

This document contains the comments the MPCA received during the Request for Comments public comment period July 24, 2023, through September 22, 2023, for planned new rules governing Air Toxics Regulations, Revisor ID # R-04807.

39347 Minnesota Pollution Control Agency Request for Comments on Air Toxics Regulations Rule

Closed Sep 22, 2023 · Discussion · 6 Participants · 1 Topics · 6 Answers · 0 Replies · 1 Votes

6

PARTICIPANTS

1

TOPICS

6

ANSWERS

0

REPLIES

1

VOTES

SUMMARY OF TOPICS

SUBMIT A COMMENT

 6 Answers · 0 Replies

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Jane Dow · Citizen · (Postal Code: unknown) · Aug 14, 2023 10:20 am

 0 Votes

Confined animal feedlots should be eliminated and have animals raised on rotational grazing farms for the sake of climate change, soil health and animal and farmer welfare. I quote a farmer who raises animals in a sustainable way. Farmer Guido Frosini , who raises livestock on pastureland (one of many farmers doing so) explains, “The corporate-controlled livestock industry would have us believe that raising livestock in confined systems is better for climate change than the alternative of raising livestock on pasture. But their studies failed to take into account the beneficial role of the pasture in climate change, as well as the huge manure lagoons that factory farms create. In those lagoons, the methane in liquid manure has nowhere to go but up into the atmosphere. A vast quantity of corn and soy is required to feed livestock in factory farms. They require large quantities of fossil fuel-based chemicals. When all of these factors are taken into account, factory farms are a climate disaster. Raising animals on pasture actually puts carbon and other Greenhouse gases back in the soil. The perennial roots of pasture grasses are deep and extensive and help draw carbon out of the air. The quality of the grasses means animals digest better so they don’t put carbon in the air from belching. The manure acts as a natural fertilizer for the soil. Not only are my pastures incredibly productive, but I have seen a tripling of the native deer population and an increase in migratory waterfowl.”

LJ Ja · Citizen · (Postal Code: unknown) · Sep 12, 2023 1:22 pm

 0 Votes

My comments are in regard to these two points:

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3) Performance testing required for facilities to measure emissions including the methods, procedures, protocols, and frequency.

4) Monitoring, reporting, and recordkeeping requirements for facilities related to air toxics emissions.

First, the calculation for companies to determine if they are in compliance should not be so complex that the company cannot determine on their own if they are in compliance. And should not be so complicated that even the yearly auditors cannot determine that they are out of compliance. And they should not be so complicated that the company has to hire an independent consultant to determine if they are in compliance.

In addition, once a company determines after painstakingly trying to figure out if they are in compliance that they mistakenly have not been in compliance and self-reports, the MPCA should try to work alongside these companies rather than vilifying them and withholding permits from the company in an area that has nothing to do with the problem area that was out of compliance. There should be an effort to encourage this kind of self-reporting and to work with, and help, these companies so that they are not slandered when they are trying to do the right thing.

And thirdly, a company which has already done all that is required to remedy an emissions problem should not be “re-convicted” so to speak at a later date because the rules have since become stricter. A company cannot predict what future laws will be and run their business accordingly. As more is discovered about the world and about things the world has developed, rules and laws change. But a person making decisions can only act on what is known at the time, and they can’t go back in time to change something according to what the rules are now. It suppresses ingenuity and innovativeness to try to discover new things if the what is unknown today threatens to convict at a later date. Each action should be judged on its current rules and laws, and not what comes after.

Mark Bray · Citizen · (Postal Code: unknown) · Sep 18, 2023 8:25 pm

👍 1 Votes

Cities not enforcing local and state laws on burning toxins, garbage and yard waste in high density residential areas are a huge problem for our air quality. Prior Lake has not enforced the air quality when police are called even though neighbors of mine who burn trash and other debris. Even now as I write this a neighbor is burning trash and the air is heavy with smoke and pollutants and pouring into my house even with my central air unit on even though it's not hot outside. Their first grade children are out screaming and laughing about how they want to burn the world down. See video.

[https://www.youtube.com/watch?](https://www.youtube.com/watch?si=eBrDyuMU2wYEiovB&v=aoltA31YmCY&feature=youtu.be)

[si=eBrDyuMU2wYEiovB&v=aoltA31YmCY&feature=youtu.be](https://www.youtube.com/watch?si=eBrDyuMU2wYEiovB&v=aoltA31YmCY&feature=youtu.be)

Tony Kwilas · Citizen · (Postal Code: unknown) · Sep 21, 2023 3:26 pm

👍 0 Votes

Please find the Minnesota Chamber of Commerce comments attached.

Terry Gilchrist · Citizen · (Postal Code: unknown) · Sep 21, 2023 6:59 pm

👍 0 Votes

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Please find the Metropolitan Council's comments attached.

Mike Karbo · Citizen · (Postal Code: unknown) · Sep 22, 2023 9:23 am
👍 0 Votes

Please find the American Petroleum Institute's comments attached.



September 21, 2023

Administrative Law Judge James Mortenson
Minnesota Office of Administrative Hearings

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) request for comments (RFC) on the Agency's planned rulemaking related to air toxics for facilities that emit air toxics and are located in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington. The Chamber represents members that the rulemaking will impact.

As indicated below, the Chamber welcomes this opportunity to share its point of view regarding the proposed regulations. The Chamber recognizes that these rules, in conjunction with associated rules for cumulative impacts analysis and air toxics emissions reporting, pose the possibility of a significant impact on the economic vitality of the areas subject to the rules. We believe that the MPCA also recognizes this concern. As such, the Chamber urges the MPCA to be deliberate and consultative in its approach.

Toward that end, and as a preliminary matter, the Chamber urges creating an advisory committee of key stakeholders to consult with the Agency before publishing draft rules. These stakeholders should include significant representation from parties that will be subject to new legal requirements under this rule. Such a process would help drive consensus around key issues and help the MPCA avoid (or at least narrow the scope of) potential rule challenges.

Overview

The Chamber supports efforts to ensure facilities do not operate in a manner that creates public health risks. We understand the importance of maintaining public trust in operating facilities. Importantly, the MPCA is not writing on a clean slate. Air toxics have been subject to regulation since the passage of the Federal Clean Air Act in 1970. The 1990 amendments to the Clean Air Act established a comprehensive program regulating all major sources of hazardous air pollutants (HAP) in the United States and requiring compliance with technology-based standards, such as the maximum achievable control technology (MACT) and generally achievable control technology (GACT) rules in 40 CFR Part 63 to reduce emissions at both major and non-major sources of HAP, regardless of risk.

The 1990 amendments also required that sources subject to MACT standards undergo a comprehensive regulatory review to ensure those facilities posed no residual risk requiring additional regulation. That process has led to additional requirements based on the United States Environmental Protection Agency's (US EPA's) risk-based evaluation. We believe this comprehensive federal program (particularly the residual risk component), which has been in place for 33 years, provides the proper assurance that sources are well-regulated.



Finally, these regulations create the possibility of a significant regulatory burden without substantial benefit. As always, we believe that any new requirements need to strike the proper balance between regulatory objectives and the continued economic vitality of the state.

With these preliminary comments in mind, the Chamber provides the following specific comments:

The Current Legislation does not Mandate a Comprehensive Air Toxics Regulatory Program.

Our understanding is that Section 5 of HF 2310 was a relatively late addition to Article 8 of that bill. We further understand that the intent of Section 5 was to provide the MPCA with the tools necessary to implement the remainder of Article 8. Article 8 is captioned “Environmental Justice,” and thus, Section 5 must be read in that context. This is further reinforced by the fact that the rulemaking authorization in Section 5 has no legislatively specified location in the Minnesota Statutes. This is in contrast with Sections 1 (Minn. Stat. §16A.151), 2 (§116.062), 3 (§116.065), and 4 (§116.07). Generally, we believe this should be interpreted to mean that any authorization set forth in Section 5 is ancillary to the other sections of Article 8. Finally, the MPCA acknowledges the direct connection to the rest of Article 8 in its RFC when it indicates the persons affected by the rule are “[p]eople living in environmental justice areas.”

Section 5, as written, contains no express authorization or requirement for the MPCA to adopt a comprehensive air toxics program independent of the rest of Article 8. The authorization is to “adopt rules” to “implement and govern regulation of facilities that emit air toxics.” Section 5, Subd. 3. The only specific and actionable mandate is found in Subd. 4(a). There, in parts (3) through (7), the legislature requires testing, monitoring, reporting, recordkeeping, and inspections – all items that are in furtherance of the rest of Article 8 and directly relate to the implementation of Section 2 and enforcement of any requirements in Section 3.

Subd. 4(b) reinforces this narrow mandate: “In developing the rules, the commissioner must establish **testing, monitoring, reporting, recordkeeping, and inspection** requirements for facilities . . .” (emphasis added).

This is not a broad obligation for the sort of regulatory program the MPCA appears to be contemplating in its RFC. The Chamber supports the incremental approach that is provided for in the legislation, wherein the MPCA first develops more fully the tools to characterize and understand the nature of any air toxic emissions. At that point, the agency can determine if it deems additional regulation necessary – or, as described below, utilize an existing process such as MNRISKS to prioritize efforts.

Importantly, the Chamber believes that any broader interpretation of the MPCA’s mandate (or the agency’s statistical broadening of the definition of Environmental Justice Area as addressed below) creates the risk of diluting the primary purpose of this legislation, which is to address impacts on potentially overburdened areas. Expanding the focus of this mission will, among other things, divert already scarce agency resources away from the focus on environmental justice.

The Information Required by Statute Should First be used to Support the MPCA’s MNRISKS Effort.

We believe the MPCA already has in place a tool for understanding and addressing public health issues associated with toxic air emissions. The legislative mandate for testing, monitoring, reporting, recordkeeping, and inspection set forth above should first be used to support that effort. For example, MNRISKS data may suggest certain pollutants and/or areas are of concern. The MPCA specifications of testing, recordkeeping, and reporting may focus on those issues instead of broad new requirements that do not incorporate learning and priorities from MNRISKS. If refined data do not alleviate concerns about specific areas or pollutants, the MPCA may consider whether additional regulation is required.

If the MPCA considers new requirements or program elements related to air toxics, those requirements should not be standalone programs but an outgrowth of federal and Minnesota work in the area over the decades. The MPCA has managed a state air toxics emissions inventory for thirty or more years, collaborating with other Midwest states and the US EPA on procedures, software, and data. As noted above, the US EPA has enacted many programs regulating air toxics over the same period. Minnesota has gone beyond federal and state law by enacting policies that examine the potential impact of air toxics during facility permitting and/or other environmental reviews. The MPCA built MNRISKS, a multimedia risk assessment model that uses available data to describe the state of knowledge on air toxics risks in the state. The MPCA has completed short- and long-term ambient monitoring studies to characterize concentrations at various geographic levels. In short, the MPCA has spent significant time and resources studying air toxics. Any potential new programs should build upon that work and aim for targeted improvements in the context of all this Minnesota-specific work. The MPCA should consult with other states on best practices for air toxics management and decide which of those practices would be relevant and effective in Minnesota.

Guideposts for a Regulatory Program

If the MPCA were to proceed beyond the mandate in Section 5, the Chamber believes there are important guideposts the MPCA (and an advisory committee) should observe. These suggestions are not intended to include all Chamber comments on a potential program.

Any toxics program should provide certainty to the community and the regulated entities.

Any regulatory program should not be overly complex or ambiguous or create a substantial “back-and-forth” process with an uncertain outcome between the agency and facilities. A program could be efficient and effective in multiple ways:

- A toxics program should exempt sources already subject to the federal regulatory program for HAP as described above. These sources are already regulated and subject to risk review. In addition, there should be a “bright line” screening of emissions levels that require no further action. The rules should also consider other means of streamlining, including establishing de minimis levels below which the regulations do not apply.

- Any rule should also establish an ambient monitoring “exit ramp” from additional regulation. Any source that agrees to implement an approved ambient monitoring program for air toxic pollutants of concern in the area should be exempt from a modeling analysis requirement that the rule may otherwise require.
- Also, any rule should include “safe harbor” provisions exempting sources from additional review unless a facility is being modified in a manner inconsistent with any prior evaluation. Such a provision makes it clear that compliance with the rule satisfies any environmental review obligations and creates an exemption for any source that has already undergone an MPCA air emissions risk analysis (AERA) and has not been modified.
- Finally, we believe any dispersion modeling evaluation provided by the rule should be performed on an actual emissions basis, not a theoretical potential to emit basis, and should consider only normal facility operations exclusive of startup, shutdown, or malfunction scenarios. From the experience of our members who have undertaken an AERA or similar process for air toxics emissions, starting such an evaluation with potential emissions or evaluating hypothetical worst-case emissions scenarios leads to skewed results and a lengthy iterative process with the agency that requires substantial resources and does not lead to any different risk determination nor any benefit to the community. Additionally, given the inherent conservatism built into any modeling projections, any modeling required by the rule should be validated by comparing results to available monitored values.

These suggestions aim to guide the program toward sources that may require additional characterization or engagement and avoid duplicative work on sources that are already well-regulated and characterized.

The MPCA Must Adopt the List of Regulated Toxics by Rule

Although the legislation defines “air toxics,” it does so in a way that requires additional rulemaking. The legislative definition incorporates compounds currently established only in guidance and not otherwise established by rule. For example, the definition includes compounds for which the Minnesota Department of Health (MDH) has developed health-based values or risk assessment advice and compounds that are addressed in the federal Integrated Risk Information System (IRIS) process. Most ambiguously, it includes “chemicals reported by facilities in the agency’s most recent triennial emissions inventory.”

As part of any MPCA rulemaking effort and consistent with general principles of administrative law, the MPCA must adopt an initial list of air toxics consistent with the legislative definitions and then, by rule, periodically modify the list as necessary, consistent with Subd. 4(a)(1).

The MPCA should use a Legislatively Consistent Definition of “Environmental Justice Area.”



Section 3 and Section 5 of Article 8 include similar definitions of “environmental justice area,” but they are not exactly the same – Section 3 includes the word “decennial” before “census data.” Importantly, neither definition implies that the census data should be modified statistically to create a confidence interval. While the Chamber has no indication at this point that the MPCA contemplates making a statistical adjustment to the Census data, the MPCA has done so on one of its current web pages. The Chamber would oppose such an approach in implementing the Article 8 rules.

Not only is such an adjustment contrary to the express language of the legislation, but it also is inconsistent with the approach utilized by other states (e.g., New Jersey, New York, Colorado) that administer air toxics programs. To artificially inflate the number of environmental justice areas dilutes the effectiveness, focus, and credibility of the environmental justice effort. Please see the Attachment for an additional technical description of this issue and concern.

As the attached analysis indicates, to include a statistical adjustment (i.e., a margin of error) inappropriately skews the definition of “environmental justice area” based solely on the confidence interval employed in one direction only – to increase the percentage. Further, the data show that the confidence interval changes based on the number of census respondents because a confidence interval may be greater for any given year’s data if fewer people respond. The U.S. Census data (as presented in the Attachment) illustrates this point.

The direct result of the unidirectional statistical adjustment substantially increases the number of environmental justice areas based solely on that confidence interval. Thus, the data indicates that using a confidence interval can almost double the number of potential environmental justice areas in the Twin Cities metropolitan area. As the number of respondents decreased during the COVID-19 pandemic, the statistical confidence intervals increased, almost tripling the number of environmental justice areas.

Such an approach not only inflates the number of environmental justice areas in any year, it also creates greater variability in possible environmental justice areas year-to-year. For example, an area with consistent actual reported data on a year-to-year basis could become an environmental justice area because there was a low number of respondents in any given year. If the number of respondents increases the next year, the area will once again not be listed as an environmental justice area. To meet the legislation’s intent, any process for identifying environmental justice areas should aim for accuracy rather than maximization.

Summary

The Chamber believes the legislation requiring this rulemaking requires a limited air toxics program focused on environmental justice areas. Within that scope, the Chamber further suggests that the MPCA use its decades of data on air toxic emissions and concentrations to target any regulatory program on pollutants and areas of potential concern, not on permitted sources and pollutants generally. A focused approach is most likely to identify and improve any elevated risks to public health.

We welcome the opportunity to participate in an advisory committee to help guide the MPCA's efforts as it moves forward with these rules.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tony Kwilas".

Tony Kwilas
Director, Environmental Policy
Minnesota Chamber of Commerce
tkwilas@mnchamber.com
651-292-4668



September 21, 2023

VIA ELECTRONIC SUBMISSION

Office of Administrative Hearings Rulemaking eComments website

<https://minnesotaoah.granicusideas.com>

Re: Comments of the Metropolitan Council on the Minnesota Pollution Control Agency's Air Toxics Regulations Rulemaking

To Whom It May Concern:

The Metropolitan Council (Met Council) appreciates the opportunity to comment on the Minnesota Pollution Control Agency's (MPCA or the Agency) Air Toxics Regulations Rulemaking. MPCA is requesting comments on possible new air rules, *Minnesota Rules*, Chapter 7012 and potential updates to additional air rules chapters 7002, 7005, 7007, 7017, and 7019 (Potential New Air Rules or Rules). The Rules will apply to facilities that emit air toxics and are located in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, or Washington. MPCA is accepting comments on the Rulemaking until 4:30 p.m. on September 22, 2023.

I. The Met Council's Interest

The Met Council operates and maintains the regional interceptor system and nine regional wastewater treatment plants that serve the seven-county Twin Cities metropolitan area. The nine wastewater treatment plants include: Blue Lake; Eagles Point; East Bethel Water Reclamation Facility; Empire; Hastings; Metropolitan (Metro); Rogers; Seneca; and St. Croix Valley. The Met Council also operates thermal destruction facilities to manage its wastewater treatment byproducts. All facilities are located in the seven County Metro Area and therefore are likely subject to the Potential New Air Rules.

II. The Met Council's Comments

The Met Council takes its role as an environmental steward seriously and is committed to working with the MPCA and other stakeholders to address air emissions including any related environmental justice concerns. The Met Council has invested significant time and resources into ensuring it is a good neighbor to the communities where its facilities exist including,

relevant to these Potential New Air Rules, the community near the thermal destruction facilities. Therefore, the Met Council offers the following suggestions, comments, and questions as to the Potential New Air Rules.

Generally Applicable Comments

This Rulemaking was directed by Minnesota Session Laws – 2023, Chapter 60, article 8, section 5 (H.F. No. 2310) and, in part, applies to chemicals for which the Department of Health has developed health-based values or risk assessment advice. As the Department of Health has health-based values for a number of PFAS compounds, these Potential New Air Rules could apply to PFAS. How PFAS acts in the environment, as well as the nature and extent of any associated ecological or human health risks, are complex issues, and addressing PFAS compounds is an ever-evolving concern for wastewater treatment facility operators, including the Met Council.

MPCA's Minnesota's PFAS Blueprint (March 2022) notes the importance of understanding and quantifying PFAS risks to human health and ecosystems, reflects a risk-based PFAS framework, and provides a path forward for PFAS monitoring in the state. Given the existing rules, regulations, and guidance, and the current state of PFAS science, additional regulations for PFAS air toxics seems premature. Insufficient information exists as to testing methods, procedures and protocols; and regulatory air standards to include PFAS in the air toxics to be regulated by these Proposed New Rules. Even if there was a valid test method and agreed upon best practices for procedures and protocols, it is not clear as to what standards the results would be compared. Met Council is not aware of any health-based inhalation values that have been developed for PFAS. The only state we are aware of that is currently regulating PFAS air emissions is New Hampshire which is doing so based on deposition risks to surface and groundwater.

Therefore, the Met Council recommends that before implementing air toxics rules related to PFAS, MPCA ensures that sufficient information exists to manage these emerging issues with clarity and scientific support. If MPCA decides to include PFAS in the air toxics rulemaking, the Met Council provides the following additional comments:

1. Critical information does not yet exist with regard to best practices for testing methods, procedures, or protocols.

The Potential New Air Rules are required to address various items including:

- “required monitoring of air emissions”;
- “performance tests conducted by facilities to measure the volume of air toxics emissions and testing methods, procedures, protocols, and frequency”; and
- “specific air toxics to be regulated”

There are multiple unknowns regarding ambient air quality, testing methods, and testing procedures as to PFAS, and there is not currently sufficient information to allow for meaningful regulation. With regard to ambient air quality, the National Atmospheric Deposition Program (NADP) is conducting studies related to PFAS dispersal and atmospheric processing. This work has demonstrated that PFAS is found in “remote terrestrial and aquatic environments” far

from any known sources.¹ Additionally, ambient air monitoring conducted by MPCA at four locations in the State from June 2020 to July 2021 demonstrated that PFAS is present in all ambient air samples.² If the Proposed New Rules require PFAS monitoring, the Rules should reflect that ambient/background sampling may be a crucial component of some monitoring plans. Furthermore, such plans and their associated decision-making steps should incorporate consideration of ambient PFAS levels. To inform this process, MPCA could consider undertaking a state-wide air toxics background monitoring program. The Met Council strongly supports such a program.

Providing clarity and consistency regarding sampling and analytical methods is critical to successful implementation of a PFAS air monitoring plan. There is significant variability among analytical methods and laboratory use of PFAS air monitoring methods. Also, new methods are currently under development, and the utility of some analytical methods is still evolving. The Met Council strongly recommends that MPCA require monitoring only for PFAS compounds for which there is a validated analytical test method. For example, EPA's Other Test Method 45 (OTM-45) was issued in January 2021, but, to date, it is not an approved EPA test method. EPA generally does not use such methods for compliance purposes because they are not considered fully-vetted.³ Analytical methods for PFAS continue to rapidly develop. To ensure accurate and consistent test results if MPCA decides to regulate PFAS under these Potential New Air Rules, MPCA should provide sufficient flexibility to allow for facilities to utilize the evolving best practices for analytical methods.

Similarly, flexibility is warranted in the method of calculating emissions. For example, MPCA's PFAS Monitoring Plan (March 2022) states that PFAS air emissions may be monitored using (1) continuous emissions monitoring; (2) stack testing for certain facilities in Minnesota that regularly conduct stack testing; (3) mass balance calculations; or (4) MPCA-approved facility proposal. MPCA should provide similar flexibility when developing procedures and protocols under the Potential New Air Rules.

Finally, regarding the specific air toxics to be regulated, MPCA should identify the specific PFAS compounds to be monitored. There can be a tendency to treat analytical results as comparable regardless of the specific analysis that generates those results and regardless of the specific analytes included. However, results obtained for the same compound using different test methods may not be directly comparable. It is vital to the integrity of the

¹ See "PFAS concentrations and deposition in precipitation: An intensive 5-month study at NADP-NTN across Wisconsin", Martin Shafer, Mark Olson, David Pfothenhauer, Emily Sellers, and Katie Praidel, *Atmospheric Environment*, Vol 291, 15 December 2022, available at: <https://www.sciencedirect.com/science/article/abs/pii/S1352231022004332> (last accessed August 24, 2023).

² See "PFAS Air Emissions Reporting and Monitoring," MPCA, presented November 29, 2021.

³ See e.g., U.S. EPA's Air Emission Measurement Center (EMC) discussion of Other Test Methods, available at: <https://www.epa.gov/emc/emc-other-test-methods> (last accessed August 24, 2023) ("these methods are subject to change based on review of additional validation studies or on public comment as part of adoption as a Federal test method, the Title V permitting process, or inclusion in a SIP."); and "Other Test Method 45 (OTM-45) Measurement of Selected Per- and Polyfluorinated Alkyl Substances from Stationary Sources", available at: https://www.epa.gov/sites/default/files/2021-01/documents/otm_45_semivolatile_pfas_1-13-21.pdf (last accessed August 24, 2023) ("The purpose of the Other Test Methods portion of the EMC website is to promote discussion of developing emission measurement methodologies and to provide ... potentially helpful tools.").

implementation of the Potential New Air Rules that there is clarity and consistency in the sampling and analytical methods used and how the resulting data are reviewed and communicated.

2. MPCA should ensure there are not redundant PFAS reporting requirements.

The Potential New Air Rules are directed to address “requirements for reporting information to the agency to assist the agency in determining the amount of the facility’s air toxics emissions and the facility’s compliance with emission limits in the facility’s permit.” Facilities are already required to report compliance items related to their permits. In addition, Minnesota’s Air Toxics Emissions Reporting law (Minn. Stat. § 116.062), was amended in May of this year by Minnesota Session Laws – 2023, Chapter 60, article 8, section 2 (H.F. No. 2310) to include annual reporting of “the facility’s air toxics emissions to the agency.” Therefore, no additional reporting requirements are needed in the rulemaking under section 5. MPCA should also consider the developing national approach to PFAS air emission management. In August of this year, the EPA published proposed updates to its Air Emissions Reporting Requirements to improve its collection of certain emissions data and is considering including PFAS as a required pollutant.⁴ Taking into consideration all of the existing and proposed reporting requirements, there is no need for additional reporting requirements in this rulemaking as such requirements would be redundant.

If MPCA includes PFAS monitoring and reporting in the Potential New Air Rules, the rules should address how the data could be used and communicated. The Met Council encourages an approach that provides transparency and communicates the data in appropriate context using risk communication tools. MPCA should explain how and when it will make monitoring information available. The Met Council is interested in working with MPCA in developing communication strategies for key stakeholders.

Beyond the possible use of data in assessing permit compliance, MPCA should explain how any data collected will be evaluated by the agency and used to inform future decisions. Specifically, MPCA should explain any analysis or comparisons it plans to undertake with the data gathered through implementation of any reporting requirement under the Potential New Air Rules. Understanding how MPCA intends to use the data will help ensure that the data collected are suitable to support those uses.

3. MPCA Should Phase in PFAS Air-Related Rules When There Is More Certainty.

PFAS compounds are ubiquitous. Wastewater treatment facilities are not generators of PFAS or utilizing PFAS in their processes; they are passive recipients of PFAS materials from their users. Assessment and management of PFAS is an ongoing, costly challenge for wastewater treatment facility operators including the Met Council. The potential costs associated with

⁴ See Revisions to the Air Emissions Reporting Rule, 88 Fed. Reg. 54,118 at 54,148 (Aug. 9, 2023) (to be codified at 40 C.F.R. pt.s 2 & 51). <https://www.govinfo.gov/content/pkg/FR-2023-08-09/pdf/2023-16158.pdf>

monitoring for PFAS air emissions may be very significant and would very likely be ultimately borne by ratepayers. MPCA should phase PFAS into these Potential New Air Rules when there is more certainty in the best practices for addressing PFAS in air emissions.

III. Conclusion

The Met Council appreciates the opportunity to submit these comments on MPCA's Air Toxics Regulations Rulemaking. The Met Council appreciates MPCA's efforts to gather additional information and input on the Proposed New Rules and looks forward to working with MPCA in its efforts to address PFAS contamination in Minnesota. Please feel free to call or e-mail if you have any questions, or if you would like any additional information concerning the issues raised in these comments.

Sincerely,

A handwritten signature in blue ink that reads "Leisa Thompson". The signature is fluid and cursive, with a long horizontal flourish at the end.

Leisa Thompson
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September 22, 2023

Re: American Petroleum Institute 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-04807

To Whom It May Concern:

The American Petroleum Institute (“API”) is pleased to submit the following 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-04807 (“Proposed Rule”).

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 Rules.

1. Air Toxics rules should incorporate by reference all Part 61 and Part 63 NESHAP standards, as well as any alternative emission standards or work practices within them.

It is important to recognize that USEPA has developed comprehensive emission standards for hazardous air pollutants for the majority, if not all, of industry source categories operating in Minnesota. The USEPA was required by the Clean Air Act to develop Maximum Achievable Control Technology (MACT) standards that are based on emissions levels which are already being achieved by the best-controlled and lowest-emitting sources in an industry. Further, on an 8-year cycle, USEPA is required to assess the remaining health risks from each source category to (1) determine whether the MACT standards protect public health with an ample margin of safety, and (2) protect the public against adverse environmental effects. This is a “risk-based” approach called residual risk. Here, the EPA must determine whether more health-protective standards are necessary. For most MN industry source categories, the initial MACT standard and subsequent residual risk evaluations have been completed with updated emission standards recently promulgated.

API recommends that MPCA incorporate the above-discussed Federal standards by reference, and limit any additional emission standard setting to those sources not included in categories subject to a Part 61 or 63 standard. Further, API recommends that MPCA is careful not to exclude, eliminate, or modify any alternative emission standards or work practices developed by USEPA in Part 61 or Part 63 development.

2. Air Toxics rules should only use standard test methods and require results exclusively from laboratories certified for such methods.

API recommends MPCA adhere closely to the use of only those test methods developed by USEPA or other standard-setting organizations (i.e., ASTM, API). Standard test methods represent methodologies and testing techniques that have been rigorously tested and validated to ensure the quality of the measurements. Standard test methods also include detailed quality assurance and control protocols to ensure the accuracy of the measurements conducted by the laboratory. Moreover, it is important that MPCA ensures the measurement competency of any company or entity conducting and reporting compliance measurements for any rulemaking. To best ensure competency and credibility, any laboratory or testing company must have third-party accreditation to conduct any test method being utilized for compliance reporting.

If MPCA utilizes Part 61 or Part 63 NESHAP standards, then this concern for testing methodology is alleviated as US EPA includes prescribed test methods within these standards. At a minimum, MPCA should only specify test methods listed in Index To US EPA Test Methods (<https://www.epa.gov/measurements-modeling/index-epa-test-methods>).

Finally, it is important to set testing intervals appropriate to each individual facility's operational scenarios and emission source type. For instance, initial performance testing of an emission source at maximum operating conditions would be sufficient unless an operational change or physical modification of the source occurs. Periodic testing intervals are often set at 5-year intervals in Part 61 and Part 63 standards where additional verification testing is warranted.

Continuous monitoring or more frequent testing/sampling should only be required where there is variability in emissions potential related to process operating conditions. MPCA should incorporate US EPA Performance Specifications for any Continuous Emissions Monitoring (CEMS) requirement to ensure that the monitored data is representative of the actual emissions. MPCA should allow use of process operating parameters as compliance monitoring methodology as this is an accepted practice that is currently incorporated in existing operating permits for some sources.

3. Air toxics monitoring is currently rigorously conducted by existing MPCA programs and Part 63 regulated refineries and chemical manufacturers.

It is important to note that MPCA has a robust monitoring program in place as part of MPCA's 2021 Air Monitoring Network Plan for Minnesota. Currently, MPCA monitors 10 metals at 18 TSP sites, and 7 carbonyls and 58 individual VOCs at 19 sites. MPCA then converts these monitored concentrations into risk values and reports them online. Moreover, both refineries operating in Minnesota have had fence-line monitoring programs for benzene, as required by the Part 63 Refinery Sector Rules (RSR), since 2016. EPA recently published revised Part 63 standards for Synthetic Organic Manufacturing, which implements fence-line monitoring for benzene, 1,3-butadiene, chloroprene, ethylene dichloride, and ethylene oxide. The combination of the MPCA and EPA monitoring programs are sufficient to meet MPCA's goals for reduction of air toxic emissions and their impact on communities.

4. 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