

November 23, 2009

The Honorable Tim Pawlenty
Governor, State of Minnesota

The Honorable Margaret Kelliher, Chair
Legislative Coordinating Commission

The Honorable Satveer Chaudhary, Chair
Senate Environment and Natural Resources
Committee

The Honorable Ellen Anderson, Chair
Senate Environment, Energy and Natural
Resources Budget Division

The Honorable Kent Eken, Chair
House Environment, Policy and Oversight
Committee

The Honorable Jean Wagenius, Chair
House Environment and Natural Resources
Finance Committee

Ms. Michele Timmons
Revisor of Statutes

RE: Annual Report on Obsolete, Unnecessary, or Duplicative Rules, as Required by
Minn. Stat. § 14.05, subd. 5

Minn. Stat. § 14.05, subd. 5, states:

“By December 1 of each year, an agency must submit to the governor, the legislative coordinating commission, the policy and funding committees and divisions with jurisdiction over the agency, and the revisor of statutes, a list of any rules or portions of rules that are obsolete, unnecessary, or duplicative of other state or federal statutes or rules. The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules. By December 1, the agency must either report a timetable for repeal of the rule or portion of the rule, or must develop a bill for submission to the appropriate policy committee to repeal the obsolete, unnecessary, or duplicative rule. Such a bill must include proposed authorization to use the expedited procedures of section 14.389 to repeal or amend the obsolete, unnecessary, or duplicative rule. A report submitted under this subdivision must be signed by the person in the agency who is responsible for identifying and initiating repeal of obsolete rules. The report also must identify the status of any rules identified in the prior year’s report as obsolete, unnecessary, or duplicative. If none of an agency’s rules are obsolete, unnecessary, or duplicative, an agency’s December 1 report must state that conclusion.”

The Minnesota Pollution Control Agency (MPCA) has reviewed and identified the following rules that are obsolete and should be repealed:

Minn. R. ch. 7011 – Standards for Stationary Sources

1. Minn. R. 7011.7930 – Brick and Structural Clay Products Manufacturing

This standard is a federal standard promulgated by U.S. Environmental Protection Agency (EPA) that was incorporated by reference into Minnesota's rules a few years ago. The federal standard has since been vacated by the US District Court of Appeals, and EPA has announced that it will either delist the sources from regulation, or will repropose a different standard. Because this standard no longer exists at the federal level, the state rule incorporating the standard is obsolete.

Minn. R. ch. 7041 – Sewage Sludge Management Basic Provisions

1. Minn. R. 7041.0500, subpart 5 – Land application approvals; subpart 6 – Treatment works not regulated under chapter 7040 before its repeal; and subpart 7 – Compliance with change of management practices.

These subparts are obsolete because they address conditions of transition from the repealed rules found in chapter 7040 to the new codification in chapter 7041. Minn. R. chapter 7040 was repealed around 1997.

Status of obsolete rules identified in the MPCA's 2008 Obsolete Rules Report:

In the MPCA's 2008 Obsolete Rules Report, the MPCA stated it had the following obsolete rules:

Minn. R. ch. 7050 – Waters of the State Rules

1. Minn. R. 7050.0210, subpart 2 - Nuisance conditions prohibited.

When the MPCA amended its Water Quality Rules in Spring of 2008, it added Minn. R. 7053.0210, subpart 2 but retained Minn. R. 7050.0210, subpart 2. At the time, the MPCA believed that it would not be confusing to have the nuisance conditions both as a discharge limitation and as an ambient water quality standard. However, in practice, the identical rule provisions have been confusing and it appears unnecessary to have the "ambient" nuisance standard as well as the new subpart created in Minn. R. 7053.0205, subpart 2.

This rule repeal is part of a MPCA housekeeping rule effort currently in progress.

Minn. R. ch. 7020 – Feedlot Rules

1. Minn. R. 7020.0355 – Permits And Certificates Issued Prior To October 23, 2002.

Subpart 1 – SW-A permits are no longer used.

Subpart 2 – Certificates of Compliance are no longer used.

Subpart 3 – Item A. – Interim A permits are no longer used. This section also references actions that have been completed by October 23, 2000.

Subpart 3 – Item B. – Interim B permits are no longer used.

Subpart 4 – This subpart references National Pollution Discharge Elimination System (NPDES) and State Disposal System (SDS) permits that expired after October 23, 2000. Since these permits were issued for a five year period, this item became outdated prior to October 23, 2005.

2. Minn. R. 7020.0535, subp. 2 – Permit applications submitted prior to October 23, 2000.

This section was placed in the rules to address permit applications that were received by the MPCA but had not been processed yet at the time the new feedlot rules became effective. All of these applications have been processed which makes this subpart unnecessary and obsolete.

The MPCA intended to delete these rule parts in the MPCA's feedlot rule revisions that have since been placed at a lower priority due to limited staff available to work on these rule revisions, and the fact that more pressing rule efforts such as the Air and Water Fee Rules have taken precedent. The MPCA now plans to repeal these two rules using the expedited process prescribed in Minn. Stat. sec. 14.3895, Process for Repealing Obsolete Rules.

3. Minn. R. 7020.0205, item J – Incorporation by Reference;
4. Minn. R. 7020.0505, subpart 4 – Content of permit applications, item A(12);
5. Minn. R. 7020.1500 – Scope of Delegated County Feedlot Program;
6. Minn. R. 7020.1700 – Procedural Rules and Appeals;
7. Minn. R. 7020.1800 – Severability; and
8. Minn. R. 7020.1900 – Variances.

The feedlot rules listed in items 3 through 8 above are currently under reconsideration for repeal, and until the MPCA is convinced there will be no impact these rule parts will remain in effect.

Costs of preparing this report: In compliance with Minn. Stat. § 3.197, the cost of preparing this report is as follows:

Staff cost: \$76.00 (Includes time for one support staff and one technical staff).

Printing cost in-house: \$32.50 (Approximately 50 copies and includes support staff time to make copies).

If you have any questions regarding this report, please contact me at 651-757-2681.

Sincerely,

Amy Rudolph
State Program Administrator Principal
Commissioners Office

AR/NC:sth:cmbg