

1 Pollution Control Agency

2

3 Adopted Permanent Rules Relating to Air Quality Definitions and  
4 Emission Offsets

5

6 Rules as Adopted

7 7005.0100 DEFINITIONS.

8 Subpart 1. to 4. [Unchanged.]

9 Subp. 4a. **Commenced, commencement.** "Commenced" or  
10 "commencement" means that an owner or operator has:

11 A. Begun, or caused to begin, a continuous program of  
12 actual on-site construction, modification, or reconstruction  
13 activities, to be completed within a reasonable time; or

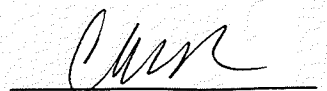
14 B. Entered into binding agreements or contractual  
15 obligations, which cannot be canceled or modified without  
16 substantial loss to the owner or operator, to undertake a  
17 program of actual construction, modification, or reconstruction  
18 to be completed within a reasonable time.

19 Subp. 4b. **Commissioner.** "Commissioner" means the  
20 commissioner of the Pollution Control Agency.

21 Subp. 5. **Construction.** "Construction" means any physical  
22 change or change in the method of operation, including  
23 fabrication, erection, installation, demolition, or modification  
24 of an emission facility, emissions unit, or stationary source  
25 that would result in a change in actual emissions. These  
26 activities include site clearance, grading, dredging,  
27 landfilling, installation of building supports and foundation,  
28 laying of underground pipework, and construction of permanent  
29 storage structures. With respect to a change in method of  
30 operating, this term refers to those on-site activities other  
31 than preparation activities that mark the initiation of the  
32 change.

33 Subp. 6. to 8. [Unchanged.]

34 Subp. 8a. **Criteria pollutant.** "Criteria pollutant" means  
35 any of the following: sulfur dioxide, particulate matter,



1 nitrogen oxides, carbon monoxide, ozone, lead, and any other  
2 pollutants for which national ambient air quality standards have  
3 been established in Code of Federal Regulations, title 40, part  
4 50, as amended, or for which state ambient air quality standards  
5 have been established in parts 7005.0010 to 7005.0080.

6 Subp. 9. [See Repealer.]

7 Subp. 10. [Unchanged.]

8 Subp. 10a. [See Repealer.]

9 Subp. 10b. **Emissions unit.** "Emissions unit" means each  
10 activity that emits or has the potential to emit any air  
11 contaminant or pollutant. This includes each piece of  
12 equipment, machinery, device, apparatus, activity, or any other  
13 means whereby an emission is caused to occur or has the  
14 potential to occur.

15 Subp. 11. and 11a. [Unchanged.]

16 Subp. 11b. **Federally enforceable.** "Federally enforceable"  
17 means enforceable by the administrator of the United States  
18 Environmental Protection Agency. Federally enforceable  
19 limitations, conditions, and requirements include requirements  
20 in or developed pursuant to Code of Federal Regulations, title  
21 40, parts 60 and 61, requirements within any applicable state  
22 implementation plan, and any permit requirements established  
23 according to Code of Federal Regulations, title 40, section  
24 51.166 or 52.21, or Code of Federal Regulations, title 40, part  
25 51, subpart I.

26 Subp. 11c. **Fugitive emissions.** "Fugitive emissions" means  
27 pollutant discharges that could not reasonably pass through a  
28 stack, chimney, or other functionally equivalent opening.

29 Subp. 24. to 35. [Unchanged.]

30 Subp. 35a. **Potential emissions, potential to emit.**

31 "Potential emissions" or "potential to emit" means the maximum  
32 capacity while operating at the maximum hours of operation of an  
33 emissions unit, emission facility, or stationary source to emit  
34 a pollutant under its physical and operational design. Any  
35 physical or operational limitation on the capacity of the  
36 stationary source to emit a pollutant, including air pollution

1 control equipment and restriction on hours of operation or on  
2 the type or amount of material combusted, stored, or processed  
3 must be treated as part of its design if the limitation or the  
4 effect it would have on emissions is:

5       A. federally enforceable with respect to permits for  
6 construction, modification, or reconstruction; or

7       B. enforceable by the state with respect to permits  
8 not included in item A.

9       Secondary emissions must not be counted in determining the  
10 potential to emit of an emissions unit, emission facility, or  
11 stationary source.

12       Subp. 35b. to 35d. [Unchanged.]

13       Subp. 36a. **Secondary emissions.** "Secondary emissions"  
14 means emissions that would occur as a result of the construction  
15 or operation of a major stationary source or major modification,  
16 but do not come from the major stationary source or major  
17 modification itself. Secondary emissions include emissions from  
18 any offsite support facility which would not be constructed or  
19 increase its emissions except as a result of the construction or  
20 operation of the major stationary source or major modification.  
21 Secondary emissions do not include any emissions that come  
22 directly from a mobile source, such as emissions from the  
23 tailpipe of a motor vehicle, from a train, or from a vessel in  
24 transit.

25       In calculating the net increase in emissions from a  
26 particular physical change or change in the method of operation,  
27 secondary emissions must not be included unless they are  
28 specific, well defined, quantifiable, and impact the same  
29 general area as the stationary source or modification that  
30 causes the secondary emissions.

31       Subp. 37. to 42b. [Unchanged.]

32       Subp. 42c. **Stationary source.** "Stationary source" means  
33 an assemblage of all emissions units and emission facilities  
34 that belong to the same industrial grouping, are located at one  
35 or more contiguous or adjacent properties and are under the  
36 control of the same person (or persons under common control).

1 Emissions units or emission facilities must be considered as  
2 part of the same industrial grouping if they belong to the same  
3 "major group" (that is, which have the same two-digit code) as  
4 described in the Standard Industrial Classification Manual,  
5 1972, as amended by the 1977 Supplement (United States  
6 Government Printing Office Stock Numbers 4101-0066 and  
7 003-005-00176-0, respectively).

8 Subp. 44. [See Repealer.]

9 7005.3020 SCOPE.

10 Parts 7005.3010 to 7005.3060 apply to persons who propose  
11 to construct a major stationary source or major modification in  
12 a nonattainment area and to persons who propose to construct a  
13 major stationary source or major modification the emissions from  
14 which would affect a nonattainment area.

15 7005.3030 DEFINITIONS.

16 Subpart 1. **Scope.** The definitions in part 7005.0100 apply  
17 to the terms used in parts 7005.3010 to 7005.3060 unless the  
18 terms are defined herein. For the purposes of these parts, the  
19 following words have the meanings defined below.

20 Subp. 1a. **Actual emissions.** "Actual emissions" means the  
21 actual rate of emissions of a pollutant from an emissions unit  
22 as determined in accordance with the following conditions:

23 A. Actual emissions as of a particular date equal the  
24 average rate, in tons per year, at which the emissions unit  
25 actually emitted the pollutant during a two-year period that  
26 precedes a particular date and that is representative of normal  
27 stationary source operation. The commissioner shall allow the  
28 use of a different time period upon determining that it is more  
29 representative of normal stationary source operation. Actual  
30 emissions must be calculated using the stationary source's  
31 actual operating hours, production rates, and types of materials  
32 processed, stored, or combusted during the selected time period.

33 B. The commissioner shall presume that the stationary  
34 source's specific allowable emissions for the unit are  
35 equivalent to the actual emissions of the unit unless the

1 commissioner finds that reliable evidence demonstrates that  
2 actual emissions differ from the allowable emissions.

3 C. For any emissions unit that has not begun normal  
4 operations on a particular date, actual emissions must equal the  
5 potential to emit of the unit on that date.

6 Subp. 1b. Affect, affected.

7 A. For a new or modified stationary source proposed  
8 to be located in a nonattainment area, "affect" or "affected"  
9 means that the emissions from the new or modified stationary  
10 source have ambient air quality impacts which are equal to or  
11 exceed the levels in Code of Federal Regulations, title 40,  
12 section 51.165(b)(2), as amended.

13 B. For a new or modified stationary source proposed  
14 to be located adjacent to a nonattainment area, "affect" or  
15 "affected" means that the emissions from the new or modified  
16 stationary source have ambient air quality impacts which are  
17 equal to or exceed the levels in Code of Federal Regulations,  
18 title 40, section 51.165 (b)(2), as amended, at a location  
19 within a nonattainment area that exceeds ambient air quality  
20 standards or will exceed ambient air quality standards due to  
21 the emissions from the new or modified stationary source.

22 C. The area that would be affected by a major  
23 stationary source or major modification is defined as follows:

24 (1) For new or modified stationary sources  
25 proposed to be located in nitrogen oxide or ozone nonattainment  
26 areas or in an air quality region adjacent to a nitrogen oxide  
27 or ozone nonattainment area, the area that would be affected by  
28 the nitrogen oxide or ozone emitted by the new or modified  
29 stationary source is the nonattainment area in which the new or  
30 modified stationary source is located or to which it is adjacent.

31 (2) For a new or modified stationary source  
32 proposed to be located in an area designated as nonattainment  
33 for a criteria pollutant not listed in item-A subitem (1), or  
34 located in an air quality region adjacent to that nonattainment  
35 area, the area that would be affected by the nonattainment  
36 criteria pollutant emitted by the new or modified stationary

1 source is the area that modeling analysis performed in  
2 accordance with part 7005.3040, subpart 3, demonstrates to be  
3 affected by the emissions from the new or modified stationary  
4 source.

5 Subp. 2. Air quality control region. "Air quality control  
6 region" means any of the seven geographic areas specified by the  
7 agency for administrative purposes based on jurisdictional  
8 boundaries, urban and industrial concentrations, climate,  
9 meteorology, topography, and other factors affecting the  
10 interchange and diffusion of pollutants in the atmosphere.  
11 These are described in Code of Federal Regulations, title 40,  
12 section 81.324, as amended.

13 Subp. 2a. Allowable emissions. "Allowable emissions"  
14 means the emissions rate of a stationary source calculated using  
15 the maximum rated capacity of the stationary source (unless the  
16 stationary source is subject to federally enforceable limits)  
17 and the most stringent of the following:

18 A. the applicable standards in Code of Federal  
19 Regulations, title 40, parts 60 and 61;

20 B. the applicable state implementation plan emissions  
21 limitation, including those with a future compliance date; or

22 C. the emissions rate specified as a federally  
23 enforceable permit condition, including those with a future  
24 compliance date.

25 Subp. 2b. Ambient air quality standards. "Ambient air  
26 quality standards" means any of the national ambient air quality  
27 standards or state ambient air quality standards relating to the  
28 primary (health related) or secondary (welfare related) air  
29 pollutant concentrations in:

30 A. Code of Federal Regulations, title 40, part 50, as  
31 amended; and

32 B. parts 7005.0010 to 7005.0080.

33 Subp. 3. and 4. [See Repealer.]

34 Subp. 5. Lowest achievable emission rate. "Lowest  
35 achievable emission rate" means, for any stationary source, the  
36 more stringent rate of emissions based on the following:

1           A. the most stringent emission limitation contained  
2 in the implementation plan of any state for the class or  
3 category of stationary source, unless the owner or operator of  
4 the proposed stationary source demonstrates that the limitations  
5 are not achievable; or

6           B. the most stringent emission limitation that is  
7 achieved in practice by that class or category of stationary  
8 source. This limitation, when applied to a modification, means  
9 the lowest achievable emission rate for the new or modified  
10 emission units within the stationary source. In no case shall  
11 the application of this term permit a proposed new or modified  
12 stationary source to emit any pollutant in excess of the amount  
13 allowable under an applicable new source performance standard as  
14 promulgated under section 111 of the Clean Air Act of 1977,  
15 United States Code, title 42, section 7411.

16           Subp. 6. **Major modification.** "Major modification" means  
17 any physical change in, change in the method of operation of, or  
18 addition to a major stationary source which would result in a  
19 significant net emissions increase of any criteria pollutant.  
20 Any net emissions increase that is considered significant for  
21 volatile organic compounds shall be considered significant for  
22 ozone. A physical change or change in the method of operation  
23 does not include:

24           A. routine maintenance, repair, or replacement;

25           B. use of an alternate fuel or raw material in a  
26 stationary source by reason of an order under sections 2(a) and  
27 (b) of the Energy Supply and Environmental Coordination Act of  
28 1974, United States Code, title 15, section 792 (1980), as  
29 amended, or by reason of a natural gas curtailment plan pursuant  
30 to the Federal Power Act, United States Code, title 16, section  
31 791a et seq. (1980), as amended;

32           C. use of an alternative fuel by reason of an order  
33 or rule adopted or issued under section 125 of the Clean Air Act  
34 of 1977, United States Code, title 42, section 7425 (1980), as  
35 amended;

36           D. use of an alternative fuel at a steam generating

1 unit to the extent that the fuel is generated from municipal  
2 solid waste;

3 E. use of an alternative fuel or raw material by a  
4 stationary source which:

5 (1) the source was continuously physically  
6 capable of accommodating before, on, and after December 21,  
7 1976, unless the change would be prohibited under any federally  
8 enforceable permit condition that was established after December  
9 21, 1976, in accordance with Code of Federal Regulations, title  
10 40, section 52.21 or in accordance with an agency rule approved  
11 by the United States Environmental Protection Agency under Code  
12 of Federal Regulations, title 40, part 51, subpart I, or Code of  
13 Federal Regulations, title 40, section 51.166; or

14 (2) the stationary source is approved to use  
15 under a permit issued pursuant to parts 7005.3010 to 7005.3060.

16 F. an increase in the hours of operation or in the  
17 production rate, unless the change is prohibited under any of  
18 the following:

19 (1) a federally enforceable permit condition  
20 established after December 21, 1976, in accordance with Code of  
21 Federal Regulations, title 40, section 52.21 or in accordance  
22 with an agency rule approved by the United States Environmental  
23 Protection Agency under Code of Federal Regulations, title 40,  
24 part 51, subpart I, or Code of Federal Regulations, title 40,  
25 section 51.166;

26 (2) an agency rule;

27 (3) a stipulation agreement;

28 (4) an order of the agency of the United States  
29 Environmental Protection Agency; or

30 (5) a court order; or

31 G. any change in ownership at a stationary source.

32 Subp. 7. [Unchanged.]

33 Subp. 7a. Major stationary source.

34 A. "Major stationary source" means:

35 (1) any stationary source that emits, or has the  
36 potential to emit, 100 tons per year or more of any criteria



1 pollutant; or

2 (2) any physical change, change in the method of  
3 operation, or addition that is proposed to occur at a stationary  
4 source not qualifying under item A as a major stationary source  
5 if the change will result in additional emissions or potential  
6 emissions from the stationary source of 100 tons per year or  
7 more of any criteria pollutant.

8 B. A major stationary source that is major for  
9 volatile organic compounds must be considered major for ozone.

10 C. The fugitive emissions of a stationary source must  
11 not be included in determining whether the stationary source is  
12 a major stationary source unless the stationary source belongs  
13 to one of the categories listed in Code of Federal Regulations,  
14 title 40, section 51.165(a)(iv)(C).

15 Subp. 8. **Net air quality benefit.** "Net air quality  
16 benefit" means that, in the area that would be affected by the  
17 stationary source, offsets proposed to be obtained by a person  
18 pursuant to part 7005.3040, subpart 2 are sufficient to result  
19 in a net reduction, on both a pounds per hour and tons per year  
20 basis, in emissions and a reduction, on balance, in the ambient  
21 concentration of nonattainment criteria pollutants. A reduction  
22 in ambient concentration need not occur at every location  
23 affected by the source, but in no circumstance shall an increase  
24 exceed the levels in Code of Federal Regulations, title 40,  
25 section 51.165(b)(2), at any location within the nonattainment  
26 area that exceeds ambient air quality standards. The  
27 commissioner shall determine whether the net air quality benefit  
28 represents reasonable further progress toward compliance with  
29 ambient air quality standards.

30 Where the major stationary source or major modification is  
31 proposed to be located in a nonattainment area without a state  
32 implementation plan or at a location where the emissions from  
33 the major stationary source or major modification would affect a  
34 nonattainment area without a state implementation plan, the  
35 commissioner shall not find that there will be a net air quality  
36 benefit unless  $Y$  divided by  $X$  is equal to or greater than 1.2,

1 where:

2 X = the potential to emit emissions on a tons per year and  
3 pounds per hour basis to which the major stationary source or  
4 major modification will be limited; and

5 Y = the offsets, equal to the lower of actual or allowable  
6 emissions, on a tons per year and pounds per hour basis, to be  
7 provided by the person proposing the major stationary source or  
8 major modification.

9 Subp. 9. Net increase or decrease in emissions. "Net  
10 increase or decrease in emissions" means any net increase or  
11 decrease in actual emissions from a particular physical change  
12 or change in the method of operation at a stationary source.  
13 Determination of a net increase or decrease in emissions is  
14 governed by the following:

15 A. A net emissions increase is the amount by which  
16 the sum of the following exceeds zero:

17 (1) any increase in actual emissions from a  
18 particular physical change or change in the method of operation  
19 at a stationary source; and

20 (2) any other increases and decreases in actual  
21 emissions at the stationary source that are contemporaneous with  
22 the particular change and are otherwise creditable.

23 B. An increase or decrease in actual emissions is  
24 contemporaneous with the increase from the particular change  
25 only if the increase or decrease in actual emissions occurs  
26 before the date that the increase from the particular change  
27 occurs.

28 C. An increase or decrease in actual emissions is  
29 contemporaneous with the increase from the particular change  
30 only if:

31 (1) it occurs between the date five years before  
32 construction on the particular change commences; and

33 (2) the date that the increase from the  
34 particular change occurs.

35 D. An increase or decrease in actual emissions is  
36 creditable only if the commissioner has not relied on it in

1 issuing a permit for the stationary source in accordance with  
2 rules approved by the United States Environmental Protection  
3 Agency under Code of Federal Regulations, title 40, part 51,  
4 subpart I, where the permit is in effect when the increase in  
5 actual emissions from the particular change occurs.

6 E. An increase in actual emissions is creditable only  
7 to the extent that the new level of actual emissions exceeds the  
8 old level.

9 F. A decrease in actual emissions is creditable only  
10 to the extent that all of the following conditions are met:

11 (1) the old level of actual emissions or the old  
12 level of allowable emissions, whichever is lower, exceeds the  
13 new level of actual emissions;

14 (2) it is federally enforceable at and after the  
15 time that actual construction on the particular change begins;

16 (3) the commissioner has not relied on it in  
17 issuing any permit in accordance with rules approved by the  
18 United States Environmental Protection Agency under Code of  
19 Federal Regulations, title 40, part 51, subpart I, or relied on  
20 it in demonstrating attainment or reasonable further progress;  
21 and

22 (4) it has approximately the same qualitative  
23 significance for public health and welfare as that attributed to  
24 the increase from the particular change.

25 G. An increase that results from a physical change at  
26 a stationary source occurs when the emissions unit on which  
27 construction occurred becomes operational and begins to emit a  
28 particular pollutant. Any replacement unit that requires  
29 shakedown becomes operational only after a reasonable shakedown  
30 period, not to exceed 180 days.

31 Subp. 10. Nonattainment area. "Nonattainment area" means  
32 any geographic region that has been:

33 A. designated by the agency as violating a state  
34 ambient air quality standard; or

35 B. designated by the United States Environmental  
36 Protection Agency as violating a national ambient air quality

1 standard in Code of Federal Regulations, title 40, section  
2 81.324, as amended.

3 Subp. 11. Nonattainment criteria pollutants.

4 "Nonattainment criteria pollutants" means as follows:

5 A. for all nonattainment areas except ozone  
6 nonattainment areas, nonattainment criteria pollutant means the  
7 criteria pollutant for which an area is designated  
8 nonattainment; and

9 B. for ozone nonattainment areas, nonattainment  
10 criteria pollutant means volatile organic compounds.

11 Subp. 12. Offsets. Offsets are governed by the following  
12 provisions:

13 A. "Offsets" means any documented reduction in the  
14 lower of actual or allowable emissions of nonattainment criteria  
15 pollutants that:

16 (1) for pollutants for which national ambient air  
17 quality standards have been established, is federally  
18 enforceable;

19 (2) is achieved after August 7, 1977, or after  
20 the date of completion of the emission inventory used by the  
21 agency in developing the most recent revision to the plan,  
22 whichever is later;

23 (3) occurs prior to start of operation of the  
24 proposed major stationary source or major modification; and

25 (4) if needed to meet the ozone standard, results  
26 from reductions in volatile organic compounds.

27 B. Credit for offsets achieved by shutting down an  
28 existing stationary source or permanently curtailing production  
29 or operating hours below baseline levels is governed by Code of  
30 Federal Regulations, title 40, section 51.165(a)(3)(ii)(C), as  
31 amended.

32 C. Credit for an emission reduction can be claimed to  
33 the extent that the agency has not previously relied on it in  
34 issuing any permit in accordance with parts 7005.3010 to  
35 7005.3060; or the commissioner has not relied on it in  
36 demonstrating to the United States Environmental Protection

1 Agency attainment or reasonable further progress.

2 D. No emissions credit may be allowed for replacing  
3 one volatile organic compound with another of lesser reactivity,  
4 except for those compounds listed in Table 1 of the United  
5 States Environmental Protection Agency's Recommended Policy on  
6 Control of Volatile Organic Compounds in Federal Register,  
7 volume 42, page 35314, July 8, 1977, as amended.

8 E. No emissions credit may be allowed unless  
9 procedures relating to the permissible location of offsetting  
10 emissions have been followed that are at least as stringent as  
11 those in Code of Federal Regulations, title 40, part 51,  
12 appendix S, section IV.D, as amended.

13 F. The offset baseline is either the stationary  
14 source's actual emissions or the potential to emit, as  
15 determined by the state implementation plan in effect on the  
16 date the commissioner determines that a complete application to  
17 construct has been filed with the agency, except that the offset  
18 baseline is the actual emissions of the stationary source from  
19 which offset credit is obtained where:

20 (1) the demonstration of reasonable further  
21 progress and attainment of ambient air quality standards is  
22 based upon the actual emissions from stationary sources located  
23 within a designated nonattainment area; or

24 (2) there is no applicable state implementation  
25 plan approved by the United States Environmental Protection  
26 Agency, or the state implementation plan does not contain an  
27 emissions limitation for that stationary source or stationary  
28 source category.

29 G. If the emissions limit under the applicable state  
30 implementation plan allows greater emissions than the potential  
31 to emit of the stationary source, emissions credit must be  
32 allowed only for control below the potential to emit of the  
33 stationary source.

34 H. For an existing fuel combustion source, credit  
35 must be based on the lower of actual or allowable emissions  
36 under the applicable state implementation plan for the type of

1 fuel being burned at the time the application to construct is  
2 filed. If the existing stationary source commits to switch to a  
3 cleaner fuel at some future date, emissions offsets based on the  
4 cleaner fuel must not be credited unless the permit is  
5 conditioned to require the use of a specified alternative  
6 control measure that would achieve the same degree of emissions  
7 reductions should the stationary source switch back to a dirtier  
8 fuel at some date. The commissioner shall not grant emissions  
9 offset credit for fuel switches unless the owner or operator of  
10 the fuel combustion source has demonstrated that adequate  
11 long-term supplies of the cleaner fuel are available.

12 Subp. 13. **Plan, state implementation plan.** "Plan" or  
13 "state implementation plan" means any state air quality control  
14 laws, rules, permits, stipulation agreements, and procedures  
15 adopted or issued by Minnesota to ensure compliance with ambient  
16 air quality standards and approved by the United States  
17 Environmental Protection Agency under section 110 of the Clean  
18 Air Act, United States Code, title 42, section 7410.

19 Subp. 14. [See Repealer.]

20 Subp. 14a. **Reasonable further progress.** "Reasonable  
21 further progress" means regular or annual incremental reductions  
22 in emissions of the applicable air pollutant that:

23 A. the administrator of the United States  
24 Environmental Protection Agency has determined are sufficient to  
25 provide for attainment of the applicable national ambient air  
26 quality standard in Code of Federal Regulations, title 40, part  
27 50; and

28 B. the commissioner has determined are sufficient to  
29 provide for attainment of the applicable state ambient air  
30 quality standards in parts 7005.0010 to 7005.0080.

31 Subp. 15. to 19. [See Repealer.]

32 Subp. 19a. **Significant emissions increase.** "Significant  
33 emissions increase" means a net increase in emissions or the  
34 potential of a stationary source to emit any of the listed  
35 pollutants that would equal or exceed any of the rates of  
36 emissions in Code of Federal Regulations, title 40, part 51,

1 Appendix S, Part II.A.10(i), as amended. Any net emissions  
2 increase that is considered significant for volatile organic  
3 compounds must be considered significant for ozone.

4 Subp. 20. Volatile organic compounds. "Volatile organic  
5 compounds" means any organic compound that participates in  
6 atmospheric photochemical reaction; that is, any organic  
7 compound other than those which the United States Environmental  
8 Protection Agency has designated as having negligible  
9 photochemical reactivity. Volatile organic compounds must be  
10 measured by a reference method, an equivalent method, an  
11 alternative method, or by procedures specified under Code of  
12 Federal Regulations, title 40, part 60. In cases where a  
13 reference method, equivalent method, or alternative method also  
14 measures nonreactive organic compounds, an owner or operator may  
15 exclude the nonreactive organic compounds when determining  
16 compliance with a standard. As used in parts 7005.3010 to  
17 7005.3060, the term "volatile organic compounds" does not  
18 include:

- 19 A. Methane;
- 20 B. Ethane;
- 21 C. 1,1,1-Trichloroethane (Methyl Chloroform);
- 22 D. Trichlorotrifluoroethane (Freon 113);
- 23 E. Methyl chloroform;
- 24 F. Methylene Chloride;
- 25 G. Trichlorofluoromethane (CFC-11);
- 26 H. Dichlorodifluoromethane (CFC-12);
- 27 I. Chlorodifluoromethane (CFC-22);
- 28 J. Trifluoromethane (FC-23);
- 29 K. Trichlorotrifluoroethane (CFC-113);
- 30 L. Dichlorotetrafluoroethane (CFC-114);
- 31 M. Chloropentafluoroethane (CFC-115);
- 32 N. any other compound listed in table 1, as amended,  
33 of the United States Environmental Protection Agency's  
34 Recommended Policy on Control of Volatile Organic Compounds,  
35 Federal Register, volume 42, page 35314, July 8, 1977; or  
36 O. any other compound determined by the United States

1 Environmental Protection Agency to be negligibly photochemically  
2 reactive. These determinations are published in the Federal  
3 Register.

4 7005.3040 CONDITIONS FOR PERMIT.

5 Subpart 1. In general. No person shall commence  
6 construction of a major stationary source or major modification  
7 in a nonattainment area or at a location where the emissions  
8 from the new or modified stationary source would affect a  
9 nonattainment area without obtaining an air emission permit and  
10 satisfying the conditions in subparts 2 to 4. All permits  
11 issued for major stationary sources or major modifications in a  
12 nonattainment area or at a location that would affect a  
13 nonattainment area shall contain the conditions in subpart 5.

14 Subp. 2. Requirement to obtain offsets. Before  
15 commencement of construction of a major stationary source or  
16 major modification in a nonattainment area or at a location  
17 where the emissions from the new or modified stationary source  
18 would affect a nonattainment area and in order to achieve  
19 reasonable further progress, the owner or operator of that major  
20 stationary source or major modification shall obtain offsets for  
21 emissions of nonattainment criteria pollutants for which the  
22 construction or modification will result in a significant net  
23 emissions increase.

24 Subp. 3. Requirement to demonstrate a net air quality  
25 benefit. Before commencement of construction of a major  
26 stationary source or major modification in a nonattainment area  
27 or at a location where the emissions from the new or modified  
28 stationary source would affect a nonattainment area, the permit  
29 applicant shall demonstrate that the offsets to be provided are  
30 sufficient to result in a net air quality benefit, as defined in  
31 part 7005.3030, subpart 8.

32 A. For major stationary sources or major  
33 modifications located or proposed to be located in nitrogen  
34 oxide or ozone nonattainment areas, or at a location where the  
35 emissions from the new or modified stationary source would



1 affect a nitrogen oxide or ozone nonattainment area, a permit  
2 applicant need not perform a modeling analysis to demonstrate  
3 net air quality benefit but shall submit to the agency a  
4 detailed statement of all information that the commissioner  
5 needs in order to be able to determine whether a net air quality  
6 benefit will result from the construction or modification.

7           B. Except as provided in item C, for major stationary  
8 sources or major modifications located or proposed to be located  
9 in nonattainment areas other than nitrogen oxide or ozone  
10 nonattainment areas, or at a location where the emissions from  
11 the new or modified stationary source would affect a  
12 nonattainment area other than a nitrogen oxide or ozone  
13 nonattainment area, a permit applicant shall perform a modeling  
14 analysis to determine whether the offsets to be provided are  
15 sufficient to result in a net air quality benefit, shall analyze  
16 the data obtained and shall submit to the agency the modeling  
17 data, the modeling analyses, a detailed description of the  
18 system of continuous emission reduction planned, and emission  
19 estimates made, together with any other information that the  
20 commissioner needs in order to be able to determine whether a  
21 net air quality benefit will result from the construction or  
22 modification. All modeling shall be performed in accordance  
23 with "Guidelines on Air Quality Models" (EPA-450/2-78-027R,  
24 United States Environmental Protection Agency, Office of Air  
25 Quality Planning and Standards, July 1986, as amended by  
26 supplemental updates) or methods that the commissioner finds to  
27 be comparably reliable.

28           C. If a major stationary source or major modification  
29 is located or proposed to be located in a nonattainment area  
30 other than a nitrogen oxide or ozone nonattainment area, or at a  
31 location where the emissions from the new or modified stationary  
32 source would affect a nonattainment area other than a nitrogen  
33 oxide or ozone nonattainment area, the permit applicant is  
34 exempt from the requirement to perform a modeling analysis to  
35 demonstrate net air quality benefit if all of the following  
36 conditions are met:

1 (1) the emission offsets are obtained from an  
2 existing stationary source on the same premises or within 250  
3 meters of the new or modified stationary source;

4 (2) the pollutants increased do not disperse from  
5 any emissions unit with a lower effective plume height than the  
6 emissions unit from which the decrease in pollutants is obtained.  
7 Lower effective plume height must be determined according to  
8 "Guidelines on Air Quality Models," adopted by reference in  
9 subpart 8; and

10 (3) the offset is equal to or greater than 120  
11 percent of the potential to emit of the proposed major  
12 stationary source or major modification.

13 A permit applicant exempt from the requirement to perform a  
14 modeling analysis must demonstrate net air quality benefit in  
15 the manner described in item A.

16 Subp. 4. Requirement for compliance. Before issuance of  
17 an agency permit to construct or modify a major stationary  
18 source or major modification in a nonattainment area or at a  
19 location where the emissions from the new or modified stationary  
20 source would affect a nonattainment area, the permit applicant  
21 shall demonstrate that all existing stationary sources in  
22 Minnesota which are either owned or operated in whole or in part  
23 by the same person for whom the application is made or which are  
24 operated under the common control of the same person for whom  
25 the application is made are in compliance with or are on a  
26 federally approved compliance schedule to meet all applicable  
27 emission limitations and standards established under the Clean  
28 Air Act, United States Code, title 42, sections 7401 to 7626 and  
29 in the state implementation plan.

30 Subp. 5. Permit conditions. Any permit issued for a major  
31 stationary source or major modification in a nonattainment area  
32 or at a location where the emissions from the new or modified  
33 stationary source would affect a nonattainment area shall  
34 include a provision that:

35 A. Limits emissions from the stationary source as  
36 follows:

1           (1) The owner or operator of a major stationary  
2 source or major modification shall install control equipment  
3 that restricts emissions from the major stationary source or  
4 major modification to the lowest achievable emission rate of the  
5 nonattainment criteria pollutants for which the stationary  
6 source is subject. The permit shall expressly describe the  
7 lowest achievable emission rate for the class or category of  
8 stationary source into which the major stationary source or  
9 major modification falls.

10           (2) The commissioner shall waive the requirement  
11 of an emission rate if the commissioner determines that a  
12 performance standard based on design, equipment, work practice,  
13 operation, maintenance, or other alternative standard is more  
14 practicable than an emission rate.

15           B. States that the offsets that the owner or operator  
16 of the major stationary source or major modification has  
17 obtained in order to be issued a permit under parts 7005.3010 to  
18 7005.3060 are legally enforceable by the agency and federally  
19 enforceable at and after the time the permit is issued.

20           Subp. 6. [See Repealer.]

21           Subp. 7. **Stationary source obligation.** When a particular  
22 stationary source or modification becomes a major stationary  
23 source or major modification solely by virtue of a relaxation in  
24 any enforcement limitation that was established after August 7,  
25 1980, on the capacity of the stationary source or modification  
26 otherwise to emit a pollutant, such as a restriction on the  
27 hours of operation, then the requirements of parts 7005.3010 to  
28 7005.3060 apply to the owner or operator as though construction  
29 had not commenced on the stationary source or modification.

30           Subp. 8. **Incorporation by reference.** The following  
31 publication by the United States Environmental Protection Agency  
32 is incorporated by reference: "Guidelines on Air Quality  
33 Models," EPA-450/2-78-027R, as amended by supplemental updates,  
34 written and published by the USEPA, Office of Air and Radiation,  
35 Office of Air Quality Planning and Standards, Research Triangle  
36 Park, North Carolina 27711. The guidelines are subject to

1 frequent change and are available from the Minnesota State Law  
2 Library, Ford Building, 117 University Avenue, St. Paul,  
3 Minnesota 55155.

4 7005.3050 BANKING.

5 A person who has obtained a reduction in the lower of  
6 actual or allowable emissions a stationary source shall be  
7 permitted to bank that reduction for future use as an offset as  
8 allowed by parts 7005.3010 to 7005.3060 under the following  
9 circumstances, limitations, and conditions.

10 A. In order to be eligible for banking and to assure  
11 that emission trades do not contravene applicable requirements  
12 of the Clean Air Act, the emission reductions shall be final and  
13 enforceable, either through the terms of a stipulation  
14 agreement, permit, or other legal instrument obtained by an  
15 owner of the stationary source or through a permanent, physical  
16 alteration of the stationary source. No person shall cease to  
17 maintain emission reductions that were obtained to provide  
18 offsets for a new or modified stationary source.

19 B. In order to be able to bank reductions in  
20 emissions, the person obtaining those reductions shall report to  
21 the commissioner the amount and location of the banked emissions  
22 and the time at which the banked emissions have become  
23 permanently and finally implemented.

24 C. A person may bank only those reductions in  
25 emissions that:

26 (1) were obtained after August 1977, but before  
27 October 27, 1981, and that were reported to the agency within  
28 six months of October 21, 1981; or

29 (2) are obtained after October 27, 1981, and are  
30 reported within six months after the reductions have become  
31 final and enforceable.

32 7005.3060 LIMITATION ON USE OF OFFSETS.

33 To the extent that these parts create a program for the use  
34 of offsets or allow persons to purchase or obtain offsets, parts  
35 7005.3010 to 7005.3060 shall not be construed to create a

1 property right that requires compensation from the state should  
2 offsets later become unusable due to a change in an applicable  
3 emission limitation or standard of the agency.

4  
5 REVISOR INSTRUCTION. In Minnesota Rules, chapters 7001 and  
6 7005, change "director" to "commissioner" where it refers to the  
7 chief executive officer of the Pollution Control Agency.

8  
9 REPEALER. Minnesota Rules, parts 7005.0100, subparts 9,  
10 10a, and 44; 7005.3030, subparts 3, 4, 14, 15, 16, 17, 18, and  
11 19; and 7005.3040, subpart 6, are repealed.