

MINNESOTA POLLUTION CONTROL AGENCY

Majors and Remediation Division

STATEMENT OF NEED AND REASONABLENESS

Proposed Rules Governing Air Emission Permits to be codified in *Minnesota Rules* Chapter 7007, with conforming amendments to Chapters 7011 and 7019.

I. INTRODUCTION

ABBREVIATIONS USED IN THIS DOCUMENT:

ANSI - American National Standards Institute

CFR – Code of Federal Regulations

CO – Carbon monoxide

EMS – Environmental Management System

EPA – U.S. Environmental Protection Agency

HAP – Hazardous air pollutant

IAF - International Accreditation Forum

IEC - International Electrotechnical Commission

ISO - International Organization for Standardization

MAAQS – Minnesota Ambient Air Quality Standards

MACT – Maximum Achievable Control Technology

MPCA – Minnesota Pollution Control Agency

NAAQS – National Ambient Air Quality Standards

NAP - National Accreditation Program

NESHAP – National Emission Standard for Hazardous Air Pollutants

NO₂ – Nitrogen dioxide

NO_x – Nitrogen oxides

NSPS – New Source Performance Standard

NSR – New Source Review

Pb - Lead

PM-10 – Particulate matter smaller than 10 microns

PSD – Prevention of Significant Deterioration

PTE – Potential to emit

RAB - Registrar Accreditation Board

SIC – Standard Industrial Classification Code

SIP – State Implementation Plan

SO₂ – Sulfur dioxide

SONAR – Statement of Need and Reasonableness

VOC – Volatile organic compound

This rulemaking proposes new rules (to be codified in Minn. R. ch. 7007) that provide two new options for the permitting of certain air emission facilities in the state.

Both options will be available to qualifying facilities that have air emissions that are less than the federal thresholds for Title V air emission permits. The “Capped Emissions Permit” option allows facilities that comply with its requirements and have emissions that are less than or equal to 90 percent of federal thresholds to obtain a permit to operate under the emission caps and compliance requirements set forth in the capped permit rule. The other option allows air emission facilities that employ qualifying EMS as a tool to manage their compliance, to operate under emission caps set in individually issued state permits, without the need for advance approval of certain changes that they may make at their facilities from time to time.

The Capped Emissions Permit proposed rule would establish conditions under which facilities with actual emissions less than 90 percent of federal permitting thresholds would be allowed to apply for and obtain an air emissions permit in which the permit requirements are contained in the rule itself. This rule-based state permit would be called a “capped emission permit” or “capped permit”. This rulemaking would offer a permitting option that applies all applicable requirements to non-complex facilities for which site-specific, customized permit conditions are not necessary. As long as the facility remains below the thresholds and demonstrates it will continue to meet the requirements of the rule, it may make changes at the facility without requiring a permit amendment from the agency. The MPCA estimates that 100 to 135 facilities may be eligible for the capped permit, although not all of these facilities may choose to apply for this permit option.

The second option allows air emission facilities that employ a qualifying EMS as a tool to manage their compliance, to operate under emission caps set in individually

issued state permits. This rulemaking proposes to offer relief from certain amendment, recordkeeping, and reporting requirements for facilities with a qualifying EMS, to provide a regulatory incentive for small and medium facilities to establish an EMS. An EMS is a comprehensive system to track environmental compliance at a facility, and to identify and correct problems as they may arise. The proposed rules would put into place procedures and requirements for a facility with a qualifying EMS. The impetus for this rulemaking stems from a successful pilot project in 2002 that developed the EMS permit requirements for the IBM facility in Rochester, Minnesota. In order to issue the permit for the IBM facility that included the provisions relevant to the EMS, however, the MPCA had to have a variance proceeding in addition to the permit issuance process. This rulemaking would allow other qualified facilities to receive those same “EMS provisions” without going through a rule variance process. The MPCA estimates that five to ten facilities currently may be eligible for requesting the proposed EMS provisions in their permit.

This rulemaking would add new permit categories to the MPCA air permitting rules for the first time in ten years. In the early-1990s, the MPCA completely revised its air emission permit rules in order to incorporate the requirements of the new federal operating permit program under Title V of the 1990 Clean Air Act Amendments. At the same time, the MPCA revised its state permit rules to contain two categories of state permit: rule-based registration permits for the smallest (and most numerous) air emission sources and state permits for the remaining sources that were below the new, lower,

federal thresholds.¹ Also in response to the 1990 Clean Air Act Amendments, the MPCA filed several State Implementation Plans that consisted of permit limits on stationary sources of air pollution that were needed to demonstrate attainment with the National Ambient Air Quality Standards in all geographic areas of the state.

As the MPCA has gained experience implementing its new permit program, the MPCA has found implementation of the federal Title V operating permits program, which applies to the largest sources in the state, to be more complex and time-consuming than anticipated. At the same time, the MPCA has reviewed its emissions inventories and found that approximately 100 to 135 small- and medium-sized stationary sources would be good candidates for a rule-based permit because their applicable requirements, compliance with ambient air quality standards and compliance demonstration requirements can be appropriately reflected in the capped emissions permit rule. Finally, the MPCA has successfully developed a pilot state permit for facilities that have an EMS, and now seeks to make that option available for other similar facilities.

II. STATUTORY AUTHORITY

The MPCA's statutory authority to adopt these rules is set forth in Minn. Stat. § 116.07, subs. 4, 4a and 4b.

The portion of Section 116.07, subdivision 4, relevant to air quality regulation reads as follows:

¹ Before the 1990 Clean Air Act Amendments, federal permitting requirements applied only to sources that exceeded the thresholds of the New Source Review program. New Source Review applies to sources with potential emissions that exceed 250 tons per year for criteria pollutants. Title V of the 1990 Amendments established a federal operating permits program for the first time, with a threshold of 100 tons per year for criteria pollutants.

Subd. 4. Rules and standards. 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.

The portion of Section 116.07, subdivision 4a, relevant to air quality permitting reads as follows:

"Subd. 4a. Permits. (a) The pollution control agency may issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the emission of air contaminants, or for the installation or operation of any emission facility, air contaminant treatment facility, treatment facility, potential air contaminant storage facility, or storage facility, or any part thereof, or for the sources or emissions of noise pollution."

Under the above cited statutes, the MPCA has the necessary statutory authority to adopt the proposed rules. All statutory authority was granted before January 1, 1996, therefore Minn. Stat. § 14.125 does not apply nor does Minn. R. 1400.2070, subp. 1(D).

III. ALTERNATIVE FORMAT

Upon request, this SONAR can be made available in a different format, such as large print, Braille, or cassette tape. To make a request, contact Norma Coleman at the Minnesota Pollution Control Agency, 520 Lafayette Road, St. Paul, MN, 55155-4194; phone (651) 296-7712; fax (651) 297-8676; or e-mail: norma.coleman@pca.state.mn.us. TTY users may call the MPCA at (651) 292-5332 or 1 (800) 657-3864.

IV. MINNESOTA STATUTES, SECTION 14.131 REQUIREMENTS

Minn. Stat. § 14.131, sets out seven factors for a regulatory analysis that must be

addressed in the SONAR, based on information that is ascertainable by reasonable effort.

“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”

This MPCA rulemaking potentially affects any person or facility that elects to apply for the proposed alternative to an individual (site-specific) state air permit, called a capped permit, or to request EMS provisions in their individual state permit. Since application for the proposed permitting alternatives is optional and the MPCA is only adding an option to an individual state permit and not removing or changing any existing permitting options, the only persons or facilities affected are those that elect to apply for either of these options. The MPCA estimates that up to 135 facilities would be eligible to consider applying for the capped option and up to 10 facilities would be eligible to consider applying for EMS provisions in an individual state permit.

The new rule will impose the same environmental limitations on sources that obtain the capped permit, but may result in lower permitting cost to affected facilities compared to the cost to obtain a federal part 70 permit or individual state permit. Additional cost savings could result from the facility’s ability to make changes without receiving a permit amendment as long as emission limitations set forth in the rule continue to be met.

“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”

The MPCA resource savings projected as a result of the creation of the capped permit option are expected to be about twice the resources expended in developing this proposed rule, and perhaps more over time. These resource savings are in the permit development and amendment issuance processes. The inspection frequency and priority

given these facilities will stay the same. The MPCA expects the cost of permitting a source requesting EMS provisions in their state permit to be only slightly greater than issuing the same source an individual state permit, because the permit language for the EMS provisions will be “boiler plate” and thus easy to incorporate. As permit holders, capped and EMS facilities will still be subject to permit fees based on their actual emissions, leaving the state revenue neutral.

“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”

This rule is expected to result in less time and money spent by both the permit applicant and the MPCA, while imposing the same environmental limitations as would be found in individually developed permits for the eligible facilities. This rule was developed to establish a less costly and time-consuming way to issue permits to small- and medium-size facilities that apply for and meet the requirements of the rule-based capped emissions permit. For facilities that qualify for a capped permit, overall permitting costs should be less and it should take less time to receive a permit than they experience under current MPCA rules.

As compared to other individual state permits, the state permit with EMS provisions may take slightly more time and resources for applicants and MPCA to complete. However, over the lifetime of the permit (which is non-expiring), savings from reduced administrative cost for both the source and the MPCA will exceed the extra upfront cost, and the source may accrue time-to-market and opportunity cost savings at an even greater rate.

Thus, the MPCA has found there is no less costly or less intrusive method to achieve the purpose of the proposed rules which create the capped permit and the opportunity for EMS provisions in an individual state permit.

“(4) a 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 MPCA considered whether any additional general permits could be developed to handle these types of facilities, and found that the eligible group consisted of too many varied source categories with too few sources in each category to make it reasonable to develop a series of general permits instead of the capped emission permit rule. The MPCA could incorporate some of the concepts in the rule into individually issued permits, but that would be much more resource-intensive for no environmental benefit. Neither of these approaches meet the objectives for the rule described in the statement of need, below.

The MPCA found that a significant number of small- and medium-size stationary sources need permits that apply all applicable requirements to the facility (like New Source Performance Standards, which are already independent rule requirements for these sources)² and that put into place an emissions cap to create a federally enforceable emissions limit that keeps emissions at the facility below federal permitting thresholds. Such caps are usually set at 90-95 percent of federal permit thresholds to allow a margin of safety before the facility becomes subject to Title V permitting requirements. These

² Minn. R. ch. 7011 contains most of these requirements. Chapter 7011 includes the state performance standards for different types of sources, and incorporates by reference over 100 federal standards that apply to a wide variety of air emission source types. These requirements are enforceable as state rules, and also enforceable as federal rules. Individual site-specific permits also repeat these rule requirements at the same time as the permits establish any needed, site-specific requirements to a facility. Individual permits are not needed to make these underlying rule requirements enforceable against an affected facility.

sources, however, do not have or need any further site-specific conditions limiting their emissions in order to comply with their applicable environmental requirements. Instead of developing over 100 separate individual permits to impose these requirements, the MPCA found that adopting one rule could impose the applicable environmental limits on these facilities.

The MPCA considered creating a rule-based EMS permit, similar to the capped permit, where the permit requirements would be in rule. However, the MPCA found that facilities with an EMS were often more complex and tended to require site-specific conditions which could not be accommodated in a rule-based permit. Therefore, the MPCA opted to do rulemaking to provide some regulatory flexibility in an individual state permit to sources that hold a qualified EMS. In addition, the MPCA initially considered a broader definition of what constituted a qualified EMS. Following discussion with stakeholders, the MPCA concluded that EMSs other than those based on the well-established ISO 14001 standard would be too variable in quality and too difficult and costly for the MPCA to independently verify. Finally, the MPCA also considered an EMS as an eligibility requirement for the capped permit, but concluded that adding EMS requirements to the capped permit option would unreasonably restrict the number of facilities which would use the capped permit option since significantly fewer facilities would adopt an EMS conforming to the ISO 14001 standard, and having an EMS is not a regulatory requirement.

“(5) the 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, businesses, or individuals.”

Permit applicants will experience similar costs in preparing applications for capped emissions permits as they do under current rules. In some cases, applicants may choose to hire a consultant to conduct the ambient air quality assessment that they otherwise might not have needed to perform, so this may cause some additional expense. This expense should be offset by the reduced costs associated with not needing to apply for permit amendments in the future, as long as the facility can still meet the emission limits in the rule after the change. The biggest cost savings, however, will result from the faster and more certain regulatory timeline for MPCA decisions on these permits. For MPCA, the savings will be realized in not needing to prepare as many individually drafted permits. For applicants, cost savings will come from being able to have their permit application acted upon more quickly, with less delay in making and implementing their business plans. Facilities that now currently pay extra to expedite their permit processing under Minn. Stat. 116.07, subd. 4a may be able to reduce costs by no longer needing to pay for MPCA staff overtime or MPCA consultants to obtain expedited review of their applications.

For the EMS permit option, the MPCA is proposing to provide a regulatory benefit for a source's decision to adopt an EMS. To date, the decision to adopt an EMS has typically been made for business reasons. While the availability of additional regulatory flexibility of the EMS permit option may play a role in a source's decision to adopt an EMS, the MPCA expects business needs will continue to be the primary reason. The EMS permit option therefore leverages a decision and resource investment that the source would likely have made anyway, and since the permit is similar to other individual state permits in transactions cost, MPCA does not anticipate that the rule will result in

increased cost to regulated sources. Furthermore, the permit is structured so that the source will not require additional permitting actions in order to continue operations should their EMS status change. The MPCA may incur slightly greater costs in issuing the initial permit, but anticipates decreased lifetime permit costs.

“(6) the probable costs 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 government units, businesses, or individuals.”

The adverse effects of permit backlogs are described in the section on the need for the proposed rule below. For applicants, the cost savings that could come from being able to have their permit application acted upon more quickly, with less delay in making and implementing their business plans, would not be realized. For MPCA, the consequences of not adopting the rule are a continuing permit backlog where many permits are not acted upon in a reasonable time. Not adopting the proposed rule would result in higher resource expense with no accompanying environmental gain.

“(7) an 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”

This proposed rule was designed to meet all requirements for “federal enforceability” required by EPA rules. The proposed rule is consistent with federal rules, policy and guidance for this size of source, and meets EPA requirements for approval of a federally enforceable state operating permits program.

(8) State Regulatory Policy

Minnesota Statutes, section 14.131 requires an agency to include in its SONAR a discussion on how the agency, in developing the rules, considered and implemented the legislative policy supporting performance-based regulatory systems set forth in Minnesota Statutes, section 14.002. Minnesota Statutes, section 14.002, states the following:

“that the legislature finds that some regulatory rules and programs have become overly prescriptive and inflexible, thereby increasing costs to the state, local governments, and the regulated community and decreasing the effectiveness of the regulatory program. Therefore, whenever feasible, state agencies must develop rules and regulatory programs that emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulatory party and the agency in meeting those goals.”

This proposed rule would establish additional permit options for regulated parties to consider using when they need to apply for air emission permits. This proposed rule would give applicants the option of choosing to be able to make changes to meet their business needs as long as they successfully maintain compliance with the emission caps and other applicable environmental requirements that apply to their facility, or the option of choosing to adopt an EMS. By effectively imposing permit limits on this group of eligible sources through this proposed rule, the MPCA can focus its limited permit engineering resources on developing permits for those facilities where more individualized work may be needed due to risk or higher emissions. This proposed rule implements the state regulatory policy described above.

(9) Additional Notification

Minnesota Statutes, section 14.131 requires that an agency include in its SONAR a description of its efforts to provide additional notification to persons or classes or persons who may be affected by the proposed rule or must explain why these efforts were not made.

In May 2003, MPCA staff conducted a survey of potentially eligible facilities. The survey results, and experience with an experimental EMS permit, were used as a framework to solicit comments under this request. Information on the results of this survey and the survey questions can be found on the MPCA website at:
<http://www.pca.state.mn.us/hot/envinnovations.html#survey>. Information on the results

of the IBM EMS permit mentioned above can be found on the MPCA website at:

<http://www.pca.state.mn.us/hot/ibm-emsp permit.html>.

On October 13, 2003, the MPCA published in the *State Register* (28 SR 507) a notice requesting comments on this planned rulemaking. This same notice was also placed on the MPCA's Public Notice Web site and mailed out to persons on the MPCA's rulemaking mailing list established by Minn. Stat. § 14.14, subd.1a. In addition, a mailing of the notice was also sent to more the more than 400 regulated facilities that received the May 2003 survey. Those that indicated an interest in providing input on the draft rulemaking were sent drafts of a concept proposal for the rulemaking and draft rule language electronically. In addition, meetings were held to gather additional input on the rule proposal the weeks of December 15th, 2003 and March 8th, 2004 with representatives from environmental consulting firms, businesses, environmental groups, neighborhood organizations, and local governmental units. Comments received from the various stakeholder parties have been considered by MPCA in development of this rule proposal.

The MPCA intends to send a copy of the Notice of Intent to Adopt and the proposed rules to the following people and organizations:

- a. All parties who have registered with the MPCA for the purpose of receiving notice of rule proceedings as required by Minn. Stat. § 14.14, subd. 1a;
- b. Other interested parties that have contacted the MPCA with an interest in this rule proceeding;
- c. A copy of the notice, proposed rules and SONAR will be posted on the MPCA's Public Notice Web site at (www.pca.state.mn.us).
- d. Permitting section staff at the EPA Region 5 office in Chicago.

The MPCA believes its regular means of notice as required by Minn. Stat. § 14.22, including publication in the *State Register* and on the MPCA's Public Notice Web page will have adequately placed other persons regulated by these rules on notice of this rulemaking.

V. NOTICE TO LEGISLATURE

Minn. Stat. § 14.116 requires an agency to send a copy of the Notice of Intent to Adopt Rules and SONAR to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules. In addition, if the mailing of the notice is within two years of the effective date of the law granting the agency the authority to adopt the proposed rules, the agency shall make reasonable efforts to send a copy of the notice and the SONAR to all sitting legislators who were chief house and senate authors of the bill granting the rulemaking authority. If the bill was amended to include this rulemaking authority, the agency shall make reasonable efforts to send the notice and the SONAR to the chief house and senate authors of the amendment granting rulemaking authority, rather than to the chief authors of the bill.

To comply with the requirements of Minn. Stat. § 14.116 the MPCA plans to send a copy of the notice, proposed rules and SONAR to the chairs and ranking Republican members of the Senate Environment and Natural Resources Committee, Senate Environment, Agriculture and Economic Budget Division and to the chairs and DFL Leads of the House Environment and Natural Resources Policy Committee and House Environment and Natural Resources Finance Committee.

The remaining requirements of Minn. Stat. § 14.116 are inapplicable because the MPCA's statutory authority to adopt and implement the proposed rule amendments is found in Minn. Stat. § 116.07, subs. 4, 4a and 4b, and are not new grants of rulemaking authority as described in section 14.116.

VI. OTHER REQUIRED INFORMATION

A. CONSIDERATION OF ECONOMIC FACTORS

Minnesota Statutes, section 116.07, subdivision 6, states:

In exercising all its powers the pollution control agency shall give due consideration to the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

In the context of determining whether to adopt proposed rules or amendments, the MPCA must consider the impact that economic factors have on the feasibility and practicability of the proposed rules or amendments.

The MPCA must take into account different, sometimes competing goals when engaged in rulemaking proceedings. The MPCA must address budget constraints in all economic sectors and choose among programs and projects that compete for scarce budget resources. Thus, the MPCA must balance the economic or financial limits of persons subject to environmental regulation with the application and enforcement of environmental laws devoted to environmental protection. The MPCA, mindful of this balance, seeks to implement the least-cost regulatory solutions if it does not compromise environmental goals or regulatory responsibilities.

In proposing these rules, the MPCA has given due consideration to economic impacts of implementing the proposed rule amendments. Since the purpose of this rulemaking is to create additional permit options to an individual state permit and the rulemaking does not mandate that a facility use these options, it is the facility's choice whether there is an economic impact as a result of the rulemaking. The MPCA estimates that the cost of preparing an application for these options would be similar or slightly higher than for an individual state permit (currently the only state permit option available to a facility whose emissions are greater than registration permit thresholds). However, the MPCA estimates that overall the permit options will result in lower costs to those regulated under it, as a facility with a capped permit may make changes without requiring an amendment from the agency and provides owners and operators more certainty about their ability to respond to changing business conditions.

B. IMPACT ON FARMING OPERATIONS

Minn. Stat. § 14.111 requires an agency to provide a copy of the proposed rules to the commissioner of agriculture no later than thirty days prior to publication of the proposed rules in the *State Register* if the rules have an impact on farming operations. The requirements of Minn. Stat. § 14.111 are inapplicable because the proposed rules do not affect farming operations.

C. 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 requirements

of Minn. Stat. § 174.05 are inapplicable because the proposed rules do not impact the Department of Transportation.

VII. LIST OF AUTHORS AND WITNESSES

A. Authors

The following MPCA and AG staff participated in the development of this rulemaking and SONAR.

1. Mary Jean Fenske, Majors and Remediation Division, Air Policy Unit
2. Al Innes, Office of Resource Strategic Management, Agencywide Planning and Assistance
3. Peggy Bartz , Majors and Remediation Division, Air Sector Permitting
4. Stuart Arkley, Majors and Remediation Division, Air Policy Unit
5. Andy Ronchak, Office of Resource Strategic Management, Agencywide Planning and Assistance
6. John Seltz, Majors and Remediation Division, Air Policy Unit Supervisor
7. Suzanne Venem, Majors and Remediation Division, Compliance and Enforcement Unit
8. Paul Kim, Environmental Outcomes Division, Environmental Data Management Unit
9. Chun Yi Wu, Environmental Outcomes Division, Environmental Data Management Unit
10. Troy Johnson, Regional Environmental Management Division, Small Business Assistance Program
11. Lisa Herschberger, Environmental Outcomes Division, Risk Evaluation/Air Modeling Unit
12. Greg Pratt, Environmental Outcomes Division, Risk Evaluation/Air Modeling Unit
13. Ann Seha, Assistant Commissioner, Air Policy
14. Stephanie Morgan, Assistant Attorney General

In addition, Chuck Stroebel with the Department of Health assisted in development of the rulemaking.

B. Witnesses

If these rules go to a public hearing, the MPCA anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

1. Ann Seha will testify regarding the overall need and reasonableness of the proposed air quality rules.

2. Mary Jean Fenske will testify regarding the need and reasonableness of the proposed air quality rules, in particular those sections related to the capped permit.
3. Al Innes will testify regarding the need and reasonableness of the proposed air quality rules, in particular those sections related to the state permit with EMS provisions.

VIII. NEED FOR THE RULES

In two major rulemaking efforts in the early 1990s, the MPCA established its current air emissions permit program, codified in Minn. R. ch. 7007. The current program was developed for two reasons: (1) to incorporate into the state program the new requirements governing federal operating permits required by the 1990 Clean Air Act Amendments, and (2) to change the pre-existing state program to enable the MPCA to issue permits to an expanded number of facilities while avoiding historic problems of chronic permit backlogs that characterized the MPCA's state air permit program prior to 1990.

In order to attempt to meet these two objectives, the MPCA incorporated the new federal requirements, and made three major improvements to its air emission permit program. For individual permits, the MPCA replaced one permit amendment procedure with a graduated series of procedures that were more streamlined the smaller the change involved. The requirements in the MPCA's rules for major, moderate, minor and administrative amendments, along with a list of activities with insignificant emissions and a provision to define and allow insignificant modifications, replaced a prior rule that required every change, regardless of its size, to go through a procedure similar to that used only for major amendments today. See Minn. R. 7007.1150-.1500.

A second major change involved the control equipment rule, Minn. R. 7011.0060-.0080. Under federal law, many requirements apply to a stationary source based on its

“potential to emit” (PTE). A source is allowed under federal rule to reduce its PTE to reflect lesser emissions only if there are in place limitations on the source that meet the EPA’s requirements for “federally enforceable” limits.³ By placing emission reduction requirements and appropriate compliance demonstration requirements into state rule, the MPCA efficiently established enforceable restrictions on sources with certain common types of control equipment. In its prior permitting program, the MPCA had to issue individual permit amendments for each source to accomplish the same result.

The third major change involved the registration permit rule, Minn. R. 7007.1110-.1130. This rule created four classes of rule-based permit, with rule requirements that applied all applicable requirements to the large number of small sources in the state that have air emissions less than 50 percent of federal thresholds. These rule requirements meet EPA’s standards for federal enforceability. Placing the requirements for these sources directly into rule effectively restricted the emissions from these facilities. In its prior permitting program, the MPCA had to issue individual permits for each source to accomplish the same result.

All of these changes to the MPCA’s permitting program assured that facilities comply with all applicable environmental requirements, and achieved that result much more efficiently. They also allowed the MPCA to redirect its limited resources to the permitting of the largest sources of emissions, those that require federal operating permits. The MPCA has now implemented its current permit program for ten years, and has been able to reduce, but still has not resolved, its permit backlog. The backlog

³ Even for emission units with installed control equipment, PTE had to be based on maximum uncontrolled emissions unless enforceable conditions required proper operation of the control equipment. As a result, permits often had to be issued to require what was already happening at the source, in order to reduce a facility’s PTE under federal rules.

persists, even though the MPCA has also maximized its use of general permits to regulate multiple sources in the same source category, in addition to the rulemakings described above.⁴ See Minn. R. 7007.1100.

Currently, the MPCA has issued approximately 90 percent of its Title V permits, and hopes to completely issue its first round of these five-year permits in the next year. Unfortunately, this effort has taken ten years to complete. The MPCA has found implementation of the federal Title V operating permits program, which applies to the largest sources in the state, to be more complex and time-consuming than anticipated. EPA, under other parts of the 1990 Clean Air Act Amendments, has issued over 100 regulations that apply more stringent emission requirements on many major sources, and has also adopted much more comprehensive requirements for compliance and emissions monitoring. These requirements are very beneficial to the environment; they also require considerable MPCA staff resources to incorporate into Title V permits.

Under its rule revisions that established the current permit program, all sources in the state had to apply for new permits between January 15, 1995 and February 15, 1996. See Minn. R. 7007.0350. Of the applications received in 1995 to 1996, about 30 Title V permits have not yet been issued, and about 60 state permits have also not been issued. Given the passage of time, and expiration of already issued Title V permits, MPCA is now collecting a backlog of reissuance applications for Title V permits. For many Title V facilities, the MPCA will have to incorporate new, complex federal standards into the reissued permits. At the same time, MPCA staff are not able to start review of

⁴ For example, the MPCA has issued a general permit for sand and gravel operations, covering nearly 100 sources and a general manufacturing general permit covering about 35 sources. The MPCA also adopted rules to efficiently apply specific requirements to asphalt plants and concrete manufacturing plants that it had been formerly writing into individual permits.

applications for construction permits and for permit amendments for periods as long as 60 days after they are received.

The Legislative Auditor's 1991 findings on the adverse effects of the air program permit backlogs still apply today:

“First, businesses want permits in a timely manner so they can start their operations or change production methods on schedule. Unnecessary delays in permit issuance can result in financial loss (23 percent of the permittees surveyed said that permit delays have caused them financial hardships). Second, efficient permitting enhances environmental protection. New permits sometimes contain stricter standards than earlier permits, and many businesses are required to conduct demonstrations of compliance with emission regulations at the time of permit issuance. Permit delays can postpone those standards and compliance demonstrations. Third, some business representatives [say] that for liability purposes, they prefer to operate under the terms of a current permit, rather than an expired permit that has been extended. Finally, an efficient, understandable permitting process makes the agency a more credible regulator.”

“Pollution Control Agency.” Program Evaluation Division, Office of the Legislative Auditor, State of Minnesota (Jan. 1991), p. 33.

This situation led the MPCA to begin the inquiry that has resulted in this proposed rule-based permit. While the permit backlog problem initiated this effort, the MPCA also sought from the beginning a solution that could serve as an incentive for air emission sources to reduce their emissions, as well as maintain an incentive for sources to keep their emissions from growing even as their businesses expand. Such a solution, of

course, had to meet federal enforceability requirements and assure compliance with ambient air quality standards, the main purposes of a state operating permit program. The reasonableness of the rule-based capped emissions permit approach proposed by MPCA is discussed in the next section, below.

With regard to facilities with a qualifying EMS that have emissions below federal thresholds, the MPCA has completed a pilot permit project involving IBM's Rochester facility. In the IBM permit, the MPCA provided relief from certain amendment, recordkeeping, and reporting requirements to allow the permit's compliance demonstration requirements to be compatible with IBM's EMS. This involved application for variances to requirements of MPCA's air emission permitting rules, and required the MPCA to take the permit through both a permit issuance and a rule variance process. Because of the variance, the matter had to be presented to the MPCA Board even though no one commented on the action during the public notice process.⁵ The proposed rule amendments would put into rule the same reduced amendment and recordkeeping permit provisions for EMS facilities that the MPCA staff developed in the IBM pilot project. These EMS facilities applying for a permit with the more flexible provisions wouldn't need to undergo the MPCA's variance process. They only require MPCA Board action if they become the subject of a contested case hearing request during the public comment period or are otherwise placed before the Board, as provided for in Minn. Stat. 116.02, subs. 6-9. The proposed rule also sets in place uniform

⁵ Minn. Stat. 116.02, subd. 6 requires that variances granted in permits be presented to the MPCA Citizens' Board for approval. In the case of IBM, the comment period yielded no comment, but the need to complete the Board process caused the permit to be issued 60 days later than if it had not needed this review. Under the proposed rule amendments, an EMS facility permit would need to go to the Board only if the regular criteria for Board approval of permits are met.

requirements for these type of permits that are absent from the current MPCA permit rules.

In summary, this rulemaking would address these needs: reduce the MPCA's permit backlog, provide an incentive for air emission sources to reduce emissions, provide an incentive for sources to keep emissions from growing as businesses expand, and allow more facilities with a qualifying EMS to receive a regulatory benefit without going through a rule variance process. Thus, the proposed rules are needed.

IX. STATEMENT OF REASONABLENESS

Minn. Stat. ch. 14 requires the MPCA to explain the facts establishing the reasonableness of the proposed rules. "Reasonableness" means that there is a rational basis for the MPCA's proposed action. The reasonableness of the proposed rules is explained in this section, together with an explanation of the need for each change which expands on the general discussion of need in section VIII. This rulemaking consists of two main parts – 1) the capped emission permit and 2) the state permit with EMS provisions. The rule changes are grouped into three major sections in order to help the reader reviewing this document:

- A Discussion of the Reasonableness of the Rules as a Whole;
- A Section-by-section Discussion of the Reasonableness of the Proposed Capped Emissions Permit; and
- A Section –by-section Discussion of the Reasonableness of the Proposed Conditions for a State Permit With EMS Provisions.

A. Reasonableness of the Rules as a Whole – Capped Emission Permit and State Permit with EMS Provisions

In looking at developing a proposal to meet the needs identified in section VIII, the MPCA reviewed its emissions inventory, permit records, and the typical conditions it places into individual state permits. The MPCA found that a significant number of small and medium-sized stationary sources need permits that apply all applicable requirements to the facility (like New Source Performance Standards, which are already independent rule requirements for these sources)⁶ and that put into place an emissions cap to create a federally enforceable emissions limit that keeps emissions at the facility below federal permitting thresholds. Such caps are usually set at 90 to 95 percent of federal permit thresholds to allow a margin of safety before the facility becomes subject to Title V permitting requirements. This proposed rule sets up two new options for small and medium-sized sources which can take caps on actual emissions of criteria pollutants at 75 to 95 percent of federal permit thresholds: the capped permit option and the EMS permit option.

The capped permit option applies to most of these small to medium-sized sources, the majority of which do not have or need any further site-specific conditions limiting their emissions in order to comply with their applicable environmental requirements. This group consists of up to 135 existing stationary sources. Up to 10 small to medium-sized existing sources may be eligible for the EMS permit option, with more sources coming into the option as they adopt qualifying EMSs. Sources eligible for either permit

⁶ Minn. R. ch. 7011 contains most of these requirements. Chapter 7011 includes the state performance standards for different types of sources, and incorporates by reference over 100 federal standards that apply to a wide variety of air emission source types. These requirements are enforceable as state rules, and also enforceable as federal rules. Individual site-specific permits also repeat these rule requirements at the same time as the permits establish any needed, site-specific requirements to a facility. Individual permits are not needed to make these underlying rule requirements enforceable against an affected facility.

option represent more than 30 source types, and thus the general permit tool would not be an efficient way to impose their applicable requirements, because a different general permit would need to be developed for each type of facility, and each one would apply to very few facilities.⁷

The MPCA also found that a significant number of stationary sources that have received or applied for Title V permits have actual emissions that are much lower than federal permitting thresholds, including a number of sources that have actual emissions below 50 percent of federal thresholds, but still apply for individual permits.⁸ The MPCA also found some Title V sources emit at levels not much higher than 100 tons per year, and may find an EMS or rule-based capped emissions permit option an incentive to reduce emissions at their source in order to qualify for a permit requiring less amendment process.

These findings indicated that the MPCA could develop a capped emissions rule-based permit option that would be able to put into rule all of the applicable environmental requirements for a facility and an EMS option that would put into rule EMS provisions for individual state permits, and place a cap on the facility's emissions to impose

⁷ The MPCA reviewed its permit applications several years ago and identified the categories of sources where it would be efficient to develop general permits. These general permits have been developed and put in place.

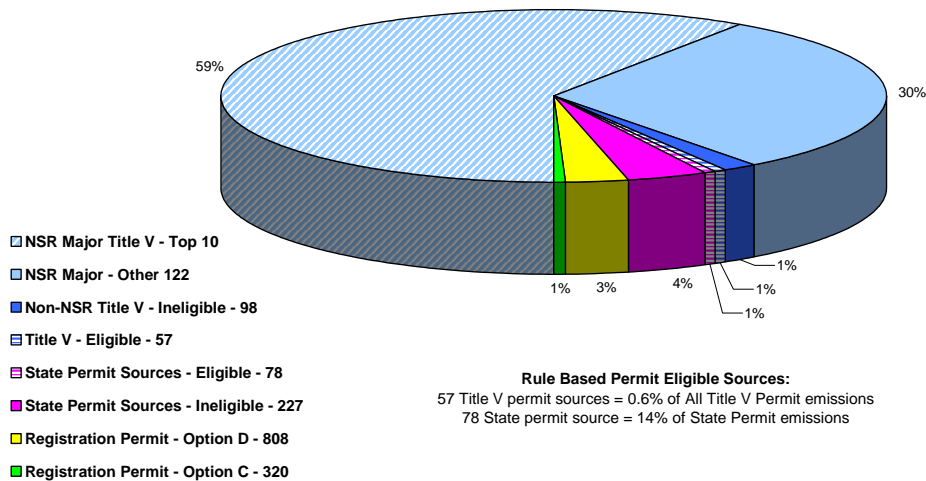
⁸ Sources have elected to obtain more complex permits than their emissions might indicate are necessary for three reasons. First, some sources that are closer in emissions to the registration permit caps are concerned that, should they have a slight increase in emissions, they would have to wait an extended period of time to transition to an individual permit, because of the MPCA's permit backlog. They are concerned that this wait time could jeopardize their ability to proceed with their business plans. The capped emission permit could provide assurance that a timely option is available if needed, encouraging sources to try to limit their emissions to the lower registration permit thresholds. Second, some sources have one pollutant that is slightly above the registration permit thresholds that they cannot reduce further, and so they must apply and wait for an individual state permit, which will authorize the emissions provided the source is meeting all applicable requirements. The capped emissions permit would achieve the same result as the more time-intensive individual permit for these facilities. Finally, some sources, for business operational needs, seek the more complex permits because they want to maintain their current allowable emission levels if those might be needed to accommodate growth in their businesses. These businesses are not likely to choose to apply for the capped emissions permit.

federally enforceable limits under which the facility could operate and make changes without requiring permit amendments. After subtracting the stationary sources that need customized, site-specific limits (and couldn't qualify for the EMS permit option) and the stationary sources that qualify for the MPCA's general permits, the MPCA found that these permit options could effectively regulate up to 135 facilities in the state.

The MPCA also found from its emissions inventory that capped and EMS permit options would effectively regulate a group of sources that are numerous in comparison to their percentage of criteria pollutant emissions. The pie chart below (figure 1) shows the actual emissions from various types of permittees under the MPCA's current air emissions permit program. The key provided with the pie chart also identifies the emissions from the sources, currently subject to either Title V or state individual permit requirements, and the number of facilities involved.

Figure 1

Criteria Air Pollutant Emissions from Point Sources in Minnesota - 2001



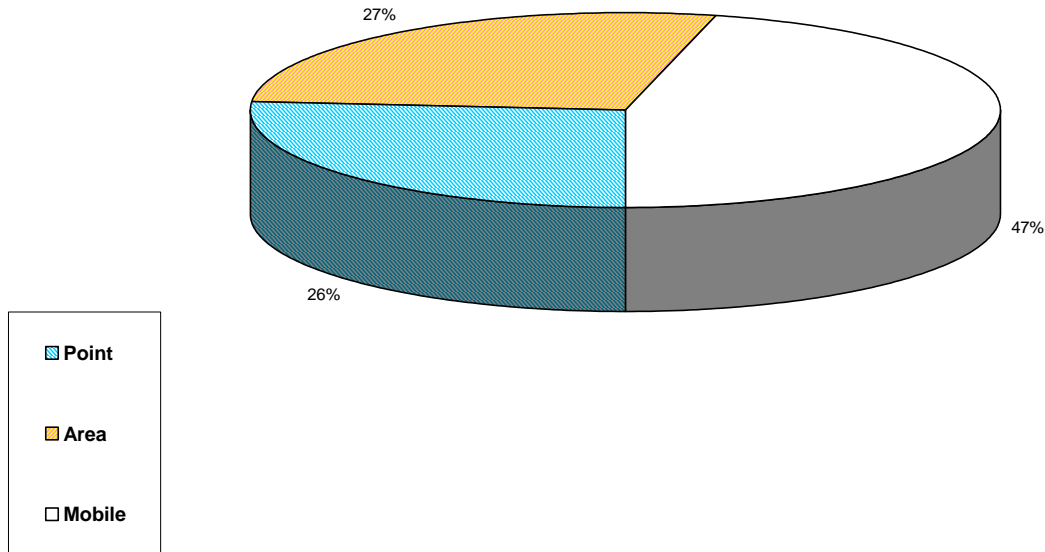
This pie chart shows that the 135 sources potentially eligible for the capped emissions or EMS permits account for about 2 percent of total criteria pollutant emissions from stationary sources in the state that are required to have permits.⁹ If this rule is adopted as proposed, the remaining sources that will continue to be required to obtain (non-EMS) individual, customized permits are the 457 sources that constitute 94 percent of the state's point source emissions.¹⁰ The MPCA also examined its emission inventory of hazardous air pollutant emissions and found that, as is the case with the criteria pollutants, the sources eligible for the new permit options emit 1.3 percent of the hazardous air pollutants emitted by point sources in the state.

The following pie chart (Figure 2) provides additional context, because it shows that point sources account for 26 percent of criteria pollutant air emissions in the state.¹¹ This proposed EMS or rule-based capped emissions permit would apply to facilities that emit about 2 percent of the total point source emissions.

⁹ Figure 1 was compiled by MPCA staff using 2001 criteria pollutant emissions inventory data. The mass of all criteria pollutant emissions (CO, Pb, VOC, SO₂, NO_x, and PM-10) were summed. Each segment represents the percent, rounded to the nearest whole, which facilities with a particular type of permit contribute to the whole. The number next to each permit type is the number of facilities in that permit group.

¹⁰ If this rule is not adopted, then the number of individual permits will be 592, covering one additional percent of point source emissions.

¹¹ Figure 2 was compiled by MPCA staff averaging the contribution to each source category of the criteria pollutants: CO, Pb, VOC, SO₂, NO_x, and PM-10 using 1999 MPCA inventory data.

Figure 2**Criteria Air Pollutant Emissions from Point, Area, Mobile Sources in Minnesota - 1999**

Having identified a sizeable group of stationary sources that could be effectively permitted with an EMS or rule-based capped emissions permit, the MPCA sought to develop permit options that:

- Require compliance with all applicable environmental requirements;
- Provide an incentive for small Title V facilities to consider qualifying for the EMS or rule-based capped emissions permit option; and
- Impose more requirements than registration permits, both to maintain an incentive for stationary sources to find the registration permit preferable (thus complying

with its lower emission caps) and to have additional compliance requirements to assure that source emissions stay under federal thresholds.¹²

To meet these objectives, the MPCA developed the proposed capped emissions permit rule as a true hybrid, with characteristics both like and unlike individual state permits and registration permits. The capped emissions permit includes all applicable environmental requirements in the rule itself, but provides a period for public input on whether a facility is eligible for the permit. It allows a facility to make changes as long as the changes do not affect its eligibility for the capped emissions permit, but includes an additional requirement for a pre-change analysis to verify that the facility will stay under its emission caps and not violate an ambient air quality standard. The recordkeeping, reporting, monitoring and emission inventory requirements are as rigorous as those placed in individual state permits and in some cases more rigorous as each pollutant emitted by the facility is capped and more data is reported in the emissions inventory. The facility must demonstrate that emissions remain below the thresholds by tracking and calculating emissions of all criteria pollutants and HAPs on a monthly basis. Finally, the capped permit requires a facility to demonstrate, using one of two modeling methods, that emissions beyond the property line are lower than the ambient air quality standards for certain pollutants.¹³

¹² The facilities that obtain a capped emissions permit need more compliance demonstration requirements because their emission caps are closer to federal permitting thresholds (90%) than are facilities with registration permits (50%).

¹³ MPCA developed its state permit rules for inclusion in the MPCA's State Implementation Plan (SIP) to demonstrate that the state would attain and maintain compliance with the National Ambient Air Quality Standards. These rules have been in the MPCA SIP since the 1970s, subject to SIP revisions from time to time. As a result, the MPCA developed the proposed rule in consultation with EPA staff, to assure that it meets the federal enforceability requirements and assures attainment of NAAQS. This modeling requirement addresses the NAAQS concern.

The EMS permit option is an individual state permit with additional flexibility for making changes and reduced record keeping . As an individual permit, the EMS-based permit includes all applicable requirements in the permit and provides conventional public notice and a 30-day comment period. Like a capped permit, the EMS-based permit will not require permit amendments prior to making a change of a certain magnitude; however, administrative amendments or major amendments will still be required. The EMS permit will require monthly 12-month rolling sum recordkeeping except, as is the case with registration permits, when the source achieves very low (approximately 25 percent of federal thresholds) actual emissions levels. Like the capped permit, the EMS permit requires a facility to demonstrate, using one of two modeling methods, that emissions beyond the property line are lower than the ambient air quality standards for certain pollutants. However, the EMS permit does not require this modeling before each physical or operational change; MPCA's review at the time of initial permitting will anticipate such changes. Also, the individual nature of the EMS permit means that the source can apply for, and the MPCA may require, site-specific controls to help ensure that emissions meet ambient air quality standards. To qualify for the EMS permit, sources must maintain a qualifying EMS and undergo periodic independent third-party EMS auditing which considers non-compliance as a factor in whether a source's EMS continues to qualify for the flexibility provisions tied to EMS use.

As a matter of information, the MPCA also has developed several SIPs to address Minnesota's past areas of nonattainment with NAAQS. To develop each SIP, MPCA modeled the sources of emissions and, if reductions were needed, placed limits in permits to assure compliance with NAAQS. These limits are not affected by this rulemaking, because their site-specific nature disqualifies the culpable sources from this permit option.

The capped emissions permit and the proposed EMS provisions for individual state permits also meet federal enforceability requirements, in addition to being an enforceable state rule.¹⁴ Federal regulations require an owner of a facility with the potential to emit (PTE) air pollutants greater than established thresholds to apply for and obtain an air emission permit. The PTE of a facility is calculated assuming that the facility is continuously operated at maximum capacity. The EPA has interpreted federal law as allowing states to develop rules that will legally limit the PTE of these facilities to levels below the federal (part 70) thresholds so that these facilities would be eligible to obtain a capped permit.¹⁵ This rulemaking abides by that federal interpretation and makes the capped permit federally enforceable through explicit rule requirements of a capped permit's content and compliance requirements that are enforceable as a practical matter. The rule itself will be public noticed to meet the requirement for review by the public and EPA.¹⁶ In addition, this proposed rule will be submitted to EPA as a SIP revision to meet the requirements in making limitations federally enforceable.

The MPCA believes this rulemaking will reduce the administrative burden of permitting for affected facility owners and the MPCA through quicker permit issuance and a reduced need for future permit actions. This rule will also create an incentive to

¹⁴ EPA guidance published in the Federal Register on June 28, 1989 (54 FR 27274) states that for state permitting programs to be federally enforceable the program must: (1) be approved into the SIP, (2) impose legal obligations to conform to the permit limitations, (3) provide for limits that are enforceable as a practical matter, (4) be issued in a process that provides for review and an opportunity for comment by the public and by EPA, and (5) ensure that there is no relaxation of otherwise applicable Federal requirements.

¹⁵ The proposed EMS provisions will be part of an individual state permit. MPCA's current policies and procedures for issuance of an individual state permit are designed to meet EPA's criteria for federal enforceability including establishing limits on PTE.

¹⁶ The comment period allowed by the rule is confined to the issue of whether a facility should be issued the capped emissions permit or whether it instead needs to have site-specific conditions and an individual customized permit. Thus, applicant facilities are either "in" or "out". If "in", the permit conditions are fixed by rule, and the public comment on the rule conditions occurs here in the state's rulemaking process. The rule conditions assure that there can be no relaxation of otherwise applicable federal requirements.

implement pollution prevention projects, to install control technology, or to adopt a qualifying EMS in order to qualify for one of the new permit options, resulting in a positive environmental impact. It also creates an incentive for facilities with a capped or EMS permit to take action to stay under the emission caps, even as their business operations grow. In addition to seeking improvement in air emissions, those adopting an EMS will pursue improvements in other regulated and unregulated areas of environmental impact (hazardous and solid waste, waste and storm water, energy and water use, packaging, fleet, etc.)

Based on the information provided above, the proposed rule, as a whole, is reasonable.

B. Reasonableness of the Rules by Section - Capped Emission Permit

7007.0100 DEFINITIONS

Subp. 7b Capped emission permit.

This proposed definition provides the name for the hybrid permit that is established under this proposed rule in parts 7007.1140 to 7007.1148. It is reasonable to define a new term for this new type of permit so that it is clear in the rule when parts of the rule apply only to capped emission permits or “capped permits”. The definition also parallels how the other types of permits are currently defined in part 7007.0100, subpart 12 (general permit), 15 (part 70 permit), 18a (registration permit), and 23 (state permit).

7007.0150 PERMIT REQUIRED

Subp. 2. Permit required.

The change in subpart 2 adds a clause to the end of the subpart to state that the capped permit is an option available to qualified stationary sources to fulfill the

requirement in current rules to obtain a permit. This change is reasonable because it reflects the addition (in this proposed rule) of the capped permit options. Also, because existing subpart 2 contains a reference to all types of permits available under the current rule, it is reasonable to continue that practice by adding a reference to the new type of permit (capped permit) that will be established by this proposed rule.

7007.0200 SOURCES REQUIRED OR ALLOWED TO OBTAIN A PART 70 PERMIT AND 7007.0250 SOURCES REQUIRED TO OBTAIN A STATE PERMIT.

Subpart 1 of each of these two parts both contain the same technical amendment. These amendments clarify that parts of chapter 7007 that refer only to capped permits do not apply to part 70 permits or to state permits. This is reasonable, because the MPCA intends in this proposed rule to add a new, different permit type to the rule, but does not intend the new capped permit rule parts to affect the current rules that apply to part 70 or state permits. These technical amendments also continue the current practice in chapter 7007 that when a provision explicitly applies only to stated types of permits, the provision does not apply to the other types of permits.

A second proposed amendment adds a new subpart 8 to part 7007.0250 that states that stationary sources may obtain a capped permit instead of a state permit if the stationary source qualifies for a capped permit option. This amendment is reasonable because part 7007.0250 establishes what stationary sources are required to obtain a state permit, and the intention of the new subpart 8 is to specify that a capped permit may be available to satisfy this requirement. The proposed language of subpart 8 also appropriately reflects the current language in part 7007.0250, subpart 5 that allows a

stationary source to obtain a state permit if it chooses to limit its emissions below the thresholds for a part 70 permit; under the proposed rule, if such a source can also qualify for a capped permit, it may choose to obtain a capped permit instead of an individual or facility-specific state permit. This amendment accomplishes the MPCA's intent that the capped permit be an alternative, more efficiently issued permit that stationary sources can obtain to satisfy the current rule's requirement to obtain a state permit and to keep the stationary source's emissions below the part 70 thresholds.

7007.1050 DURATION OF PERMITS.

Subp. 2. State permits and capped permits.

Subpart 2 is amended by adding language that states the duration of a capped permit is non-expiring unless the agency makes the permit expiring under subpart 5. During development of the rule proposal, certain stakeholder groups requested that the agency have the same authority to make some capped permits expiring as it has for individual state permits. This provision is reasonable because the capped permit is a type of state permit and the state permit is also non-expiring except if the agency makes it expiring for any of the reasons under subpart 5.

Subp. 5. Expiring state, capped, and general permits.

Subpart 5 is amended to allow the agency to make the capped permit expire after five years or more for the same reasons that it can make a state or general permit expire. These reasons include a request by the permittee or an agency determination that an expiring permit would significantly improve the likelihood of continuing compliance with applicable requirements or permit terms. The grounds for a determination to make a

permit expire include, but are not limited to: a history of noncompliance, an expected change over the next five years in the applicable requirements for source, or the expectation that a source is likely to make substantial changes in next five years making it subject to additional applicable requirements. For example, if a source applies for a capped permit and the MPCA is aware that the emission factors used to demonstrate eligibility for the capped permit are being re-evaluated by EPA and are likely to change substantially as a result of that evaluation, then the MPCA may make the permit expiring to ensure that the permittee is still able to comply with the terms of the capped permit after the new emission factors have been established. The MPCA has made only a handful of the individual state permits it has issued expiring permits and anticipates that a similarly small percentage of capped permits would be made expiring. It is reasonable to apply the same criteria to make a capped permit expiring as a state permit because a capped permit is a type of state permit.

Subpart 5 currently states that the expiration does not apply to any title I conditions. Since a capped permit will not explicitly identify any terms that would otherwise be labeled as title I conditions¹⁷ in an individual state permit, the MPCA is proposing language in part 7007.1143, subpart 9 to require all provisions in parts 7007.1140 to 7007.1148 to continue to apply until a new permit of a different type is issued or a permit is voided under part 7007.1050, subpart 7. This assures that all requirements in parts 7007.1140 to 7007.1148 permanently apply to facilities with capped permits as long as the facility holds the capped permit, even for the handful of

¹⁷ Limits taken to avoid classification a major source or modification under 40 CFR 52.21 and Minn. R. 7007.3000 are identified as non-expiring Title 1 conditions in individual permits issued by the MPCA.

capped permits that might be made expiring. If a facility needs to be transitioned to a different permit type, that permit type (part 70, state, general, or registration) has already been approved by EPA as meeting federal enforceability requirements, including the assurance that Title I conditions are permanent and do not expire. The intent of part 7007.1143, subpart 9 is to capture the language in subpart 5 to ensure that Title I conditions won't expire. (See part 7007.1143, subpart 9 for a discussion of reasonableness.)

7007.1100 GENERAL PERMITS.

Subp. 2. Public participation

This amendment is proposed to the public participation procedures under a general permit to address the development by the MPCA of sector-based general permits in the future. This amendment would allow the MPCA to put in the notice for a sector-based general permit whether or not a facility in a sector addressed by the general permit would be eligible for a capped permit. Those facilities no longer eligible for a capped permit would be required to apply for the new sector-based general permit, unless the facility instead chooses to obtain a registration, state, or part 70 permit. The proposed capped permit language under part 7007.1140, subpart 2, item C denies eligibility for a capped permit to facilities for which a sector-based general permit is available unless the notice for the general permit under this subpart allows otherwise.¹⁸ It is reasonable to provide for opportunity for comment on whether facilities eligible for certain sector-based general permits created in the future remain eligible for a capped permit. The

¹⁸ The concept is that, as long as the source wishes to have a state permit instead of a part 70 or registration permit, and an applicable sector-based general permit is available and appropriate, the source would be regulated under the general permit instead of the capped permit.

MPCA is not contemplating the development of any sector-based state general permits at this time, but it is reasonable to allow for the possibility in the future.

Note that the Reasonableness by Section for parts 7007.1102, 7007.1105, and 7007.1107 may be found under section C, Reasonableness by Section – State Permit with EMS Provisions, beginning on page 135.

7007.1110 REGISTRATION PERMIT GENERAL REQUIREMENTS.

The proposed technical amendments to subparts 1, 16, and 17 add capped permits to the list of permit types already existing in the rule. Under subpart 1, the amendment clarifies that a stationary source may elect to apply for a registration permit instead of a capped permit (or other permit type). Under subpart 2, the proposed amendment clarifies that the commissioner may request an owner or operator with a registration permit to apply for a capped permit (or other permit type) for the grounds listed. Under subpart 17, the proposed amendment allows the commissioner to void a capped permit when a stationary source is issued a registration permit. These technical amendments are reasonable, because the MPCA intends in this proposed rule to add a new, different permit type to the rule, and must alter language in the registration permit rule to allow for this new permit type.

7007.1140 CAPPED PERMIT ELIGIBILITY REQUIREMENTS.

Subpart 1. Sources that may obtain a capped permit.

This subpart defines the MPCA's intended requirements for a stationary source to be eligible for a capped permit. To qualify, a stationary source must have actual emissions below part 70 permitting thresholds and comply with the air quality assessment

requirements proposed in part 7007.1148. A capped permit is reasonable because it will lessen the burden both on the permittee and on the MPCA in regulating a qualified stationary source while providing the means to assure environmental regulations are met.

This subpart also states the MPCA's intent that the capped permit is an option for sources that can qualify for state permits, but qualified sources are not required to obtain capped permits if they would rather have another type of permit. This is reasonable because in creating the capped permits, the MPCA intends only to make available a new more efficiently issued and maintained permit option for stationary sources that qualify, not to force eligible stationary sources into capped permits. This leaves to qualified sources the decision of what type of permit is best for its business operations.

Under item A, the MPCA proposes to offer a stationary source the choice between two emission threshold options for a capped permit. Option 1 has higher thresholds than option 2, but requires additional calculation and recordkeeping for quantifiable insignificant activities and conditional insignificant activities. Both options ensure that a source's actual emissions are below part 70 thresholds. The only difference between the two options is in the allowable emission thresholds and the treatment of insignificant activities. It is reasonable to offer a permittee a choice between allowable emission thresholds as long as the compliance requirements ensure that the part 70 thresholds will not be exceeded. Environmental consultants at a rulemaking input session recommended that both options be in place as some facilities do not require the higher thresholds and would desire reduced recordkeeping. It is reasonable to offer facilities a

permit option with lower thresholds so that facilities are not required to do additional recordkeeping (tracking of emissions from some insignificant activities). These consultants also recommended offering a higher emissions threshold as some facilities will want a higher threshold and would be willing to do the additional recordkeeping to qualify for the higher threshold. It is reasonable to offer emission threshold options that will fit the varying needs of qualifying facilities and yet still ensure actual emissions remain below part 70 thresholds.

Item B specifies that the 12-month rolling sum (defined in part 7007.0100) of actual emissions for each pollutant must be less than the applicable emission thresholds established in part 7007.1141. It is reasonable to specify a method (12-month rolling sum) for a stationary source to demonstrate that they remain below part 70 thresholds. The proposed method is the same method that is used for option D registration permits under part 7007.1130, subpart 1 and is the customary method used in facility-specific state permits that establish facility-wide emission limits. In addition, this item proposes that a facility that has not been operated or that has operated less than 12 months, use estimated actual emissions for those months without emissions data in the 12-month rolling sum calculation. It is reasonable to allow sources without operational data to estimate actual emissions for the 12-month rolling sum calculation to provide a means for these facilities to qualify. As a source begins operation and generates emissions data, the actual emissions are not allowed to exceed emissions thresholds.

Item C states that an owner or operator who, at the time of application, anticipates making changes at the facility that would cause the emission thresholds to be

exceeded in the next year is not qualified for a capped permit. It is reasonable to prevent a source from “bouncing” in and out of a capped permit based on fluctuations in actual emissions from the source. Such fluctuations would raise concerns about the source’s ability to maintain continuous compliance with its capped permit, and the source would then best be regulated under a general permit or a facility-specific state or part 70 permit.

Item D requires that an owner or operator complete an ambient air quality assessment using the methods specified in part 7007.1148 (Ambient Air Quality Assessment) in order to qualify for a capped emission permit. The reasonableness of this requirement is discussed under part 7007.1148.

Subp. 2. Sources that may not obtain a capped permit.

Item A.

This subitem lists several categories of stationary sources that may not obtain a capped permit, regardless of whether the source would otherwise qualify. These categories include acid rain affected sources, solid waste incinerators, waste combustors, state implementation plan (SIP) required state permits, and other sources that are required to get a part 70 permit under part 7007.0200, subpart 5. (This is the same list of categories that may not receive a registration permit under part 7007.1110, subpart 2, item A.)

It is reasonable to prohibit acid rain affected sources from obtaining capped permits because part 7007.0200, subpart 3 and 40 CFR section 70.3 requires these sources to obtain a part 70 permit. Since capped permits are only available to sources that can qualify for a state permit, acid rain affected sources cannot be eligible for them.

The same rationale applies to certain solid waste incinerators and waste combustors required to obtain part 70 permits under part 7007.0200, subpart 4.

Part 7007.0200, subpart 5 by its terms applies to other sources required by federal rules to obtain part 70 permits. Since federal rules establish that requirement, state rules cannot change it, and those sources must obtain part 70 permits. Facilities with a SIP-required state permit will contain facility-specific conditions in the permit designed to remedy past violations and assure compliance with ambient air quality standards and, therefore, are not eligible for a capped permit.

Finally, sources required to obtain a state permit under part 7007.0250, subpart 6 (sources subject to the waste combustor standard of performance in ch. 7011) are ineligible. This is reasonable because the waste combustor standard of performance meant to require certain waste combustors to obtain a state permit in order to incorporate into the permit the complex requirements of the performance standards that apply to the individual waste combustor. The waste combustor rule also sets out detailed permit application and permit content requirements that may not be implemented through a capped permit since all of the capped permit requirements are contained in rule and are not customized to an individual facility. Therefore, it is reasonable to exclude waste combustors from eligibility for a capped permit.

Item B.

This item outlines three circumstances under which a source could potentially assume limits or conditions not contained in parts 7007.1140 to 7007.1148 rendering the source ineligible for a capped permit. Subitems (1) and (2) identify the interaction

between a capped permit and sources that are subject to an environmental impact statement (EIS) or an environmental assessment worksheet (EAW). Some sources that will be eligible for a capped permit might also be subject to the EIS/EAW process. Under subitem (1), if air quality specific source conditions or limits, not included in parts 7007.1140 to 7007.1148, are assumed as a result of an EIS, then the source is not eligible to receive a capped permit. The conditions or limits may be specifically identified in the mitigation measures or they may be assumed as the basis of a health risk or other similar air quality assessment. Under subitem (2), if a source in obtaining a negative declaration for an EAW (meaning an EIS was not necessary) assumed source specific air quality conditions or limits that are not conditions that permittees are required to follow under parts 7007.1140 to 7007.1148, then that source would be excluded from obtaining a capped permit. Excluding a source from obtaining a capped permit under these conditions is reasonable, because the capped permit process provides no opportunity to include facility-specific conditions in the permit, and these situations would result in the need for including source-specific permit conditions. The MPCA anticipates that site-specific permit conditions would be necessary in a very limited number of environmental assessment situations for sources of the size applying for a capped permit.

Finally, the current rule allows the MPCA to require a source to obtain a state permit if restrictions on the source are needed to comply with a national or state ambient air quality standard (part 7009.0250, subpart 3). It is reasonable to make these sources ineligible for a capped permit because compliance with ambient air quality standards will involve facility-specific and pollutant-specific emission limits and compliance demonstration requirements that can be imposed in an individual state permit, but which

cannot be anticipated or included under the capped permit rule because they would only apply to an individual source and are dependent on the source's specific location.

Item C.

Item C proposes prohibiting a source producing fuel-grade ethanol from obtaining a capped permit. Fuel-grade ethanol producers typically are issued state permits. However, ethanol plants are part of a national effort for which specific and tailored emission estimation methods are being developed and reviewed, and as such, require an individual permit to specify the methods. This is the only industry in the state that MPCA staff is aware of (and for which data exists) that typically qualifies for a state permit, but for which tailored VOC emission estimation methods are being developed, and are not yet established.¹⁹ Therefore, it is reasonable to disqualify fuel grade ethanol producers from eligibility for a capped permit at this time.

This item also proposes that if a sector-based general permit is available for a stationary source, it is not eligible for a capped permit except as allowed under part 7007.1100, subpart 2 (General Permits). A sector-based general permit is tailored to a specific industry and will contain sector-specific conditions not included in a capped permit. A general permit is a streamlined alternative to a facility-specific permit that can be issued quickly by the MPCA. Currently the only sector-based state general permit available is for non-metallic mineral processors (SIC codes 1422, 1423, 1429, 1442, and 1446).²⁰ This general permit contains requirements that are specific to materials handling

¹⁹ It is likely in the future, when the emission estimation methods for ethanol plants are more settled, the MPCA would develop a general permit for this sector. The general permit would be required instead of a capped permit, anyway.

²⁰ A part 70 manufacturing general permit is available for stationary sources. Should they qualify, some sources that currently hold a part 70 manufacturing general permit may be interested in applying for a

operations such as testing the aggregate for moisture content and requirements for control of fugitive dust emissions. It is reasonable to deny eligibility for a capped permit to a stationary source that is eligible for a sector-based general permit from the agency as the general permit will contain sector-specific conditions and the general permit is already streamlined. The discussion of why it is reasonable to provide an exception whereby sector-based general permits created in the future could allow a facility to retain its capped permit is discussed above under part 7007.1100, subpart 2.

Item D.

This item proposes that a stationary source that requires site-specific (or facility-specific) conditions not contained in parts 7007.1140 to 7007.1148 in order to ensure compliance with applicable requirements or to protect human health or the environment is not eligible for a capped permit. Here are four examples of situations where this prohibition could apply:

1. A facility was previously determined by the MPCA to be out of compliance with an applicable standard and additional operating restrictions need to be imposed in an individual permit to ensure compliance (e.g., additional control equipment is required in order to meet the standard or additional operation and maintenance requirements need to be added to make sure the controls are being adequately maintained).
2. A facility performed a stack test to develop an emissions factor and either did not test at worst case conditions or tested at different operating conditions to develop multiple emission factors for various pollutants. If the facility wanted to use the

capped permit in the future. The MPCA does not consider the manufacturing general permit a sector-based permit in part because of the variety of source types that it covers and the broad applicability of the manufacturing general permit's requirements to many source types.

emissions factor(s) for permitting purposes, an individual permit would be needed to establish the necessary operating conditions and required monitoring to ensure the emissions factor(s) is valid.

3. The actual emissions of an individual HAP at a facility applying for an option 1 capped permit are approaching 9 tons and the EPA emission factor relied on in the analysis is of poor quality. The facility might require an individual permit to establish conditions for testing or additional compliance demonstration to ensure it remains below the 10 ton threshold for a part 70 major source.

4. The community raises concerns about human health impacts for a facility that has a sensitive receptor (such as a day care or nursing home) nearby. The commissioner in this case would need to make the determination whether facility-specific permit conditions inserted into an individual permit would be needed to protect human health.

It is reasonable to prohibit sources requiring facility-specific conditions from eligibility for a capped permit because facility-specific requirements can only be imposed in an individual state permit, not in a rule-based permit such as the capped permit.

Item E.

This provision prohibits stationary sources that are subject to a New Source Performance Standard (NSPS) standard from eligibility for a capped permit except for sources that are subject to one or more of the twelve identified NSPS categories listed in this item. Staff evaluated and identified NSPS categories in a manner similar to the method used to identify NSPS categories under part 7007.0300 (Sources Not Required to Obtain a Permit). The criteria staff used to determine which NSPS categories a source could be subject to and still be eligible for a capped permit was whether or not there

existed, in the NSPS source category, sources of the size likely to qualify for a capped permit. In addition, MPCA staff evaluated the compliance requirements included in the applicable NSPS. If the compliance requirements were relatively straightforward (non-complex) for the NSPS category, it is included on the proposed list of allowable NSPS (subitems 1 through 12 of this item).

This item is reasonable because for a source subject to an NSPS, other than those 12 listed, the issuance of a facility-specific state permit will allow more detailed description of the NSPS compliance requirements to be included in the permit, whereas for a source subject to an NSPS category listed in this provision the capped permit will not list the specific NSPS compliance requirements. (The capped permit only states that compliance with the applicable requirements, e.g. an NSPS, is required.)

For example, if the NSPS contained case-by-case compliance alternatives such as contained in 40 CFR Part 60, Subpart VV – Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry, it was not included in the list. If the NSPS contained complex monitoring requirements such as requiring continuous emission monitors, it was not included in the list. Although 40 CFR Part 60, Subpart Dc (Small Industrial-Commercial-Institutional Steam Generating Units) does require continuous emission monitors for certain size sources the MPCA believes it is reasonable to include Subpart Dc on the list. Subpart Dc only requires continuous emission monitors for certain size sources. Those stationary sources that qualify for a capped permit and are subject to Subpart Dc likely would not be large enough that Subpart Dc would require the operation of continuous emission monitors. (See 40 CFR Subpart 60.46c(e) and 40 CFR Subpart 60.47c(a).)

As another example of an NSPS category that the MPCA determined was not qualified, stakeholders asked MPCA staff to evaluate Subpart Db (Industrial-Commercial-Institutional Steam Generating Units) to see if it would be suitable to list this NSPS for affected sources that burn only natural gas and low sulfur fuel. MPCA staff determined that it did not meet the criteria for inclusion on the list because Subpart Db requires the installation of a NO_x continuous emissions monitor when burning natural gas and a continuous opacity monitor when burning oil. In addition, none of the sources subject to this NSPS appear to otherwise qualify for a capped permit.

This list of 12 allowable NSPS is the same as the list of NSPS for the registration permit in part 7007.1110, subpart 2, item C with the following exceptions. Subpart OOO (Standards of Performance for Non-metallic Mineral Processors) is not listed. It is reasonable not to include Subpart OOO since a state general permit already exists for this industry and the requirements in that general permit are tailored for the industry. For example, the general permit contains sector-specific requirements such as testing for moisture content of materials, limits on the amount of material that may be crushed smaller than a certain size, and more rigorous specific dust control measures for larger facilities. These requirements would not apply to sources issued a capped permit. The general permit is a more appropriate way to handle sources in this sector. The MPCA is not aware of another industry category that is subject to Subpart OOO that would otherwise qualify for a capped permit.

This list contains two new NSPS that are not contained in registration permit part 7007.1110, subpart 2, item C: Subpart GG , Standards of Performance for New Stationary Gas Turbines, and Subpart XX, Standards of Performance for New Bulk

Gasoline Terminals. It is reasonable to include these two categories as they meet the criteria listed above: (1) there are stationary sources subject to these NSPS whose emissions allow them to qualify for a capped permit, and (2) the MPCA reviewed the compliance requirements of the NSPS and determined they are noncomplex.

In the future, MPCA staff anticipates that NSPS categories may be added to the list of 12 allowable NSPS and that existing NSPS may be modified. If an NSPS is added or an existing NSPS is modified in such a way that staff believe the NSPS should be added to (or deleted from) the list in this section, MPCA staff will propose amendments to this rule to include (or exclude) the new or modified NSPS categories.

7007.1141 CAPPED PERMIT EMISSIONS THRESHOLDS.

Subpart 1. Option 1 emission thresholds.

Subp. 2. Option 2 emission thresholds.

This part establishes facility-wide emissions thresholds for each of the capped permit options. (See table below.) Both of the options establish thresholds below the part 70 permitting levels for criteria pollutants and HAPs. (See part 7007.0200 for part 70 permitting thresholds or above table.) Option 1 has higher allowable thresholds than option 2, but requires calculation of quantifiable insignificant activities in demonstrating that a source is below the thresholds. The permit limits and compliance methods for the two capped permit options are established in order to have reasonable assurance that the source does not exceed part 70 permitting thresholds.

Capped Permit Emission Thresholds for Options 1 and 2 Compared with Part 70 Permitting Thresholds

POLLUTANT	Option 1 Threshold (ton/year)	Option 2 Threshold (ton/year)	Part 70 Threshold (ton/year)
HAP	9.0 tons per year for a single HAP 20 tons per year total for all HAPs	8.0 tons per year for a single HAP 20 tons per year total for all HAPs	10 tons per year for a single HAP 25 tons per year total for all HAPs
PM	90 tons per year	75 tons per year	100 tons per year*
PM-10	90 tons per year	75 tons per year	100 tons per year
VOC	90 tons per year	85 tons per year	100 tons per year
SO₂	90 tons per year	90 tons per year	100 tons per year
NO_x	90 tons per year	85 tons per year	100 tons per year
CO	90 tons per year	85 tons per year	100 tons per year
Pb	0.50 tons/year	0.50 tons/year	0.50 tons/year **

* Threshold for PSD permitting of certain source categories.

** Threshold for state permitting.

In proposing the thresholds for the capped permit options, MPCA staff relied upon the approach used for facility-specific state permits in establishing permit limits below part 70 permitting thresholds. This approach considers:

- the applicable regulatory threshold,
- what emissions will be directly calculated,
- what emitting activities won't be tracked, and
- the emissions monitoring methodology.

For the rule-based capped permit, an owner or operator is required to track all significant sources of emissions, i.e. all those emission units that are not an insignificant activity under part 7007.1300, subparts 2 and 3 or conditionally insignificant activities in Ch. 7008. During rule development meetings, stakeholders asked that the MPCA develop two thresholds to best satisfy the needs of sources that may be eligible for this permit option, one with higher thresholds where emissions from all quantifiable emission

units are tracked and one with lower thresholds where insignificant activities are not tracked.²¹

Subpart 1 proposes emissions thresholds for option 1 of the capped permit at 90 percent of part 7007.0250 permitting thresholds for all pollutants except for lead and total HAPs. (The lead threshold is the same as that for state permitting applicability. See part 7007.0250, subpart 4. The rationale for the proposed HAPs thresholds follows later in the discussion of this part.) This is reasonable as it is consistent with MPCA's approach for individual state permits. The MPCA will typically set the emissions limits at 90 percent of the regulatory threshold for individual permits that require daily recordkeeping and monthly emissions calculations that primarily rely on mass balance using formulation-based data such as Material Safety Data Sheets (MSDS) and on EPA's general emissions factors from AP-42. This is meant to account for the monitoring frequency, uncertainty, variability, and reliability of content data from MSDSs, and the manner in which AP-42 factors are developed. For example, AP-42 factors are considered representative averages and are given ratings to indicate their quality. Under part 7007.1147, the capped permit proposes to allow several calculation methods, two of which are mass balance and emissions factors, thus the general approach used in setting emissions thresholds for an individual permit is reasonable for setting thresholds for a capped permit. Therefore, for the option 1 capped permit, where all quantifiable activities are tracked, it is reasonable to use the 90 percent of thresholds approach for the criteria

²¹ Some stakeholders had voiced a concern about all facilities tracking all sources of emissions, even those that are considered insignificant activities under part 7007.1300, subpart 3 and Ch. 7008. While some sources may be able to track these insignificant activities using their current records and tracking systems, some sources might need to develop new methods for gathering the data.

pollutants threshold as it is similar to the approach used for individual facility-specific state permits.

The option 2 emissions thresholds set forth in subpart 2 are lower than those in option 1 for most pollutants because the source does not need to account for insignificant activities in determining initial eligibility under part 7007.1140 or when doing the monthly compliance calculation of actual emissions under part 7007.1146. When developing individual permits, MPCA staff determines what emission units can be tracked as a group or not calculated as part of the compliance calculations activities in the permit to allow smaller emitting activities to be permitted in a more efficient manner. The allowable emissions threshold in the permit is lowered accordingly. For example, when setting a facility-wide VOC limit using a mass balance approach, it is common to leave insignificant fuel-burning emissions of VOC out of the limit and compliance calculations if the tracking of fuel consumption at these small units is not straightforward. For this case, the limit is set at a lower level to account for the potential VOC emissions from the fuel-burning units. Thus, if the regulatory threshold is 100, and the potential VOC emissions from fuel is 2, the intended regulatory limit of 90 percent of the regulatory threshold would result in a numerical limit of 88 (90 minus 2).

Since the MPCA will not be able to establish case-by-case limits based on the specific insignificant activities at a source, MPCA staff conducted a review of issued permits in various source categories to determine the appropriate limits that would cover the broad group of sources that may apply for option 2. In the review of the permits the MPCA evaluated:

- which insignificant activities are quantifiable,

- the pollutants that are emitted, and
- the potential to emit of the facility's activities that are insignificant under part 7007.1300, subpart 3.

MPCA staff found that the following items under Minn. R. 7007.1300, subpart 3 are quantifiable in some way: 3(A), 3(B)(2), 3(D)(2), 3(E)(1), 3(E)(2), 3(G), 3(H)(3), 3(H)(7), 3(I), 3(J), and 3(K). In general, a mass balance or AP-42 factors can be used for most of these activities. In other cases, a process parameter (such as airflow) and the allowable emissions rate (concentration) can be used to estimate emissions.

The MPCA staff reviewed technical support documents for 10 randomly selected individual permits containing facility-wide emission limits. These 10 sources represent a variety of source categories. In the review, MPCA staff identified the pollutants and calculated the potential emissions from the insignificant activities which were listed in the application but whose emissions were not required to be tracked by the permittee in their permit. In general, individual HAP and lead emissions were not quantified in the files for these facilities. The following data were found regarding potential emissions from insignificant activities at the 10 sources:

Pollutant	Average PTE from IAs at 10 Sources (tons per year)	Range of PTE from IAs at 10 Sources (tons per year)
Total HAP	0.44	0.1 – 1.0
PM/PM-10	6.59	0.3 – 20
VOC	1.30	0.2 - 3.6
SO ₂	0.43	0 – 3.6
NO _x	3.89	0.08 – 7.4
CO	2.85	0.4 – 3.6

For these specific permits, the MPCA did not request the actual emissions from the insignificant activities from the permittees, so they were not documented in the

technical support documents for the permits; however, it is reasonable to assume that the actual emissions from most insignificant activities are typically a small percentage of the potential emissions. Most of the listed activities are maintenance or other types of intermittent operations. In addition, while individual HAP potential and/or actual emissions were not requested from the permittees, the individual HAP emissions must be equal to or less than the total HAP emissions that were reported. For these permits, most of the HAP emissions were from combustion sources, so the largest individual HAP is typically 50 to 95 percent of the total HAP (using AP-42 factors for fuel oil, natural gas, and wood).

MPCA staff used the data in the above table to derive the thresholds listed for option 2 in order to have a reasonable assurance that any facility utilizing this option would remain below the part 70 permitting thresholds. The proposed emission thresholds are reasonable in that conservative assumptions were used to establish an adequate buffer below the part 70 thresholds. In addition, sources applying for an option 2 capped permit must list insignificant activities, giving MPCA staff the opportunity to judge whether the emission thresholds of option 2 are appropriate for the source.

This part proposes the same threshold, 20 tons per year, for total HAPs emitted from a source for both capped permit options; and individual HAP emission thresholds of 9.0 and 8.0 for capped permit options 1 and 2, respectively. It is reasonable to create more conservative buffers (80 percent of part 70 thresholds) below the part 70 permitting thresholds for HAPS, as EPA emission factors for HAPs typically have lower ratings than the criteria pollutant factors for the same process. In addition, the consequences of a facility inadvertently exceeding the threshold for HAPs are significant as they will

become a “major” source of HAP. Becoming a major source of HAP means that the facility will need to obtain a part 70 permit and comply with any applicable requirements of the NESHAP program under 40 CFR pt. 63. As EPA improves the quality of its HAP emission factors, it could mean that a source that was a minor source could become a major source in the future. The individual HAP threshold proposed for an option 1 capped permit is 90 percent of part 70 permitting thresholds. This threshold is reasonable because 1) the owner or operator is required to calculate HAP emissions from insignificant activities as directed under part 7007.1140, subpart 1 (A); and 2) the quality of the HAP data is a criteria used by the MPCA in its evaluation of a source’s eligibility for a capped permit as discussed in example #3 above under part 7007.1140, subpart 2, item D. In addition, an owner or operator that relies on lower quality HAP data and allows actual emissions to approach the threshold does so at their own risk.

7007.1142 CAPPED PERMIT ISSUANCE AND CHANGE OF PERMIT STATUS.

Subpart 1. Capped permit issuance, denial, and revocation.

This subpart sets forth the grounds for the issuance, denial, or revocation of a capped permit. The provision regarding issuance requires the issuance of a capped permit if the stationary source submits a complete application, qualifies under parts 7007.1140 to 7007.1148, and the commissioner anticipates that the stationary source will comply with its capped permit. Likewise the provision allowing denial of the capped permit application allows denial if the determination is made that the stationary source does not qualify under parts 7007.1140 to 7007.1148, or if the commissioner determines that the stationary source will not be able to comply with its capped permit. These criteria for issuance and denial are reasonable because the MPCA intends that only qualified

sources that will comply with the requirements of this proposed rule may obtain capped permits (a determination assisted by a complete application), to assure that they truly are non-complex facilities with actual emissions below part 70 thresholds that are appropriately regulated under a capped permit.

Additionally, a capped permit application can be denied if grounds under part 7007.1000, subpart 2, items B-G apply. It is reasonable to include items B to G as grounds for capped permit denial because they are grounds for permit denial that have applied to all air emission permits for years. The criteria are reasonable, because they involve noncompliance at the source that has not been corrected, submission of false or misleading information, endangerment to human health or the environment, failure to pay required fees or penalties or failure to submit a required pollution prevention plan. These criteria are basic to compliance with the air program, and if a stationary source cannot meet them, it should constitute grounds for permit denial. It is reasonable to prohibit a source from obtaining the capped permit on the same grounds that a part 70, state, registration, or general permit could currently be denied. The proposed rule does exclude part 7007.1000, subpart 2, item A, because it refers to issuance procedural requirements in part 7007.1000, subpart 1, that apply only to a state, general, or part 70 permit.

Similarly, the requirements in part 7007.1000, subpart 1 (except item H) are not specifically referenced in the capped rule because some of the preconditions in part 7007.1000, subpart 1 either do not apply to capped permits or are already included in the specific capped permit preconditions in part 7007.1142. A complete application is explicitly required as a ground for permit issuance, so part 7007.1000, subpart 1 item A need not apply. Part 7007.1000, subpart 1, items B to D includes criteria that the public

notice procedures and notification of other entities (e.g., affected states and EPA) for an individual permit have been followed. Alternative participation procedures have been developed for the capped permit, so items B to D need not apply. For example, as a rule-based permit, the public has an opportunity to comment on the contents of the capped permit during the rulemaking public comment period. In addition, the agency will provide a public comment period at the time a source applies for a capped permit to allow the public to comment on the eligibility of the source for the permit. This is discussed further under part 7007.1144.

The proposed rule on its face requires compliance with all applicable requirements and mandates the content of the permit in a way that does not vary federal requirements, so part 7007.1000, subpart 1, items E and F need not apply. It is a stated requirement for capped permit issuance that the commissioner anticipate that the source will comply with the capped permit, so part 7007.1000, subpart 1, item G need not apply. Finally, item H does apply to the capped permit as a precondition for issuance in that chapter 116D of Minn. Stat. (environmental impact statement and environmental worksheets) requires that the provisions of 116D and rules adopted under 116D must be met before any air emissions permit may be issued by the MPCA.

Finally, the capped permit revocation procedure is reasonable because it is based on the current revocation procedures that apply to all other permits. The proposed rule specifies that the commissioner, rather than the MPCA Board, would make the revocation determination and follow the procedures of part 7007.1700. The commissioner would make the permit revocation decision unless: 1) a contested case hearing is pending, 2) a

variance is pending, or 3) the MPCA Board wants to make the decision. (Minn. Stat. ch. 116.02)

Subp. 2. Changes or modifications rendering stationary source ineligible for its current capped permit option.

This subpart specifies the procedure for an owner or operator to apply for the other capped permit option when a change or modification has made the stationary source ineligible for its current option. When a stationary source is issued a state or part 70 permit, the permit issued has provisions which govern changes and modifications to the source. Similarly, it is reasonable for a capped permit to establish specific provisions governing changes or modifications that cause a stationary source to be ineligible for its current capped permit option but eligible for the other. Any new “activity” that causes the stationary source to not meet the eligibility terms of its capped permit option will be either a change or a modification.²²

Item A requires the owner or operator to submit the required permit application for the other capped permit option before making the change or beginning actual construction (defined in part 7005.0100, subp. 3a). Under part 7007.1145, subpart 1, item A, the owner or operator would be allowed to supplement previous application

²² The intent of this rulemaking is to allow a facility to make changes as long as emissions remain below the thresholds in part 7007.1141 and it continues to meet other eligibility requirements. A modification as defined in part 7007.0100 includes any physical or change in method of operation at a facility that results in an increase in the emission of any regulated air pollutant. However, a physical change or change in the method of operation allowed in the permit is explicitly excluded from this definition of modification and is referred to by the MPCA as merely a “change”. Since a facility with a capped permit can make physical changes and changes in the method of operation if the requirements of parts 7007.1140 to 7007.1148 continue to be met, these are not modifications as long as the stationary source continues to meet all the requirements in parts 7007.1140 to 7007.1148. This includes not only physical changes but routine maintenance, repair and replacement; increase in production rate; increase in the hours of operation; and use of alternative fuels.

materials submitted to meet the application requirements for the new capped permit option. This should minimize the amount of administrative burden on the part of the source while still providing the MPCA with the information it needs to determine if the source qualifies for the other option prior to making the change. This item also states that the public participation procedures in part 7007.1144 do not apply to situations where an application is submitted to transfer from one capped permit option to the other. The primary difference between the two options is the way in which the facility demonstrates it remains below part 70 permitting thresholds, i.e. through its emissions thresholds and calculation of emissions. Otherwise, the eligibility requirements for both options are the same. The MPCA does not expect total actual emissions to be significantly different between facilities in option 1 versus option 2. Moving from one capped permit option to the other is similar to an administrative amendment to an individual state or part 70 permit which is made without public participation. (See current part 7007.1400.) Since the public already has had an opportunity to comment on a facility's eligibility with the initial capped permit issuance and only the allowable thresholds and insignificant activity recordkeeping is being altered, it is reasonable to reduce the administrative burden by not requiring a public participation process.

Item B allows the owner or operator to make the change or begin actual construction on and start-up of the modification, seven working days after the application for the other capped permit option is received. Since this type of change or modification, however, will generally be minor compared to modifications that render the stationary source ineligible for any capped permit option, it is reasonable to allow the source to proceed at their own risk upon seven days prior written notice to the commissioner. This

procedure is somewhat analogous to the minor modification procedure applicable to a state or part 70 source in current part 7007.1450, subparts 7 and 8, except that this proposed procedure culminates not in a permit amendment but in a new capped permit under a different capped permit option.

Finally, item C requires the permittee to comply with all applicable requirements of the permit option for which it applied, until the new capped permit is issued. This is reasonable because it assures that the stationary source will comply with the new capped permit option requirements from the time it makes the modification or change that subjects it to that option. For example, a facility moving from capped permit option two to capped permit option one, must comply with option one seven working days after the application was received by the commissioner. (In essence this means the source would start to track emissions from quantifiable insignificant and conditionally insignificant activities plus whatever new applicable requirements that are associated with the change or modification.)

As a note of explanation, a source can voluntarily move from one permit option to the other, but it would not do so under this provision. It would do so based on its demonstration of eligibility for the other capped permit option under part 7007.1140 through submission of a permit application for the other capped permit option .

Subp. 3. Changes or modifications rendering stationary source ineligible for either capped permit option.

This subpart requires a stationary source to obtain a registration, part 70, state, or general permit before making a change or modification that results in the stationary source being ineligible for the capped permit. It imposes on capped permit holders the

same requirement imposed on other stationary sources that want to modify a stationary source in such a way that the source triggers the requirement for the first time to obtain a part 70 or state permit. (Current part 7007.1150, item E requires that the stationary source obtain the appropriate part 70 or state permit before beginning actual construction on a modification that would make the stationary source subject for the first time to the requirements of a state or part 70 permit.) A state or part 70 installation and operation permit is also available if the requirements for such a permit are met, prior to receipt of the state or part 70 total facility permit. The requirements in this subpart are reasonable, because a change or modification that renders the stationary source ineligible for the capped permit typically makes the stationary source sufficiently large and/or complex to require an individual state or part 70 permit. As a result, it is reasonable that the permittee be required to obtain a permit with the appropriate restrictions for such larger and/or complex sources before this type of modification can be made. While the MPCA cannot envision a situation where a change or modification would make a stationary source ineligible for a capped permit but eligible for a registration permit, the MPCA does want to not disallow a source from moving into this lower allowable emission permit option if a source is qualified. Therefore, it is reasonable to list the registration permit as a permitting alternative.

Finally, this subpart provides that once a stationary source has made a change or modification that makes it ineligible for any capped permit option, it must demonstrate permanent emission reductions explained below in subpart 4 before it can again be eligible for a capped permit. This provision is reasonable to prevent a source from “bouncing” in and out of a capped permit based on fluctuations in actual emissions from

the source. Such fluctuations would raise concerns about the source's ability to maintain continuous compliance with its capped permit, and the source would then best be regulated under a general permit, an individual state or part 70 permit. It is reasonable, however, to allow a source to re-qualify for a capped permit if the permanent reductions required by subpart 4 are put in place at the source to assure that it will be able to comply with a capped permit continuously. This also comports with the grounds for capped permit issuance that the commissioner must anticipate that the permittee will comply with the capped permit requirements before issuing a capped permit.

Subp. 4. Reinstatement of eligibility for capped permit through addition of air pollution control equipment, removal of emission units, or implementation of pollution prevention practices.

This provision addresses a stationary source which reinstates eligibility through permanent addition of listed control equipment or implementation of pollution prevention practices. The second sentence of this subpart requires the submittal of a description of a pollution prevention practice to the commissioner along with the required capped permit application. The submittal is required if the pollution prevention practices are the reason the source is becoming eligible for, or reinstating eligibility for, the capped permit. This provision is reasonable because, without the submittal, the commissioner would not be able to verify that the practices result in the required decrease of emissions.

The definition in this subpart of "pollution prevention practices" is based on the definitions of "pollution prevention" and "reduction" found in Minn. Stat. section 115D.03, subd. 8 and 9 (the toxic pollution reduction act). For the purposes of this part, however, reductions of any regulated air pollutant (including criteria pollutants) also

qualify as pollution prevention the same as reductions of toxic or hazardous air pollutants for purposes of reinstating eligibility for a capped permit. This is reasonable, because whatever pollutant the source reduces, it will still have to have sufficiently low emissions of all regulated pollutants and hazardous air pollutants to qualify for either capped permit option. The last sentence of subpart 4 which states that emission reductions that are solely the result of a decrease in production at the stationary source are not considered as “pollution prevention practices” is reasonable, both because it comports with section 115D.03, subd. 9, and because any subsequent increase in production would increase emissions and possibly cause the source to violate its capped permit. It is reasonable that such a decrease not allow a source to reinstate or establish eligibility for a capped permit, because the commissioner must anticipate that the source will comply with the capped permit to issue one, and this type of reduction does not supply that assurance.

Overall, this subpart is reasonable because it will encourage stationary sources to add listed control equipment as defined in part 7011.0060 or implement pollution prevention plans in order to obtain a capped permit, which will result in the reduction of actual emissions in the state of Minnesota.

Subp. 5. Change of name, ownership or control of stationary source issued a capped permit.

Item A.

This item outlines the procedure for a source to change its name or a mailing address that appears on the permit itself. Since a capped permit cannot be amended it is reasonable to re-issue a new capped permit to the facility with the new name or mailing address appearing on the permit. It is reasonable to void the permit with the prior name or

mailing address as a source can hold only one capped permit at any time. This is purely an administrative procedure as the only change at the facility is to the name or a mailing address that may appear on the permit.

Item B.

This item requires a new owner or operator to submit a change of ownership request form to the commissioner prior to a change in ownership or control of the facility. This provision is similar to that for change of ownership for a general permit under part 7007.1100, subpart 8. The change of ownership itself is an administrative change at a facility and it is reasonable to provide a relatively simple administrative procedure to allow for the transfer. The second sentence requires the commissioner to make a determination whether the new owner or operator qualifies for the capped permit. If eligible, the previous capped permit is voided and a new capped permit issued. (The issuance process should be simple for capped permit sources and the MPCA because a new capped permit will generally be issued quickly if the source qualifies.) This provision is necessary because the capped permit itself is not subject to amendment so issuance of a new capped permit is reasonable.

Finally, this subpart states that the public participation procedures do not apply to a capped permit issued due to a change in name, mailing address, ownership or control. This is reasonable because since no facility operations or equipment at the source is changing, these are solely administrative changes. Even for a part 70 source (under part 7007.1400, subpart E), the change in name, mailing address, ownership or control is

handled through an administrative amendment with no public notice of the amendment pursuant to part 7007.1400, subpart 1, items B and E and part 7007.1400, subpart 3.

Subp. 6. Agency request for a different type of permit application.

This provision allows the commissioner to make a determination that the owner or operator of a stationary source with a capped permit must submit an application for either a part 70, state, or general permit, or for a different capped permit option. The provision allows this determination to be made under seven conditions: A) if the source has a history of noncompliance; B) if the source does not qualify for a capped permit; C) if the source qualifies for a different capped permit option; D) the applicable requirements that apply to the source are about to or have changed substantially; E) the application contained a material mistake or inaccurate statements were made in establishing eligibility; F) alterations or modifications to the facility may result in a significant change in the nature or amount of regulated air pollutants emitted; or G) new information becomes available to the commissioner that shows that the terms and conditions of the permit do not accurately represent the facility.

Item A is reasonable because if a source has a history of noncompliance and site-specific conditions are needed to assure future compliance, then the source should be regulated under an individual state or part 70 permit or a sector-specific general permit to better assure continuing compliance. Items B and C are reasonable because if a source holds a capped permit when it does not qualify, or holds the wrong capped permit option, the commissioner must have a way to ensure the source has the proper permit coverage if the source will not apply voluntarily. Item D is reasonable, because changes to

applicable requirements may require some sources to be regulated under state, part 70 or general permits in order to assure compliance with the applicable requirement through more detailed permit conditions. Item E is reasonable because if a source has obtained a capped permit based on mistakes or inaccuracies made in the application, those mistakes or inaccuracies may affect the status of a source's eligibility for a capped permit.

Therefore, it is reasonable to provide the commissioner with the authority to request an owner or operator to obtain the appropriate permit type. This item parallels the condition in part 7007.1600, subp.1, item C for mandatory reopening of part 70 and state permits. Similarly, items F and G of this subpart 6 also parallel the bases for mandatory reopening of part 70 and state permits found in part 7007.1600, subpart 2, items B and C, respectively. Item F is reasonable because if a source is altering the facility in such a way that it significantly changes the nature or amount of regulated pollutant and does not voluntarily submit an application for the appropriate type, the commissioner must have a way to require the source to obtain the appropriate permit. Item G is reasonable because if new information becomes available that affects the eligibility of a source with a capped permit, the commissioner must be able to require the stationary source to obtain the appropriate permit based on the new information. An example of new information is the development of improved emission factors. If a new emission factor is significantly increased over a previous factor, it could affect the eligibility of a source for this permit.

All of these bases for commissioner action are reasonable because it protects the commissioner's authority to require a source to apply for the appropriate permit when grounds exist that show that the facility is more appropriately regulated under another type of permit.

Subp. 7. Voiding an existing permit.

This provision allows the commissioner to 1) void an existing registration, part 70 or state permit if the stationary source is issued a capped permit; 2) no longer cover a source under a general permit if it is issued a capped permit; 3) void a capped permit issued under one option when a capped permit is issued under the other capped permit option; and 4) void a capped permit when the source is issued a part 70, state, registration, or general permit. It is reasonable to ensure that a stationary source is not subject to two different permits (or two different capped permit options) at the same time. This reasonably reflects the principle that the whole stationary source must be subject to only one permit, and prevents confusion about which requirements apply to a source.

7007.1143 CAPPED PERMIT GENERAL REQUIREMENTS**Subpart 1. Capped permit certifications.**

This section requires a certification be included with submittals made to the commissioner under the capped permitting process. This requirement is reasonable because it helps assure that information submitted to the commissioner regarding capped permits is truthful, accurate, and complete. This provision is also reasonable because it maintains consistency with: 1) part 7007.0800, subpart 6, item C which requires that a responsible official (as defined in part 7007.0100) at a source holding an individual state and part 70 permits submit the certification; 2) the certifications currently required in part 70, state and general permit applications (by part 7007.0500, subpart 3); and 3) the current requirement that reports submitted by a permittee after permit issuance also contain a certification by a responsible official (in part 7007.0800, subpart 6, item C, subitems 5 and 6).

Subp. 2. Capped permit content.

This subpart specifies the content of a capped permit. The capped permit will require compliance with parts 7007.1140 to 7007.1148, state whether capped permit option 1 or 2 applies, and emphasize certain compliance requirements (development of a compliance plan, record keeping, monitoring, and reporting). It is reasonable to mandate the contents of a capped permit, with the only variable being the insertion of the specific capped permit option under which the capped permit is granted, to: 1) assure consistency in the capped permit content; 2) implement the capped permit as rule-based; 3) prevent addition of individual permit conditions in a capped permit that would require individual public notice and comment beyond the state's rulemaking procedures; and 4) be federally enforceable as discussed above in the section on the overall reasonableness of a capped permit. It is reasonable in the permit content to call attention to certain general types of activities to assist the permittee in understanding that there are continuing actions to be performed to be in compliance with the capped permit.

Subp. 3. Emission inventory required for stationary sources issued capped permits.

This provision states that the owner or operator of a stationary source must comply with chapter 7019 and submit an annual emission inventory.²³ This subpart does

²³ The purpose for requiring an emission inventory is to: 1) have access to information to verify that the source remains qualified for the capped permit; and 2) as the basis for which emission fees are charged for actual emissions from a source under chapter 7002. The uses for the emissions inventory are expanding as the quality of the information improves over time, as new data is gathered for other source categories such as area sources (smaller, unpermitted sources) and mobile sources, and the tools to evaluate the data continue to improve. For example, emissions information from many sources is used by the MPCA in modeling to project ambient concentrations everywhere in the state and evaluate the contribution by stationary sources to projected ambient levels of pollutants, both criteria pollutants and hazardous air pollutants.

not change the current requirement in part 7019.3000, subpart 1 that sources required to obtain a permit under chapter 7007 must submit an annual emission inventory (part 7019.3000, subpart 1 refers to part 7002.0015, subpart 2, which includes in the inventory and in fees any source required to obtain a permit under chapter 7007). This proposed rule does not change the sources subject to obtain a part 70 or state permit, hence those subject to the emission inventory and fees. This proposed rule instead creates a more efficient and flexible permit option for those sources already required to obtain a part 70 or state permit under chapter 7007. It is reasonable to reference the requirement to submit an emission inventory in this subpart to remind permittees of this existing rule requirement.

Subp. 4. Record retention, access to records, and inspections for stationary sources issued capped permits.

Item A requires that the owner or operator issued a capped permit keep required records at the site of the stationary source for a period of five years and that the records be available for examination or submittal upon request. This item is reasonable because it is consistent with the existing rules for record keeping and retention, which are necessary to allow MPCA inspectors to verify compliance with any air emission permit, including capped permits.

Item B requires that the owner or operator of a stationary source issued a capped permit provide access to the stationary source and access to the records for inspections. This provision is reasonable because it informs the owner or operator of the stationary source that the MPCA has statutory authority for inspecting a stationary source and the required records to determine compliance.

The record keeping requirements in items A and B are consistent with those for individual state or part 70 permits (see part 7007.0800, subparts 5(C) and 9). Unlike the registration permit in part 7007.1110, subpart 9(A), this item does not allow for maintenance of records at the main office for an unattended stationary source as the MPCA is not aware of any source that qualifies for a capped permit that is unattended as capped permit sources are larger emission sources than registration permittees. Item B does, however, allow for maintenance at the main office for records for years prior to the current calendar year. Off-site retention of records for previous calendar years is reasonable as records are still available upon request to the MPCA and it allows the owner or operator the flexibility to maintain those records at the most convenient office location. For all of the reasons above, it is therefore reasonable to require a stationary source to maintain records for the period of time and the locations proposed in this subpart.

Item C states that nothing in subpart 4 shall be read to limit the commissioner's, agency's, or administrator's authority under Minnesota Statutes, section 116.091, section 114 of the act, or other law. It is reasonable to remind the reader of the authority provided under these other laws with regards to record retention, access to records and inspections.

Subp. 5. No circumvention; permit shield.

This subpart states that an owner or operator is subject to enforcement action if it is discovered that the stationary source does not qualify for the capped permit, and that sources issued a capped permit do not qualify for the permit shield in part 7007.1800. In offering the option of a capped permit, the commissioner must depend to a large extent

on the owner or operator providing correct and truthful information in the permit application about a stationary source. If that information is incorrect, then the owner or operator must be responsible for not having fulfilled the obligation to obtain the appropriate permit. This is the same requirement that applies to general permits in part 7007.1100, subpart 7 and registration permits in part 7007.1110, subpart 18, for the same reason: general permit issuance and registration permit issuance relies on the source providing correct information in the permit application to establish eligibility for that permit. This reasoning applies with equal force to capped permits.

It is also reasonable that the permit shield does not apply to capped permits because issuance of these permits will not entail the detailed analysis of which requirements are applicable that accompanies issuance of an individual state or part 70 permit. Similarly, the capped permit content will not include a specific list of applicable requirements for each individual source as an individual part 70 or state permit does. Such steps are essential to the proper definition of what is subject to a permit shield, and are incompatible with the nature of a capped permit for which all of the permit conditions are in rule and the same for each facility issued a capped permit. If a source wishes to avail itself of the permit shield, it has the option to apply for and obtain a part 70 or state permit. Therefore, it is reasonable to exclude stationary sources with a capped permit from protection under the permit shield.

Subp. 6. Operation in more than one location.

The proposed rule allows a stationary source applying for a capped permit to request that it be allowed to operate in more than one location provided it identify the geographic areas in the state it intends to operate. This provision is reasonable because it is consistent with the permit content requirements in part 7007.0800, subpart 12 which allow a source applying for a state permit to request operation in more than one location. A capped permit is a type of state permit. (See part 7007.1146, subpart 5, item E for the reasonableness of the compliance requirements associated with this provision.)

Subp. 7. Capped permit general conditions.

This subpart includes the general conditions which must be included in every capped permit. The conditions listed in subpart 7, items A through O are the same general conditions that are required in all part 70 and state permits by part 7007.0800, subpart 16 and all registration permits by part 7007.1110, subpart 21. The general conditions listed in part 7007.0800, subpart 16 refer to the “agency”. For purposes of the proposed capped permit rule, the term “commissioner” is often substituted for “agency” or added to specify that the commissioner has the authority, and not the agency, which includes the MPCA Board. It is reasonable to refer to the specific authority to assist permittees and others who use these rules so that the decision-maker is clear. The proposed rule language in subpart 7 also deletes references in the general conditions to parts of chapter 7007 that do not apply to capped permits, such as the permit shield, minor permit amendments or the administrative amendment procedure for changes in ownership or control of a source. (Compare items D, G and N in this subpart with the same items in part 7007.0800, subpart 16). It is reasonable for the MPCA to sort these

differences out by editing and restating the general conditions as they will apply to capped permits, so that these requirements will be clearly stated for the capped permit holder and applicant.

Subp. 8. Parts that do not apply to capped permits.

This subpart identifies those parts that apply to part 70, state and general permits that do not apply to capped permits. It is reasonable that these be listed so that it is clear what applies to capped permits and what does not. Part 7007.0500 and part 7007.0501 do not apply because the capped permit has its own specific permit application requirements in part 7007.1145. In addition, waste combustors are not eligible for a capped permit so it is reasonable to exclude part 7007.0501 which controls application contents for waste combustors. Parts 7007.0600 to 7007.0950 do not apply because the complete application, application submittal, completeness review, timelines, permit content and public/affected state/administrator review of draft permit requirements contained in those parts for state and part 70 permits do not apply to capped permits because specific requirements in those areas are covered in other ways in parts 7007.1140 to 7007.1145. Part 7007.1000, subpart 1, items A to G do not apply for the reasons explained in 7007.1142, subpart 1 above. Parts 7007.1100 to 7007.1130 cover only general permits and registration permits and are not applicable to capped permits. Parts 7007.1150 to 7007.1250 and parts 7007.1350 to 7007.1650 do not apply to capped permits because capped permits cannot be amended and because the provisions in the capped permit rule for part 7007.1142 discuss the procedures a stationary source must take when it makes changes or modifications which change the applicable capped permit

option or render the source ineligible for any capped permit. Part 7007.1800 does not apply for the reasons stated in part 7007.1143, subpart 5 above.

Subp. 9. Parts that always apply to capped permits.

This subpart states that parts 7007.1140 to 7007.1148 continue to apply to sources issued a capped permit until the source is issued another type of permit or the commissioner determines that the source no longer requires an air emissions permit. It is necessary to state that these parts continue to apply since some of the emission limits in part 7007.1141 would be otherwise be identified as non-expiring title I conditions as defined in part 7007.0100, subpart 25 if that source were to receive an individual state permit instead of a capped permit. For example, if a source is applying for an individual state permit and the source's PTE is greater than NSR applicability thresholds (250 tons per year for most criteria pollutants for most sources), then the emission limits for those pollutants with a PTE greater than NSR thresholds and the associated monitoring, record keeping and reporting conditions would be identified in the state permit as non-expiring title I conditions.

Since under part 7007.1050, Duration of Permits, the agency has the authority to make some capped permits expire and since some of the terms of a capped permit could potentially otherwise be labeled as non-expiring title 1 conditions, it is reasonable to state that parts 7007.1140 to 7007.1148 continue to apply regardless of capped permit expiration unless a new permit is issued or a permit is no longer needed.

7007.1144 CAPPED PERMIT PUBLIC PARTICIPATION.

This part sets forth the procedures for public participation in the issuance of a capped permit to a facility. Normally, a public comment period is required so that citizens can comment on the facility-specific requirements in the individual permit. Public comment is also required by federal rule for an individual state or part 70 permit to be federally enforceable. With a capped permit, however, all of the permit requirements are contained in the rule at parts 7007.1140 to 7007.1148.

Citizens will have the opportunity to comment on the specific permit requirements during the public comment period that is required as part of the rulemaking process. This is similar to the procedures for a general permit, where there is a formal public comment period at the time the general permit is developed and noticed, but there is no public comment period when any individual facility applies for coverage under the general permit. This method meets federal rule requirements for noticing because citizens do have the opportunity to comment on the contents of the capped permit during the rulemaking process. By public noticing of the rule itself in place of public noticing each individual permit and submitting the rulemaking itself to EPA as a SIP revision this would meet the requirements of making the capped permit limitations federally enforceable. A formal public comment period with each capped permit application to the agency would not be required to establish federal enforceability, however, because the specific requirements of the permit are set forth in rule and cannot be changed in issuance of capped permits to different facilities.

During the rule development process, several stakeholder group representatives informed the MPCA that they were concerned about the MPCA making the determination about a facility's eligibility for a capped permit without the opportunity for public input, especially because the permit is non-expiring. In particular, they expressed concern about "problem" facilities at a local level, e.g. a facility about which a local government receives complaints. Due in part to this input, the agency is offering a 30-day public participation period to allow citizens to comment on a facility's eligibility for the capped permit. If a citizen believes a facility is not eligible for the capped permit, the citizen can communicate those concerns to the agency during the comment period. The agency will investigate the concerns raised and decide whether to issue the capped permit to the applicant.

It is reasonable to provide an opportunity for interested persons to comment on a source's eligibility for a capped permit as this information can improve the quality of eligibility decisions made by the MPCA. The public may provide site-specific knowledge of which the MPCA is unaware. Because facilities with capped permits are the same size as those with individual state permits, a public notice process is reasonable.

Subpart 1. Notice of applications received.

This subpart requires the MPCA to electronically post a notification that an application has been received for a capped permit. Electronic posting of permit applications is the least costly, most efficient way to share with all interested persons notice that an application has been received. It can be posted quickly on the agency's website for little cost compared with providing notice in a newspaper. Internet access is

available to the public at public libraries, in addition to being common in both the workplace and many homes. At the stakeholder meetings held on the rulemaking, stakeholders generally felt that electronic notification was most desirable and that legal notices in newspapers are often ineffective. It is reasonable to use the most efficient, least costly means to post this information. In addition this subpart requires the agency to provide notification of applications received to persons who request it. The MPCA intends to develop an electronic list-serve where interested persons can sign up to receive electronic notification of applications received. This service was requested by stakeholder groups so that they would not need to check the MPCA's website each day to determine whether any new applications had been posted. Stakeholder groups have indicated that electronic notification in particular would be useful to local governments and citizen groups who could then use their own internal communication networks to inform those in the public who may be most interested in providing information on the eligibility of a source for the capped permit. It is reasonable for the MPCA to provide expedient notice to those persons of the public who indicate an interest in knowing which facilities have applied for a capped permit.

Subp. 2. Contents of notice.

This subpart specifies the information that must be contained in the notice posted on the MPCA Internet web site. (The website address for the MPCA site is www.pca.state.mn.us.) The electronic notice will list the name and location of the facility so that persons can identify whether or not they have an interest in that facility. Inclusion of the SIC code and short title (for example: SIC 3365, aluminum foundries) is also reasonable as they provide a short description to the public of the type of facility

applying for the permit. It is also reasonable for the public to know whether it is an existing, or new facility, yet to be built, applying for the permit as the type of comments on eligibility may differ based on this piece of information. The MPCA electronic notice will provide a description of the comment procedures including the processes available to the public to participate in permit issuance including the dates on which the comment period commences and ends. This is reasonable because it is difficult for the general public to know where to find information about their participation options in the rules. Inclusion of the specific comment period start and end dates is reasonable as it provides important information for effective participation. Finally, the notice will contain the name, address, telephone number and electronic mail address of the person from whom interested parties can request additional information, including copies of the application (agency policy for copying charges would apply) and projected actual emissions information for new facilities. Emissions information for HAPs and criteria pollutants for existing facilities is already available on the MPCA's website and a link to this information will be provided. It is reasonable that the notice contain MPCA contact information so that interested persons can contact the MPCA with questions in the manner most convenient for them.

Subp. 3. Length of comment period.

The MPCA is proposing a period of 30 days for the interested persons to comment on the eligibility of a stationary source for a capped permit. This is reasonable as it is consistent with comment periods for other permitting actions such as the public notice of an individual state or part 70 operating permit. The 30-day notice period would

begin the date that the application notice required in subpart 1 was posted on the website and will be calculated pursuant to part 7000.0200.

Subp. 4. Contents of written comments.

This subpart establishes the requirements that an interested person must include when submitting written comments during the comment period on a facility that is applying for a capped permit. Any person may call the MPCA contact with questions about a facility at any time. This part establishes the types of information needed by the MPCA so that a person's specific comments can be appropriately addressed. Item A requires a statement of a person's interest in the permit application and any information related to a facility's eligibility. For example, a person may state that they are interested because they live nearby the facility. A person may question the facility's eligibility based on the person's personal observation of conditions at or near the facility. For example, a person thinks a source is exceeding emission limits based on frequent observations of black smoke coming from the plant. It is reasonable to require that a person state their interest in a facility to provide the MPCA context for the comments. Since the only type of information relevant to issuance of a capped permit is related to the eligibility requirements, it is reasonable to request any information they may have related to eligibility.²⁴

Item B requires a statement of action the person would like the agency to take.

Examples of actions a person might request include but are not limited to: a meeting with

²⁴ If the facility is found to be ineligible, the owner or operator will then likely need to obtain an individual permit, which will have a comment period during which the public can comment on specific conditions developed in the draft permit.

MPCA staff, further investigation by the MPCA of the potential malfunctioning of equipment, a request for additional information about certain pollutants emitted, or denial of eligibility for the capped permit. It is reasonable for an interested person to express their expectations of what action they wish the agency to take as a result of their comments so that the agency can respond accordingly. This information will also facilitate communication between the MPCA and the source that applied for the permit. A person may also comment on matters that are unrelated to the eligibility of the permit, such as noise. Some of the comments made, while unrelated to capped permit eligibility, could result in other actions being taken by the MPCA such as increased inspection frequency, a meeting with company personnel, etc.

Item C requires a person to provide reasons supporting their position with enough specificity that the commissioner can investigate the merit of the position. Vague comments made about a facility will not be helpful to the MPCA in its determination of whether a facility is eligible for this permit. It is reasonable to require an interested person to provide specific information to support their position so that the agency can evaluate the claim being made and respond accordingly.

Subp. 5. Petition for contested case hearing.

This subpart states that a person may request a contested case hearing during the 30-day comment period pursuant to part 7000.1800. It is reasonable to provide the opportunity for an interested person to petition for a contested case hearing if the person believes this additional process is necessary. It is reasonable to include references to the procedural rule part in Ch. 7000 for a contested case hearing as a citizen might not

otherwise know which rule parts apply to a petition for a contested case hearing. It is reasonable to require a petition for a contested case hearing regarding capped permit eligibility to follow the rules in ch. 7000 to be consistent with all other contested case hearing petitions. It is also reasonable to include the reference to a contested case hearing in this rule so that all parties, including the owner or operator of the stationary source, interested citizens, and the MPCA are aware that the contested case hearing process applies to a capped permit eligibility determination. This will alleviate resources that might otherwise be spent in making a determination whether the contested case hearing process is available.

The last sentence states that the public participation procedures in this part do not apply in certain instances where the agency voids and re-issues a capped permit. The reasonableness of excluding public participation when a source is transferring from one capped option to the other is discussed above under part 7007.1142, subpart 2(A). The reasonableness of excluding public participation when there is a change in the name, mailing address, ownership, or control of the stationary source is discussed above under part 7007.1142, subpart 5.

7007.1145 CAPPED PERMIT APPLICATION.

Subpart 1. Application procedures and request for additional information.

This section includes three provisions applying to a stationary source submitting an application for a capped permit. Item A requires the owner or operator of a stationary source applying for a capped permit to submit the application on a current standard application form provided by the commissioner. The provision is reasonable because it

will result in consistency in capped permit applications. The MPCA intends to obtain only information needed to evaluate the capped permit application. As a result, the applicant will spend less time filling out the application and the MPCA will obtain only the information necessary for review. This item is also consistent with general, state and part 70 applications which are also required by part 7007.0500, subpart 1 to be on a form provided by the MPCA. It is also reasonable to provide the commissioner with the authority to create different application forms for the two capped permit options, because the application forms may be able to reduce applicant preparation time and MPCA review time if they are tailored specifically to each option. This item specifies the application form used be current because the MPCA has found some parties have been using outdated forms when more current forms are available. It is reasonable to require an applicant to use the forms that are the most recent at the time of application to allow the MPCA to receive all the information needed for its review of the application and to avoid expending resources by both the MPCA and applicant to update an application submitted on an outdated form.

Item A also proposes to allow a source that has submitted a complete application for a registration, state, part 70, or general permit to supplement material provided in previous applications in order to meet the application content requirements listed in subpart 2. It is possible that a facility wishing to apply for capped permit already has submitted an application for an individual state permit or has submitted applications (for example for a modification) after the original application submitted for the Title V program. This proposed language allows the MPCA to make use of any application information already received by the MPCA in order to meet the application content

requirements in subpart 2. The application content requirements for a capped permit are comprehensive and similar to the application content requirements for a facility-specific state permit in part 7007.0500. The MPCA anticipates that many sources applying for a capped permit will either have submitted an application meeting the content requirements in part 7007.0500 or already have a facility-specific part 70 or state permit. It would be burdensome and unnecessary for a source to have to resubmit information that the MPCA already has. Therefore, it is reasonable for a source to provide only that application information that the MPCA does not already have and to update any information previously submitted to meet the content requirements of subpart 2. In addition, as stated earlier, one of the goals of this rulemaking is to provide an incentive for facilities to move into a permit option with lower allowable emissions. It would be a disincentive for a facility that already has a part 70 federal permit and qualified for a capped to have to complete an entire new application. It is reasonable to remove barriers for facilities wishing to obtain a permit with lower allowable emissions.

Items B and C both serve the purpose of obtaining complete and accurate information in the capped permit application. Item B is reasonable because it requires the permittee to submit corrections to a capped permit application as soon as the owner or operator becomes aware that incorrect information was submitted, even if that information is discovered after the permit is issued. Errors in the information submitted in the application could mean that a stationary source does not qualify for a capped permit at all, or that it should have received a permit under the other option. Item C is reasonable because it allows the MPCA to obtain additional information needed to evaluate a capped permit application or to verify that the stationary source qualifies for a

capped permit. Examples of the type of information the MPCA might request are: records verifying calculations made in the application process, compliance records, or other information specifically related to the stationary source qualifying for or complying with the capped permit. These requirements are also consistent with current requirements for part 70, state and general permits in part 7007.0600.

Subp. 2. Information included.

This subpart specifies the information to be included when an owner or operator is applying for a capped permit. This subpart includes a reminder of the agency's statutory authority to require information in addition to that specifically listed in subpart 2. (Minn. Stat. ch. 116.091, subd. 1.)

Item A.

Item A requires the owner or operator to specify which capped permit option they are applying for. It is reasonable for the owner or operator to specify whether they are applying for capped permit option 1 or 2 to allow the MPCA to evaluate whether it is eligible for that option.

Item B.

This item requires the application to include information about the location of the stationary source, its owner and operator, site personnel and contact information (telephone and electronic mail address) for any persons listed. Item B is reasonable because this information is necessary to properly identify the stationary source. Providing contact information is reasonable to allow the MPCA to communicate with regulated

parties. Electronic mail and telephone are the two primary ways that the agency uses to communicate with regulated parties.

Item C.

This item requires that a description of the facility's processes and products by Standard Industrial Classification (SIC) code and North American Industry Classification System (NAICS) be submitted in the application. It is reasonable to provide information that allows the MPCA to classify the various stationary sources. It is also reasonable to request the inclusion of both NAICS and SIC code information as these are the two most common systems currently used to classify businesses in the U.S.

Item D.

Subitem 1

This item requires the applicant to submit information for every emissions unit except as allowed in the remaining subitems of this item. This item also specifies the treatment of fugitive dust emissions in the application. It is reasonable to require information for each emission unit to verify which requirements apply, eligibility, emissions rates, and impact on ambient air quality. This item requires that information about fugitive dust emissions from the insignificant activity listed in part 7007.1300, subpart 3, item J be included only if it is in one of the 27 source categories listed in part 7007.0200, subpart 2, item B. This is consistent with the treatment of fugitive dust emissions for sources applying for a facility-specific state permit. Fugitive emissions must be included when determining if a source is major under New Source Review or Part 70, but only if the source is included in one of the 27 categories listed in 40 CFR

52.21(b)(1)(iii)(a) –(aa), 40 CFR. 70.2 , or Minn. R. 7007.0200, subp. 2(B) (1)-(27). If the source is not major under NSR or Part 70 using the above criteria for inclusion of fugitive emissions, the fugitive emissions must be included in determining if the source would require a state permit under chapter 7007. Since a source applying for a capped permit has already determined that a state permit is needed, it is reasonable to require information about fugitive dust emissions from entrance roads and parking lots in capped permit applications only when it is in one of the 27 source categories.

Subitem 2

This subitem sets forth the requirements of when to include information about insignificant activities. This subitem is split into unit (a) which discusses insignificant activity information when an applicant seeks a capped permit option 1, and unit (b) which discusses insignificant activity information when an applicant seeks a capped permit option 2. The rationale for and reasonableness of treating the information requirements for insignificant activities differently in the two permit options is described under part 7007.1141.

Both capped permit options allow a stationary source to exclude the emissions-related information about the insignificant activities in part 7007.1300, subpart 2. These include activities such as photocopy machines and drain, waste and pipe venting. The criteria the MPCA uses for establishing an insignificant activity are (1) that the quantity of emissions is “small”, and (2) that the exclusion of detailed information of the activity or emissions unit does not interfere with the determination or imposition of any applicable requirement. MPCA staff believe that the kinds of activities listed in subpart 2

are those with very small to negligible emissions and their exclusion will not impact the source's ability to remain below the emission thresholds in part 7007.1141. Thus, it is reasonable not to request any information about insignificant activities that are listed in part 7007.1300, subpart 2 from a stationary source.

Unit (a) requires that a source list all insignificant activities in part 7007.1300, subpart 3 and conditionally insignificant activities in ch. 7008. In addition, an owner or operator must provide calculations for those activities that are quantifiable, i.e. emission factors or calculation methods exist. Part 7007.1300, subpart 3 activities and conditionally insignificant activities have emissions that are "small" but typically are larger than subpart 2 activities. The activities that the MPCA currently believes are unquantifiable (i.e. emission factors or calculation methods do not exist) are: part 7007.1300, subpart 3 item B, subitem (1); part 7007.1300, subpart 3, item C; part 7007.1300, subpart 3, item D, subitem (1); part 7007.1300, subpart 3, item F; part 7007.1300, subpart 3, item H, subitems (1), (2), (4), (5), and (6). Since an option 1 capped permit has emission thresholds that are 90 percent of part 70 thresholds, it is reasonable to require the source to list all activities that could potentially impact the threshold and request emissions calculation information for those quantifiable insignificant activities to ensure that the permit emissions thresholds are not exceeded and that the source is eligible for a capped permit.

Unit (b) sets forth the permit application requirements for the capped permit option 2. This unit requires that an owner or operator applying for capped permit option 2 only list any insignificant activities in part 7007.1300, subpart 3 and any conditionally

insignificant activities in chapter 7008. This is consistent with facility-specific state permits. It is reasonable to not require calculations for these small sources of emissions unless necessary to determine what type of permit is needed. This unit also allows the MPCA to request the permittee to provide the calculations, if a determination is made by the MPCA that specific insignificant activities could potentially impact a permit threshold. Since the emission thresholds for an option 2 capped permit are lower to account for emissions from insignificant activities, it is anticipated the MPCA would rarely request these calculations. However, it is reasonable for the MPCA to have this authority because in its review of facilities that are potentially eligible, the MPCA found a few facilities where emissions from insignificant activities could potentially impact the thresholds.

Subitem 3

This item specifies that the owner or operator must provide sufficient detail about each emissions point to determine the applicability of applicable requirements and specifies the type of information needed for each emission point such as the location of the emission point, the location of the emission unit, exhaust gas flow rate and temperature, and the stack height and diameter of an emission point. The MPCA intends that the type of information currently requested in its application forms GI-02 and GI-03 is sufficient to meet the requirements of this subitem. This is information that facilities commonly maintain for other purposes. It is reasonable to require an owner or operator to provide this information for several reasons. First, it is necessary to assist the owner or operator in determining whether their facility complies with part 7007.1148 (Ambient Air Quality Assessment). Second, it can be used to verify applicability of applicable

requirements. Finally, it also can be used by MPCA staff in statewide and regional modeling or when a neighboring facility must perform PSD modeling which includes modeling nearby facilities.

Subitem 4

This item requires the permit application to specify potential emissions in pounds per hour from each emission unit. It is reasonable for a source to provide hourly potential emissions information because the MPCA uses potential to emit data to decide whether or not a given unit will be in compliance with applicable requirements such as the Industrial Process Equipment rule in Ch. 7011. In some cases, a facility may need facility-specific conditions to assure compliance with applicable requirements and would not be eligible for the capped permit. In addition, for certain pollutants it can be used for modeling purposes both by the source in its ambient air quality assessment under part 7007.1148 and for statewide and regional modeling performed by the agency of HAPs and criteria pollutants.

This item also requires that the permit application specify actual emissions in tons per year from the stationary source. It is reasonable to require actual emissions information from the stationary source so the MPCA can verify that the stationary source meets the emissions thresholds in part 7007.1141 and determine whether the stationary source is eligible for the capped permit.

Finally, this item specifies the pollutants for which this emissions information is necessary. Those pollutants that could make the source a major source under part 70 include each regulated air pollutant, and each hazardous air pollutant that is not yet a

regulated pollutant, as defined in part 7007.0100, subparts 12a and 19. The exceptions to this are pollutants regulated solely under section 112(r) of the act and pollutants regulated solely under section 602 of the act. This list of pollutants that could make a source under part 70 is broader than those pollutants listed in part 7007.1141, and includes less commonly emitted pollutants such as fluorides and directly emitted ozone. For example, it is possible that a stationary source could emit ozone directly from an emissions unit such as a corona treater. If the potential emissions of ozone from the stationary source exceed the part 70 threshold (100 tons), then that facility would not be eligible for a capped permit because part 7007.1141 does not include an emissions threshold for ozone. A facility-specific state permit would be needed to limit direct emissions of ozone to below part 70 thresholds. It is reasonable to include this emissions information for all pollutants that potentially could make the source a major source under part 70 to allow the MPCA to determine whether the facility is eligible for the capped permit.

Subitem 5

This subitem requires that a permittee provide information about parameters such as fuel use and operating schedules if they are related to emissions. It is reasonable to provide information upon which emissions calculations may be based to allow the MPCA to verify the eligibility of a permittee for a capped permit.

Subitem 6

This provision requires that if the owner or operator of a stationary source qualified for the capped permit by making the required calculations in part 7007.1147 using listed control equipment, then the owner or operator must identify and describe the

air pollution control equipment used. The description of the pollution control equipment might include information such as the manufacturer, model number, pollutants controlled and capture efficiency. It is reasonable to require the owner or operator to provide enough information about the listed control equipment to allow the MPCA to verify that the control equipment qualifies as listed control equipment under part 7011.0070.

Subitem 7.

Subitem 7 requires that the permittee provide information about the data sources used to develop emissions information and to provide the calculations. It is reasonable to require information on emissions development and the calculations since one of the primary criteria for the MPCA in determining eligibility of a source for a capped permit is that the source emissions be below the thresholds in part 7007.1141. This subitem also allows a source to use agency emission calculation worksheets which is reasonable as it can reduce resources used by the permittee in developing this information and provides certainty to the permittee that the methods and emission factors are acceptable to the MPCA.

Subitem 8.

This provision requires the permittee to submit the calculations required under part 7007.1147 (Calculation of Actual Emissions) and the results of those calculations in the application. It is reasonable to require submittal of the calculations to allow the MPCA to verify eligibility of the source for the capped permit.

This provision also establishes a procedure for an owner or operator to follow in the event that the source has been in operation for less than 12 months. This provision

allows the owner or operator to estimate the 12-month sum of actual emissions. This provision is reasonable because it provides a means to determine applicability for new sources. Furthermore, the provision is reasonable because the permittee is required to use actual emissions data once it becomes available and a permittee must always maintain the 12-month sum below the emissions thresholds in part 7007.1141 to stay in compliance with the capped permit.

Subitem 9.

This provision requires the source to state which method in part 7007.1148, subpart 1 (CAPS Electronic Spreadsheet Method) or subpart 2 (SCREEN3 Method) was used to comply with part 7007.1148 (Ambient Air Quality Assessment) and the summary of the results of the assessment. It is reasonable for a permittee to state the assessment method used and provide a summary of results so that the MPCA can verify whether the source complies with part 7007.1148. This requirement is satisfied by providing a copy of the output of the CAPS spreadsheet or the output from SCREEN3 modeling. An example of each is shown in Attachments 1 and 2. While subitem (9) requires an owner or operator to submit only a summary of the assessment results, the commissioner has the general authority to request an owner or operator to provide the data used in either of the methods above.

Item E.

Item E requires that an applicant for a capped permit provide in the application a listing of the applicable requirements that the applicant is subject to at the time of application. The MPCA has created a form called GI-09 for facility-specific state and

part 70 permittees that provides the necessary information to assist an owner or operator in making this determination. The MPCA intends to create an application forms package for capped permit applicants with a shortened GI-09 that will allow applicants to more easily fulfill this requirement. If a facility already has completed GI-09 in an application for a different type of permit, it would only need to update the information previously submitted. The owner or operator must know which requirements apply in order to prepare a compliance plan pursuant to part 7007.1146, subpart 4. It is reasonable to require the applicant to identify all applicable requirements as the capped permit requires that the owner or operator comply with all applicable requirements. The capped permit is not tailored to the individual facility so all the requirements are in rule.

Item F.

Item F allows an applicant to request in the permit application to operate in more than one location during the term of the permit provided the conditions in part 7007.1143, subpart 6 are met. It is reasonable to allow portable stationary sources that move from location to location the ability to request operation in more than one location through the permit application. This is consistent with what is currently allowed in a facility-specific state or part 70 application under part 7007.0500, subpart 2, item I.

Item G.

This item requires the owner or operator to describe the compliance status of the stationary source with respect to all applicable requirements and the requirements of parts 7007.0100 to 7007.1850. It is reasonable to request information about the compliance status in the application because compliance status is one of the criteria that

the MPCA uses to determine whether a stationary source is eligible for a capped permit and also a criterion used in determining whether to make the permit expiring under part 7007.1050, subpart 5.

Subp. 3 Environmental review.

Subpart 3 requires the applicant to include in the application a statement of whether an environmental worksheet (EAW) or an environmental impact statement (EIS) is required by state or federal law for the activity to be permitted. This is reasonable as it provides the MPCA with the information necessary to be consistent with the rules of the Environmental Quality Board (Minn. Rules 4410.3100, subpart 1) which require that permits may not be issued until the environmental review process is complete. Also, it is reasonable for the MPCA to know if an EAW or EIS is required as the MPCA may need to examine the facility more closely for eligibility under part 7007.1140, subpart 2, item B.

7007.1146 CAPPED PERMIT COMPLIANCE REQUIREMENTS.

Subpart 1. Capped permit compliance requirements.

Subpart 1 contains five items identifying the general rules with which the owner or operator of a stationary source with a capped permit must comply. The other subparts in part 7007.1146 provide more specific compliance requirements related to record keeping, conducting a pre-change analysis, developing and maintaining a compliance plan, and reporting. Nearly all of the stationary sources qualifying for a capped permit will be taking limits to keep their potential emissions below the Part 70 permit threshold where certain federal permitting requirements begin to apply. Therefore, the proposed

compliance provisions in this rulemaking are subject to the review and approval of the EPA. They follow EPA guidance and procedures for creating federally enforceable conditions for limiting potential emissions. In addition, EPA Region V staff was consulted during rule development to ensure that the conditions are federally enforceable. The MPCA currently issues facility-specific state permits to create federally enforceable conditions for limiting potential emissions. The compliance conditions in this rule serve the same purpose as the compliance conditions in those permits.

Item A states that a capped permit holder shall comply with parts 7007.1140 to 7007.1148, which encompass the capped permit rule as a whole. This provision is reasonable as it simply provides notice that compliance with all parts of the rule is necessary to qualify and maintain eligibility for a capped permit.

Item B states that the owner or operator must comply with all “applicable requirements.” This is reasonable because these requirements apply whether or not the owner or operator has a permit for the facility and is needed in order to clarify that these applicable requirements, which themselves are rules, continue to apply under this new rule. As an example, sources applying for a capped permit may be subject to one or more of the twelve proposed new source performance standards listed in part 7007.1140, subpart 2, item E. In exchange for the opportunity to elect to be governed under the more efficient and flexible capped permit, the owner or operator assumes responsibility to determine which applicable requirements apply to the stationary source, and to comply with them. In addition, the application materials prepared for capped permit applicants

will assist the applicants in identifying the applicable requirements. Therefore, it is reasonable to remind the stationary source of this requirement in item B.

Item C requires that the monthly calculation of the sum of actual emissions for the previous 12 months not exceed the relevant emission threshold for that pollutant in part 7007.1141. To be federally enforceable, EPA guidance requires calculation at least monthly to demonstrate that emissions for the previous 12 months are below thresholds. This is the same frequency required in state permits with facility-wide pollutant caps. This provision is reasonable because it is consistent with existing practices for site-specific permits and is needed in order to establish a federally enforceable means of demonstrating that emissions remain below part 70 thresholds.

Item D requires that, for nitrogen oxides (NO_x) emissions, the owner or operator of the stationary source must ensure that the emissions for the calendar year do not exceed the estimated value used for compliance with part 7007.1148. This part is needed because for the purpose of assessing ambient air impacts in part 7007.1148 for NO_x, an annual estimate is used, reflecting the long averaging time of the ambient standard. Since the assessment for the particulate matter and sulfur dioxide ambient standards have relatively short averaging times and the ambient impacts are based on short-term, worst case assumptions of emissions, the provisions in Item C are adequate. The NO_x assessment is based on an estimate of actual emissions rather than a worst case assumption so it is necessary, and reasonable, to require an additional compliance demonstration to ensure that actual NO_x emissions do not exceed the estimate used in the assessment.

Item E contains a formula for capped permit holders to follow, if the stationary source has less than the 12 months of emissions data needed to determine compliance with the 12-month rolling sum limitation. Under certain conditions, the proposed rule allows sources to qualify for capped permits if they have less than 12 months of emissions data. This formula is the same as that currently in place for registration permit holders under part 7007.1110, subpart 7, and was derived from a procedure currently used in facility-specific state and part 70 permits. The provision is reasonable as it follows the procedure that likely capped permit applicants are already subject to and is needed in order to enable newly permitted facilities to demonstrate compliance during the first 12 months.

Subp. 2. Record keeping requirements.

This subpart sets forth the record keeping requirements that are needed to maintain a record of compliance with the capped permit provisions. Depending on the emission units at a stationary source and the owner or operator's preference of methods for performing actual emissions calculations, not all compliance requirements described in items A through G will apply to every stationary source. Item H (monthly calculation) and item I (daily operating records) apply to every source holding a capped permit.

Item A contains four record keeping compliance requirements that apply where the owner or operator has used the material balance approach as the basis in the calculations of part 7007.1147. These four record-keeping compliance requirements are reasonable as they are non-complex and they utilize the same kind of information that would have been used in the original calculations to demonstrate eligibility for the

capped permit. Specifically, subitem 1 requires that a record be made by the end of each calendar month. Subitem 2 requires that a record of material data sheets (or signed statements from the supplier) stating the content of the pollutant of concern be kept. Subitem 3 requires a source assuming reductions due to recycling of material off-site to keep the appropriate records to verify the reductions. Subitem 4 requires that the 12-month rolling sum be recalculated and recorded for that pollutant by the end of each month, with a record of the date of the calculation and the calculation itself. Subitems 1, 2 and 3 provide data for the calculation in subitem 4. As explained for subpart 1(C), federal guidelines require monthly calculation and demonstration that emissions for the previous 12 months are below thresholds. All four subitems refer to both the quantity of material purchased or the quantity of material used. In the permit application, the owner or operator shall state whether it will verify compliance based on the purchase or use of each pollutant-containing material. In many cases the purchase records will be used because it enables the owner or operator to use existing accounting systems for the required records. In other cases, a stationary source may choose to demonstrate compliance based on actual use because it would not qualify under the purchase method. It is reasonable to allow the source to choose a method for compliance demonstration that will best meet the needs of the source and also follows EPA guidance for creating federally enforceable conditions.

Similarly, Item B contains two record keeping compliance requirements that apply where the owner or operator used the quantity of fuel used or purchased as a basis in the calculations of part 7007.1147. Subitem 1 requires a record of fuel used or purchased in the previous month to be made before the end of each month. Subitem 2

requires that the 12-month rolling sum be recalculated and recorded for that pollutant by the end of each month, with a record of the date of the calculation and the calculation itself. This mirrors the mass balance concept of Item A and is needed and reasonable for the same reasons.

Item C contains record keeping compliance requirements for facilities that used fuel sulfur data to calculate SO₂ emissions under part 7007.1147, subpart 5. Subitem 1 requires a record to be made before the end of each month of the amount of fuel burned for each batch for the previous month. Subitem 2 requires that a record of the certified sulfur content be maintained for each batch of fuel received. Subpart 3 requires that the SO₂ 12-month rolling sum be recalculated and recorded by the end of each month, with a record of the date of the calculation and the calculation itself. Again, this parallels the mass balance concepts of Items A and B, and is needed and reasonable for the same reasons.

Item D contains compliance requirements for facilities where the owner or operator used hours of operation as a limiting factor in the calculations in part 7007.1147. Subitem 1 requires a record of hours of operation of the applicable emissions units for the previous month to be made before the end of each month. Subitem 2 requires that the 12-month rolling sum be recalculated and recorded by the end of each month, with a record of the date of the calculation and the calculation itself. Again, this mirrors the mass balance concepts of Items A to C, and is needed and reasonable for the same reasons.

Item E is similar in concept to Items A and B but applies to situations where, as allowed under part 7007.1147, the actual emissions were calculated based on a throughput or output factor rather than an input or usage factor. Subitem 1 requires a

record of such throughput or output for the previous month to be made before the end of each month. Subitem 2 requires that the 12-month rolling sum be recalculated and recorded by the end of each month, with a record of the date of the calculation and the calculation itself. Again, this mirrors the mass balance concepts of Item A and B, and is needed and reasonable for the same reasons.

It is possible that a combination of two or more of the calculation methods in items A-E could be used for a given pollutant associated with a given emissions unit. In that case, all the calculation data would be combined into a single equation for a single recalculation of the 12-month rolling sum.

Item F requires that the owner or operator comply with the control equipment rule (parts 7011.0060 to 7011.0080) if eligibility for the permit or compliance demonstration was based on the default control efficiencies in part 7011.0070. This is reasonable since the default control efficiencies in that rule are in part dependent on the monitoring, maintenance and operational requirements contained throughout that rule. For hot mix asphalt plants, where specific control equipment parameters are built into the individual performance standard for these facilities at part 7011.0917; part 7011.0070, subpart 2, allows for an alternate, site-specific control efficiency to be developed based on a performance test provided that test meets the requirements of the performance test rule, parts 7017.2001 to 7017.2060. Item F specifies that if an alternative factor is developed, the owner or operator must operate the control equipment within the parameters of the test. This is necessary because a change in an operational parameter such as scrubber water flow rate for a wet scrubber can have a significant impact on the control efficiency of the control device. This requirement is needed in order to ensure

that control equipment will be operated at the default or alternative conditions upon which eligibility or compliance assumptions were made. Further, it requires reasonable monitoring and other operational requirements of the capped permit holder that are equivalent to those in existing registration permits and facility-specific state operating permits.

Item G requires that the owner or operator of a stationary source provide notice to the commissioner of changes at the stationary source that make it subject to an NSPS in part 7007.1140, subpart 2, item E or if it adds an emission unit subject to an NSPS listed under part 7007.0300. A stationary source subject to an NSPS listed in part 7007.1140, subpart 2, item E is still eligible for capped permit. The standards in part 7007.0300 do not require any permit. Subitems 1 and 2 require the owner or operator of a stationary source issued a capped permit to submit a notification to the commissioner for a change which results in the source being subject to a NSPS listed under part 7007.1140, subpart 2, item E, or a standard listed in part 7007.0300 (sources not required to obtain a permit). Subitem 1 is reasonable because the standards themselves require notification of the commissioner and this serves as a reminder to the owner or operator. Subitem 2 is reasonable because the commissioner needs a description of the changes in order to verify that the owner or operator still qualifies for the capped permit. Subitem 3 is reasonable in order to require submission of a copy of the standard with applicable portions highlighted so that the owner and operator will become familiar with the portions of the standard that apply.

Item H states that monthly calculation and recording of the 12-month rolling sum of actual emissions from the stationary source is required. As an additional

requirement where continuous emission monitor (CEM) information is used to calculate the 12-month rolling sum, the owner or operator must include the information required in part 7007.1147, subpart 2(C), which is specific to CEM operation. This is reasonable since it is the same kind of information that was used to support the permit application. The reasons and reasonableness for the inclusion and exclusion of certain insignificant activity data depending on the capped permit option is explained in the section above under part 7007.1141.

Item I requires the owner or operator to keep daily operating records that could be used for calculating emissions of the appropriate pollutant(s) for that period of time after the most recent compliance calculation. For example, if an MPCA inspector were to inspect a facility on May 10th, the most recent 12-month rolling sum calculation required to be completed would be for the 12 month period ending March 31st (as proposed under item H above). If requested by the MPCA, the facility would need to provide operating records for the period from April 1st to May 10th. For instance, an inspector may request the daily records (and calculations) if the source's actual emissions were close to the applicable threshold for that period ending March 31st. The daily records would allow the inspector to further investigate the compliance status of the facility. This requirement would allow the MPCA to make that determination.

The MPCA intends the stationary source make use of existing record keeping systems to the extent possible in fulfilling the requirements of Item I. The owner or operator is not required to recalculate facility-wide actual emissions every day but must provide the data upon the commissioner's request that could be used to make this calculation. This item is needed in order to allow the MPCA to periodically check that a

facility is below a threshold upon which permitting eligibility is based. This is consistent with requirements in individual state and part 70 permits. The MPCA and EPA require that where long-term limits are used (i.e., 12-month rolling limits), facilities must have short-term records that can be used by the regulatory authority to determine if the facility is in compliance at any point in time (i.e., continuously). Because the capped permit rule is generic and does not allow specific records to be tailored to the individual facility (as would be done if an individual permit were issued), this requirement is written broadly to allow many types of daily records - such as usage, purchase, hours of operation, production or throughput records, and requisition records. This is reasonable as the record keeping must match the compliance time basis in order to be able to demonstrate compliance with the threshold amount and does so in a way that is not unduly burdensome to the facility by allowing use of existing recordkeeping to the extent possible.

Subp. 3. Pre-change analysis.

This subpart requires that the owner or operator conduct a pre-change analysis before making a physical or operational change that will increase emissions at the facility. Items A and B essentially require the repeat of steps used in the original eligibility analysis to determine whether, after the change, the facility would still be within the applicable thresholds. Item A concentrates on ensuring that the facility would remain below the permitting eligibility thresholds. Item B then helps to assure that any increase in SO₂, NO_x or PM-10 would not have an adverse effect on the ambient air standards for those pollutants, as determined by the process in part 7007.1148. Item C requires the owner or operator to keep records of this analysis, in much the same way that

a facility would be expected to keep copies of its application materials for a site-specific permit. This subpart is needed in order to provide a process that will allow a facility to make changes if those changes will not affect eligibility for a capped permit and will not have an adverse impact on ambient air quality. It is reasonable to provide a procedure for the owner or operator to ensure that the intended change will not affect eligibility and yet still allows the source the flexibility to make changes in response to changing business needs. It is also reasonable as the procedures are consistent with the procedures that the owner or operator has already used to apply for the capped permit.

Subp. 4. Compliance plan.

Since a capped permit will not contain site-specific compliance requirements, the owner or operator is required under subpart 4 to develop a written plan containing a list of applicable state and federal requirements and a list of the actions that it will take to show compliance with these requirements. No particular format is specified, so it can be tailored to the needs of the facility. This plan is due within 60 days of receiving the capped permit and must be updated within 15 working days after any change at the facility that modifies or adds to the list of applicable requirements and compliance actions. This plan is to be kept on-site and supplied to the commissioner if requested. It is less likely that a facility could meet all of its deadlines and action requirements if it did not have a formal schedule to follow. Although a customized compliance plan is not required to be completed for 60 days, the facility is required to comply with the capped permit requirements as of the date it is issued. Also, while an owner or operator is allowed 15 working days after a change to update the plan to allow time for internal approvals, it is required to comply immediately upon making the change with whatever

recordkeeping, monitoring, etc. that may be required under parts 7007.1140 to 7007.1148 or other applicable requirements.

An example of a change made at the stationary source that would trigger the need to update the compliance plan is the installation of new equipment subject to a federal NSPS that is listed in part 7007.1140, subpart 2, item E. The compliance requirements of that standard would apply in addition to the compliance requirements described above under part 7007.1146, subpart 2, item H. Therefore, the stationary source would need to include in its compliance plan those actions necessary to comply with the new requirement.

It is reasonable and necessary to ask the owner or operator to develop a compliance plan to guide the facility or MPCA inspectors.

Subp. 5. Reporting.

Subpart 5 reiterates that all reports and notifications be certified by a responsible official as specified in part 7007.1143, subpart 1, and contains specific reporting requirements in Items A-E.

Item A contains the requirements for deviations reporting. Subitem 1 of item A mirrors parts 7007.1850 and 7019.1000, which already applies to all facilities with air permits. It is reasonable to include these requirements in the capped permit rule, with a reference to the specific rules, in order to make it clear that these requirements still apply when operating under a capped permit. Similarly, subitem 2 mirrors the existing requirements in part 7007.0800, subp. 6(A), with the exception that a deviation report is required only if there was a deviation. The existing requirement applying to individual state and part 70 permit holders requires a report every 6 months whether or not there is a

deviation. This relaxation is reasonable as it is balanced by the fact that in order to maintain capped permit status the facility must perform monthly calculations to assess its compliance status and at the same time eliminates the need to report when there is nothing to report.

Item B contains the same requirements for submittal of an annual compliance certification that are in the permitting rules at part 7007.0800, subp. 6(C) except that the proposed rule does not contain the requirement to send part 70 permit compliance certifications to the EPA administrator. This item is reasonable as it incorporates the relevant portion of a rule that already applies to the types of facility that might apply for a capped permit.

Item C states that the owner or operator must submit an annual emission inventory in accordance with the referenced emission inventory rules. This is a requirement that already applies to facilities that might obtain a capped permit so it is reasonable to include it here. An additional requirement is added to specify that when submitting the emission inventory the owner or operator shall base the calculations on the same methods that it uses to demonstrate compliance with the thresholds in the capped permit rule. This is reasonable since the owner or operator is already using these calculations for compliance on a monthly basis and can readily calculate an annual total from the same information. As the compliance options in part 7007.1146 will provide more representative emissions data than will a generic emission factor, this requirement also helps to improve the overall accuracy of data in the emissions inventory.

Item D requires that a list of existing equipment be submitted with the emissions inventory submittal referenced in item C. This is needed in order for emission

inventory staff to be able to keep an up-to-date record of emissions units since the owner or operator can make certain changes without otherwise notifying the commissioner. For example, a new paint booth could be added to the source without notifying the commissioner as long as all other requirements of parts 7007.1140 to 7007.1148 are met. Emission inventory staff are able to update the database that is used by emission inventory, permitting and compliance staff. The requirement that the information be submitted in a format specified by the commissioner is needed in order to facilitate efficient and complete data entry. It is reasonable to require a stationary source to submit updated emissions unit information so that the MPCA can keep its records complete, which facilitates future permitting work and inspections.

Item E refers back to part 7007.1143, subpart 6, which enables the owner or operator at the time of permit application to identify alternative operating locations. This part requires the owner or operator to give the MPCA notice at least 48 hours in advance of the move, and to provide the exact location and a statement that the source will comply with ambient air quality standards as demonstrated under part 7007.1148. This is needed in order to ensure that an ambient air impact analysis is performed before the move. This provision is reasonable because it is consistent with the requirements of a source applying for a state permit requesting operation in more than one location under part 7007.0800, subpart 12 and a capped permit is a type of state permit. In addition, this is reasonable because the property boundaries and physical terrain around a stationary source can impact the results of an assessment. These are both variables that can change with the relocation of a source. For example, a source located on a small property could have a more difficult time complying with part 7007.1148 than if it were located on a much

larger piece of property. It is reasonable to require a source to make a new demonstration of compliance with part 7007.1148 when the variables that are used to make the determination change as with a change in location.

7007.1147 CAPPED PERMIT CALCULATION OF ACTUAL EMISSIONS

Subpart 1. Methods Used.

This subpart sets forth the methods for calculating actual emissions for sources applying for a capped permit. This part adopts the methods set forth in the emission inventory rule (Minn. Rules parts 7019.3020 to 7019.3080) with minor modifications to reflect application to capped permits. Owners and operators of existing stationary sources that will be applying for a capped permit are large enough to have been required to report actual emissions under the requirements of the emissions inventory rule. Therefore, these owners or operators will be familiar with the emissions inventory method of calculating emissions and thus will be familiar with the methods set forth in this part. It is reasonable to use a method that the owners or operators are already familiar with to more efficiently use resources. It is also reasonable to use a method that that will provide data of recognized quality that will correlate with the MPCA emissions inventory. The calculation methods listed in the emissions inventory rule are consistent with generally acceptable calculation methods required by facility-specific state and part 70 permits.

This subpart requires an owner or operator to calculate actual emissions for each material or fuel used in each emissions unit but does allow for aggregation of similar units. It is reasonable to calculate emissions for each material and fuel because different emissions factors or contents apply to each material and fuel. Therefore, to accurately calculate emissions an owner or operator must calculate each separately.

However, where the same emissions factor, test result, or content of material applies to emissions from multiple units, it is reasonable to allow the emissions to be calculated for the grouped units. For example, if natural gas is burned in five different units and the same emissions factors apply to each of the units, it is reasonable to allow the total fuel usage to be used to calculate the total emissions instead of sub-dividing the usage between the units. This is particularly true for sources likely to obtain a capped permit since the other applicable requirements not contained in parts 7007.1140 to 7007.1148 that a capped permit holder is likely to be subject to (e.g., NSPS or state performance standard) are not likely to require the source to track usage at the individual unit level.

The rule proposes a hierarchy of calculation methods that is consistent with the hierarchy of emission calculation methods in the emissions inventory rules. It is also consistent with EPA guidance on the accuracy of the various methods and with the requirements in individual state and part 70 permits. Actual emissions measurement data from the site (i.e., CEM and performance test data) is clearly more representative of actual emissions than EPA emissions factors published for a given type of emissions unit. It is reasonable to require a hierarchy of calculation methods consistent with federal guidance and state emissions inventory requirements. It is also reasonable to reject any of the methods used under subparts 2 to 6 if conditions in each of the subparts are not met because the method doesn't apply if an owner or operator does not have the appropriate data or uses it incorrectly. It is also reasonable to require that only one emissions method be used for each emissions unit to prevent double counting of emissions. For the reasons already described under part 7007.1145, subpart 2, item C, subitem 1, it is reasonable to require calculation of fugitive dust emissions from activities listed in part 7007.1300,

subpart 3 (J) (unpaved entrance roads and parking lots) only if the source is in one of the 27 source categories listed in part 7007.0200, subpart 2, item B, subitems (1) to (27). As an example, a source with either capped permit option not in one of the 27 source categories would not need to calculate emissions from unpaved entrance roads or parking lots²⁵; however, that source would need to calculate actual emissions of fugitive dust from any stockpiles or material transfer points.

Subp. 2. Continuous emission monitor data

Subpart 2 sets forth the requirements for calculating emissions using data collected with continuous emissions monitors. This subpart adopts part 7019.3040 of the emissions inventory rule (Minn. Rules ch. 7019). No changes to the emissions inventory method of calculating emissions from emission units with CEMs are proposed in this subpart except that a reference to facilities subject to part 7017.1020 (acid rain sources) does not appear because these sources are not eligible for a capped permit. It is reasonable to allow an owner or operator to use CEMs as a method of actual emissions data as this method provides the most reliable and accurate measure of a source's actual emissions.

Subp. 3. Performance test data.

This subpart sets forth the requirements for calculating emissions using data collected through performance tests (or stack tests). This subpart is based on part 7019.3050 with some modifications. This subpart requires that for emission units with listed control equipment, the performance test determine the control efficiency (not the controlled emission factor). This is reasonable because the current control equipment rule

²⁵ The MPCA assumes that emissions would not be calculated from paved entrance roads and parking lots for capped permit applicants..

only allows development of alternative control efficiencies for listed control equipment, not development of controlled emission factors. (See part 7011.0070, subpart 2.) In addition, controlled emissions factor cannot be determined solely by the performance test results for units that do not have a total enclosure. HAP control efficiencies and other alternative control efficiencies are allowed as specified in Minn. Rules part 7011.0070, subpart 2. No changes to the alternative control efficiency methods are proposed in this subpart. Consistent with facility-specific state and part 70 permits which allow only controls required by their permit/rule to be used for emissions reduction credit purposes, it is reasonable to only allow development of control efficiencies for listed control equipment because only control equipment that is required to be operated by the rule, i.e. the owner or operator uses the listed control equipment in its calculation of actual emissions to demonstrate compliance with the capped permit rule thresholds, can be used for emissions reduction credit.

This subpart also requires that if performance testing is performed that it be done under worst case conditions. Part 7017.2005, subpart 8 defines worst case as the operational conditions that result in the highest emission rate for the pollutant tested. It is reasonable to test under worst case conditions because if testing is conducted at other than worst-case conditions, operating restrictions and appropriate monitoring would need to be imposed in the permit in order to ensure that the test result was representative of their actual operation, making the stationary source ineligible for the capped permit.

Finally if a source does performance testing to determine a VOC emission factor, the test must reflect the actual mass of VOC compounds emitted. This is consistent with requirements for facility-specific state and part 70 permits and needs to be

specified because, unlike PM, NO_x and SO₂ test methods, the test methods for VOC do not automatically give a result that is on the same mass basis as needed for permitting and emission inventory work. VOC test protocols often need to be developed on a site by site basis in order to generate a true mass emissions rate. If this additional work is not done, the results are generally reported as a default mass like propane or carbon, which potentially underestimates the actual VOC mass. This requirement is reasonable as MPCA and EPA guidance specifies that for development of VOC emission factors for permitting applicability and emissions inventory the actual VOC mass must be used. A default mass basis such as propane can be used only when a specific emission limit is based on that same mass basis.

Subpart 4. General calculation method.

Subpart 4 sets forth the calculation equation that may be used to calculate emissions when CEM or performance test data is not available. The method of calculating emissions under this subpart is a modification of the calculation method used for the emissions inventory at part 7019.3080. The modification allows the owner or operator to only take credit for emissions reductions that result from the use of control equipment that are listed in and comply with Minn. Rules part 7011.0070 (Control Equipment Rule). (An owner or operator may not assume emissions reductions from control equipment that is not listed in part 7011.0070.) Minn. Rules part 7019.3080 sets forth the method to calculate emissions using EPA emissions factors and a corresponding operation parameter. The equation in this subpart includes a multiplier for the designated control efficiency of listed control equipment in Minn. Rules part 7011.0070. It is reasonable to specifically identify that the calculations can account for the use of listed

control equipment because use of listed control equipment is the only way that facilities with a capped permit can receive emissions reduction credit. Facilities obtaining individual state and part 70 permits may be required by their permit to use control equipment other than that required by Minn. Rules part 7011.0070. The emissions inventory rule allows credit for control equipment required by a permit or applicable requirement (part 7019.3020, item F). It is therefore reasonable for capped permits to allow credit only for control equipment that is permissible under the capped permit rule – that control equipment listed in and complying with Minn. Rules part 7011.0070 (Control Equipment Rule).

Subp. 5. Material balance method.

This subpart sets forth the requirements for calculating pollutant emissions using material balance procedures. This subpart is similar to part 7019.3060 of the emissions inventory rule except that it references the control efficiencies for listed control equipment in the control equipment rule (part 7011.0070) instead of the more general EPA efficiency factors. Since the listed control equipment in part 7011.0070 have been evaluated specifically for this capped permit rule, it is reasonable to limit the control efficiencies to those that have been evaluated. The emissions inventory rule only allows credit for controls that are required. For capped permits, only equipment in part 7011.0070 can be required through an owner or operator's use of the listed control equipment efficiencies in determining actual emissions. Therefore, listed control equipment can be credited.

This subpart is also broader than part 7019.3060 in that it states that a material balance approach can be used for calculating emissions of pollutants other than just VOC.

Subpart 7019.3060 of the emissions inventory rule does not specifically address emissions calculations of HAPs, however, the capped permit imposes facility-wide limits for HAPs. Thus, the capped permit emissions calculations must include methods to calculate HAPs emitted by a source. As with VOC, a material balance method is appropriate and reasonable for calculating emissions from the use of materials that contain HAPs. In addition, particulate emissions from the spraying of materials that contain solids (i.e., coating) are generally calculated by using a material balance method. This is consistent with calculations required by facility-specific state and part 70 permits. It is reasonable to include a method for calculating HAP emissions because the capped permit imposes facility-wide HAP limits.

The owner or operator may elect to obtain credit for HAPs, solids, and/or VOC shipped in waste materials. To obtain credit, the owner or operator must provide the technical justification for the amount of the relevant pollutant leaving the process as waste or not otherwise being emitted to the air (the “c” term of the method). Two examples of acceptable methods for how an owner or operator may provide the technical justification for the determination of the VOC, solids, and/or total and individual HAP content for each credited shipment are:

- 1) The owner or operator may analyze a composite sample of each waste shipment to determine the weight content of VOC, solids, total HAP, and each individual HAP, excluding water.
- 2) The owner or operator may use supplier data for raw materials to determine the VOC, solids, and total and individual HAP contents of each waste shipment, using the same content data used to determine the content of raw materials. If the waste contains

several materials, the content of mixed waste shall be assumed to be the lowest VOC, solids, and total and individual HAP content of any of the materials.

It is reasonable to allow the owner or operator to receive credit for pollutants leaving the process as waste as long as there is technical justification to support this calculation because allowing subtraction of these materials shipped off-site more accurately reflects a source's actual emissions. In addition, this is consistent with material balance calculations in individual state and part 70 permits as well as for conditionally insignificant VOC usage under part 7008.4100

Subp. 6. Fuel Sulfur Data.

This subpart sets forth the requirements for calculating SO₂ emissions using fuel sulfur data in a material balance procedure. The requirements in this subpart are reasonable because the requirements are the same as part 7019.3070 of the emissions inventory rule (Minn. Rules ch. 7019). In addition, the requirements are consistent with SO₂ calculations using fuel sulfur data in individual state and part 70 permits.

7007.1148 AMBIENT AIR QUALITY ASSESSMENT.

Subpart 1. Methods Used.

This subpart sets forth the procedures for an owner or operator of a stationary source to conduct an ambient air quality assessment and sets forth the criteria that a stationary source must meet in the assessment. Part 7007.1148 applies to a source when demonstrating initial eligibility for a capped permit or a state permit with EMS provisions, or when required to do a pre-change analysis under part 7007.1146, subpart 3. It should be noted that both of the methods proposed for an assessment are screening analyses and if, under either of the methods allowed, a stationary source does not meet

the criteria for eligibility, it does not necessarily mean that the source is in modeled noncompliance with part 7009.0080 (ambient air quality standards). A more comprehensive modeling evaluation than the ambient air assessment methods allowed under this part is needed to determine modeled compliance with part 7009.0080.

The ambient air quality standards in Minn. Rules part 7009.0080 are designed to protect the public health and the environment from the adverse effects of air pollution, and apply throughout the state. The commissioner has the authority to prevent a stationary source from receiving a capped permit, or to revoke a capped permit, if source-specific permit conditions are necessary to ensure the source operates in compliance with ambient standards. MPCA staff performed a screening analysis of facilities that may be eligible for a capped permit. The analysis compared projected ambient levels to national and state ambient air quality standards using a screening-level air dispersion modeling methodology. The screening analysis showed that all of the potentially eligible facilities attained the national ambient air quality standards (NAAQS) for lead (Pb) and carbon monoxide (CO). However, the analysis indicated that modeled emissions had the potential to be higher than certain ambient air standards at some facilities (24-hr PM-10, 1-hr SO₂, and annual NO₂). Therefore, an ambient air quality assessment is necessary to help ensure that those stationary sources that appear eligible to receive the capped permits do not operate in violation of state and national ambient air quality standards.

Thus, it is reasonable, and in fact necessary under Minnesota's State Implementation Plan, that for purposes of initial eligibility for the capped permit an owner or operator must conduct an ambient air quality assessment to demonstrate that the facility's emissions result in ambient concentrations lower than the NAAQS for the 1-

hour SO₂, 24-hour PM-10 and annual NO_x ambient standards. The 1-hour average SO₂ standard and the 24-hour average PM-10 standard were selected because the screening analysis showed for the group of eligible facilities that when these standards were met, the standards for the other SO₂ and PM-10 averaging times were also met. Nevertheless, the emissions and resulting concentrations for other short-term averaging times for SO₂ are included in the analysis as an affirmative demonstration that the standards are met. This requirement is reasonable because the emissions data are required for other purposes, including them in the analysis entails insignificant additional effort, and the electronic analysis makes the calculations automatically.

The rule as proposed does not require the owner or operator to use one of the two specific methods to demonstrate that predicted annual SO₂ and annual PM-10 concentrations are lower than the standards in part 7009.0080. It is the experience of MPCA modelers that if the short-term standards are met at a facility, then the long-term standards are met as well in nearly all cases. It is reasonable to keep the analysis as simple as possible and yet still provide reasonable assurance that ambient air quality standards are protected. In addition, the MPCA always has the authority to request a specific facility to demonstrate compliance with pollutants and averaging times other than those that are part of the assessment in this part.

An owner or operator is allowed to use either the method in subpart 2 or subpart 3 for each pollutant standard. For example, an owner or operator could choose to use subpart 3 for the 24-hour PM-10 standard and subpart 2 for the remaining standards for each relevant pollutant (SO₂, and NO_x) emitted by the source. It is reasonable for an owner or operator to select the most suitable method for their source since both methods

provided are appropriate as a screening level assessment. If a source does not emit PM-10, SO₂, or NO_x (e.g. only VOCs); then the requirements of part 7007.1148 are satisfied and no ambient air quality assessment is required to be done under this part.

A facility that is issued a capped permit is allowed to make changes under the permit as long as its emissions remain below the applicable emissions thresholds for the capped permit option. Depending on the size, stack height and location of the emission unit, a new emissions unit added at a facility could contribute to an ambient air quality standard violation and yet facility-wide emissions could be below the capped permit thresholds in part 7007.1141. It is reasonable to require an owner or operator to evaluate whether a change at the facility will cause a violation of ambient air quality standards prior to the change since the capped permit rule does not require agency review for changes to the facility. In addition, once the initial assessment of the facility has been conducted, it is relatively simple to evaluate changes to the facility under either of the methods allowed.

This rule allows an owner or operator to use screening methods that are relatively simple and require much fewer resources than a comprehensive air quality modeling analysis. The two methods allowed under this part are based on well-accepted and established modeling methods. These methods are described under subparts 2 and 3. Similar amounts of effort are required for the two methods. The subpart 2 method comprises a set of options that range from very conservative screening (i.e., the look-up table) to semi-refined air dispersion modeling [i.e., using the DISPERSE procedure with BPIP building wake inputs (BPIP is the EPA Building Profile Input Program)]. The subpart 3 method comprises the EPA-recommended screening procedure which is the

moderately conservative SCREEN3 model. The data required for these assessments is already required for a capped permit application under part 7007.1145 or is data that is readily available to an owner or operator, such as the distance from the stack to the property line.

These tools are simple enough that personnel at many facilities can use them without specialized training. Facilities with fugitive emissions that must be included may require the assistance of an environmental consultant. The MPCA believes the type of facility that typically will qualify for a capped permit are the facilities most likely to hire a consultant anyway; they are too small to have their own dedicated environmental staff, but often too big to qualify as a small business where MPCA's Small Business Program would be able to assist them. Based on informal estimates the MPCA gathered from environmental consultants, the MPCA estimates it could cost \$2500 to \$5000 for a facility with ten stacks to have a consultant conduct the initial assessment. The costs of the assessment will vary based on such factors as the method used, whether the source must model road-like fugitive emissions, and whether site-specific dispersion factors are developed. The screening assessment tools allowed under this part are reasonable because they are relatively simple tools to provide the owner or operator as well as the agency with information about a source's contribution to ambient air quality levels beyond the property line.

This part requires that a stationary source with less than 12 months of emissions data (for example, a facility that has not yet been constructed) or a stationary source conducting a pre-change analysis use estimated annual emissions data for the NO_x value in either of the methods. As a source begins operation and generates emissions data, part

7007.1146, subpart 1 requires that actual annual NO_x emissions not exceed the amount of annual NO_x emissions modeled. This requirement acts as a check on the estimates used by facilities. Thus, it is reasonable to allow sources without operational data to estimate actual emissions for the NO_x ambient air quality assessment to provide a means for these facilities to qualify for the capped permit.

This part also requires that a source not assume any specific limits or conditions not contained in parts 7007.1140 to 7007.1148 when conducting the ambient air quality assessment. This is reasonable because a capped permit is not designed or allowed to provide for facility-specific conditions. If an owner or operator assumes conditions (such as limits on the capacity of an emissions unit or hours of operation), these conditions are not enforceable under a capped permit. Therefore, it is not reasonable that a source be allowed to consider these limits or conditions in its emissions calculations for the ambient air quality assessment in this part. This part does, however, specify that a source can (and should) use control efficiencies in determining hourly potential emissions if they are using listed control efficiencies in their calculations under part 7007.1147. The inclusion of listed control equipment provides a more accurate projection of the ambient concentrations and is therefore reasonable to include in the rule language. In addition, other enforceable conditions, such as a NSPS limit, should be used in the modeling if the limit is more restrictive than the potential emissions of the unit running as designed.

This part also proposes that fugitive dust emissions from unpaved roads and parking lots do not need to be included for the purpose of this ambient air quality assessment unless the commissioner determines that emissions from these sources are large enough to significantly impact the assessment. For example, under capped permit

option 1 an owner or operator would not need to include fugitive dust emissions from unpaved roads²⁶ and parking lots for the ambient assessment unless requested by the commissioner, but would still need to calculate fugitive dust emissions from roads and parking lots if it is in one of the 27 source categories listed in part 7007.0200, subpart 2, item B to demonstrate it remains below the facility-wide PM-10 thresholds. Estimating fugitive dust emissions from line sources such as roads and parking lots and modeling their dispersion is more difficult than for emission units with stacks. In addition, while part 7011.0150 requires all persons to take reasonable measures to prevent airborne dust from leaving their property line, none of the measures taken by a facility are federally enforceable under a capped permit because specific control requirements are not outlined in the proposed rulemaking. A stationary source performing the ambient air quality assessment could not assume emissions reduction credit for control of these lots and roads, making it more difficult for a source to meet the assessment criteria and making the assessment less reflective of actual conditions. Part 7011.0150 provides MPCA enforcement staff with the regulatory tools it needs to deal with sources where fugitive dust from roads and parking lots is an issue. It is reasonable to treat fugitive dust emissions differently for the purpose of the ambient air quality assessment than for actual emissions calculations to demonstrate a stationary source remains below the thresholds in part 7007.1141.

A stationary source having emission units with hourly potential emissions of less than 0.1 pounds per hour need not include those in the ambient assessment. This level of 0.1 pounds per hour is consistent with guidance published by the agency in its

²⁶ The MPCA assumes that paved roads would not be included either.

document titled “MPCA Air Dispersion Modeling Guidance for Minnesota Title V Modeling Requirements and Federal Prevention of Significant Deterioration Requirements (Version 2.1)” released January 4, 2004 and available on the MPCA’s website at <http://www.pca.state.mn.us/publications/modeling-title5.pdf>. The guidance states that “sources less than 0.1 pounds per hour can be ignored for Title V modeling purposes”. The support for this value of 0.1 is documented in the guidance. It is reasonable that small emission units ignored for Title V modeling purposes also be ignored when doing an ambient air quality assessment for capped permit sources.

Subpart 2. CAPS electronic spreadsheet method.

Item A.

Subpart 2 allows the owner or operator to use the CAPS electronic spreadsheet as a method for the owner or operator to conduct the ambient air quality assessment for these standards in part 7009.0080: 1-hour, 3-hour, and 24-hour SO₂ standards; the 24-hour PM-10 ambient air standard; or the annual NO₂ ambient air standard. This spreadsheet method, called CAPS, allows the user to project screening level and semi-refined level concentrations. CAPS provides a ratio of the criteria pollutant concentrations to their respective ambient air quality standards. A description of the methods used to develop the CAPS spreadsheet, as well as guidance in its use, can be found on the MPCA website (www.pca.state.mn.us/air/permits/capped). Given that the screening analyses of CAPs provide “conservative” results (i.e., biased toward overestimating concentrations), and thus are protective of the NAAQS, it is reasonable to provide a simplified means for an owner or operator that relies on established modeling methods to conduct an ambient air quality assessment.

CAPS can be used to compare maximum estimated ambient air concentrations of criteria pollutants with ambient air quality standards because it uses methods that comply with US EPA modeling guidance. It cannot be used to document non-compliance with an ambient air quality modeling standard because it is a screening-level method and it is possible that more refined methods could demonstrate attainment where the screening method showed nonattainment. Furthermore, the modeling in CAPS reports the “high first-high” to predict ambient concentrations, while NAAQS compliance demonstrations rely on the “high sixth-high” over five years for the 24-hour PM-10 standard and the second-highest over one year for the 1-hour SO₂ standard.

The EPA model, AERMOD, which the spreadsheet uses to develop default dispersion factors is not subject to frequent change as it is updated at a frequency of no less than every five years and typically longer.

Item B.

Item B requires an owner or operator to use hourly potential emissions for SO₂ and PM-10 and estimated future annual emissions of NO_x in the CAPS spreadsheet. It also requires that the concentrations predicted using the model at or beyond the property line be lower than the short-term SO₂ and PM-10 standards and annual NO_x standards found at part 7009.0080. The rule requires that the owner or operator shall enter potential hourly emissions of PM-10 and SO₂ into the CAPS spreadsheet for each emissions unit for which calculations were performed under part 7007.1147 unless otherwise allowed under this part (e.g. emission units with potential hourly emissions less than 0.1 pounds per hour).²⁷ Since the standards that the owner or operator must evaluate are short term

²⁷ CAPS evaluates emissions impacts based on releases through “stacks”. Thus the characteristics of emission sources or points that are not stacks (windows and doors or fugitive emission sources) must be

standards, it is reasonable to require the use of the potential hourly rate in the spreadsheet. It is also reasonable to require that the same emission units for which actual emissions are quantified under part 7007.1147 be included in the ambient air assessment since the emissions data will already exist for those emissions units. This means that under capped permit option 2 some of the part 7007.1300, subpart 3 insignificant activities will not be required to be modeled as they will be for capped permit option 1. Since the MPCA will be receiving a list of the insignificant activities with the application submitted for a capped permit option 2, the MPCA would have the authority to ask for inclusion of those activities if staff deemed that it would have an impact on the overall analysis.

Item B also requires an owner or operator to enter the estimated future annual NO_x emissions in units of tons per year. While the standard is for NO_2 , the owner or operator is required to enter NO_x emissions. Nitrogen dioxide (NO_2) is a reddish brown, highly reactive gas that is formed through the oxidation of nitric oxide (NO). Nitrogen oxides (NO_x) is the generic term for a group of highly reactive gases that contain nitrogen and oxygen in varying amounts and is generally taken to be the sum of NO and NO_2 for most purposes. While the MPCA tracks emissions of NO_x , the monitoring network in the state (and nationally) measures ambient concentrations of NO_2 for comparison to national and state ambient air quality standards. The estimated future annual NO_x emissions are not based on potential emissions but on the actual emissions projected by an owner or

modified in some way to allow the CAPS to predict dispersion and risk. Options for modification might include entering fugitive emissions that must be quantified in the CAPS as though they would be emitted through a one-meter stack, using SCREEN3 or a more refined dispersion model to estimate ambient air concentrations.

operator for any 12-month period in the near future. It is reasonable to allow a facility to use actual emissions for the annual NO_x assessment because under part 7007.1146, subpart 1, item D in any given calendar year, the actual NO_x emissions must not be greater than the estimated amount of NO_x emissions used to comply with this part.

Item B requires that the concentrations predicted at or beyond the property line using the spreadsheet must be lower than the short-term SO₂ and PM-10 standards and annual NO_x standards. It is reasonable to require that the stationary source perform a screening level demonstration that its emission do not contribute to a violation of an ambient air quality standard.

The CAPS spreadsheet model only estimates pollutant concentrations at ground level receptors; receptors at elevated levels are not considered in CAPS. The maximum concentration need only be estimated at or beyond the property line of the facility. It is not necessary for the purpose of this assessment that physical access to a facility's property be restricted at the property line. It is reasonable to evaluate projected concentrations only at the property line or beyond for these sources since this is a screening level analysis that is intended to be relatively simple for a source to use. It would add an unnecessary level of complexity to the assessment for the source to identify "fence line" in the same manner as an NSR analysis for very large sources, where it is determined by whether the public generally has routine access to a facility's property. The commissioner always has the authority to request a more comprehensive analysis be done to demonstrate compliance.

Item C.

Item C requires the owner or operator to use either default dispersion factors in CAPS, or to develop dispersion factors using the MPCA DISPERSE program or the EPA SCREEN3 program. Default dispersion factors have been developed in CAPS for the 1-hour, 3-hour, 24-hour, and annual averaging times and are automatically extracted from the look-up tables in CAPS to predict air concentrations for the pollutants' various ambient air quality standard averaging time. The default dispersion factors in CAPS are generally conservative. Because the look-up tables lack detailed site-specific information (i.e., temperature, velocity, building size and location, and land use), they use worst-case values for these parameters. Each stack is centered on a square building to reasonably maximize building downwash. For facilities with multiple stacks, a preliminary and conservative evaluation might be to group similar stacks and evaluate the group at the lowest stack height. Combining stacks and maximizing building downwash generally yields relatively high predicted concentrations. Depending on the results of the preliminary analysis, the owner or operator may choose to generate dispersion factors based on data specific to the stack.

Rather than, or in addition to, using the default DISPERSE look-up table in CAPS, an owner or operator can choose to use dispersion factors generated from the DISPERSE Batch Program, which also uses EPA's AERMOD dispersion model or EPA's SCREEN3 model. The user must provide additional stack parameters and specific data to use the DISPERSE Batch Program. Detailed technical information on using the Batch program can be found in the MPCA document, "Dispersion Information Screening Procedures for Emission Risk Screening Evaluations (DISPERSE) with emphasis on

DISPERSE Look-up Table and DISPERSE Batch Programs”, Version 1.0, October 1, 2003. It is available on the MPCA’s Internets site at:

<http://www.pca.state.mn.us/air/atguide.html>. This document is incorporated by reference in the rule because it is reasonable to give notice of where a reader can locate documents.

The DISPERSE program asks for several specific pieces of information:

- stack information (stack height, stack diameter, exit velocity, and exit temperature);
- appropriate Land Use Land Cover (LULC) option,
- Building Profile Input Program (BPIP) option,
- meteorology option (1986-1990); and
- stack location relative to the building center (if applicable).

MPCA default values are offered for cases where values are not readily available or known to the user.

It is reasonable to allow an owner or operator to develop dispersion factors under item C to provide sufficient degree of flexibility to model the facility under conditions that more closely approximate site-specific conditions. Anything beyond this is complicated and not suitable for this capped permit option.

Subp. 3. SCREEN3 method.

Item A.

Item A allows an owner or operator to use the SCREEN3 model for ambient air quality assessment. SCREEN3 is a conservative, screening-level model designed to predict maximum one hour ambient air concentrations from a single stack based on operating and design parameters such as maximum production rate, maximum sulfur

content of fuel, and stack height. It is the EPA recommended model for typical screening-level applications at industrial facilities. While designed for a single stack and projecting one-hour concentrations, the SCREEN3 guidance provides direction to use the program for multiple stacks and for projecting the maximum annual NO₂ concentration. It is the experience of MPCA modeling staff that the CAPS spreadsheet is simpler to use for multiple stacks and for prediction of the annual NO₂ concentration, however, an owner or operator is offered the option of the SCREEN3 method which may be more suitable for certain facilities. If a stationary source has only one stack, the program is simple enough to be run by the facility personnel or a consulting firm could be used. It is reasonable to allow the use of SCREEN3 as it is a well-accepted and well-established modeling method that some sources may prefer to use over the CAPS spreadsheet.

Item B.

This item incorporates the SCREEN3 model by reference and provides information about how to obtain it. The SCREEN3 program is available the Pollution Control Agency library through the Minitex interlibrary loan system, through the National Technical Information Service (NTIS), Springfield, VA, (800) 553-6847, or at the Environmental Protection Agency Internet site at the following address:

<http://www.epa.gov/scram001/tt22.htm#screen3>.

SCREEN3 is not updated frequently, 1995 is the most recent version of this model. It is reasonable to provide information on where to obtain the SCREEN3 model.

Item C.

This item is the same as item B in subpart 2 above requiring an owner or operator to use hourly potential emissions for SO₂ and PM-10 and estimated future annual

emissions of NO_x in the screen model. It also requires that the concentrations predicted using the model at or beyond the property line be lower than the short-term SO₂ and PM-10 standards and annual NO_x standards found at 7009.0080. For a discussion of reasonableness see item B in subpart 2 above.

Item D.

Item D provides the adjustment factors if the owner or operator is using SCREEN3 to estimate concentrations for standard averaging times longer than one hour, i.e. standards with a 3-hour, 24-hour, or annual averaging time. The SCREEN3 model predicts maximum 1-hour concentrations with the exception of the ability to do a 24-hour estimate for complex terrain impacts. For longer period averages, EPA provides adjustment factors in a document titled “Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised”, EPA-454/R-92-019, U.S. EPA, Office of Air and Radiation, October 1992. The adjustment factors in item D are taken from this document for the averaging times that may be needed to show compliance with part 7007.1148. These adjustment factors have been in use by modelers using SCREEN3 since 1992 and, thus, it is reasonable to include these factors in the rule itself, rather than reference the EPA document in which they are included.

The last two sentences of part 7007.1148 clarify that the new rule part does not allow violations of the ambient air quality standards, which govern all sources in the state at all times. It is reasonable to clarify that the commissioner may request a stationary source to demonstrate compliance with the ambient standards for other pollutants and averaging times for which standards exist. This language is reasonable to assure that the MPCA retains the authority it already has to assure compliance with ambient standards,

and that compliance with the ambient standards will be required in situations where the requirements of this rule part are not sufficient by themselves to provide a reasonable degree of certainty that ambient air quality standards are met at particular sources.

Ch. 7011 CONTROL EQUIPMENT

7011.0065 APPLICABILITY.

Subpart 1. Applicability.

This subpart contains a technical amendment to the applicability provisions of the control equipment rule. Item E is added to allow a stationary source to use the provisions in the control equipment rule to qualify for a capped permit. This is consistent with the existing rule provisions which allow an owner or operator of a stationary source to use the control equipment rule to determine what type of permit or permit amendment is required or to qualify for a registration permit. The control equipment rule defines which control equipment is eligible (“listed control equipment”) and specifies operation, monitoring, maintenance, recordkeeping and control requirements for that equipment. The impact on emissions is federally enforceable with this rule. Thus, it is reasonable to allow an owner or operator of a stationary source to use the control equipment rule in qualifying for a capped permit.

7011.0070 LISTED CONTROL EQUIPMENT AND CONTROL EQUIPMENT EFFICIENCIES.

Subp. 2. Alternative control equipment efficiencies; control efficiencies for hazardous air pollutants.

The proposed change to subpart 2 is a technical amendment to allow sources applying for a capped permit to use the control equipment rule to request an alternative

control efficiency by demonstrating through a performance test the control equipment is capable of achieving a higher consistency. Currently under this subpart, those applying for a part 70, state, registration, or general permit can request an alternative control efficiency. It is reasonable to allow owners or operators applying for a capped permit to also be able to request an alternative control efficiency, consistent with all other permit types.

7011.0075 LISTED CONTROL EQUIPMENT GENERAL REQUIREMENTS.

Subpart 1. Operation of Control Equipment.

The proposed change to subpart 1 is an amendment to allow those applying for a capped permit with a fabric filter the ability to request an alternative pressure drop operating range if they submit two years of compliant monitoring data with the request. Registration permittees are currently allowed to request an alternative range. (It is not necessary to specify that facility-specific state or part 70 permittees be able to request an alternative range as the individual permit allows for tailoring of the control equipment monitoring range.) It is reasonable to allow capped permittees the ability to request an alternative range because there are sources that may have the original manufacturer's control equipment that may not have specified any range or specified a range that was inappropriate. The proposed rule change allows the owner or operator to submit to the MPCA an alternative to the manufacturer's specified range that is most appropriate for their equipment and to base the range on two years of historical data. The request for an alternative range will include a summary of the actual values of the monitored parameters for the past two years. The MPCA has the authority to ask the source for supporting data if the range submitted seems to be out of line with other similar control equipment

monitoring ranges. (Minn. Stat. ch. 116.091, subd. 1.) Examples of supporting data may be technical information from a control equipment manufacturer or supporting documentation from an article in peer reviewed technical literature. In the unusual circumstance that sufficient supporting data is not available, the MPCA may request a performance test to demonstrate that the control equipment can meet the listed control efficiency when operated in the range desired by the owner or operator. (Minn. R. 7011.0075, subp. 6.) The proposed change to this subpart is reasonable because it allows flexibility to account for the individual differences between facilities applying for a capped permit and yet it preserves the MPCA's ability to disallow a proposed range which subjects the source to different applicable requirements under Ch. 7007, or renders the source ineligible for a capped permit.

Subp. 5. Deviation of listed control equipment from operating specifications.

This subpart is proposed to be changed to allow stationary sources with a capped permit to report a deviation only if a deviation occurred in the reporting period. A deviation occurs when the control equipment monitored parameters do not comply with the operating specifications. It is reasonable for the types of facilities receiving a capped permit (non-complex state sources) to report deviations only if they have a deviation within the six month reporting period. MPCA experience with these types of sources has been that deviations do not occur frequently and reporting only if there is a deviation is sufficient. At a minimum, as proposed in this rulemaking, the capped permittee must certify on an annual basis that they have been in compliance with all applicable requirements, or if not, to report the deviation.

7011.0917 ASPHALT PLANT CONTROL EQUIPMENT REQUIREMENTS.**Subpart 1. Operation of asphalt plant control equipment.**

This is a technical amendment to allow an owner or operator of an asphalt plant applying for a capped permit to request an alternative range to the control equipment manufacturer's specifications. The current rule allows a registration permit applicant to request this range. It is reasonable to allow an owner or operator applying for a capped permit to be also able to request an alternative range for the same reasons listed above under part 7011.0074, subpart 1.

A second technical amendment to this part is to clarify that for hot mix asphalt plants in operation on April 22, 1996 applying for a registration permit that this request be made by the application deadline in part 7007.0350. This requirement was specific to asphalt plants applying for the registration permit and was written to address issues specific to asphalt plant registration permittees at the time of that rulemaking. It is reasonable to clarify that this applies only to registration permittees and not to capped permittees as the capped permit did not exist at the time this subpart was originally written.

Subp. 6. Deviation of asphalt plant control equipment from operating specifications.

This subpart contains a technical amendment to clarify that the asphalt plants with capped permits need only report a deviation if a deviation occurred in the reporting period. The reasonableness of this amendment is described above under part 7011.0075, subpart 5.

Ch. 7019 EMISSION INVENTORY REQUIREMENTS**7019.3020 CALCULATION OF ACTUAL EMISSIONS FOR EMISSION INVENTORY.****Item A.**

A technical amendment is proposed to item A to account for addition of the capped permit as a permit option. The proposed amendment specifies that insignificant activities required to be quantified under a capped permit option 1 are not insignificant for the purposes of the emissions inventory. This is reasonable as the facility is already calculating emissions from quantifiable insignificant activities to demonstrate compliance with the option 1 capped permit under part 7007.1146, requiring no extra effort on the part of the source. It also makes calculations for the purposes of permitting consistent with the emissions inventory which is an intent of this rulemaking to reduce complexity for both the MPCA and the permittee.

Item B.

This is a technical amendment to item B exempting capped emission permittees from calculating emissions using the methods in part 7019.3030 to 7019.3100. This is reasonable because calculation methods for actual emissions for a capped permit are specified in part 7007.1147 which, to a large extent, adopt the methods in the emission inventory rule. The reasonableness of these methods is described above under part 7007.1147. It is reasonable to have consistency between emission calculation methods for permitting and emissions inventory to minimize confusion for both the MPCA and the permittee.

Item E.

Item E is a new item which requires an owner or operator obtaining a capped permit to report actual emissions as calculated for compliance demonstration purposes under part 7007.1146, subpart 2, item H for the calendar year. This requirement is reasonable for the reasons provided under items A and B above. The requirement that the information be submitted in a format specified by the commissioner is needed in order to facilitate efficient and complete data entry. This item provides a reasonable process for the MPCA to keep its records complete, which facilitates future permitting work and inspections. The specified format can also simplify data reporting for the permittee because while emissions from all emission units must be reported, similar units may be aggregated and still meet the data needs of the MPCA. For example, units that are in the same Source Classification Code often may be reported as a group, especially if the units individually have small emissions and are numerous.

Item G.

Item G needs to be updated because otherwise, in those instances where a facility has applied for a permit but the agency has not yet issued the permit, it could result in the facility not receiving credit for the control equipment and having to pay higher fees. Item G currently states that the provision becomes effective three years after approval of the agency's permitting program. EPA granted full program approval of the agency's permit program on December 1, 2001. This means that as of December 1, 2004 item G will be effective. At the time item G was drafted, the MPCA expected that all facilities would have their total facility permit 3 years after the program approval date. The proposed

change clarifies that this item is not effective until the MPCA has issued a facility their registration, state, part 70, capped, or general permit, and not before the three years after the date of full permit program approval. This change is reasonable as it corrects an unintended consequence of the original rule provision due to assumptions made at that time which have turned out not to be true.

7019.3030 METHOD OF CALCULATION.

Item A.

This is a technical amendment that clarifies the methods of calculation under part 7019.3030 are not applicable to sources holding a capped permit. This is needed and reasonable for the reasons listed above under part 7019.3020, item B.

C. Reasonableness of Rule by Section - State Permit with EMS Provisions

Having completed discussion of the reasonableness of the proposed capped emissions permit rule in the previous part (Part B), Part C of the SONAR will discuss reasonableness of the proposed state permit with EMS provisions, section-by-section. This proposed permit option allows air emission facilities that employ a qualifying EMS as a tool to manage their compliance, to operate under emission caps set in individually-issued state permits. This part of the SONAR will begin by discussing the definition of several new terms (to be incorporated into the existing part 7007.0100), conditions for establishing and maintaining eligibility for the state permit with EMS provision (under a new part 7007.1105), and the content of applications and the state permit with EMS provisions itself (also under a new part 7007.1107).

7007.0100 DEFINITIONS.**Subpart 7c. Customary permit conditions.**

This rule proposes to provide flexibility in order to promote the implementation of an environmental management system (EMS) and reduce administrative cost for both stationary sources and the MPCA. Therefore it is imperative that the permit option in this rule be easier to administer than an existing individual state permit. Yet, if the MPCA and the source had to generate a new permit should the source permanently or temporarily discontinue its International Organization for Standardization (ISO) 14001 conformance status, or if a stationary source adopted an EMS after initial startup or soon after permit issuance, then both parties would incur cost and delay exceeding that of the current individual state permit process. The MPCA has therefore proposed to incorporate both “customary” permit conditions and the EMS provisions into this permit option. In so doing, a stationary source will not need a new permit, or even a permit amendment, if its eligibility for the EMS provisions changes. It is reasonable to structure the permit’s content in this way since doing so reduces administrative cost for both the MPCA and the stationary source.

This subpart defines as “customary” those permit conditions that a stationary source must comply with when it does have an EMS that qualifies for the EMS provisions. The MPCA has chosen “customary” as the modifier to avoid confusion with other established terms such as “standard” or “conventional.” The term will describe the permit conditions that appear in most state (and federal) air permits, including:

- a requirement to comply with Part 7007.1200, subpart 3 (calculating hourly emissions rate increases), for purposes of determining what type of amendment is needed under state rules;
- a requirement to comply with Part 7007.0800, subpart 6, item A, subitem 2 (submitting semiannual deviation reports); and
- a requirement to calculate monthly 12-month rolling sums for all emissions limited by the permit.

The MPCA proposes to place this set of customary permit conditions in state air permits with EMS provisions. The EMS provisions are then alternatives to these customary permit conditions, offering relief from these customary conditions if the permittee's EMS and compliance history meet all of the eligibility requirements. It is reasonable to include both customary permit conditions and EMS provisions in the permit so that the permittee and MPCA do not have to generate a new permit if the permittee's EMS status changes. It is reasonable to create a definition for "customary" permit conditions for purposes of this rule to make the EMS permit process more clear.

Subp. 9b. Environmental management system.

This rule subpart sets forth the definition of environmental management system (EMS) for use throughout the rule. This definition combines aspects from several EMS programs, including the ISO, the EPA, and its National Environmental Performance Track program (Performance Track), the Multi-State Working Group on Environmental Management Systems (MSWG), and other states with EMS incentive programs. The proposed EMS definition has two components:

1. a general statement of what an EMS is, for purposes of this rule; and

2. reference to the ISO 14001 EMS standard for the framework of specific elements that make up an EMS that will qualify a stationary source for the EMS provisions.

MPCA has not adopted the ISO 14001 general statement on EMS, since many stakeholders outside the organizations using the ISO standard have found it to be insufficiently focused on regulatory compliance and environmental performance. The proposed general statement is actually closest to what is used by EPA in its Performance Track program and elsewhere:

“An EMS is a continual cycle of planning, implementing, reviewing and improving the processes and actions that an organization undertakes to meet its business and environmental goals.”

However, MPCA has changed “cycle” to a more determinate “program” and has focused on environmental obligations, legal requirements, and improved environmental performance rather than the more general “business and environmental goals.” It is reasonable to provide this sharper focus on compliance and performance since the source’s implementation of the EMS is expected to make its physical and operational changes compliant and protective of human health and the environment without review by MPCA staff.

Through this rulemaking, the MPCA wants to create incentives for stationary sources to incorporate an EMS. To further this goal, the MPCA has decided to base this rule on the ISO 14001 EMS system which is the foremost EMS standard in the world. The MPCA has also incorporated the ISO 14001 support structure of auditing standards,

auditor and registered company oversight, and the overarching international framework.

The use of an established, recognized system has additional benefits, for example:

- private sector stationary sources may be more willing and likely to implement a standard that the private sector has both developed (with input from government and citizen partners) and implemented;
- in addition, the MPCA can rely on the ISO 14001 standard, as it has layers of international, national, company, and auditor accountability and oversight built up and tested since 1996. Thus, the MPCA can leverage that system to oversee the environmental performance of qualifying companies, and to extend its oversight reach without requiring additional public outlays.

The MPCA is proposing two different definitions of EMS. One is to be registered to the ISO 14001 EMS standard, and the other is to have a system that conforms to the ISO 14001 standard. If a stationary source chooses registration, the MPCA included language that such registration must take place under the American National Standards Institute-Registrar Accreditation Board (ANSI-RAB) National Accreditation Program (NAP). This is reasonable as it will assist a stationary source as it contracts with a consultant or auditor. A prospective auditor should be able to demonstrate their conformance with NAP requirements. Any EMS registration outside of the NAP would not be recognized by customers or markets.

While MPCA considered accommodating EMSs outside of the ISO standard, it was deemed infeasible since MPCA would have to take on additional and expensive new roles relating to EMS standard development, auditing, and auditor qualification and oversight. However, through experience and stakeholder input, it became evident that

many companies were adopting EMSs based on the ISO standard, and were even having their EMSs audited based on ISO and supporting requirements, without necessarily taking the final step of ISO registration. Since that step is often expensive both in registration fees and higher auditor rates, it is reasonable to offer a flexible second option which requires conformance but not registration to the ISO 14001 standard because this will increase the incentive to implement an EMS by offering the same flexibility benefit.

While the permit is based on the ISO 14001 standard, the EMS definition and other adjustments reflect a growing consensus in the U.S. and among Minnesota stakeholders that regulatory flexibility based on EMS use dictates that more focus be placed on regulatory compliance and environmental improvement, so it is reasonable that the EMS definition be structured as it has been proposed. It is also reasonable to create a definition of EMS that is based on the ISO 14001 framework, incorporates some language from the EPA Performance Track program²⁸, and has environmental performance as its goal.

Subp. 9c. EMS audit.

MPCA is proposing a rigorous definition of what constitutes an EMS audit for purposes of this permit option. The EMS audit is a process of observing and sampling the stationary source's work practices, records, training and management procedures, and

²⁸ EPA's Performance Track program is designed to recognize and provide incentives to facilities that consistently meet their legal requirements and have implemented high-quality environmental management systems. As of June 2004, the program has 344 members nationally and four in the state of Minnesota. Once EPA approves a facility's application, members remain in the program for three years, as long as they continue to meet the program criteria. After three years they may reapply. Facilities applying to Performance Track must have: a) an EMS in place for at least one full cycle that has been assessed by an independent party; b) a history of sustained compliance; c) past environmental achievement and commitment to continuous environmental improvement; and d) commitment to community outreach. More information is available at: <http://www.epa.gov/performancetrack/>

performance, and of documenting the results of the auditing process. An EMS audit can be thought of most simply as the stationary source “saying (through documentation) what it’s going to do (through its EMS), then doing what it says.” More formally, the purpose of the EMS audit is to determine if a stationary source’s EMS conforms to the requirements of the ISO 14001 EMS standard. While an owner or operator causes the EMS audit to occur at intervals and within the scope defined by the ISO 14001 system, the EMS audit must be conducted by a provider who is independent of the stationary source being audited. These are all reasonable requirements since they align closely with industry standards. For purposes of clarifying expectations under this rule for both stationary sources and auditors, MPCA proposes to specifically incorporate a number of related requirements:

- A. ISO 19011: Guidelines for quality and/or environmental management systems auditing, ISO, 2002 – this ISO standard combines and supersedes the previous EMS auditing standards, 14010 and 14011;
- B. ISO/International Electrotechnical Commission (IEC) Guide 66: General requirements for bodies operating assessment and certification/registration of environmental management systems, ISO, 1999 – expanded guidance for EMS auditors and registrars;
- C. Guidance on the Application of ISO/IEC Guide 66, International Accreditation Forum (IAF), 1996 – the IAF is an international consortium of the national bodies (in the U.S., that body is the Registrar Accreditation Board or RAB) overseeing accreditation of EMS registrars and auditors in that country or economic group. IAF members agree to a common interpretation of ISO standards and guides, lending

international conformity to issues of ISO 14001 implementation. Of particular interest to the MPCA is section G.4.1.6 of the IAF guidance, which states:

“Legal and Regulatory Compliance in Clause 4.1.1.5. of ISO/IEC Guide 66 means

- (a) An organization with a certified/registered EMS has a management system that should achieve continuing compliance with regulatory requirements applicable to the environmental aspects and associated impacts of its activities, products and services. The certification/registration body confirms that a system capable of achieving the required compliance is fully implemented.
- (b) Procedures should be developed by the certification/registration body detailing action to be taken by the certification/registration body in the event that a noncompliance, or indication of a noncompliance, with a relevant regulatory requirement is discovered during the activities of the certification/registration body. These procedures should include a requirement that any noncompliances discovered are communicated (not necessarily in writing) to the organization audited. It is important that the organization is advised of these procedures in advance.
- (c) Certification/registration bodies should be aware that environmental regulatory requirements applicable to an organization may cover the area outside and inside the site boundaries. The regulatory controls may stem from various sources; certification/registration bodies should know which need to be considered.”

The MPCA has included this language from the IAF guidance in the SONAR because it offers additional explanation of the ISO 14001 system's approach to regulatory noncompliance encountered by EMS auditors, and helps address historic concerns of citizens that ISO 14001 does not adequately address noncompliance.

MPCA applies the same rationale in incorporating the following documents.

- D. National Accreditation Program Advisories, Registrar Accreditation Board (RAB) – these are intermittent advisories published by the RAB (the U.S. governing body for ISO 14001 implementation) to address issues as they arise. In particular, the RAB developed the following Advisory No. 28 (May 2, 2002, original guidance October 2000) because the ISO and IAF guidance documents above (items B and C, respectively) do not contain specific guidance on the level of audit evidence that is required about an audited organization's compliance with relevant legal or regulatory requirements, or about its system for ensuring compliance in order for EMS auditors to determine conformance to the ISO 14001 standard. RAB Advisory No. 28 follows in full:

“Sufficient data on an organization's compliance with relevant legislation and regulations, gathered during the registration review and surveillances, are relevant and necessary to determine whether the organization's systems conform to the standard.

In the event that certain specific data or other information related to legal or regulatory compliance are not made available to the registration body for review because of an assertion of legal privilege or their proprietary nature, registration shall not be granted or shall not continue, unless the registration body

can obtain demonstration by objective evidence that the full system requirements relating to legal compliance, covering the applicable section of the standard, have been effectively implemented by sufficiently documented and verifiable means. This would include at least a documented procedure for evaluating legal compliance, objective evidence of its implementation, objective evidence of compliance review by management, and objective evidence of implementation of identified corrective and preventive actions. In such cases, the registration body's relevant requirements shall be stipulated in the registration contract agreed with the organization, and the evaluation methodology to be employed by the registration body shall be documented in its audit plan.

A registration body may register an organization or permit its registration to continue despite observed legal noncompliances, provided that the registration body is satisfied that the EMS does address such noncompliances and when, in the aggregate, such noncompliances are not determined to indicate a major nonconformity.

A registration audit is an audit of a management system to determine conformance to the standard, and while compliance is a part of the management system, the registration audit is not an audit of full compliance with all applicable regulatory requirements.”

The MPCA concurs with those in the ISO 14001 EMS auditing community who take these incorporated references together to indicate that instances of repeated regulatory noncompliance should result in a finding of major nonconformance with the requirements of the ISO 14001 EMS standard. Repeated major nonconformance by a

stationary source would therefore result in loss of ISO 14001 registration or conformance, and as proposed in this rule, would result in loss of the EMS provisions. It is reasonable that MPCA adopt a stringent standard for EMS auditing in order to protect environment and public health by preventing noncompliance with legal and regulatory requirements.

The MPCA proposes to be less prescriptive on the scope of any individual EMS audit in favor of adopting a commonly-accepted standard of having the full scope of an EMS be audited over a two-year period. MPCA's proposal on scope is reasonable in balancing common practice with the need for accountability and facility-wide management excellence.

Subp. 9d. EMS auditor.

This subpart sets forth the definition of an EMS auditor including the standard for certification for the auditor and the relationship between the auditor and the stationary source. Under the U.S. oversight system for the ISO 14001 EMS standard, only an EMS Lead Auditor certified by the Registrar Accreditation Board may produce audit findings leading to an organization's registration to the ISO 14001 standard. Therefore it is reasonable for MPCA to adopt this RAB certification requirement as the definition of EMS auditor for purposes of this rule. By extension, only RAB-certified Lead Auditors will be finding that an EMS conforms to the requirements of ISO 14001 for the purpose of qualifying for the EMS provisions in this permit option. To further ensure the independence required under the EMS audit definition above and to confine EMS auditing for purposes of this rule to third-parties outside the control of the stationary source, MPCA proposes to exclude from EMS auditing anyone with an ownership,

employment, or subsidiary relationship to the stationary source. Defining EMS auditor in this manner is reasonable since it allows MPCA and stakeholders to have confidence in the integrity of EMS audits and those conducting them, and follows closely the ISO definitions for those qualified to conduct registration audits. Similarly, the two-year firewall between EMS consulting and auditing services is a standard recently adopted by RAB and designed to prevent conflicts of interest from inhibiting the independent judgment of the EMS auditor, so it is a reasonable standard for the MPCA to include in this subpart.

Subp. 9e. EMS auditor's documentation of findings.

This subpart defines the basis for an EMS auditor's conclusions. Under part 7007.1105, subpart 7 of this proposed rule, the MPCA would gain access to the EMS auditor's evidence supporting the auditor's findings of conformance or nonconformance with the requirements of the ISO 14001 EMS standard. The purpose of authorizing the MPCA's access to the EMS auditor's documentation of findings is to gain enough information for MPCA to be able to determine whether an EMS auditor's findings of conformance or nonconformance with the ISO 14001 standard are well-founded and whether to take action based on those findings. It is reasonable to propose that the MPCA have access to the EMS auditor's documentation of findings since such access allows the MPCA to make reasoned decisions, which in turn allow the MPCA to offer stationary sources and other interested stakeholders due process should they dispute the EMS auditor's findings.

Subp. 9f. EMS provisions.

This subpart defines the permit conditions that will be included when a stationary source is eligible for a permit through this rule. The MPCA proposes a set of alternative permit conditions which offer reduced amendment application, reporting, and recordkeeping as long as EMS use, third-party EMS auditing, and compliance are maintained. In the proposed rule, these alternative permit conditions are defined as “EMS provisions.” The term describes the following permit conditions:

- the owner or operator is relieved of calculating hourly emissions rate increases as required by part 7007.1200, subpart 3, which in turn means that no amendments would be needed for physical or operational changes at a facility that would otherwise require an amendment under part 7007.1450 (Minor and Moderate Permit Amendments) due only to any increase in hourly emissions – this does not apply to changes increasing facility-wide limits, changes affecting other non-expiring Title I conditions, changes affecting State Implementation Plan conditions, changes triggering certain New Source Performance Standards or National Emission Standards for Hazardous Air Pollutants, or any other changes requiring major amendments, or to changes requiring administrative amendments;
- semi-annual deviations reports (part 7007.0800, subpart 6, item A, subitem 2) are required only if a deviation occurred in the reporting period; and
- the stationary source is allowed to calculate 12-month emissions sums for a given pollutant once a year rather than the customary monthly interval if actual emissions for that pollutant are below 25% of federal thresholds. This incentive

for reduced emissions is present in the state registration permit rule, and was adopted for the IBM pilot EMS permit.

It is reasonable to include these EMS provisions in a state permit to provide incentive to a stationary source to implement an EMS at its facility. Stakeholders have had an opportunity to review the EMS provisions and support the provisions as incentives. The EMS provisions proposed in this rulemaking are the same ones that were included in the IBM pilot EMS permit. No objections to these permit provisions were raised during two public notice periods for the IBM pilot EMS permit. While the EMS provisions can be withdrawn if an EMS auditor finds the same major EMS nonconformance twice in 6 months (with MPCA concurrence and notification to the facility), the facility does not lose its right to operate; it simply must operate under conditions that would otherwise exist in a conventional state air permit (the customary permit conditions). Thus, when a stationary source applies for, and is deemed eligible for, a state permit with EMS provisions, the permit will contain the usual customary permit conditions as well as the EMS provisions. As the EMS provisions offer relaxation of some of the customary permit conditions, the EMS provisions will apply as long as the stationary source remains eligible under the terms of this rule. If the source loses eligibility, it must then comply with the customary permit conditions. It is reasonable to offer the EMS provisions as alternatives to customary permit conditions, and to include both within one permit document to reduce the administrative burdens to both the MPCA and the source from having to apply for and issue a new permit based on eligibility.

Subp. 12c. Major nonconformance.

The MPCA proposes here a broad definition of major nonconformance that tracks closely with accepted practice and definition among ISO 14001 EMS auditing professionals for nonconformances. To distinguish a nonconformance as “major” for purposes of this rule, the MPCA proposes to tie that definition to the possibility that the nonconformance may lead to legal or regulatory noncompliance. While this definition relies heavily on the judgment of the auditor, it does offer guidance to the auditor on distinguishing minor nonconformances from major ones for purposes of this rule. This might seem to create a potential dual standard were it not for the ISO, IAF, and RAB guidance referenced earlier. The presence of these documents in guiding the ISO 14001 EMS auditing profession in the U.S. leads the MPCA to conclude it is reasonable to tie the definition of major nonconformance to regulatory noncompliance.

Subp. 24a. Summary of EMS audit results.

This subpart defines the information that should be included in an EMS auditor’s summary of results. The MPCA learned from the IBM pilot EMS permit that there is a need for a mechanism for reporting the status of the EMS as audited. The first approach was to simply adopt the audit report generated by the EMS auditor as the reporting mechanism. However, it became clear that some content of a standard EMS audit report might need to be excluded if irrelevant to the air permit or confidential for business reasons. Therefore, for the purposes of this rule, the MPCA proposes to establish the content of a summary of EMS audit results, and leave it to the audited stationary source and the EMS auditor to determine if the EMS audit report can be submitted as the summary of EMS audit results or if a new document should be created. Providing the

flexibility of summarizing the content is reasonable in that it allows the MPCA to monitor progress and determine based on the summary whether further information is required, in which case MPCA would have access to the EMS auditor's documentation of findings. The summary would describe the date and scope of the audit, and would include findings of conformance, and minor and major nonconformances. For a major nonconformance, the summary of the EMS audit results would include material typical of an EMS audit report: objective evidence of the major nonconformance found by the EMS auditor in the course of the EMS audit, corrective actions required to address the major nonconformance, and how the EMS auditor will follow up (or has followed up) in checking on the implementation of the corrective action or actions. It is reasonable to define the content of summaries of EMS audit results as similar to common practices.

7007.1102 INCORPORATIONS BY REFERENCE.

This subpart lists five documents for incorporation by reference so that the documents need not be reiterated in the body of the proposed rule. The documents listed in this proposed part are named in the definitions as the basis for environmental management systems, EMS audits, and the practice of EMS auditing required in order to qualify for the EMS provisions. Because these documents are lengthy and exist nowhere else in rule, it is reasonable to incorporate them by reference so that all users and stakeholders of the proposed permit option can make themselves aware of the requirements. Furthermore, incorporation by reference provides the MPCA with the basis for its decisions on whether EMS auditors' EMS conformance findings are properly documented and verified, and for any enforcement proceedings should a stationary source violate the rule's requirements by improperly using the EMS provisions without

qualifying. The ISO 14001 document has not changed since the original version of 1996, however, some technical changes and minor wording revisions are expected to be approved in 2004. If approved, ISO would publish the new standard as ISO 14001: 2004 in late 2004, accompanied by a specified conformance deadline of approximately 18 months following publication. As with other registered or conforming facilities, stationary sources operating under the EMS provisions would have until that specified conformance deadline to conform to the new standard. The MPCA intends that, when final, these technical changes and minor wording revisions will be incorporated into this rule and that sources operating or seeking to operate under the EMS provisions will be expected to conform to the ISO 14001 standard that includes those changes. A similar process, conformance deadline, and incorporation into this rule without formal rule change would occur for any subsequent minor revisions to the ISO 14001 standard.

The ISO 19011 document incorporated and revised two previous standards documents in 2002. ISO/IEC Guide 66 was published in 1999. The IAF Guidance on the Application of ISO/IEC Guide 66 was first published in 1996, and is now in Issue 3 (November 1, 2003). The National Accreditation Program Advisories are published periodically by the Registrar Accreditation Board (RAB) to address ISO 14001 implementation issues as they arise in the U.S.

This summary of the documents' histories shows that some of them have been subject to occasional change, and NAP Advisories are revised or added frequently. Users should therefore use the websites provided to make sure they are working from the most recent information. Typically, changes to these documents are technical, and do not significantly affect the content and fundamental requirements of the standards or

guidances. Examples of these types of technical changes include numbering, title, consolidation, reorganization, and minor wording revisions. Since most users of ISO-conforming EMSs will keep up with these changes for business reasons anyway, it is reasonable that the MPCA not have to amend this rule in order to incorporate these types of minor changes to these standards or guidances. However, if the standards or guidances change significantly, the MPCA would have to address such changes by amending this rule.

Since the first three publications (ISO 14001, ISO 19011, and ISO/IEC Guide 66) must be purchased, copies will be maintained and available through the Minitex interlibrary loan system. This is a reasonable means of making these documents more widely available.

7007.1105 ELIGIBILITY FOR ENVIRONMENTAL MANAGEMENT SYSTEM PROVISIONS IN STATE PERMITS.

This part of the proposed rule anticipates various scenarios under which the commissioner could determine that stationary sources applying for or holding a state permit with EMS provisions would be eligible, or conversely ineligible for those provisions.

- Subpart 1 applies to existing sources with an EMS already implemented.
- Subpart 2 applies to any source which does not have an eligible EMS or is not in compliance with applicable permits, rules and standards.
- Subpart 3 applies to new sources that intend to implement an EMS or existing sources that did not previously have an EMS but intend to implement one after being issued a state permit with EMS provisions (both types are “transitional” sources).

- Subpart 4 applies to sources previously eligible but losing eligibility.
- Subpart 5 applies to sources that have lost eligibility but want to regain it.
- Subpart 6 applies to stationary sources eligible for EMS provisions where there is a change of ownership and the new owner would like to continue eligibility for the EMS provisions.
- Subpart 7 establishes the commissioner's authority to request information in addition to the summary of EMS audit results in order to make determinations of eligibility.
- Subpart 8 applies to sources eligible for and operating under the EMS provisions which choose to comply with the customary permit conditions instead.

It is reasonable that the subparts under this part provide the procedures for the MPCA and facilities to follow in each scenario so that it is clear to a stationary source when it can operate under the EMS provisions and when it must comply with customary permit conditions.

Subpart 1. Eligibility for existing stationary sources.

Subpart 1 applies only to existing stationary sources which have implemented an EMS and, through EMS audits prior to permit application, been registered to or found to be in conformance with the requirements of the ISO 14001 EMS standard. An existing stationary source will submit information on their EMS and third-party EMS auditing (including a summary of EMS audit results) to the MPCA on an approved form along with a standard permit application requesting the EMS provisions in its state permit. The commissioner will make a determination as to the source's eligibility for the EMS

provisions in the course of processing the permit application. Item A of this subpart establishes the requirement that the applying source have implemented an EMS as defined in this rule, either registered to ISO 14001 or conforming to the requirements of that standard as determined by an EMS auditor qualified as defined in this rule. This requirement creates a “win-win,” in that stationary sources get regulatory flexibility for EMS programs they adopt primarily for business reasons, while the MPCA is able to leverage the oversight of the ISO 14001 system for state minor or mid-sized air sources. It is reasonable to require a stationary source to prove it has an eligible EMS as a sound EMS is the basis of the rule’s flexibility.

The second basis for eligibility in item B of this proposed subpart is that the existing stationary source apply for or have previously applied for an individual facility permit (state or federal), and that the source’s application include facility-wide emission limits for criteria pollutants, hazardous air pollutants (HAPs), and other regulated pollutants as determined by the commissioner. It is reasonable to base eligibility on establishing emission limits since the presence of the facility-wide upper limits (or “caps”) on actual emissions enables the MPCA to allow minor or moderate physical or operational changes without requiring corresponding permit amendments.

Subp. 2. Ineligibility for EMS provisions.

This subpart applies to any source which does not have an eligible EMS or is not in compliance with applicable permits, rules and standards. In addition to stating that the absence of a qualifying EMS is grounds for denial, this proposed subpart adopts an existing Minnesota rule, part 7007.1000, subpart 2 as an independent basis for determining eligibility for the EMS provisions. These grounds include inadequate,

inaccurate, or false information submittals by the stationary source, unresolved noncompliance with applicable state or federal statutes, rules, or permits, endangerment of human health or the environment, failure to pay required fees or penalties, or failure to prepare a pollution prevention plan or submit annual pollution prevention progress reports if required to do so by Minnesota Statutes, section 115D.07 and 115D.08. These grounds for denial are applied to all stationary sources and therefore it is reasonable to include these grounds in the proposed rule.

Subp. 3. Transitional eligibility.

This subpart sets out procedures for two types of “transitional” sources intending to implement an EMS after being issued a state permit with EMS provisions: new sources or existing sources that did not previously have an EMS. “Transitional” in this subpart refers to the time period between the date of

- initial startup of a new stationary source or
- permit issuance for an existing source

and the date the source becomes eligible for the EMS provisions because it has completed all of the rule requirements. The MPCA intends to use “transitional” as defined here for purposes of this rule only, and does not intend for the definition of “transition” as found in 7007.0100, subpart 27 to apply here, or that the definition of “transitional” defined here change the definition of 7007.0100, subpart 27.

To be eligible for a state permit with EMS provisions following a transitional period as described in this proposed subpart, the stationary source must first apply for an individual state total facility permit, and include in the application facility-wide emission limits for criteria pollutants, hazardous air pollutants (HAPs), and other regulated pollutants as determined by the commissioner. This requirement mirrors 7007.1105,

subpart 1, item B, and is a reasonable basis for eligibility for the reasons stated in the discussion of subpart 1 above.

In the case of new stationary sources, an owner or operator who intends to adopt an EMS as defined in this rule may apply for and construct a new stationary source under a state permit that contains the customary permit conditions. To establish eligibility for operation under the EMS provisions, the owner or operator of the new source is required to complete the following actions:

- apply for and receive the state permit with EMS provisions;
- construct the new source and notify MPCA of its initial startup date as required elsewhere in rule;
- use up to 365 days from initial startup to implement its EMS and undergo its first EMS audit, still operating under customary permit conditions;
- for EMS audits conducted during the transitional period, cause the EMS auditor to send all summaries of EMS audit results directly to the MPCA within 45 days.

The 45-day requirement for the EMS auditor to submit the summary of EMS audit results is based on the experience of the IBM pilot EMS permit in which a 30 day initial requirement was too short for some EMS auditors to deliver the EMS audit summary. The 45-day requirement may result in some added cost and data submitted if a corrective action takes longer than about 40 days to complete, but it is reasonable to propose a 45-day requirement so that the MPCA receives timely information of major nonconformances which may affect regulatory compliance.

In the case of existing stationary sources, an owner or operator who intends to adopt an EMS as defined in this rule may apply for, be issued, and operate under a state

permit that contains the customary permit conditions. To establish eligibility for operation under the EMS provisions, the owner or operator of the existing source is required to complete the following actions:

- apply for and receive the state permit with EMS provisions;
- use up to 365 days from the date of permit issuance to implement its EMS and undergo its first EMS audit, still operating under customary permit conditions;
- for EMS audits conducted during the transitional period, cause the EMS auditor to send all summaries of EMS audit results directly to the MPCA within 45 days.

In either case, new or existing stationary source, if a major nonconformance is found during any EMS audit in the transitional period, the owner or operator must follow the procedure in subpart 4, item B.

Once the new or existing stationary source has completed the transitional period and met all the requirements of this rule regarding eligibility for the EMS provisions, Item C requires the owner or operator of either type of stationary source to notify the commissioner in writing and allows stationary sources to be eligible for the EMS provisions 7 working days after MPCA receipt of the notification, unless the MPCA notifies the stationary source that the commissioner has determined the source is ineligible.

If the owner or operator's priorities or plans change, the source could indefinitely postpone its eligibility for the EMS provisions and continue to operate under the customary permit conditions.

This procedure and its timelines have been found to be reasonable by MPCA through the IBM pilot EMS permit, comparison with accepted EMS and EMS auditing practice, and by stakeholders providing input on draft versions of this rule.

Subp. 4. Grounds for loss of eligibility for EMS provisions.

This proposed subpart defines the circumstances under which a stationary source which had established eligibility for the EMS provisions could lose that eligibility. Item A under this subpart is intended to address situations not specifically anticipated by this rule: situations in which a stationary source discontinues its EMS, moves away from an ISO 14001 EMS to another EMS model, discontinues independent third-party auditing, or otherwise is no longer motivated to pursue eligibility for the EMS provisions in its permit. The proposed rule gives the source responsibility for notifying the commissioner within 7 days of such a circumstance and immediately complying with the customary conditions in the permit. Because item A provides a streamlined, low-cost process for notifying the commissioner and incorporates the customary permit conditions without having to obtain a new or amended permit, it is a reasonable means for addressing unforeseeable changes in a stationary source's management system.

Item B sets forth the procedures a stationary source must follow if a major nonconformance is discovered during an EMS audit. The source will have 6 months in which to undergo an EMS audit covering at least the scope, effect, and corrective action relating to the major nonconformance, and the summary of the follow-up EMS audit results will be sent to the MPCA within 45 days. The procedures and timelines proposed were designed with input of stakeholders and the experience from the IBM pilot EMS permit in mind, and track reasonably with common practice for interactions between the

stationary source and its EMS auditor to correct major nonconformances with the requirements of the ISO 14001 EMS standard.

Proposed item B also requires the MPCA to review summaries of the results of EMS audits finding major nonconformance which have led to a source's loss of eligibility for the EMS provisions. Under item B, should the commissioner determine the stationary source is no longer eligible for the EMS provisions, the commissioner shall provide the source with written notification of its decision that the stationary source is no longer eligible for the EMS provisions. Once the source receives written notification of the commissioner's decision, the source is required to immediately comply with the customary permit conditions. The requirements in item B provide incentive for a source that wishes to continue its EMS and eligibility for the EMS provisions to be diligent in maintaining that EMS with a margin of error so the EMS auditor cannot be led to conclude that major nonconformance exists. However, this incentive is reasonably balanced by the fact that in no case will the source lose its right to operate or be required to amend its permit for outcomes relating solely to its EMS.

Item C under this proposed subpart reiterates the proposed subpart 2 (Ineligibility for EMS provisions) which adopts an existing Minnesota rule, part 7007.1000, subpart 2 (Grounds for [permit] denial) based on noncompliance with various statutory or regulatory compliance requirements as possible grounds for a stationary source's ineligibility for the EMS provisions. In contrast to subpart 2, item C does not specifically cite 7007.1000, subpart 2 in its entirety. Instead, item C is based solely on unresolved noncompliance with applicable requirements or with the source's permit. This proposal is reasonable since existing rule establishes noncompliance as grounds for permit denial

and MPCA is simply adopting these as grounds to revoke the EMS provisions. Such revocation would likely precede any other enforcement actions the MPCA might consider to address the noncompliance in question.

It is reasonable for the MPCA to set forth clear conditions under which a stationary source, having previously been operating under the EMS provisions in its permit, can lose that eligibility.

Subp. 5. Reinstating eligibility for EMS provisions.

This proposed subpart lays out the procedure for a stationary source which has lost eligibility for the EMS provisions to regain that eligibility. By requiring a minimum one-year wait, the proposed language establishes a disincentive for a source to fall out of conformance with the requirements of the ISO 14001 EMS standard. The MPCA balances the stringency of that disincentive by allowing the owner or operator to re-establish the conformance of its EMS at any time during the one-year period, rather than having to wait for a full year before beginning re-qualifying EMS audits. Conversely, the source may choose to take more than one year to reinstate its eligibility for the EMS provisions. The proposed language also offers the flexibility to choose the number of EMS audits required to re-establish that eligibility, although EMS audit or audits undertaken while reinstating eligibility must, taken together, cover the full scope of the EMS. It is reasonable to require that the full scope of the EMS be audited because it is consistent with the requirements for initial eligibility for the EMS provisions. A source which was eligible, lost eligibility, and subsequently seeks reinstatement of eligibility is in essence re-qualifying for the EMS provisions. Subpart 5 also requires the MPCA to review all summaries of the results of the EMS audit or audits used to re-establish EMS

conformance and provide written notification reinstating eligibility. This proposed procedure is reasonable since it also mirrors the process for initial qualification for the EMS provisions.

Subp. 6. Change of ownership or control.

In this subpart, the MPCA addresses another possible scenario in which a stationary source which is eligible for the EMS provisions experiences a change in ownership or management control. The subpart proposes that such a scenario require the source to substantiate its continuing eligibility for the EMS provisions by auditing the full scope of the source's EMS anytime between 12 and 24 months of the change of ownership or control. This is a reasonable timeline, given that stakeholders advised the MPCA that management changes take that long for their effects to be seen in an established management system. During the 12-24 month period, a previously-eligible stationary source may continue to operate under the EMS provisions. The number of audits required to cover the full scope of the source's EMS is at the discretion of the owner or operator. The commissioner must make a determination of eligibility and notify the source in writing of that determination. If the commissioner determines the new owner or controlling management has lost eligibility for the EMS provisions, the owner or operator may either:

- regain eligibility through the procedure in subpart 5;
- seek recourse from the commissioner's determination of loss of eligibility; or
- choose not to reinstate eligibility but continue operating under the customary permit conditions.

It is reasonable for the MPCA to require substantiation of eligibility for the EMS provisions since the efficacy of an EMS is heavily dependent on the commitment and ability of a stationary source's management. Stakeholder input during rule development and public notice of the IBM pilot EMS permit has supported this as reasonable basis for the requirement, and stakeholders have advised that approximately 18 months is a reasonable period to wait for the effect of ownership or management change to work its way through a stationary source's EMS.

Subp. 7. Commissioner review of EMS auditor's documentation of findings.

This proposed subpart provides the MPCA the authority to review the basis for an EMS auditor's findings. This is reasonable since the MPCA may need the authority to review the basis of findings if an owner or operator disputes a determination of ineligibility or loss of eligibility, or if an external stakeholder disputes any of the commissioner's determinations regarding a stationary source's eligibility for the EMS provisions. Stakeholder input indicates providing the MPCA with access to the EMS auditor's documentation of findings is a reasonable proposal as long as stationary sources are allowed to request confidentiality for portions of the EMS auditor's documentation of findings, since they would become public record. This subpart provides a procedure for such requests for confidentiality by following the existing rule part 7000.1300.

Scenarios under which a stationary source no longer had an internal mandate to continue its EMS or could not correct a major nonconformance because sufficient capital resources were not available within the required timeframe should be made evident within the summaries of EMS audit results. Such continuing major nonconformance scenarios should not typically require MPCA review of the EMS auditor's documentation

of findings since there is unlikely to be a dispute between the source and its EMS auditor over the facts in such a case. It is reasonable for the MPCA to require a stationary source to provide the EMS auditor's documentation of findings instead of MPCA staff making independent audits, which would require the expenditure of resources to train MPCA staff as EMS auditors. Furthermore, at issue is eligibility for the EMS provisions, not the right to operate the source or the commissioner's authority to determine the source's compliance status. These are separate circumstances with their own avenues for information discovery. For all these reasons, it is therefore reasonable for MPCA to have the authority to request the basis (documentation of findings) for summaries of EMS audit results, although MPCA does not anticipate that using this authority will be commonplace.

Subp. 8. Stationary source notification of return to customary permit conditions.

This proposed subpart offers the stationary source the option of withdrawing itself from eligibility and applicability of the EMS provisions, and a simple procedure for notifying the commissioner and making the change in status effective. This proposed language is reasonable in that it places minimal burden on either the source or the MPCA since it does not require a permitting action to make the change.

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

This part sets forth requirements for the content of applications for state permits with EMS provisions as well as requirements for the content of the permits themselves.

Subpart 1. Application content.

Since this permit option will be unique and distinct from other air permit options currently offered in Minnesota rules, it is reasonable to create a new part devoted to the application and permit content related to inclusion of EMS provisions in state permits.

Item A in this subpart addresses application content requirements. Since the proposed option is an individual permit with facility-specific permit conditions (as opposed to widely applicable conditions referenced in rules for the registration permit option), it is reasonable to require the same (existing) application form, content, and timing required in applying for an individual state permit with the addition of application content necessary to determine eligibility for the EMS provisions. If a stationary source already has an individual permit or has previously submitted an application, the stationary source may simply supplement that application with any information needed for this EMS permit option. This is reasonable for several reasons:

- MPCA has the information already;
- Some eligible facilities already have air permits;
- Requiring a new application would be overly burdensome and would erase any flexibility incentive this permit option is attempting to create.

Proposed item B is the same requirement for ambient air quality assessment that appears in the proposed rule for the capped permit option, addressed earlier in this SONAR under 7007.1148. In contrast to the capped permit, however, a stationary source applying for the state permit with EMS provisions may propose facility-specific production limits, control equipment requirements, or other permit conditions protective of ambient air standards. In addition to the two screening methods listed by the proposed

rule, the stationary source may also use site-specific modeling completed in the past and approved by the MPCA, or may propose site-specific modeling to be completed as part of the permit application and approval process. This is reasonable flexibility to offer to stationary sources applying for an individual permit.

Item C allows the MPCA to generate a form for stationary sources to use specifically for the purpose of submitting the data necessary to demonstrate eligibility for the EMS provisions. Submittals would include data relating to EMS implementation, the scope and timing of EMS auditing, qualifications of the EMS auditor, indications that the EMS auditor has been asked to submit a summary of EMS audit results, the summary of EMS audit results itself, and other data MPCA deems necessary to determine the stationary source's eligibility for the EMS provisions. This form would be used by existing permitted or unpermitted sources and new sources seeking transitional eligibility. This provision is reasonable because it will result in consistent information provided by sources applying for an individual state permit with EMS provisions.

Subp. 2. EMS provisions: flexibility in amendment, reporting, and calculation procedures.

This subpart of the proposed rule contains “the EMS provisions” referred to throughout the rule. The EMS provisions are three types of regulatory flexibility that the MPCA has tested through the IBM pilot EMS permit and now proposes to offer as incentives for implementation of an EMS and improved environmental performance to a larger number of facilities. This subpart offers flexibility for eligible stationary sources already using EMSs and third party EMS audits, and incentives for stationary sources now considering EMS use, new stationary sources, or any eligible source in the future to

implement EMSs and third-party EMS auditing. It is reasonable to offer this flexibility as an incentive since:

- these are minor sources with actual emissions below major thresholds, so that their individual and, as a group, relative contribution to overall stationary source emissions is minor and lower-priority than major or mobile sources;
- compliance with applicable state and federal statutory, permit and rule-based requirements is still required (except in the areas of flexibility);
- EMS use stimulates improvement across regulated and unregulated environmental media including air, solid and hazardous waste, waste water and storm water;
- EMS auditing as required by the ANSI-RAB National Accreditation Program ties EMS conformance to compliance status and this air permit option allows MPCA to promote even stronger links between EMS conformance and regulatory compliance;
- the required frequency of EMS auditing may in fact provide more oversight than MPCA currently allots to minor air sources, and the multi-media aspect of EMS audits extends that oversight leverage into MPCA regulatory programs other than air.

Item A under this subpart states that an eligible stationary source need not comply with 7007.1200, subpart 3 (Calculation method for modifications that are not title I modifications), however, Part 7007.1200, subpart 1 (How to calculate emission changes) and subpart 2 (Calculation methods to determine if the proposed change is a title I modification) still apply.

Part 7007.1200, subparts 1 and 2 directs stationary sources in determining whether a modification will require a major permit amendment under the federal Title I program. By stating that subpart 3 does not apply, MPCA is offering relief from the state method for determining whether modifications require a state minor or moderate permit amendment. That state method is based on hourly emissions increases. Because stationary sources with the EMS provisions in their permits are relieved of this hourly increase calculation (since part 7007.1200, subpart 3 does not apply), the owner or operator is in turn relieved of the requirements of part 7007.1450 (Minor and Moderate Permit Amendments) for changes at a facility that would otherwise require an amendment under part 7007.1450 due only to any increase in hourly emissions. It is reasonable for MPCA to structure the rule language in this way since only calculations under 7007.1200 subpart 3 lead to actions required in 7007.1450.

If a stationary source operating under the EMS provisions wishes to stay under their facility-wide emission limits for criteria pollutants, hazardous air pollutants, and other regulated pollutants required in 7007.1105, subpart 1, then for annual emissions calculations completed for Title I purposes, those limits become the source's future potential-to-emit (PTE) after an allowed modification. In other words, for annual calculations completed for Title I (NSR) purposes, the emissions increase for any modification that does not exceed Title I facility-wide emissions limits is less than the major source threshold and is therefore not subject to NSR. Stationary sources should note that some modifications may still be major for other reasons such as NSPS, NESHAPs, etc., and therefore will require an major permit amendment prior to their implementation.

Item B provides relief from the requirement under part 7007.0800, subpart 6, item A, subitem 2 to submit a semi-annual deviations report even if no deviations have occurred in the applicable reporting period. State permits with EMS provisions will contain as a customary permit condition the requirement to comply with part 7007.0800, subpart 6, item A, subitem 2, plus the EMS provision offering the exception should the stationary source be eligible for the EMS provisions under proposed part 7007.1105, subparts 1, 3, 5, and 6. This relaxation eliminates the need to report when there is nothing to report, and is reasonable because it is balanced by requirements in the state permit with EMS provisions that stationary sources report shutdowns, breakdowns, and other significant process upsets (and associated impacts) in a timely way (within days).

In item C, if a stationary source maintains actual emissions below about 25 percent of the federal thresholds for individual criteria or hazardous air pollutants, then the owner or operator is allowed to reduce the frequency of calculating emissions of the low-level pollutant or pollutants from monthly 12-month rolling sums to an annual (calendar year) calculation. Subitem (1) establishes that specific conditions in the permit will determine what activities will be included in the emissions calculations. Item C adapts emissions calculation flexibility normally offered only to registration permit holders, except that for registration permits all pollutants must be under 25 percent of federal thresholds. It is reasonable to provide this flexibility since the 25 percent level provides a large enough buffer between actual emissions and federal (part 70) thresholds that annual calculations (with safeguards described in subitem (3)) are warranted. This flexibility also provides an incentive for stationary sources to reduce their emissions to low levels in order to qualify.

Subitem (2) sets out the conditions under which the stationary source can move from monthly 12-month rolling sums to annual calculations (or back) as appropriate based on their actual emissions levels. It is reasonable to offer both calculation routines in the same permit since it allows for small changes or fluctuations without requiring burdensome permit actions by either the source or by the MPCA. It is also reasonable to set waiting periods of 12 consecutive months to reinstate eligibility for the reduced recordkeeping flexibility since the requirement bolsters the incentive to keep emissions low and provide a disincentive for moving back and forth across the thresholds too often. Such movement makes the stationary source's job of determining which calculation method to use more complex, and makes the MPCA's task of reviewing records to ascertain compliance more difficult and time-consuming.

Concerns over relaxation of the monthly 12-month rolling sum emission calculation requirement led the MPCA and the EPA to include safeguards in the form of additional facility-specific tracking mechanisms in the IBM pilot EMS permit. In subitem (3), MPCA has therefore proposed to continue that practice by including general authority for the commissioner to name facility-appropriate operating parameter or parameters (such as process inputs purchased or fuel or fuel type used) and corresponding facility-specific operating parameter levels above which and for what period the owner or operator must calculate monthly 12-month rolling emissions sums. The main purpose in the MPCA having authority to place these tracking mechanisms in a state permit with EMS provisions is to safeguard an owner or operator who is conducting annual instead of monthly calculations from reaching the end of a calendar year and finding themselves in violation of one or more facility-wide emissions limits. The levels above which monthly

12-month rolling sums are triggered should therefore be set appropriately for safeguarding facility-wide limits, not to safeguard the much lower eligibility limit for reduced calculations. It is reasonable to balance flexibility based on the expected strength of an EMS-using stationary source in documenting process parameters and emissions with a requirement to track key operating parameters as indicators of significant production (and emission) increases. MPCA will use the model language in the IBM pilot EMS permit as a template for the permit conditions proposed in subitem 3.

Subp. 3. Requirements related to inclusion of EMS provisions.

The proposed part 7007.1107, subpart 3, sets forth permit conditions the MPCA will incorporate into a state permit with EMS provisions.

Item A requires the inclusion of the customary permit conditions in each state permit with EMS provisions, which include:

- requirement to comply with Part 7007.1200, subpart 3 (calculating hourly emissions rate increases);
- requirement to comply with Part 7007.0800, subpart 6, item A, subitem 2 (submitting semiannual deviation reports); and
- requirement to calculate monthly 12-month rolling sums for all emissions limited by the permit.

It is reasonable to include both customary permit conditions and EMS provisions at issuance of the permit as it will relieve both the permittee and the MPCA of the administrative burden of applying for and issuing a new permit should the permittee's EMS eligibility status change. The MPCA will use standard procedures and templates for setting these permit conditions, but will label them clearly as "Customary Permit

Conditions” for which the EMS provisions are alternatives. This is a reasonable permit process in that it clarifies for the owner or operator which conditions to comply with depending on their EMS eligibility status.

Item B requires that a stationary source obtain an EMS audit at least every 2 years. A maximum interval of two years is less frequent than most EMS audit schedules in practice. However, this flexibility is reasonable in that it is balanced by the MPCA’s adoption in the definition of EMS audit of the commonly-accepted standard of having the full scope of an EMS audited over a two-year period.

Item C requires that a summary of the EMS audit results be sent directly from the EMS auditor to the commissioner within 45 days of the date of any EMS audit, if requested by the commissioner or required under proposed part 7007.1105 subparts 1 to 6. The commissioner will need the summaries under this subpart to determine new eligibility, return to eligibility, ineligibility, or loss of eligibility. However, the MPCA does not propose to require submittal of summaries of EMS audit results if a stationary source is eligible for the EMS provisions and continually maintains that eligibility with EMS audits which show no major nonconformances. It will be the responsibility of the stationary source to ensure that the EMS auditor submits a summary of EMS audit results directly to the MPCA commissioner for any EMS audit showing a major nonconformance. This is a reasonable balance both for eligible stationary sources and the MPCA in that neither will have ongoing reporting burden (sending or accepting) associated with the program, although the commissioner will retain the authority to request a summary of EMS audit results at any time.

The summary of EMS audit results creates a simplified document to inform the MPCA of the source's EMS eligibility status. This is a reasonable requirement since MPCA must monitor the stationary source's compliance with the permit and determine based on the summary whether further information is required. The summary of EMS audit results does not overburden the EMS auditor or the stationary source bearing the cost of the EMS auditor's time with a long or complex process for reporting EMS audit results. Providing the flexibility of summarizing the content is reasonable in that it allows MPCA to monitor progress and determine based on the summary whether further information is required, in which case MPCA would have access to the EMS auditor's documentation of findings. While the summary of EMS audit results is a public document, the fact that it is a summary should allow the EMS auditor to protect possibly confidential business information from becoming public. This is reasonable since MPCA and the stationary source would assume further administrative burden to label, review, and approve portions of documents as confidential were this basic reporting document made more detailed. The purpose of the summary of EMS audit results is to provide MPCA with enough information to accept the EMS auditor's findings or request the EMS auditor's documentation of findings.

The direct submittal of the summary of EMS audit results from the EMS auditor to the commissioner is reasonable because it provides more certainty to stakeholders as to the veracity and independence of the EMS auditor's work, and because the process has been tested successfully in the IBM pilot EMS permit.

The 45-day requirement for the EMS auditor to submit the summary of EMS audit results is also based on the experience of the IBM pilot EMS permit. While this

requirement in the form of a permit condition may result in some added cost and data submitted if a corrective action takes longer than about 40 days to complete, it is reasonable to propose a 45-day requirement so that the commissioner receives timely information of major nonconformances which may affect regulatory compliance.

X. CONCLUSION

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

Dated: _____

Sheryl A. Corrigan
Commissioner

Attachment 1 CAPS Spreadsheet Format

Inputs may be made in yellow cells

Screening Date:
 AQ Facility ID No.:
 AQ File No.:
 Facility Name:
 Facility Location:
 User Title:
 Type of emissions (e.g., PTE/Future Actual)

Chemical Name	Total Annual Emissions (tpy)	Stack(s)#1		Stack(s)#2		Stack(s)#3		Stack(s)#4		Stack(s)#5	
		Hourly Emissions (lb/hr)	Annual Emissions (tpy)	Hourly Emissions (lb/hr)	Annual Emissions (tpy)	Hourly Emissions (lb/hr)	Annual Emissions (tpy)	Hourly Emissions (lb/hr)	Annual Emissions (tpy)	Hourly Emissions (lb/hr)	Annual Emissions (tpy)
SO ₂											
NO ₂											
PM ₁₀											

Criteria Pollutant Screen						
Chemical	Fraction of 1-hr std	Fraction of 3-hr std	Fraction of 8-hr std	Fraction of 24-hr std	Fraction of quarterly	Fraction of annual std
SO ₂						
NO ₂						
PM ₁₀						

Lookup table	notes	Stack(s)#1	Stack(s)#2	Stack(s)#3	Stack(s)#4	Stack(s)#5	Stack(s)#6	Stack(s)#7	Stack(s)#8	Stack(s)#9	Stack(s)#10
Stack height (m)	required for lookup (1-99 m)										
Distance to property line or receptor (m)	required for lookup (10-1000m)										
1-hr dispersion value from Table	automatic lookup										
3-hr dispersion value from Table	automatic lookup										
8-hr dispersion value from Table	automatic lookup										
24-hr dispersion value from Table	automatic lookup										
Monthly dispersion value from Table	automatic lookup										
Annual dispersion value from Table	automatic lookup										

Batch Process (or other)	notes	Stack(s)#1	Stack(s)#2	Stack(s)#3	Stack(s)#4	Stack(s)#5	Stack(s)#6	Stack(s)#7	Stack(s)#8	Stack(s)#9	Stack(s)#10
1-hr dispersion value from batch process or	enter dispersion values manually										
3-hr dispersion value from batch process or	enter dispersion values manually										
8-hr dispersion value from batch process or	enter dispersion values manually										
24-hr dispersion value from batch process or	enter dispersion values manually										
Monthly dispersion value from batch process or	enter dispersion values manually										
Annual dispersion value from batch process or	enter dispersion values manually										

*Batch process (i.e., "Disperse") or other screening or refined air dispersion modeling is run separately and dispersion values are entered manually. If the the batch process cells are filled in they are used preferentially over the lookup table values.

Attachment 2 SCREEN3 Model Output Format

SIMPLE TERRAIN INPUTS:

SOURCE TYPE =
 EMISSION RATE (G/S) =
 SOURCE HEIGHT (M) =
 INIT. LATERAL DIMEN (M) =
 INIT. VERTICAL DIMEN (M) =
 RECEPTOR HEIGHT (M) =
 URBAN/RURAL OPTION =

THE REGULATORY (DEFAULT) MIXING HEIGHT OPTION WAS SELECTED.
 THE REGULATORY (DEFAULT) ANEMOMETER HEIGHT OF 10.0 METERS WAS ENTERED.

BUOY. FLUX = .000 M**4/S**3; MOM. FLUX = .000 M**4/S**2.

*** FULL METEOROLOGY ***

 *** SCREEN AUTOMATED DISTANCES ***

*** TERRAIN HEIGHT OF 0. M ABOVE STACK BASE USED FOR FOLLOWING DISTANCES ***

DIST (M)	CONC (UG/M**3)	STAB	U10M (M/S)	USTK (M/S)	MIX HT (M)	PLUME HT (M)	SIGMA Y (M)	SIGMA Z (M)	DWASH
10.									
100.									
200.									
300.									
400.									
500.									
600.									
700.									
800.									
900.									
1000.									

MAXIMUM 1-HR CONCENTRATION AT OR BEYOND

DWASH= MEANS NO CALC MADE (CONC = 0.0)
 DWASH=NO MEANS NO BUILDING DOWNWASH USED
 DWASH=HS MEANS HUBER-SNYDER DOWNWASH USED
 DWASH=SS MEANS SCHULMAN-SCIRE DOWNWASH USED
 DWASH=NA MEANS DOWNWASH NOT APPLICABLE, X<3*LB

 *** SUMMARY OF SCREEN MODEL RESULTS ***

CALCULATION PROCEDURE	MAX CONC (UG/M**3)	DIST TO MAX (M)	TERRAIN HT (M)
-----	-----	-----	-----