

Minnesota Pollution Control Agency

Environmental Analysis & Outcomes Division

REQUEST FOR COMMENTS

Planned Permanent Air Quality Rule Amendments Governing Definitions and Abbreviations; Permits and Offsets; Standards for Stationary Sources; Monitoring and Testing Requirements and Emission Inventory Requirements to be Codified in Minnesota Rules Chapters 7005, 7007, 7011, 7017 and 7019 to Comply with New Federal Air Permit Thresholds for Greenhouse Gases and minor housekeeping amendments to clarify rule language and meaning, improve consistency, and to incorporate one federal New Source Performance Standard (NSPS) into state rules.

Subject of Rule: The Minnesota Pollution Control Agency (MPCA) requests comments on its proposal to make permanent amendments to air quality rules to comply with new federal air permit thresholds for greenhouse gases (GHGs) affecting the MPCA's air quality rules, along with the minor housekeeping amendments described above, to be codified in Minnesota Rules, chapters 7005, 7007, 7011, 7017 and 7019.

Background: On May 13, 2010, the United States Environmental Protection Agency (USEPA) issued a final rule to establish permit threshold for GHG emissions. This rule affects two permit programs: 1) the Prevention of Significant Deterioration (PSD) program for construction permits; and 2) the Part 70 (operating) permit program, also called the Title V program.

The new emissions threshold for GHGs is a potential to emit (PTE) of 100,000 tons per year (tpy) of carbon dioxide equivalent (CO₂-e). The USEPA calls this the Tailoring Rule, as the permit thresholds would be tailored to exempt facilities with lower emissions. As of July 1, 2011, the GHG permit threshold applies to both new construction projects and existing sources. A modification of 75,000 CO₂-e or more makes a change subject to a PSD review. For example, a facility would do a Best Available Control Technology determination and air emission modeling.

The rule defines GHGs as an aggregate group of six gases. These are: Carbon dioxide (CO₂), nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride.

Temporary Rule: The MPCA adopted temporary rules to address GHG permitting on January 24, 2011 under Minnesota's Good Cause Exemption, Minnesota Statutes, section 14.388, subdivision 1, clause (2). The statute allows an expedited process if agencies need to comply with a requirement in federal law. The exempt rulemaking process occurred in 2010 to meet the effective date of the federal permit rule of January 2, 2011.

Rules passed under the exempt process of Minnesota Statutes, section 14.388, subdivision 1, clause (2) are only good for 2 years. Therefore, the MPCA is beginning a traditional rulemaking process to replace the temporary rules with permanent rules.

Persons Affected: Minnesota is a delegated state for the PSD program. This means that the new federal PSD permit requirement is effective here immediately. No rule changes are needed to begin incorporating GHGs into PSD permits.

However, Minnesota's Part 70 permit rule refers to the Clean Air Act for applicability. The existing rule language needs to be revised permanently to conform to the new threshold in the federal rule. Additionally requirements for registration permits, capped permits and insignificant activities may need to be modified to ensure that facilities are permitted appropriately under the new federal law.

Statutory Authority: The MPCA's authority to adopt and implement the new rules is found in Minnesota Statutes, section 116.07, subdivision 4 which can be found at: <https://www.revisor.leg.state.mn.us/statutes/?id=116.07>: This provision authorizes the MPCA to adopt rules "for the prevention, abatement, or control of air pollution."

Public Comment: Affected and interested persons or groups may submit comments or information on the MPCA's proposal to adopt these permanent rules in writing or orally until 4:30 p.m. on September 28, 2011. The MPCA does not contemplate appointing an advisory committee to comment on these rules.

Public Informational Meeting: The MPCA will host a public informational meeting pertaining to this rulemaking on September 29, 2011 at the MPCA, 520 Lafayette Road N. St. Paul, in the boardroom central from 1:00 to 4:00 pm. If you plan to attend the public informational meeting you will need to first sign in and show a photo ID to security located at the north side of the MPCA building which is the main entrance to the agency. The MPCA does provide limited free parking for visitors. If visitor parking is full you may need to park off site. If you park in MPCA visitor parking you will also need to register your vehicle with security so it will not be towed. MPCA parking maps are available at: <http://www.pca.state.mn.us/index.php/view-document.html?gid=129>.

Rule Drafts: The MPCA is in the process of preparing draft permanent rules. The temporary rule is available on the MPCA's air rulemaking web site at <http://www.pca.state.mn.us/yhiz49d>.

Agency Contact Person: Written comments on the MPCA's proposal to adopt permanent rules on GHG permitting and housekeeping changes, questions, requests to receive a draft of the permanent rules when they are available, and requests for more information on the rule amendments should be directed to: Barbara Conti at the MPCA, 520 Lafayette Road North, Saint Paul, Minnesota, 55155-4194, Phone: 651-757-2288, Fax: 651-296-8676, and may also be directed by *email*: barbara.conti@state.mn.us. TTY users may call the MPCA at TTY 651-292-5332 or 1-800-657-3864.

Rulemaking Mailing List: You may request to be included in future mailings and updates specifically for this rulemaking. You may also request to be added to the MPCA's general rulemaking mailing list to receive notices of all rule efforts the MPCA is working on. Either request should be directed to: Shane Hanly at the MPCA, Phone: 651-757-2066, Fax: 651-297-8676, and may also be directed by e-mail: shane.hanly@state.mn.us. TTY users may call the MPCA at TTY 651-292-5332 or 1-800-657-3864.

Alternative Format: Upon request, this Request for Comments can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact the agency contact person at the address or telephone number listed above.

Note: Comments received in response to this notice may not necessarily be included in the formal rulemaking record when a proceeding to adopt rules is started. The MPCA is required to submit to the administrative law judge reviewing the rules only those written comments received in response to the rules after they are formally proposed for adoption in the State Register.

Paul Aasen, Commissioner
Minnesota Pollution Control Agency