



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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December 13, 2010

Norma Coleman
Minnesota Pollution Control Agency
Environmental Analysis and Outcomes Division
520 Lafayette Road North
St. Paul, MN 55155

RE: Review of the Proposed Exempt Temporary Rules of the State Pollution Control Agency Relating to Air Quality Definitions, *Minnesota Rules*, Chapter 7005, and Permits and Offsets, *Minnesota Rules*, Chapter 7007; Request for Review and Approval of Good Cause Exempt Rules Under Minnesota Statutes, Section 14.388.

OAH Docket No. 11-2200-21731-1.
Governor's Tracking No. AR 543.

Dear Ms. Coleman:

This is to inform you that the adoption of the above-entitled rules has been approved as to legality on December 13, 2010, under Minnesota Statutes, sections 14.386 and 14.388, subdivision 1, clause 2. The Administrative Law Judge (ALJ), however, recommends several technical corrections to the rules. The recommendations are not defects in the rules, but are merely recommendations for correction to the rules that the agency may adopt if it chooses to do so.

The five-business-day comment period for these proposed rules ended at 4:30 p.m. on December 6, 2010. The Office of Administrative Hearings (OAH) received nine public comments.

Part 7007.0150, subpart 1, item E

Based on the public comments, the Pollution Control Agency (Agency) wishes to correct an error in the proposed rules by making the following correction to part

7007.0150, subpart 1, item E: "~~By January 2, 2011~~ July 1, 2011, an owner or operator holding any existing part 70 or state facility permit must calculate whether the facility's potential to emit greenhouse gases meets or exceeds the permit threshold for greenhouse gases in part 7007.0200, subpart 2." This change is necessary because the rule as proposed misstates the federal law. Accordingly, the ALJ approves this revision in the proposed rules.

Part 7007.0200, subpart 2, item B

By letter dated December 6, 2010, the Minnesota Center for Environmental Advocacy (MCEA) recommended the following change to the proposed rules at subpart 2, defining "major sources:"

A major stationary source of air pollutants, as defined in section 302 of the act . . . , that directly emits or has the potential to emit, 100 tons per year or more of any air pollutant other than greenhouse gas emissions (including any major source of fugitive emissions or any such pollutant, as determined by rule by the administrator)

The suggested change aligns the rule language with the Agency's objective of exempting greenhouse gas emitters who emit between 100 and 100,000 tons per year of greenhouse gases. The ALJ agrees with the MCEA's comment and recommends that the Agency make this change.

Part 7007.1130, subpart 3, item M

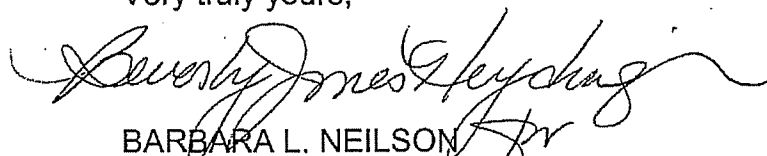
The ALJ recommends the following addition to the language proposed in part 7007.1130, subpart 3, item M, to maintain consistent terminology throughout the proposed rules and to avoid confusion among regulated parties: "If the stationary source determined eligibility in the permit application, in whole or in part, by calculating actual emissions as CO₂e of hydrofluorocarbons, perfluorocarbons, nitrous oxide, and sulfur hexafluoride, purchased or used . . . , the owner or operator must"

Effective Date

The Agency proposes to adopt these rules under clause 2 of the good cause exempt rulemaking provisions found in Minn. Stat. § 14.388. Clause 2 allows an agency to utilize this exemption when it seeks to comply with a federal law in a manner that does not allow for compliance with sections 14.14 to 14.28. Rules adopted under clause 2 are effective for a period of two years. The ALJ recommends that the Agency add language at the end of the proposed rules regarding an effective date, as follows: "These proposed rules are effective for a period of two years from publication in the State Register."

With the approval of the adoption of these rules, our office is sending this letter to the Agency for its consideration of the suggested technical corrections. **Please contact Maria Pretzer at (651) 361-7841 with any questions and to inform OAH whether the Agency intends to adopt the recommendations discussed above.**

Very truly yours,



BARBARA L. NEILSON
Administrative Law Judge

Enclosures

cc: Office of the Attorney General
Legislative Coordinating Commission
Office of the Revisor of Statutes
Office of the Governor