissions rules as the EPA. Since air quality issues are so readily transmitted across state borders, it is reasonable for the MPCA to be consistent with federal requirements for GHGs in air emission operating permits. The MPCA's approach to incorporating GHGs in part 70 permits is similar to that of the other states in Region 5 or that border Minnesota. For state-only permits, the MPCA has chosen to make other rule changes to provide reasonable regulatory relief for sources with low actual emissions of GHGs.

Miscellaneous Housekeeping Changes

The MPCA also proposes to make several miscellaneous rule modifications that are reasonable to clarify rule language and meaning, to improve consistency, and to incorporate one federal NSPS into state rules. It is reasonable for the MPCA to clarify its rules where experience has shown that some confusion exists as to their meaning and where internal inconsistencies have been identified. It is also reasonable for the MPCA to update its rules by incorporating new federally promulgated NSPSs.

Reasonableness of Proposed Rule Modifications

The Minnesota Rules to be amended in this rulemaking are chapters 7005 (Definitions and Abbreviations), 7007 (Air Permitting), and 7011 (Standards for Stationary Sources). The reasonableness of each proposed change is provided as follows.

7005.0100 DEFINITIONS.

Chapter 7005 provides the MPCA definitions and abbreviations for the air program. Because GHGs are newly defined by the EPA as a pollutant, the MPCA proposes to include GHGs in its definitions and abbreviations.

Subpart 10a, "Emission factor," is revised to include additional acceptable calculation references for GHG emissions as some sources are not covered by those currently listed in the definition.

Subpart 11d adds a new definition of "Greenhouse Gas". The new definition uses the same aggregate of six gases used by the EPA. It is reasonable to include the same definition of GHGs in chapter 7005 as used by the EPA. This definition and could eventually be used in more than one chapter of Minnesota's air quality rules.

These changes are reasonable because they define GHGs and "emission factor" in a manner consistent with the EPA's regulations. It is reasonable to include these changes in chapter 7005 because that is the location for general definitions for the air permit program.

The MPCA also proposes to revise subpart 30, the definition of "owner or operator," to read "owner" or "operator." This clarifies that both an "owner" and an "operator" meet the definition of "persons" who are responsible to obtain and hold air emission permits – "person" is defined in Minn. Stat. § 116.06, subdivision 17.

This change is reasonable to clarify the original intent of the rules and to resolve any confusion that owners or operators might have about the applicability of the air quality rules.

7007 PERMITS AND OFFSETS

Chapter 7007 applies to the issuance of air emission permits. These permits include construction, modification and operating permits. This chapter includes rules to implement the federal Part 70 operating permit program and rules for Minnesota's state-only permits. These rules include, among other items, due dates for applications and reports, the content of permit applications, notice and review procedures, permit content and compliance demonstrations. Additional parts of chapter 7007 address permits for PSD/NSR sources according to 40 CFR 52.21 and sources of hazardous air pollutants under section 112(g) of the CAA.

7007.0050 SCOPE

The scope of chapter 7007 is the issuance of permits to construct, modify, reconstruct or operate emissions units, emissions facilities and stationary sources that emit air pollutants. The existing language says that the MPCA issues permits to "stationary sources" which is inaccurate. The MPCA never intended to authorize stationary sources to build and operate themselves, so the language of the rule has been inaccurate since it was promulgated.

In fact, the MPCA issues permits to "persons" as that word is defined in Minn. Stat. § 116.06, subdivision 17, who own and operate stationary sources. Minn. Stat. § 116.081, subdivision 1 and part 7007.0150 prohibit "persons" from constructing, modifying, reconstructing or operating emission units, emission facilities or stationary sources, thereby obligating "persons" to obtain and hold permits for emission

units, emission facilities or stationary sources. The definition of "persons" in Minn. Stat. § 116.06, subdivision 17 includes natural persons and entities that could own or operate a source, but does not include inanimate structures such as stationary sources.

MPCA proposes to clarify the wording to say that permits are issued to owners and operators rather than to stationary sources. In addition, the MPCA proposes to clarify that proposals to modify a stationary source are made by owners and operators, not by the stationary source, which is typically a building or a collection of buildings.

It is reasonable to revise the language to more accurately reflect the actual practice of the Agency and the original intent of the rule. These clarifications are reasonable because a stationary source is not the legally responsible party for obtaining a permit or operating under that permit. The owners and operators are responsible and it is reasonable to ensure that the rule language is clear on that distinction.

7007, MULTIPLE SUBPARTS

The following subparts are all modified slightly to clarify when both owners and operators are responsible for a specific action or activity or when either an owner or an operator can be. The reasoning for this change is the same as described under part 7007.0050.

Part 7007.0100, subps. 7b; 7d; 12c; 24b; and 25, item C;
Part 7007.0150 subp. 4, items A and B;
Part 7007.0200, subp. 1;
Part 7007.0250, subps. 1-8;
Part 7007.0350, subp. 1, items A, E and F;
Part 7007.0400, subps. 1 and 3 to 5;
Part 7007.0500, subp. 2, item D, subitem (2);
Part 7007.1105, subps. 3 and 4, items A and B;
Part 7007.1107, subp. 1 and item A;
Part 7007.1110, subps. 2, items A and B; 2b; 3, item B; 11; 12, items A, B, and C; 13; 14 and 16;
Part 7007.1115, subps. 1; 2, item A; and 3;
Part 7007.1120, subps. 1 and 2, item A;
Part 7007.1125, subps. 1; 2, item A; and 3;
Part 7007.1130, subps. 1; 2, item A; and 3a, item F;
Part 7007.1140, subp. 1, item A;
Part 7007.1142, subps. 1; 2, items A and C; 3; 3a; 4; 5, items A and B; and 6;
Part 7007.1145, subps. 1, item A; 2, items A and B;
Part 7007.1146, subp. 2, item F; and
Part 70071150, Item E.

7007.0100 DEFINITIONS.

Part 7007.0100 includes definitions that apply to parts 7007.0050-7007.1850. The MPCA proposes several changes to specify that GHG is a pollutant that is now regulated and to specify how GHG emissions should be calculated. These new definitions are necessary to be consistent with the EPA regulations. The MPCA also proposes changes to clarify that owners and operators are the entities responsible for actions related to permitting. Similar to the proposed revisions under part 7007.0050, these changes are reasonable because a "stationary source" is not the legally responsible party for the permitting and operation of a source. The owners and operators are responsible and it is reasonable to ensure that the rule language is clear.

Subpart 7b is revised to clarify that owner and operators of a stationary source are allowed to make changes under a capped permit. A "stationary source" is not a person and cannot make changes.

A new subpart 7c defines carbon dioxide equivalent emissions or CO_2e. The EPA has defined the permit threshold for GHG emissions in terms of CO_2e. The change is reasonable in this case so that Minnesota Rules comport with the federal regulations.

The definition of "customary permit conditions" is renumbered as subpart 7d and owners and operators are added as the entities that are eligible for Environmental Management System provisions. Eligibility for Environmental Management Systems is established in part 7007.1105. Part 7007.1105 specifies that owners or operators, not stationary sources, must meet the requirements of the rule. It is reasonable to clarify the definition of "customary permit conditions" so that it is consistent with part 7007.1105 which uses the phrase.

In subpart 19, GHGs will be added to the definition of "regulated air pollutant," which is a term used in the MPCA's PSD permit program and permit application content requirements. GHGs first became "regulated air pollutants" when the EPA issued greenhouse vehicle emission standards in 2010. Since then, the EPA has issued rules that require GHG emission sources to report their GHG emissions and rules to "tailor" federal permitting requirements to account for the vastly higher amount of GHGs that are emitted from stationary sources.

It is reasonable to add GHGs to the definition of "regulated air pollutants" because GHGs are now being regulated at both the federal and state level. The list of pollutants in the definition would be misleading if it did not include GHGs.

The MPCA will also add a definition of "subject to regulation" in a new subpart 24a. The MPCA proposes to adopt the EPA's definition of "subject to regulation" in its "tailoring" rule. The MPCA evaluated other options to create its own definition and decided to retain the EPA's definition. The only proposed change from the temporary rule is to delete the reference to the *Federal Register* as the regulation has now been codified at 40 CFR 98, Table A-1.

It is reasonable to use the EPA's wording to maintain consistency with federal regulations and to be clear that MPCA does not intend any different meaning from the EPA's.

"Summary of EMS audit results" is renumbered as subpart 24b and owners and operators are substituted for "stationary source" as the persons that are responsible for corrective actions. It is reasonable to make the renumbering of this subpart permanent in order to maintain the numbering system in the rules. It is also reasonable to substitute owners and operators for "stationary source" because the sources do not plan or complete corrective actions; the owners and operators do.

Subpart 25, Title I Condition, Item C is clarified to show that owners and operators accept permit conditions that apply to the stationary source, rather than the source accepting permit conditions. The clarification is consistent with the MPCA's effort in this rulemaking to remove "stationary source" where the rule actually intends "owners and operators." The clarification is reasonable because an inanimate stationary source cannot assume permit conditions.

7007.0150 PERMIT REQUIRED.

Part 7007.0150 addresses when air emission permits are required. Subpart 1 prohibits construction, reconstruction, modification or operation of certain sources of air emissions without a permit. Item A is clarified by rewording the first sentence and deleting the last sentence. These changes are reasonable because they align the subpart with the same prohibition in Minn. Stat. § 116.081.

New items will be added under subpart 1 to explain the process that an owner or operator must follow if there is a pending facility modification that was approved prior to the effective date of the EPA's "tailoring" regulation, January 2, 2011. The intent is to ensure that no pending modifications cause a source to become a major source inadvertently by application of the new GHG threshold and to ensure that major sources properly evaluate Best Available Control Technology for GHG emissions, if necessary. Owners and operators are expected to comply with EPA regulations. These changes are reasonable by providing a process and timeline for owners and operators to assess their modifications and thus avoid potential non-compliance and unintended consequences of a facility modification.

The MPCA proposes to revise or replace part 7007.0150, subpart 1, items B, C and D of the temporary rule because these three items contain requirements that have expired or that were confusing to permittees. Under the federal "tailoring" rule, the group of sources affected by the EPA's January 2, 2011, effective date is construction projects that were already subject to PSD for a conventional pollutant. Item B addresses construction projects where actual construction has not yet started. Item B is revised from the temporary rule to improve clarity. It explains that pending modifications must be assessed for GHGs to determine if the pending change is now subject to review under PSD. If necessary, the owners and operators must submit a new permit application ensure compliance with federal PSD requirements.

Item C has been revised to further explain and clarify the requirements for facilities where the existing permit conditions satisfy GHG requirements. If no new permit application is needed, the owners and operators must keep records of the determination for five years.

Item D is replaced with new text that states that the assessments under items B and C do not apply to stationary sources covered by capped permits or registration permits. General permits are not specifically addressed in this subpart as part 7007.1100, subpart 5, already requires holders of general permits to meet the requirements of parts 7007.0100 to850.

Item E, subitem (2) adjusts the due date to July 1, 2012, instead of June 30, for submitting a new permit application, which is more consistent with previous sections.

The proposed changes to part 7007.0150 are reasonable because some of the requirements in the temporary rule will have expired by the time the permanent rule is promulgated, so it is no longer necessary to include them in the rule. The MPCA also heard from permittees that these sections were confusing. The proposed changes in the permanent rule are reasonable because they clarify the MPCA's intent, they carry forward only those provisions needed for compliance purposes, and they streamline the language.

7007.0200 SOURCES REQUIRED OR ALLOWED TO OBTAIN A PART 70 PERMIT.

Part 7007.0200 specifies the types of facilities for which owners and operators must obtain a federal Part 70 permit. It defines an emissions threshold for a facility to be considered a major source. This section also includes what types of sources must include fugitive emissions in their potential emissions calculation, and when owners and operators of waste incinerators/combustors must obtain a Part 70 permit.

Subpart 1 is clarified to state that the owners and operators are the persons required to obtain the permit, not the facility or emission unit. This change is consistent with similar housekeeping changes being proposed to the rule at this time and is reasonable as an owner or operator holds a permit and is legally responsible for the facility, unit, or source, not the building or unit itself.

Subpart 2, item B previously defined the applicability of the Part 70 program in Minnesota by referring to the definition of a major source in the CAA by setting the permit threshold at 100 TPY. The MPCA adds the new federal Part 70 threshold of 100,000 TPY CO_2e for GHGs. This change is necessary to implement the federal Part 70 permit threshold in Minnesota. It is reasonable to specify what is being regulated and provide for implementation consistent with the EPA regulations. As noted on page 6, adopting this higher permit threshold for GHGs provides regulatory relief for thousands of smaller sources such as large homes, hospitals, schools and restaurants.

7007.0250 SOURCES REQUIRED TO OBTAIN A STATE PERMIT

Part 7007.0250 explains under what conditions various types of air emission permits are required. Subparts 1-8 are all clarified to indicate that owners and operators must apply for a permit, rather than saying the stationary source must apply for a permit. The reasoning for this change is the same as described under part 7007.0050.

7007.0300 SOURCES NOT REQUIRED TO OBTAIN A PERMIT

Part 7007.0300 lists specific New Source Performance Standards (NSPSs) for which owners and operators of a stationary source do not need to obtain a permit as otherwise required under part 7007.0250, subpart 2, item A, provided the sole reason it is needed is because it is subject to one of the listed NSPSs.

Subpart 1 is revised to clarify that the owners and operators are not required to obtain a permit, rather than the stationary source. The reasoning for this change is the same as described under part 7007.0050.

Subpart 1, items B, C and F are revised to clarify that stationary sources are covered by a permit rather than required to obtain a permit. As discussed under part 7007.0050, stationary sources themselves do not obtain permits.

Subpart 1, item B also lists the NSPSs for which owners and operators need not obtain a permit if the NSPS is the sole reason a permit would otherwise be required. The MPCA proposes to add *Title 40, part 60, subpart JJJJ, Standards of Performance for Stationary Spark Ignition Internal Combustion Engines* as one of the NSPS listed in this item. The MPCA proposes to exempt owners and operators of stationary spark ignition internal combustion engines from the requirement to obtain a state permit if there is no other condition that triggers the need for an air emission permit other than the stationary spark ignition internal combustion engine NSPS. The only exception would be those engines for which the owners and operators conducted a performance test to demonstrate compliance with the applicable standard. Performance testing to demonstrate compliance is required for certain units and is a more complex requirement than the other NSPSs listed in this item. If owners and operators purchase a unit certified by the manufacturer, then performance testing is not required to demonstrate compliance. The MPCA expects that relatively few owners and operators would use performance testing as a compliance option.

In determining whether to exempt certain NSPS categories from the requirement to obtain a permit, the MPCA has used the following criteria:

1) Straightforward compliance requirements and
2) Potential emissions likely below permitting thresholds

The compliance requirements for the subpart JJJJ engines are uncomplicated (e.g., maintaining records of notifications, engine maintenance, compliance with standards, and hours of operation) unless

performance testing is chosen as a compliance option. The MPCA believes the majority of units subject to this standard will have potential emissions below the permitting thresholds when the stricter emission limits of the standard are taken into account.

This change is reasonable to provide regulatory relief to owners and operators of facilities with no other emission units than stationary spark internal combustion engines. Otherwise, simply by purchasing an engine an owner or operator of a facility that previously did not need an air emissions permit would be required to hold an air emissions permit from the state. To require permitting for many additional facilities simply because the owners or operators purchase a new engine (and a cleaner engine if it is replacing an existing engine) would result in added administrative burden for both the stationary source owner and operator and MPCA staff. This change is reasonable because owners or operators of any of these engines must comply with the applicable standard regardless of permit status.

7007.0325 SOURCES ALLOWED TO EXCLUDE BIOGENIC CARBON DIOXIDE FROM APPLICABILITY THRESHOLDS

As described in the Introduction to this SONAR, on July 20, 2011, the EPA promulgated a rule that excludes biogenic carbon dioxide from calculations of potential air emissions for air permit applicability determinations until July 21, 2014. The MPCA proposes to add the new federal regulation to Minnesota Rules.

The EPA's regulatory language for this biogenic deferral, which is used in both PSD and Part 70 rules (40 CFR 51, 52, 70 and 71), is as follows (76 FR 43507):

> *"…prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material)."*

In the preamble of the biogenic deferral, the EPA further clarifies that the exclusion applies only to biogenic CO_2 and not to other constituents of GHGs (76 FR 43492).

> *"This deferral applies only to biogenic CO_2 emissions and does not affect non-GHG pollutants or other GHGs (e.g., methane (CH_4) and nitrous oxide (N_2O)) emitted from the combustion of biomass fuel. Also, this deferral only pertains to biogenic CO_2 emissions in the PSD and Title V programs and does not pertain to any other EPA programs such as the GHG Reporting Program."*

The MPCA will incorporate the biogenic CO_2 deferral per the EPA's regulation promulgated on July 20, 2011. The deferral means biogenic CO_2 emissions will not be included in the calculation of GHG emissions for purposes of determining whether the emissions threshold for permitting requirements has been reached.

Subpart 1 excludes biogenic CO_2 from potential-to-emit calculations until required to be included by federal regulations. The explanation of what constitutes biogenic CO_2 is based on the EPA's language used in 40 CFR § 52.21 and 40 CFR 70.

Subpart 2 lists other chapters of Minnesota Rules where biogenic CO_2 is also excluded from air permitting applicability determinations for the deferral period. This change is reasonable to be consistent with the major source applicability threshold in Minnesota Rule 7007.0100, subp. 24a. It will

also reduce the burden on owners and operators holding general, capped and registration permits. They will not need to calculate biogenic CO_2 emissions during the deferral for either permit applicability or recordkeeping purposes. Owners and operators holding registration permits will also exclude biogenic CO_2 from their annual emission inventory reporting.

These changes are reasonable to define what constituents of the pollutant GHGs are regulated and to provide for implementation of GHG permitting that is consistent with EPA regulations.

Until the MPCA's permanent rule is final, the MPCA will implement the deferral as a policy per the *Program Management Decision Memorandum: Implementation of U.S. Environmental Protection Agency's Deferral for Carbon Dioxide Emissions From Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration and Title V Programs.*

7007.0400 PERMIT REISSUANCE APPLICATIONS AFTER TRANSITION; NEW SOURCE AND PERMIT AMENDMENT APPLICATIONS; APPLICATIONS FOR SOURCES NEWLY SUBJECT TO A PART 70 OR STATE PERMIT REQUIREMENT.

Part 7007.0400 explains the obligation and timing for owners and operators to submit applications for new facility permits or amendments for making a change or modification. The changes proposed to these rules are housekeeping changes to clarify how the rule applies. Originally, this and part 7007.0750 were promulgated to transition owners and operators to the new requirement to obtain operating permits. When the rules were promulgated, they did not account for how the rules would apply after the transition was complete. As a result, some owners and operators have attempted to use the rules to allow modifications to unpermitted facilities without obtaining a total facility operating permit. These rules were never intended to allow facilities to obtain permit amendments in the absence of an underlying permit. The proposed changes will clarify the conditions under which a previously unpermitted source may obtain a permit to authorize a facility change or modification.

Subpart 1 is clarified to state applications are from the owners and operators of a facility. This change is reasonable for the same reasons explained in support of the change to part 7007.0050.

Subpart 4 is clarified to show that the rule applies to previously unpermitted facilities that would become subject to the requirement to obtain a permit for the first time as the direct result of a change or physical modification. This provision does not apply to facilities currently holding any kind of air permit. This has been a point of confusion in the past and it is reasonable to ensure that the rule language is clear. This change is also reasonable because it allows facilities to obtain authorization to make the change or modification, but specifies a schedule for the owners and operators to apply for an operating permit.

Subparts 4 and 5 are revised to clarify that both owners and operators are responsible to apply for and hold a permit. The reasoning for this change is the same as described under part 7007.0050.

Subpart 5 adds language to specify the process an owner or operator should follow if a regulatory change makes a facility newly subject to obtain a Part 70 or state operating permit, including scenarios where a facility had a state operating permit and a regulatory change makes the source subject to Part 70. This change incorporates the longest possible deadline allowed under the federal Part 70 permit program (12 months as allowed under 70.5(a)(1)(i)). This change is necessary; otherwise the presumption would be that an application would be due on the day a new rule is promulgated. It is reasonable to clarify procedures and timeframes so that owners and operators can have sufficient time to complete and submit an application.

7007.0500 CONTENT OF PERMIT APPLICATION.

Part 7007.0500 specifies that owners and operators must use standard permit application forms. In addition, it lists what information should be included regarding emission units and emissions, applicable requirements, operations and certification.

Subpart 2, item C, subitem (4), is modified to address the EPA's deferral of biogenic carbon dioxide. The deferral is in part 7007.0325. The change to this part of the rule is reasonable to make it consistent with the biogenic carbon dioxide deferral that the MPCA is proposing to adopt.

In subpart 2, item C, subitem (6), unit (a), GHGs are added to the list of pollutants for which information must be submitted. This change is necessary to provide for implementation of EPA regulations. The permanent rule also specifies that the calculation is as CO_2e. It is reasonable to clarify that GHG emission rates as CO_2e are part of a complete application.

Subpart 2, item D, subitem (2), is revised to clarify that owners and operators are required to test emissions of a stationary source rather than implying the source tests itself. This change is reasonable for the same reasons identified in support of the change to part 7007.0050.

7007.0750 APPLICATION PRIORITY AND ISSUANCE TIMELINES

Subparts of part 7007.0750 list the processing and issuance deadlines for various types of permit applications. This includes procedures specific to modifications as well as to EPA review timelines.

The title of subpart 5 is amended to show that the subpart applies to stationary sources that were not previously subject to permitting requirements. This amendment is reasonable to clarify the MPCA's original intent that the rule only applies to permits for sources that did not previously have permits because the sources were not subject to permitting requirements, not because the owners and operators had failed to obtain a permit.

Items under subpart 5 are revised to further clarify the Agency's intent and practice.

Subpart 5, item A is clarified to indicate that owners and operators must apply for a permit, rather than saying the stationary source must apply for a permit. The reasoning for this change is the same as described under part 7007.0050.

Subpart 5, item A, subitems (1) and (2), are deleted because this transition period is complete.

Subpart 5, item B is revised to say that the modification will subject the owners and operators for the first time to the requirement to obtain a permit. This change is reasonable to clarify the MPCA's original intent that the rule only applies to permits for sources that did not previously have permits because the sources were not subject to permitting requirements.

The existing subpart 5, item B is renumbered as subpart 5, item C and is revised to clarify that owners and operators are the entities who may experience economic hardship, rather than the stationary source. This change is reasonable for the same reasons identified in support of the change to part 7007.0050.

The existing subpart 5.C is renumbered as 5.D.

The concluding paragraph of subpart 5 is clarified that the permit obtained under this part is for a modification. This is consistent with other proposed changes to this subpart to clarify the MPCA's original intent that the rule only applies to installation and operation permits. This paragraph is also clarified that both owners and operators apply for and hold a permit. The reasoning for this change is the same as described under part 7007.0050.

7007.0800 PERMIT CONTENT

Part 7007.0800 defines what the Agency shall include as permit conditions in all permits.

Subpart 7 and item B are revised to clarify that owners or operators hold the allowances instead of that the stationary source holds the allowances. The reasonableness of this change is the same as the explanation for part 7007.0050.

Subpart 11, item A is revised to clarify that owners or operators keep records of alternative operating scenarios, not the stationary source itself. The reasonableness of this change is the same as the explanation for part 7007.0050.

7007.0950 EPA REVIEW AND OBJECTION

Part 7007.0950 lays out the procedure for the EPA to review permits that the MPCA proposes to issue. This review is required under federal regulations.

Subpart 3 is clarified to state that the owners and operators will not be in violation of the requirement to submit a timely and complete permit application in the case of a petition's being filed on a Part 70 permit. The change is reasonable as the owners and operators submit the application; the stationary source does not submit documents. The reasonableness of this change is the same as the explanation for part 7007.0050.

7007.1050 DURATION OF PERMITS

Part 7007.1050 specifies how long each type of permit is valid and allows permits to be voided if a stationary source no longer requires a permit under law.

Subpart 5, item C is revised to clarify that owners and operators are the entities expected to make substantial changes at the stationary source. The reasonableness of this change is the same as the explanation for part 7007.0050.

7007.1100, GENERAL PERMITS

Part 7007.1100 details the requirements for owners and operators to apply for, and the MPCA to issue, a general permit. General permits cover a specific category or sector in which the facilities and applicable requirements are the same or substantially similar.

Subparts 2, 5, 6 and 7 are revised to clarify that owners and operators hold a permit, submit applications and are subject to enforcement action. A stationary source does not apply for or hold a permit. These changes are reasonable to define who is responsible for compliance at a stationary source. It is the owner(s) and operator(s), not the source itself. It is reasonable for the rule to be clear on this responsibility.

The proposed addition to subpart 8 concerns changes to a name, ownership, control or address in a general permit. New subpart 8, item A clarifies that owners and operators can change the facility name, or mailing information as it appears on the cover page of the permit by submitting a request to the MPCA. Without this rule change, it appears that owners and operators must apply for an entire new general permit and pay the full application fee. It has always been the MPCA's practice to allow these changes to be considered administrative with the lower application fee. This clarification is reasonable to provide regulatory relief for owners and operators making this administrative change. Renumbered subpart 8, item B is also revised to clarify that both owners and operators are responsible for the permit. The reasoning for this change is the same as described under part 7007.0050.

The existing language is renumbered as subpart 8, item B.

7007.1105 ELIGIBILITY FOR ENVIRONMENTAL MANAGEMENT SYSTEM (EMS) PROVISIONS IN STATE PERMITS

This section defines the eligibility for regulatory relief for facilities where an EMS is in place. These facilities are going beyond the minimum required for compliance.

Subpart 1 and item B are revised to clarify that owners and operators are the entities that apply for a permit. The reasonableness of this change is the same as the explanation for part 7007.0050.

In subpart 1 item B., GHGs are added to the list of pollutants for which permit limits must be in place for owners and operators to be eligible to use EMSs in state permits. These changes are reasonable to maintain consistency with federal changes that account for GHGs in air emission permits.

7007.1107 APPLICATION AND PERMIT CONTENT RELATED TO INCLUSION OF EMS PROVISIONS IN STATE PERMITS

This section provides the application criteria and procedures for facilities where an EMS is in place to obtain regulatory relief from certain other permit provisions. For example, emission calculations to determine the need for an amendment are unique to qualifying facilities.

Subpart 2 is revised to change "stationary source" to "owners and operators." This change is reasonable because the subpart refers back to part 7007.1105 which specifies that the commissioner determines whether owners or operators are eligible for EMS, not whether the source is eligible.

In subpart 2, item C, subitem (1), a new GHG threshold of 25,000 TPY CO_2e is added as subitem (j) in the list of pollutant levels to be eligible for the reduced calculation method provided in the rule. It is reasonable to add a CO_2e threshold in this provision so that an appropriate GHG threshold is included in the list of pollutants for which regulatory relief is available.

7007.1110 REGISTRATION PERMIT GENERAL REQUIREMENTS

Minnesota offers a streamlined category of permits for facilities with low actual emissions. These permits are called registration permits. There are four kinds of registration permits, depending on applicable regulations, types of equipment at the facility, or level of emissions. Part 7007.1110 includes items that apply to all four types of registration permits. Among other parts, these define general eligibility, application and certification requirements, permit content and compliance requirements.

Subparts 1; 2, item C; 3; and 5 are revised to clarify that owners and operators of a stationary source may or may not obtain a registration permit. A stationary source does not apply for or hold a permit. The reasonableness of this change is the same as the explanation for part 7007.0050.

A new subpart, subpart 2, item C, subitem (14), will add a recently promulgated NSPS to the list of those allowed under registration permits: *Title 40, part 60, subpart JJJJ, Standards of Performance for Stationary Spark Ignition Internal Combustion Engines*. The proposed addition of item C, subitem (14) brings stationary spark ignition internal engines into the group of NSPS standards that do not preclude application for a registration permit on the basis that they are NSPS-subject facilities. It is reasonable to extend the registration permit option to qualifying sources with simple, straightforward compliance requirements that would otherwise be barred by an NSPS. If this change were not made, registration permit holders that purchased a new spark ignition engine would no longer qualify for their registration permit and would need to apply for an individual permit. The change is needed as part of a general

MPCA practice to offer more streamlined permit options where the rate of compliance will not be adversely affected.

The compliance requirements for the subpart JJJJ engines are uncomplicated (e.g. maintaining records of notifications, engine maintenance, and compliance with standards, hours of operation and possibly periodic performance testing). The MPCA believes the majority of units subject to this standard will have potential emissions below the permitting thresholds when the stricter emission limits of the standard are taken into account.

Subpart 11a, item A has been clarified to address the process when a facility becomes ineligible for its current registration permit category because of a new regulatory requirement. The subpart includes timelines for notifications and revised permit applications. The temporary rule applied only to sources that became subject to new regulatory requirements due only to its emissions of GHGs. This subpart is modified from the temporary rule to be applicable to new regulations in general, not only regulations related to GHGs. In addition, the procedural portion of the subpart has been revised in an attempt to be clearer about what owners and operators must complete within specific timeframes. These changes are reasonable to ensure that facilities have a clear process to follow to avoid potential non-compliance.

The proposed addition to subpart 15 concerns administrative changes to permits. New subpart 15, item A will clarify that owners and operators can request to change the facility name or mailing information as it appears on the cover page of the permit. Without this rule change, it appears that facilities must apply for an entire new registration permit and pay the full application fee. It has always been the MPCA's practice to allow these changes to be considered administrative with the lower application fee. This clarification is reasonable to provide regulatory relief for owners and operators making this administrative change. The existing language is renumbered as subpart 15, item B.

7007.1125 REGISTRATION PERMIT OPTION C

Part 7007.1125 includes specific eligibility, application and compliance requirements for Option C registration permits. Option C is geared toward facilities whose emissions are mainly from combustion sources and volatile organic compounds. Compliance is determined by using a calculation that considers fuel use, the sulfur content of the fuel, operating hours, and volatile organic compound usage. This calculation is sufficiently conservative to accommodate GHG emissions from combustion sources. Facilities that meet the calculation threshold have actual emissions below major-source thresholds.

Subpart 1, eligibility will be modified to prohibit the generation or use at the stationary source of hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride or nitrous oxide other than from combustion. This change is reasonable because the compliance demonstration method for Option C, which is found in part 7007.1125, subp. 4, does not support inclusion of these chemicals from process units other than combustion. Subpart 1 is also revised to clarify that both owners and operators are responsible to apply for a permit. The reasoning is the same as described for part 7007.050.

Owners and operators that do not use or generate those chemicals can retain their option C permit. Staff believes that most Option C facilities will be able to continue with the same permit type. Medical facilities with Option C permits may use nitrous oxide. However, the usage may qualify as an insignificant activity under either part 7007.1300, subpart 2.I or subpart 3.I(3). Relatively few operations that could fit within the Option C framework are likely to use or generate hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride. Facilities that use or generate those chemicals may qualify for an Option D registration permit, instead.

Subpart 3, Compliance Requirements, will be modified to include recordkeeping for GHGs and the date that new recordkeeping must begin. Recordkeeping for GHGs is reasonable since GHG are now

addressed in air emissions permits and this requirement is consistent with how other pollutants are treated for compliance purposes. Although compliance for Option C facilities is determined by the calculation referenced above, other GHG-related information may be subject to recordkeeping. One example is an activity that previously qualified as insignificant and no longer does because the list of insignificant activities in part 7007.1300 was revised based on GHGs. This example was added to the rule. It is reasonable to provide an explanation of what recordkeeping is required under this option since it may not have been clear given that compliance is otherwise determined using another method. In addition, subpart 3 is revised to clarify that owners and operators are issued a permit. The reasoning is the same as described for part 7007.0050.

7007.1130 REGISTRATION PERMIT OPTION D

This section defines the specific eligibility and compliance requirements for an Option D registration permit. The Option D registration permit limits actual emissions to 50 TPY or half the major source permit threshold. This category is more flexible as the actual emissions level determines eligibility. Unlike Options A and C, it does not restrict eligibility based the type of equipment or applicable requirements.

Subpart 3, Compliance Requirements, will be modified to include GHGs in the 12-month rolling sum calculations and the date that new recordkeeping must begin. In addition, new parts will be added to provide calculation methods for GHGs. Item M provides the method for calculating emissions of GHGs purchased or used. Item N addresses GHG emissions from chemical processes. These calculation methods are similar to those already in place for units with emissions of volatile organic compounds. The wording is also revised to clarify owners and operators are issued a permit. The reasoning is the same as described for part 7007.0050.

For reduced record-keeping in subpart 3a, GHGs and GHG-containing materials are added to the lists of pollutants, materials and calculations allowed under this part. A GHG emissions threshold of 25,000 TPY CO_2e will be added to Table 3A in subpart 3a. It is reasonable to provide regulatory relief for low-emitting sources of GHGs.

Subpart 4, Calculation of Actual Emissions, item D is modified to include GHGs and to explain that the method to calculate actual GHG emissions is to calculate the individual constituents, convert to CO_2e and sum the total CO_2e. The calculation method is the same as that promulgated in the federal rule. These changes are reasonable to allow owners and operators of low actual GHG emissions to obtain a registration option D permit and to provide a consistent calculation method for GHGs for compliance purposes. It is reasonable to use this method for GHGs as it is similar to how other pollutants are treated within the registration option D compliance methods. These changes also align state requirements for emission calculations with the federal permit rule.

A GHG emissions threshold of 50,000 TPY CO_2e will be added to Table 3 in subpart 5. These thresholds use the same proportion of the federal permit threshold as the other pollutants. These changes are reasonable to provide regulatory relief for facilities with low actual emissions of GHGs.

Adding a GHG threshold to option D will allow most facilities to retain their current option D permit. It is reasonable to provide regulatory relief for facilities with low actual emissions of GHGs.

7007.1140 CAPPED PERMIT ELIGIBILITY REQUIREMENTS

Capped permits are another option that provides regulatory relief for certain facilities. Allowable actual emissions are higher than registration permit option D, but still below major source permit thresholds.

Owners and operators of facilities with capped permits can make certain changes at their facilities without applying for a permit amendment.

Subparts 1 and 2 clarify that owners and operators rather than stationary sources may elect to apply for this type of permit and when owners and operators may not obtain this type of permit. The reasoning for this change is the same as described under part 7007.0050. A "stationary source" is not the legally responsible party for permitting and operating a source. The owners and operators are responsible and it is reasonable to ensure that the rules are clear.

A new subpart, subpart 2, item E, subitem (14), adds a recently-promulgated NSPS to the list of those allowed under capped permits: *Title 40, part 60, subpart JJJJ, Standards of Performance for Stationary Spark Ignition Internal Combustion Engines*. Adding this new NSPS is consistent with prior practice and allows the capped permit option for owners and operators of sources that are eligible for a capped permit unless they are subject to NSPS. The proposed addition of item E, subitem (14), brings stationary spark ignition internal engines into the group of NSPS standards that do not preclude application for a capped permit on the basis that they are NSPS-subject facilities.

It is reasonable to extend the capped permit option to qualifying sources with simple, straightforward compliance requirements that would otherwise be barred by an NSPS. If this change were not made, capped permit holders that purchased a new spark ignition engine would no longer qualify for a capped permit and would need to apply for an individual permit. The change is reasonable as part of the MPCA's general practice to offer more streamlined permit options where the rate of compliance will not be adversely affected.

The compliance requirements for the subpart JJJJ engines are uncomplicated (e.g., maintaining records of notifications, engine maintenance, compliance with standards, hours of operation, and possibly periodic performance testing). The MPCA believes that the majority of units subject to this standard will have potential emissions below the permitting thresholds when the stricter emission limits of the standard are taken into account.

7007.1141 CAPPED PERMIT EMISSION THRESHOLDS

This section specifies the pollutant emission levels that apply to the capped permit option. A GHG emissions threshold of 90,000 TPY CO_2e and 85,000 TPY CO_2e will be added to subparts 1 and 2, respectively. These changes are reasonable to provide regulatory relief for facilities with actual emissions of GHGs below the major source threshold.

7007.1142 CAPPED PERMIT ISSUANCE AND CHANGE OF PERMIT STATUS

This section explains the process for capped permit issuance. Additionally, it explains what owners and operators must do when a physical change to the facility makes it ineligible for either or both capped permit options.

A new subpart 3a, explains the process that must be followed if a regulatory change makes a source ineligible for a capped permit. This process is similar to the process provided for registration permits. Such a process should have been specified for capped permits previously, and was inadvertently omitted. The new subpart includes timelines for notifications and revised permit applications. These changes are reasonable to ensure facilities have a clear process to follow to avoid potential non-compliance and to make the capped permit processes similar to the registration permit processes.

7007.1146. CAPPED PERMIT COMPLIANCE REQUIREMENTS

This section explains the methods of complying with both capped permits. This includes a calculation method, record keeping, pre-change analysis and reporting. GHGs will be added to record keeping requirements in subpart 2, items A and I, including the date on which to begin the new GHG recordkeeping. It is reasonable to include GHGs so that the compliance requirements for GHGs are the same as for other pollutants. The wording is revised to clarify that owners and operators are issued a permit. The reasoning for this change is the same as described for part 7007.0050.

7007.1150 WHEN A PERMIT AMENDMENT IS REQUIRED

This section of the rule describes what types of changes at a stationary source trigger the need for a permit amendment or notification.

Item F specifically addresses the situation where a permit is required to authorize a facility change, but the stationary source does not hold any permit. If the owners and operators want to make a modification, they may apply for a permit amendment to authorize the change (construction permit under part 7007.0750, subpart 5). The existing language has resulted in some confusion among permittees. The subpart is revised to clarify that if owners and operators submit a timely permit application, they may make facility changes as provided by the rules, despite the fact that they do not yet have an underlying (operating) permit. Without at least a permit application on file, the MPCA has no knowledge or inadequate knowledge of the facility and is not able to make an informed decision on an application to modify the facility. It is reasonable to require owners and operators that do not hold current permits to submit timely permit applications to be eligible for authorization to modify their facility. This change is also reasonable to make this subpart consistent with parts 7007.0400 and 7007.0750.

7007.1300 INSIGNIFICANT ACTIVITIES LIST

The EPA provides an option for states to define activities as insignificant for permit purposes (40 CFR § 70.5[c]). Minnesota has developed a list of insignificant activities that provides regulatory relief by several methods. Subpart 2 exempts certain operations from being listed in a permit application. Subpart 3 requires the activities to be listed in the permit application although no initial calculation of emissions is necessary. Subpart 4 also contains activities to be listed and is specific to a Part 70 (Title V) permit application. Subpart 4 is a threshold-based exemption. The owners and operators must quantify emissions to determine eligibility under this section.

In subparts 2, items A and G, and 3, items A and B, the size and/or capacity of units that qualify under this subpart have been reduced. Now that the MPCA is considering GHGs when determining whether a permit is required, the new thresholds will ensure that GHG emissions from these units will continue to qualify as "insignificant." These changes are reasonable as the capacities were selected to be proportionate to the current levels relative to the Part 70 permit threshold and will protect the facility by making the listed activities unlikely to cause a facility to exceed the major source thresholds.

Subpart 3, item B, is titled "Furnaces and Boilers". The text of subpart 3, item B, subitem (2) has an example that explains the applicability of this activity. This example used the phrase "fuel burning emission units." Other types of equipment that use fuel, such as dryers, are not intended to be covered under this subpart. The example is revised to say furnace, to be consistent with the intent of the subpart. Subpart 3, item B also used the term "fuel burning equipment." This term is not defined and also creates confusion with subpart 3, item A, which covers general fuel use for space heating. This phrase is changed to "indirect heating" equipment. To further clarify the term, a sentence is added

saying that indirect heating equipment has the meaning given under part 7011.0500, subpart 9. Clarifying that the subpart applies to "indirect heating equipment" is reasonable because that term is defined in Minnesota Rules and is consistent with the MPCA's interpretation and practice.

A GHG emissions threshold of 1,000 TPY CO_2e has been subpart 3, item I for activities required to be listed in a permit application. Also, for Part 70 permits, GHG emissions thresholds of 10,000 TPY CO_2e PTE or 1,000 TPY CO_2e actual emissions have been added in subpart 4 to activities required to be listed in a permit application. These changes are reasonable to provide regulatory relief for facilities with activities or units having low potential and low actual emissions of GHGs. Without these changes, facilities with low-emitting GHG activities or units that did not meet the insignificant activity definitions in subparts 2 and 3 would have had to list the activities in permit applications.

Subpart 4 is also revised to clarify that owners and operators apply for a permit. The reasoning for this change is the same as described under part 7007.0050.

7007.1400 ADMINSTRATIVE PERMIT AMENDMENTS

The EPA provides an option for states to define different levels of permit revisions depending on the proposed change. Minnesota has adopted an administrative amendment process in part 7007.1400. Administrative permit amendments are allowed by 40 CFR § 70.7(d). Minn. R. 7007.1400 defines the eligibility for administrative amendments, the process to apply for one, and time lines to make the proposed change. This type of amendment is used to correct typographical errors or make minor administrative changes, among other simple updates to the permit. No emissions increases are allowed under the administrative amendment process.

Subpart 1, item D, subitem (5), previously used the term "equipment" which is not defined. The MPCA proposes to change the word "equipment" to "emission unit." Clarifying that the subpart applies to an "emission unit" is reasonable because that term is defined in state rule and is consistent with the MPCA's interpretation and practice.

7007.1450 MINOR AND MODERATE PERMIT AMENDMENTS

The EPA provides a process under 40 CFR § 70.7(e) for permit revisions that do not qualify as administrative amendments. This section of the Minnesota Rules provides procedures for minor and moderate permit amendments. These amendments do not qualify as administrative amendments, nor do they rise to the level of a major permit amendment.

The MPCA proposes to change the language in subpart 2 to allow use of the minor amendment process to make changes in permit conditions, to authorize certain modifications to a facility and to incorporate former insignificant activities that no longer qualify as insignificant due to a regulatory change. When incorporating insignificant activities, there is a change in actual emissions reported within the permit. The administrative amendment process is therefore not applicable to this change. The minor amendment process is the next option and is the least burdensome amendment process that can be used in this case.

The permit changes that are proposed to be included in these rules are those that do not require a major permit amendment or those that cannot be made through the administrative amendment process. It is reasonable to allow owners and operators to use the more streamlined minor permit amendment process to change this type of permit condition because it relieves them of the need to go through the major permit amendment process. The change is also reasonable because many changes to permit conditions are in fact minor in nature and changing them does not make the permit less environmentally protective.

In addition, a due date is added to subpart 2. Owners and operators must submit an application within 30 days of a new regulation becoming effective that results in existing insignificant activities no longer qualifying as such. Under the prior rule, there was no application due date. This meant that applications were due on the date a new regulation became effective, which is impractical. The change is reasonable because it gives owners and operators clear direction on the timing of a permit application.

Subpart 4, item A, is expanded to be inclusive of the types of information that are needed in an application for the types of changes that are now allowed under the minor or moderate amendment process (due to revisions to subpart 2). Subpart 4, item A, is revised to allow owners and operators to use the minor and moderate amendment process to make changes to permit conditions as well as for facility modifications or to respond to regulatory changes. The administrative amendment process is not applicable to this type of change. The proposed rule change is reasonable because the minor amendment process is the least burdensome amendment process that can be used in this case.

Subpart 4, item B, is revised to clarify that the application should include the owners' and operators' suggested draft permit or amendment. This change is reasonable for the same reasons as supported the change to part 7007.0050.

Subpart 4, item C, is clarified by replacing the word "modification" with "amendment." This change is in the nature of a housekeeping change. The word "modification" is generally defined to mean changes to a facility, not changes to a permit. It is reasonable to use the word "amendment" because it is more accurate than "modification."

Subpart 7, item A, allows owners and operators to make changes that qualify for minor permit amendments seven-working days after the MPCA air quality division receives the minor permit amendment application. The MPCA proposes to add making a change to permit conditions to the rule so that not only facility modifications, but changes to permit conditions may be implemented seven-working days after receipt of a minor permit amendment application. This change is reasonable because it allows owners and operators to implement changes to permit conditions that the MPCA considers minor in nature using the most streamlined amendment process that is applicable.

Subpart 8 is revised to say modification or change. This change is reasonable as it affords permittees the opportunity to make certain changes, such as a change that decreases emissions, which are not "modifications" as defined in rule. Additionally, the text is revised to clarify the owners and operators make changes. This change is reasonable for the same reasons as supported the change to part 7007.0050.

7007.1500 MAJOR PERMIT AMENDMENTS

Part 7007.1500 applies to changes to permit conditions or to any permitted source modification that does not qualify for an administrative, minor or moderate permit modification. This section defines what activities trigger this amendment process.

Subpart 1, item A, subitem (6), previously used the term "equipment" which is not defined in rules. The MPCA proposes to change the word "equipment" to "emission unit." The change is reasonable because "emission unit" is defined at part 7005.0100, subpart 10b and because use of the phrase is consistent with the MPCA's interpretation of the existing rule and its practice in implementing the rule.

7007.1850 EMERGENCY PROVISION

Part 7007.1850 explains what is considered an emergency. To avoid issues related to non-compliance, a permittee has the responsibility to notify the MPCA and document the event.

The text is clarified that an emergency event is beyond the control of the owners and operators of the stationary source. This change is reasonable for the same reasons as supported the change to Part 7007.0050.

7011.3520 STANDARDS OF PERFORMANCE FOR STATIONARY COMPRESSION IGNITION INTERNAL COMBUSTION ENGINES

Chapter 7011 contains the MPCA's performance standards for stationary sources. Chapter 7011 includes both the incorporation of federal performance standards by reference as well as state-specific standards.

Part 7011.3520 incorporates a federal NSPS by reference. The standard applies to specific types of stationary engines. This performance standard is proposed to be renumbered as part 7011.2305. This renumbering will result in standards related to engines being grouped together in the rule. This is reasonable to improve the organization of the chapter and assist owners and operators in finding the requirements that potentially apply to their facilities.

7011.2315 STANDARDS OF PERFORMANCE FOR STATIONARY SPARK IGNITION INTERNAL COMBUSTION ENGINES

As noted above, chapter 7011 contains the MPCA's performance standards for stationary sources. The MPCA adds a new subpart to incorporate by reference the federal rule 40 CFR 60, subpart JJJJ, entitled "Standards of Performance for Stationary Spark Ignition Internal Combustion Engines." The MCPA generally incorporates the federal NSPS regulations by reference into state rule. Upon reviewing the list of federal standards against state rules, the MPCA staff found that subpart JJJJ, the NSPS for spark ignition engines, had not been incorporated by reference in the past. Subpart JJJJ, applying to both manufacturers and owners and operators of spark ignition engines, was finalized by EPA in winter 2008. These incorporations are needed and reasonable in order to keep Minnesota's rules up to date.

List of Exhibits

- Final Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 40 CFR Parts 51, 52, 70, and 71. EPA, docket number EPA–HQ–OAR–2009–0517; FRL–9152–8. (75 FR 31514-31608), June 3, 2010. Follow this link: http://www.gpo.gov/fdsys/pkg/FR-2010-06-03/pdf/2010-11974.pdf

- Regulatory Impact Analysis for the Final Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, Final Report (May 2010); Linda M. Chappell, EPA, Office of Air Quality Planning and Standards. Follow this link: http://www.epa.gov/ttn/ecas/regdata/RIAs/riatailoring.pdf

- Deferral for CO2 Emissions From Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs, 40 CFR Parts 51, 52, 70, and 71. EPA, docket number EPA–HQ–OAR–2011–0083; FRL–9431–6. (76 FR 43490-43508) July 20, 2011. Follow this link: http://www.gpo.gov/fdsys/pkg/FR-2011-07-20/pdf/2011-17256.pdf

- Standards of Performance for Stationary Spark Ignition Internal Combustion Engines and National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion

Engines, 40 CFR Parts 60, 63, 85, 90, 1048, 1065, and 1068. EPA, docket number EPA-HQ-OAR-2005-0030, FRL-8512-4. (73 FR 3567-3614) January 18, 2008. Follow this link: http://www.gpo.gov/fdsys/pkg/FR-2008-01-18/pdf/E7-25394.pdf

- Adopted Exempt Rule Relating to Greenhouse Gas Permit Requirements (chapters 7005 to 7007). (35 SR 1097-1108) January 24, 2011. Follow this link: http://www.comm.media.state.mn.us/bookstore/stateregister/35_30.pdf

- Insignificant Activities Assessment – Spreadsheet. MPCA staff (file attached):

Insignificant activity analysis.zip

Conclusion

Based on the foregoing, the proposed rules are both needed and reasonable.

Date	Michelle Beeman Deputy Commissioner