

Minnesota Pollution Control Agency

Environmental Analysis and Outcomes Division

Request For Comments on Planned Amendments to Rules Governing Water Quality Variances, *Minnesota Rules* Chapters 7050 and 7053

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) is requesting comments on planned amendments to water quality rules, *Minnesota Rules* chapters 7050 (Waters of the State) and 7053 (State Waters Discharge Restrictions). The MPCA is planning amendments to the identified rule chapters. Comments on the amendments are requested from affected or interested parties. Comments should be submitted in writing in accordance with the provisions of this notice under the **Public Comment** section below.

Plain English Summary: This Request for Comments is the MPCA's legal notice of its intent to begin rulemaking. This is the first of several opportunities for public comment and input on this rulemaking. At this stage, we do not have a draft rule; we want your feedback to inform us about the ideas described under the **Subject of Rules** section below. If you have other ideas related to this rulemaking that we need to consider, please submit them in writing. For example, we recognize that costs to regulated parties can be a concern with rulemaking; if you have cost information or data related to this rulemaking that you wish to share with us to inform our decisions, please submit that information. Submitting your ideas and information to us at this early stage in rulemaking allows us more time to address issues that may come up, and helps to ensure informed decision-making on our part.

Where to Get More Information: A website has been established for this rulemaking where additional information will be posted as it becomes available: <http://www.pca.state.mn.us/zihy1479>. Also, if you are interested in being notified when a draft of the rules is available and of other activities related to this rulemaking, please register for GovDelivery at: <https://public.govdelivery.com/accounts/MNPCHA/subscriber/new>. The Water Quality Variance Rule is located under the Public Notices and Rulemaking topic.

Subject of Rules: The MPCA is planning amendments to eliminate inconsistencies in the rules governing the issuance of water quality variances. Variance provisions currently exist in several different water quality rules and the procedures under which a variance may be granted are different in each rule. The MPCA may grant variances to the water quality standards in *Minnesota Rules* chapters 7050 and 7052, and the effluent discharge restrictions in 7053. The inconsistencies between the variance rules are confusing to the regulated community, and complicate the MPCA's ability to maintain consistency and comply with federal restrictions on the issuance of variances. The United States Environmental Protection Agency (EPA) has final approval of water quality variances proposed by the MPCA.

The MPCA is considering amending the different variance procedures in 7050 and 7053 to be consistent with the variance procedures currently in 7052. The 7052 rules were adopted to satisfy the requirements of the EPA's Great Lakes Initiative, a comprehensive plan to restore the health of the Great Lakes. The 7052 procedures are based on the EPA's procedures in 40 *Code of Federal Regulations* § 132, and apply to variance requests from water quality standards in the Lake Superior Basin. The

criteria to approve a variance in Part 132 are consistent with the EPA's rules for removal of a designated use (40 *Code of Federal Regulations* § 131.10(g)). That is, the conditions used for the removal of a designated use of a water body, are the same conditions that the EPA uses for approving a temporary change to a designated use through a variance.

The federal Part 131 and 132 rules, and 7052 rules for variance procedures all use the term "or" and not the more inclusive term "and" to identify the variance conditions that must be met. The 7050 and 7053 variance procedures that apply to the rest of the state are different than the federal requirements for a variance.

Due to new and modified water quality standards, the MPCA expects an increase in the number of variance requests. Currently, as the rules are written, variances outside of the Lake Superior Basin are unlikely to be granted because meeting all the criteria in the current rules is unclear, appears to be overly burdensome, and not consistent with the federal criteria.

Persons Affected: The planned amendments to the rules will affect the owners and operators of all facilities that may seek a variance from the water quality standards or effluent discharge restrictions. These facilities include Publicly Owned Treatment Works (i.e. municipal wastewater treatment facilities) and industrial dischargers authorized to discharge under a National Pollutant Discharge Elimination System (NPDES) or State Disposal System (SDS) permit.

Statutory Authority: *Minnesota Statutes*, section 115.03(1)(e) authorizes the Agency to adopt, issue, reissue, modify, deny, or revoke permits, variances, standards, and rule.

Public Comment: Interested persons or groups may submit written comments or information on these planned rule amendments from October 1, 2012, until 4:30 p.m. on October 31, 2012. Comments or information should be submitted to Mary H. Lynn at the address below. The MPCA will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this request for comments. The MPCA does not plan to appoint an advisory committee to comment on the rule amendments.

The MPCA does not anticipate that the rule amendments will require a local government to adopt or amend an ordinance or other regulation under *Minnesota Statutes*, section 14.128. Local governments may submit written information to the contrary.

The MPCA requests any information pertaining to the cumulative effect of the rule amendments with other federal and state regulations related to the specific purpose of the rule. Cumulative effect means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules.

Rules Draft: The MPCA has not yet drafted the rule amendments. Persons interested in being notified when a draft of the rules is available and of other activities relating to this (or other MPCA rulemakings) are encouraged to register at:
<https://public.govdelivery.com/accounts/MNPCA/subscriber/new>.

MPCA Contact Persons: Written comments, requests to receive a draft of the rules when it is available, and requests for more information on these planned rule amendments should be directed to:

Mary H. Lynn
Minnesota Pollution Control Agency
520 Lafayette Road North, St. Paul MN 55155-4194
Telephone: 651-757-2439 or **Toll-free:** 1-800-657-3864
TTY: 651-282-5332
E-mail: mary.lynn@state.mn.us

Technical questions on these planned rule amendments should be directed to:

Elise Doucette
Telephone: 651-757-2316 or **Toll-free:** 1-800-657-3864
E-mail: elise.doucette@state.mn.us

Alternative Format: Upon request, this information can be made available in an alternative format, such as large print, Braille, or audio. To make such a request, please contact the rule process contact person at the telephone number or address listed above.

Note: Written comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The MPCA is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submit written comments during the development of the rules and you want to ensure that the administrative law judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

Dated: _____

John Linc Stine, Commissioner
Minnesota Pollution Control Agency