This document contains the comments the MPCA received during the second Request for Comments public comment period April 1, 2024, through May 1, 2024, for the planned amendments to rules governing Air Quality (Air Toxics Emissions Reporting Rule), Revisor ID # R-4599.

Discussion: 39354 Minnesota Pollution Control Agency Request for Comments on Air Toxics Emissions Reporti…

REQUEST FOR COMMENTS- Air Toxics Emissions Reporting Rule

Planned Amendments to Rules Governing Air Quality, Minnesota Rules, chapters 7002, 7005, 7007, 7008, 7011, 7017, and 7019; Revisor's ID Number R-4599

1 Topics | 1 Attachments | 2 Answers | Closed 2024-05-01 | View Discussion

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2 Responses

2 Responses

Mike Karbo at April 30, 2024 at 3:20pm CDT

American Petroleum Insitute Comments

Attachments: API_Comments_on_Air_Toxics_Emissions_Reporting_MN_4.29.24.pdf

0 Reads

Tony Kwilas at April 30, 2024 at 6:23pm CDT

Minnesota Chamber of Commerce comments

Attachments: Chamber_Letter_to_MPCA_-_Affirmative_Defense_Removal.docx

0 Reads

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April 29, 2024

Re: American Petroleum Institute Comments on second Request for Comments on planned amendments to air quality rules, Minnesota Rules Chapters 7002 (Permit Fees), 7005 (Definitions and Abbreviations), 7007 (Permits and Offsets), 7008 (Conditionally Exempt Stationary Sources and Conditionally Insignificant Activities), 7011 (Standards for Stationary Sources), 7017 (Monitoring and Testing Requirements), and 7019 (Emission Inventory Requirements).

Revisor number: R-04599

To Whom It May Concern:

The American Petroleum Institute ("API") is pleased to submit the following comments on the second Request for Comments on planned amendments to air quality rules, Minnesota Rules Chapters 7002 (Permit Fees), 7005 (Definitions and Abbreviations), 7007 (Permits and Offsets), 7008 (Conditionally Exempt Stationary Sources and Conditionally Insignificant Activities), 7011 (Standards for Stationary Sources), 7017 (Monitoring and Testing Requirements), and 7019 (Emission Inventory Requirements). This rulemaking is referred to as the Air Toxics Emissions Reporting Rule published at Revisor number: R-04599 ("Proposed Rule"). API previously submitted comments on the Proposed Rule during the first period in September 2023.

API is the national trade association representing America's oil and natural gas industry. Our industry supports more than 11 million U.S. jobs and accounts for nearly 8 percent of U.S. Gross Domestic Product. API's approximately 600 members, from fully integrated oil and natural gas companies to independent companies, comprise all segments of the industry. API's members are producers, refiners, suppliers, retailers, pipeline operators, and marine transporters, as well as service and supply companies, providing much of our nation's energy. API was formed in 1919 as a standards-setting organization and is the global leader in convening subject matter experts across the industry to establish, maintain, and distribute consensus standards for the oil and natural gas industry. API has developed more than 800 standards to enhance operational safety, environmental protection, and sustainability in the industry.

API has numerous members that will be affected by these planned amendments to Rules Governing Air Quality, Minnesota Rules, chapters 7002, 7005, 7007, 7008, 7011, 7017, and 7019 by way of emissions guidelines, reporting, and corresponding state standards implemented under this action. For example, there are API member companies that own and operate refineries and distribution terminals which would be subject to these proposed regulatory standards. Thus, API and its members will be impacted by the regulatory changes that MPCA makes for air toxics program requirements.

We offer the following comments on the Proposed Rule.

1. The Emergency Affirmative Defense Provisions should not be removed from Minnesota state rules

API recommends MPCA not proceed with the notice of intent to repeal the emergency affirmative defense provisions in Chapter 7007 as described in the second request for comments for the Air Toxics Emissions Reporting Rule. The Air Toxics Emission Reporting Rule regards planned rule amendments to require annual reporting on air toxics emissions from permitted facilities in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, or Washington counties. The repeal of the emergency affirmative defense provisions in Chapter 7007 would have statewide impact and does not give notice to affected facilities to provide comment.

EPA's July 21, 2023, decision referenced in the Second Request for Comments does not require states to remove all emergency defense provisions from the Clean Air Act Title V operating permit program. The decision states, "his rulemaking would have no effect on, and does not preclude states from retaining or creating, such regulations unrelated to the state's EPA-approved part 70 program. State-only affirmative defense provisions that are included within individual operating permits would need to be clearly labeled to indicate their limited applicability." It is recommended that MPCA maintain the state-only provisions.

Additionally, MPCA should consider the fact that the July 21, 2023 decision for the Removal of Title V Emergency Affirmative Defense Provisions From State Operating Permit Programs and Federal Operating Permit Program is currently being heard in court and could impact MPCA's rulemaking. MPCA may file an extension with EPA as allowed before August 21, 2024.

2. Air Toxics Reporting Rule is duplicative of the current AERR initiative by EPA. MPCA should be aligned with AERR, therefore ensuring synergy of efforts by regulated sources.

API recommends MPCA align the Air Toxics Reporting rule with the current Air Emission Reporting Requirements (AERR) initiative by the EPA. The proposed amendments to AERR were published August 9, 2023 and may require changes to "current regulations of State, local, and certain tribal air agencies; would require these agencies to report emissions data to the EPA using different approaches from current requirements; and would require owners/operators of some facilities to report additional emissions data." The proposed amendments will require certain sources to report Hazardous Air Pollutants, criteria air pollutants, and their precursors in addition to other requirements. MPCA's alignment with AERR will prevent duplicative efforts and ensure consistency across reporting requirements for the state.

Alignment with the federal emission reporting effort will result in a reporting process that minimizes burden on Minnesota facilities while still enabling MPCA to collect accurate and complete data on air toxics. One consistent reporting process will reduce the effort required to

reconcile data across multiple reporting formats, protocols, and structures. One reporting process will also result in consistent data reporting across the state, and will not be limited to Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties. Statewide alignment with AERR is beneficial to Minnesota facilities and the MPCA.

As of April 1, 2024 the final rule for AERR is currently at OIRA and will be promulgated within the next few months. With the new federal rule on the near-term horizon, it is prudent for MPCA to delay rulemaking to ensure that duplication of State and Federal reporting requirements does not occur and that these two reporting systems are aligned to maximum extent possible.

At a minimum, MPCA must clearly state how the agency intends to comply with both the upcoming AERR reporting requirements and address the regulatory burden for facilities having to comply with two rules covering essentially the same emissions.

3. Air Toxics inventory reporting should be limited to the federal list.

API recommends that Air Toxics Inventory Reporting requirements be limited to the federal list of HAPS and Criteria Air Pollutants. There are three substantial challenges that are likely to arise if the Air Toxic Emission Reporting requirements are not limited to the federal list of HAPS and Criteria Air Pollutants. First, Minnesota Statute 116.062(c) currently defines air toxics as "chemical compounds or compound classes that are emitted into the air by a permitted facility and that are: (1) hazardous air pollutants listed under the federal Clean Air Act, United States Code, title 42, section 7412, as amended; (2) chemicals reported as released into the atmosphere by a facility located in the state for the Toxic Release Inventory under the federal Emergency Planning and Community Right-to-Know Act, United States Code, title 42, section 11023, as amended; (3) chemicals for which the Department of Health has developed health-based values or risk assessment advice; (4) chemicals for which the risk to human health has been assessed by either the federal Environmental Protection Agency's Integrated Risk Information System; or (5) chemicals reported by facilities in the agency's most recent triennial emissions inventory." This expansive list of air toxics creates challenges for facilities in Minnesota that will have to either develop a method of calculation or directly measure the components for annual emission reporting. The second challenge is that the above-referenced Minnesota Statute allows for air toxics to be added to the list without means for notification to affected facilities. Lastly, facilities would be required to develop methods for accurate reporting of emissions, which in turn implies that facilities would be required to comply with 7019.3020 (Calculating Actual Emissions for Emission Inventory) for each air toxic.

If Minnesota pursues air toxic reporting as defined in Minnesota Statute 116.062(c), MPCA should adopt the list of Air Toxics into rule. This will provide notice for facilities to investigate and develop emission estimation methods and provide accurate and complete emission reporting. It is recommended that Minnesota limits air toxics included in the mandatory emission inventories to the federal list of HAPs and Criteria Air Pollutants, or those finalized in the EPA's AERR.

4. The term "insignificant" should be defined, and thresholds for reporting should be consistent with EPA's AERR.

API recommends MPCA require reporting for major sources of air toxics consistent with Section 112 (U.S.C. Title 42 - The Public Health and Welfare) which will also be consistent with existing Part 61 and Part 63 NEHSAP standards. Alternatively, MPCA must align with thresholds

for reporting that are consistent with EPA's AERR. Additional consideration should be given to air toxics that are not included in the AERR when establishing de minimis thresholds to prevent undue burden for facilities that would be required to report exceedingly small amounts or investigate impurities. Establishing methods for estimating these quantities would be increasingly difficult if facilities would be required to meet the standard set by 7019.3020, which can require performance testing, process studies and modeling, and sampling – if an alternative method must be used, the facility would need to comply with 7019.3100, which requires the facility's proposed alternative method to be approved by the commissioner every five years:

The owner or operator of an emission reporting facility may propose an alternative method for calculating actual emissions if the owner or operator can demonstrate to the satisfaction of the commissioner either:

(1) that the proposed method is more accurate than the methods in parts 7019.3040 to 7019.3090; or

(2) that none of the methods in parts 7019.3040 to 7019.3090 is technically or economically feasible and the proposed method is accurate.

It is important to note that EPA has provided definition of insignificant activities for HAPs in 40 CFR 71.5(c)(11)) in Operating Permits Program requirements. As such, incorporation of a more structured approach is entirely appropriate and proven to be a practical methodology.

(ii) ***Insignificant emissions levels.*** Emissions meeting the criteria in paragraph (c)(11)(ii)(A) or (c)(11)(ii)(B) of this section need not be included in the application, but must be listed with sufficient detail to identify the emission unit and indicate that the exemption applies. Similar emission units, including similar capacities or sizes, may be listed under a single description, provided the number of emission units is included in the description. No additional information is required at time of application, but the permitting authority may request additional information during application processing.

(A) ***Emission criteria for regulated air pollutants, excluding hazardous air pollutants (HAP).*** Potential to emit of regulated air pollutants, excluding HAP, for any single emissions unit shall not exceed 2 tpy.

(B) ***Emission criteria for HAP.*** Potential to emit of any HAP from any single emissions unit shall not exceed 1,000 lb per year or the de minimis level established under section 112(g) of

It should be noted that the additional resources required for emission reporting are significant – performance testing at a source can cost $5-10,000 per pollutant per source. Establishing a targeted list of air toxics with minimum thresholds would reduce the significant burden that would be required to calculate and report accurate emissions.

5. MPCA should incorporate alternative emission estimation methods for air toxic emission reporting.

API recommends an alternative process for calculating air toxics. Minnesota currently provides a hierarchy for methods of calculations for criteria pollutants; (1) Continuous Emission Monitor Data; (2) Performance Test Data; (3) VOC Material Balance, Mercury Material Balance, SO_2 Material Balance, Emission Factor, Enforceable Limitations; (4) Facility Proposal. These methods have defined procedures within 7019, which will result in significant reporting burden.

The emission estimations required for reporting will be significant because the number of pollutants is large – the current list of pollutants for Minnesota air toxic emission inventory includes 500 components, with 187 of those being federal HAPs. Existing calculations are not

available for all of those components, and facilities may not have the information required to calculate the emissions. For components that have existing reporting requirements for federal standards, the same methodologies should be accepted for Minnesota emissions reporting. For components that may not meet this criterion, to reduce the burden, facilities should be able to use engineering and process knowledge to complete estimations. These estimates should not be required to comply with 7019.3100, which requires the facility to submit the proposal to the commissioner for approval every five years. Exclusion of this requirement would ease the burden for facilities and MPCA.

6. Timing of inventory should be no earlier than AERR.

API recommends MPCA's Air Toxic Emission Inventory Reporting align with EPA's Air Emission Reporting Requirements for the reporting timelines, with mandatory reporting starting consistent with the final AERR rule. Reconciliation of report timing will allow for the advancements of reporting tools or software and will prevent developments that may conflict with AERR. As stated earlier, the final rule is currently under review at OIRA and reporting timelines may have changed significantly from proposed rule.

7. MPCA should incorporate certifications for Air Toxic Reporting if it wishes to include data quality assurance.

MPCA has indicated interest in pursuing a pathway for data quality assurance. If they do so, the method of achieving this should be a requirement for certifications upon submittal of air toxic emission reporting similar to that of the emission inventory under 7019.3000 Subpart 1(A), with the exclusion of the language specific to fee payment. This would be consistent with requirements in other states for Air Toxic Reporting (LAC 33:III.5107.A.2 and N.J.A.C. 7:27-21.8(a)). If MPCA requires certification for air toxic emission reporting, MPCA should additionally allow for error correction consistent with that detailed in 7019.3000 Subpart 2, with the exclusion of the language specific to emission fee correction.

Thank you again for the opportunity to submit these comments on the Proposed Rule. Please do not hesitate to contact me if you have questions or need more information.

Sincerely,

Mike Karbo
Associate Director, Midwest Region
American Petroleum Institute

RECEIVED
By: OAH on 4/30/2024
Tony Kwilas Attachment

MINNESOTA CHAMBER OF COMMERCE
GROWING MINNESOTA

May 1, 2024

Administrative Law Judge Jessica Palmer-Denig
Minnesota Office of Administrative Hearings
OAH Docket No. 71-9003-39354

Comments submitted electronically through OAH's website

The Minnesota Chamber of Commerce ("Chamber") submits these comments in response to the Minnesota Pollution Control Agency's (MPCA or "Agency") second request for comments (RFC) on the Agency's planned rulemaking related to air toxics emissions reporting for facilities that emit air toxics and are in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington. The Chamber represents members that the rulemaking will impact.

The second RFC is unrelated to the air toxics emissions reporting rulemaking. Instead, the MPCA provides notice of intent to repeal portions of chapter 7007 that allow a Title V air permittee to assert an affirmative defense in an emergency. The Chamber welcomes this opportunity to share its point of view regarding the MPCA's proposed notice of intent to repeal these provisions.

The Title V affirmative defense is important for subject facilities in Minnesota. In Minn. R. 7007.1850, an "emergency" is defined as "any situation arising from sudden and reasonably unforeseeable events beyond the control of the owners and operators of the stationary source, including an act of God, that requires immediate corrective action to restore normal operation, and that causes the stationary source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency." A facility must demonstrate an affirmative defense of emergency by satisfying several conditions listed in item C of the rule with corresponding evidence. The Chamber believes retaining these provisions to the extent practical and legal is imperative. Sources should not be held liable for emissions noncompliance resulting from an emergency situation beyond their control.

As described below, the Chamber recommends not proceeding with the notice of intent to repeal the emergency affirmative defense provisions in chapter 7007 and instead seeks an extension of the EPA's August 21, 2024, deadline, which the EPA offers as an option.

<u>The MPCA is Not Required to Wholly Repeal the Affirmative Defense Provisions</u>

The MPCA states in this second RFC that the planned amendment to repeal "certain sections of chapter 7007" is in response to the EPA's July 21, 2023, final rule that removed emergency affirmative defense provisions from the Clean Air Act Title V operating permit program regulations, herein referred to as the "T5-AD rule

change." 88 Fed. Reg. 47029 (July 21, 2023) However, the EPA does not require that the MPCA remove the entirety of the affirmative defense provisions. It offers other considerations in the final rule preamble:

> This rulemaking would have no effect on, and does not preclude states from retaining or creating, such regulations unrelated to the state's EPA-approved part 70 program. State-only affirmative defense provisions that are included within individual operating permits would need to be clearly labeled to indicate their limited applicability. 40 CFR 70.6(b)(2).
>
> However, notwithstanding the ability of states to create state-only affirmative defense provisions within their state regulations, any impermissible affirmative defense provisions contained within any EPA-approved part 70 programs will nonetheless need to be removed from the state's EPA-approved part 70 program. In such instances, the state would need to transmit to the EPA a program revision submittal to remove the affirmative defense provision from the body of regulations that comprise the state's official EPA-approved part 70 program. The EPA believes that the best practice for states would be to conduct a rulemaking to remove the affirmative defense provision from the state's current regulations (or to revise the state regulations to clarify the limited applicability of a state-only affirmative defense) and/or a legislative process to remove such provisions from a state statute, in addition to submitting the part 70 program revision to the EPA to formally remove the provision from the state's EPA-approved part 70 program. This would provide clarity for sources and the public and avoid any inconsistency between the state's EPA-approved part 70 program and the state's current regulations and/or statutes.

88 Fed. Reg. 47049. The EPA recognizes the importance of the emergency affirmative defense by suggesting an approach to maintain state-only affirmative defense provisions. The MPCA should take advantage of the opportunity given to it by the EPA to retain affirmative defenses in emergency situations regarding state-only limits and standards. Reserving its discretion to allow affirmative defenses for state-only requirements preserves MPCA's authority over limits and standards the MPCA itself has established and avoids confusion over the availability of these defenses.

Further, the T5-AD rule change is currently being challenged in court.[1] The outcome of this litigation may impact the disposition of the T5-AD rule change, including a potential stay or vacatur. This possibility further supports the need for MPCA to take advantage of the response deadline extension request EPA offered in the T5-AD rule change. Asking for more time to consider action in response to the T5-AD rule change would avoid a repeat of the 2015 startup, shutdown, and malfunction (SSM) State Implementation Plan (SIP) "call." In that case, EPA ordered a number of states—including Minnesota—to revise those parts of their SIPs that included defenses or exemptions related to emission exceedances during SSM events. The MPCA repealed Minn. R. 7011.1415 shortly thereafter. The D.C. Circuit Court of Appeals, however, recently overturned most of the bases for the EPA's 2015 SIP call. *Environmental Committee of the Florida Electric Power Coordinating Group, Inc. v. Environmental Protection Agency*, 94 F. 4th 77 (D.C. Cir. 2024). Had the MPCA not rushed to repeal its SSM rule, it may have avoided the need to do so. The 2015 SIP call underscores the need for slower and more careful consideration (and the need to seek an extension), particularly given that the litigation regarding the T5-AD rule change is still ongoing.

[1] *SSM Litigation Group v. EPA*, filed September 19, 2023, in the United States Court of Appeals for the District Of Columbia Circuit, case number 23-1267.

Finally, since the MPCA permitting rules combine both the non-Title V and Title V operating permit programs, it is unclear how the removal or modification of the affirmative defense provisions will affect non-Title V facilities. Minn. R. 7007.1850 does not disassociate the use of the affirmative defense between these types of permitted facilities, but the EPA's rule revoking the affirmative defense applies only to Title V permits. There is no basis for removing this provision for non-Title V permitted facilities.

The MPCA is Not Required to Rush these Permit Amendments by August 2024

The Chamber notes that this RFC is regarding the repeal of a state-wide rule for allowing a demonstration of affirmative defense when a technology-based emissions standard is exceeded during an emergency. This second RFC is unrelated to the nature, purpose, and content of the overall purpose of the planned rule amendments, which is to address air toxic emissions reporting rulemaking for facilities in the seven-county metropolitan area. The affirmative defense repeal issue and the air toxic emissions reporting issue are distinctly separate, for which the MPCA appears to conjoin in a single set of planned rule amendments simply for the sake of administrative convenience and to address an August 21, 2024, deadline from the EPA.

The Chamber believes combining these matters confuses the public and the regulated community. If the MPCA proceeds with a notice of intent to repeal the affirmative defense provisions, it should do so separately from the air toxic emissions reporting rulemaking with sufficient detail included on the specific provisions to be repealed or modified and the corresponding legal and practical basis.

Additionally, the EPA's August 21, 2024, deadline for permitting agencies allows either the submittal of a program revision or a request for an extension of time. Because of the active litigation on this matter, as noted above, there is no reasonable benefit to rush through a program revision until there is certainty on the rule outcome. The Chamber advises that the MPCA seek an extension as allowed by the EPA rule.

Thank you for the opportunity to provide comments and participate in this rulemaking.

Sincerely,

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