

Minnesota Pollution Control Agency

Watershed Division

DUAL NOTICE: Notice of Intent to Adopt Rules without a Public Hearing Unless 25 or More Persons Request a Hearing, And Notice of Hearing If 25 or More Requests for Hearing Are Received

Proposed Amendment to Rules Governing the State Clean Water Partnership Financial Assistance Program and the Federal Nonpoint Source Management Program, *Minnesota Rules*, Chapter 7076; and the Repeal of Minnesota Rules parts 7076.0110, subps. 15, 18, 18a, 20a, and 20b; 7076.0140, subp. 2; 7076.0150, subp. 3; 7076.0170, subps. 3 and 4; 7076.0180, subps. 1 and 3; 7076.0200; 7076.0225, subps. 1, 3, and 4; 7076.0230, subps. 1, 1a, and 2; 7076.0240, subps. 1, 2, 3, and 4; 7076.0250; 7076.0260; 7076.0270; 7076.0280, subps. 2, 3, 4, and 5; and 7076.0285, subps. 2 and 3; and Proposed Amendment to Rules Governing the Wastewater and Storm Water Treatment Assistance Program *Minn. Rules*, Parts 7077.0117; 7077.0118; and 7077.0119

Introduction. The Minnesota Pollution Control Agency (MPCA or Agency) intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on December 20, 2012, the MPCA will hold a public hearing. The hearing will start at 9:00 a.m. on Friday, January 11, 2013, and continue until 12:00 p.m. or until the Administrative Law Judge adjourns the hearing.

The hearing, if required, will be at the MPCA's St. Paul office at 520 Lafayette Road North, St. Paul, Minnesota 55155. For the convenience of the public, if a hearing is held, it will also be broadcast via interactive video conference to the following MPCA regional offices.

- MPCA-Detroit Lakes: 714 Lake Avenue, Suite 220, Detroit Lakes, MN 56501
- MPCA-Duluth: 525 Lake Avenue South, Suite 400, Duluth MN 55802
- MPCA-Brainerd: 7678 College Road, Suite 105, Baxter, MN 56425
- MPCA-Willmar: 1601 Highway 12 East, Suite 1, Willmar MN 56201
- MPCA-Marshall: 504 Fairgrounds Road, Suite 200, Marshall, MN 56258
- MPCA-Mankato: 12 Civic Center Plaza, Suite 2165, Mankato MN 56001
- MPCA-Rochester: 18 Wood Lake Drive SE, Rochester MN 55904

You may listen, present testimony or ask questions at any of the videoconference sites. Directions to the hearing locations may be found on the MPCA's website at <http://www.pca.state.mn.us/iryp3e4> or by contacting the MPCA contact person identified in this Notice.

NOTE: Access to the MPCA offices is controlled. To attend a hearing you will be asked to sign in at the security desk and provide photo identification, such as a driver's license.

To find out whether the MPCA will adopt the rules without a hearing or if it will hold the hearing, you should contact the Agency contact person after December 20, 2012 and before January 11, 2013.

The MPCA will be able to display any written documents presented at the hearing at all video conference sites. The hearing will not be rescheduled in the event that the video conferencing links to one or more regional offices fails.

Agency Contact Person. Submit any comments or questions on the rules or written requests for a public hearing to the Agency contact person. The Agency contact person is:

Yolanda Letnes
520 Lafayette Road North, St. Paul MN 55155-4194
Phone: 651-757-2527 Fax: 651-297-8676
Email: yolanda.letnes@state.mn.us
TTY: 651-282-5332 or 800-657-3864

Subject of Rules. The proposed rules are about changes to the administrative procedures that govern the Clean Water Partnership Financial Assistance Program (CWP) and the Federal Nonpoint Source Management Program (Section 319 Program). The goal of the proposed amendments is to address recent changes to *Minnesota Statutes* ch. 103F as provided by [Laws 2011, chapter 107, sections 53 through 64, and 108](#). The CWP rules (Chapter 7076) have not been amended since 1995 and the MPCA also proposes changes to streamline rule requirements based on current MPCA water quality objectives. Proposed revisions include housekeeping changes to address obsolete requirements, elimination of noncompetitive continuation grants, and funding changes from advance payments to expense reimbursement, as well as other changes necessary to streamline and update existing requirements. The MPCA anticipates this effort will simplify and streamline the rules. The proposed amendments include the repeal of *Minnesota Rules* parts 7076.0110, subps. 15, 18, 18a, 20a, and 20b; 7076.0140, subp. 2; 7076.0150, subp. 3; 7076.0170, subps. 3 and 4; 7076.0180, subps. 1 and 3; 7076.0200; 7076.0225, subs. 1, 3, and 4; 7076.0230, subps. 1, 1a, and 2; 7076.0240, subps. 1, 2, 3, and 4; 7076.0250; 7076.0260; 7076.0270; 7076.0280, subps. 2, 3, 4, and 5; and 7076.0285, subps. 2 and 3.

Statutory Authority. The statutory authority to adopt the rules is *Minnesota Statutes*, section 103F.745, which authorizes the MPCA to adopt rules necessary to implement sections 103F.701 to 103F.761.

Rule Availability. The proposed changes to *Minnesota Rules* chapter 7076 and 7077 are published after this notice in the *State Register* or they can be viewed on the MPCA website at: <http://www.pca.state.mn.us/iryp3c9>. Due to the proposed rule's availability on MPCA's website, it is not attached to this Notice. However, a free copy of the proposed rules is available upon request by contacting Wendy Gardner-Pritchard at 651-757-2090. Only one copy will be sent per request.

Comments. You have until 4:30 p.m. on Thursday, December 20, 2012, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change that you desire. You must also make any comments about the legality of the proposed rules during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that the MPCA hold a hearing on the rules. You must make your request for a public hearing in writing, which the Agency contact person must receive by 4:30 p.m. on Thursday, December 20, 2012. You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the Agency cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the MPCA will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the Agency must give written notice of this to all persons who requested a hearing, explain the actions the Agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, Braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the MPCA contact person at the address or telephone number listed above.

Modifications. The MPCA may modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted to the agency or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the MPCA follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the MPCA encourages you to participate in the rulemaking process.

Cancellation of Hearing. The MPCA will cancel the hearing scheduled for January 11, 2013, if the Agency does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the Agency will notify you before the scheduled hearing whether the hearing will be held. You may also call the Agency contact person at 651-757-2527 after December 20, 2012, to find out whether the hearing will be held. On the scheduled day, you may check for whether the hearing will be held by calling 651-757-2527 or going on-line at <http://www.pca.state.mn.us/oxpgf5f>

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing on the rules, the MPCA will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The MPCA will hold the hearing on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge Ann O'Reilly is assigned to conduct the hearing. Judge O'Reilly can be reached at the Office of Administrative Hearings, 600 North Robert Street, PO Box 64620, Saint Paul, Minnesota 55164-0620, telephone 651-361-7844, and Fax - 651-361-7936.

Hearing Procedure. If the MPCA holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five-working days after the public hearing ends. At the hearing the Administrative Law Judge may order that this

five-day comment period is extended for a longer period but not more than 20 calendar days. Following the comment period, there is a five-working day rebuttal period when the Agency and any interested person may respond in writing to any new information submitted. No one may submit additional evidence during the five-day rebuttal period. The Office of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Office of Administrative Hearings. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge.

The Agency requests that any person submitting written views or data to the Administrative Law Judge before the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the Agency contact person at the address stated above.

Statement of Need and Reasonableness. The statement of need and reasonableness summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available. You may obtain copies by contacting Wendy Gardner-Pritchard. You may review the SONAR at either the MPCA's website (<http://www.pca.state.mn.us/iryp3c9>) or at any of the MPCA regional offices listed above, or may obtain a copy by contacting Ms. Pritchard at 651-757-2090.

Request to Have MPCA Board Make Decision on Rule if No Hearing is Required. If a hearing is required, the MPCA Board will make the final decision on whether to adopt the proposed rules. If no hearing is required, you may submit a petition to the MPCA Commissioner or an MPCA Board Member to have the MPCA Board make the decision whether to adopt the proposed rule amendments by following the procedures in *Minnesota Rules* part 7000.0650, subpart 3. Your request must be in writing, identify the matter that the person would like placed on the agenda and the reasons for placing it on the agenda. The petition must be served on the MPCA Commissioner by mail at least 24 days before the meeting during which the petitioner would like the matter to be considered, or by personal service or facsimile at least 21 days before the meeting. The Commissioner shall grant or deny the petition. The schedule of MPCA Board meetings is available at <http://www.pca.state.mn.us/enzq405> or by contacting the MPCA contact person, Yolanda Letnes. Requests received after the MPCA Commissioner has made a decision on whether to approve the rules will not be considered. If no petitions are received and granted, the Commissioner will make the decision whether to approve the rules and that decision is anticipated on or about January 30, 2013. Under *Minnesota Statutes*, section 116.02 where a hearing is not required, the MPCA Board will only make the decision on the rule if the MPCA Commissioner grants a petition or if an MPCA Board Member makes a timely request that the decision be made by the MPCA Board.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Ask any questions about this requirement of the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone 651-296-5148 or 1-800-657-3889.

Adoption Procedure if No Hearing. If no hearing is required, the Agency may adopt the rules after the end of the comment period. The MPCA will submit the rules and supporting documents to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the rules are submitted to the office. If you want either to receive notice of this, to receive a copy of the adopted

rules, or to register with the Agency to receive notice of future rule proceedings, submit your request to the Agency contact person listed above.

Adoption Procedure after a Hearing. If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the Agency adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by writing to the Agency contact person stated above.

Order: I order that the rulemaking hearing be held at the date, time, and location listed above.

Signed by Michelle Beeman, Minnesota Pollution Control Agency Deputy Commissioner, on October 25, 2012