

December 1, 2023

The Honorable Tim Walz
Governor, State of Minnesota
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Ryan Inman, Revisor
Office of the Revisor
700 State Office Bldg.
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Michelle Weber, Executive Director
Legislative Coordinating Commission
72 State Office Bldg.
100 Rev. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

The Honorable Fong Hawj
Chair, Environment, Climate and Legacy
Committee
3231 Minnesota Senate Bldg.
95 University Ave. W
St. Paul, MN 55155

The Honorable Justin Eichorn
Ranking Minority Member, Environment,
Climate, and Legacy Committee
2235 Minnesota Senate Bldg.
95 University Avenue W.
St. Paul, MN 55155

The Honorable Rick Hansen
Chair, Environment and Natural Resources
Finance and Policy Committee
407 State Office Bldg.
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

The Honorable Josh Heintzeman
Ranking Minority Lead, Environment and
Natural Resources Finance and Policy
Committee
375 State Office Bldg.
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

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

Dear Legislators:

Minn. Stat. § 14.05, subdivision 5, states:

“By December 1 of each year, an agency must submit to the governor, the legislative coordinating commission, the policy and funding committees and divisions with jurisdiction over the agency, and the Revisor of Statutes, a list of any rules or portions of rules that are obsolete, unnecessary, or duplicative of other state or federal statutes or rules. The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules. By December 1, the agency must either report a timetable for repeal of the rule or portion of the rule, or must develop a bill for submission to the appropriate policy committee to repeal the obsolete, unnecessary, or duplicative rule. Such a bill must include proposed authorization to use the expedited procedures of section 14.389 to repeal or amend the obsolete, unnecessary, or duplicative rule. A report submitted under this subdivision must be signed by the person in the agency

who is responsible for identifying and initiating repeal of obsolete rules. The report also must identify the status of any rules identified in the prior year's report as obsolete, unnecessary, or duplicative. If none of an agency's rules are obsolete, unnecessary, or duplicative, an agency's December 1 report must state that conclusion."

The Minnesota Pollution Control Agency (MPCA) has conducted a review of its rules and requested input from interested external parties (e.g., Minnesota Chamber of Commerce, regulated parties, local government, and environmental advocacy groups) to identify rules that are obsolete, unnecessary, or duplicative.

Rules identified as obsolete, unnecessary, or duplicative in 2023

On July 21, 2023, EPA published their final rule to remove Title V Emergency Affirmative Defense Provisions from State Operating Permit Programs and Federal Operating Permit Program. This language is in our permit rules at 7007.1850 and in other places of 7007 as well as appearing as part of the "7007.0100 to 7007.1850" references throughout the rule. EPA requires states to either remove these from their rules or submit a "program revision" by August 24, 2024. The MPCA intends to conduct a Good Cause Exempt rulemaking to remove these references in 2024.

Status of rules identified in previous Obsolete Rules Reports (ORRs)

The MPCA has identified obsolete rules in previous ORRs, some of which have already been addressed/remedied by the agency. For the previously identified rules listed below, the MPCA is either currently completing rulemaking to address them or still evaluating options to make the necessary changes.

1. Updates to underground waters, *Minn. R. pt. 7060* (2020 ORR)

MPCA staff identified portions of *Minn. R. 7060* with references to other rule parts that require updating—for example, 7060.0200 refers to text in parts 7050.0100-7050.0220 as of 2014 that was moved or changed in 2019. The MPCA, Minnesota Department of Health, and other agencies with relevant authority are reviewing specific items for revision in the Water Quality Standards: Use Class 1 rulemaking (Revisor's ID #04727).

2. Updates to permits and certifications, *Minn. R. pt. 7001* (2020 ORR)

MPCA staff identified portions of *Minn. R. 7001.3175*, *7001.3275*, and *7001.3300* with requirements to submit four copies of relevant preliminary permit applications, final permit applications, or detailed site evaluation reports that are now considered obsolete because of streamlined agency processes and technological efficiency. The MPCA is working on rulemaking, referred to as the Land-Related Housekeeping Rule (Revisor's ID #04155), to make minor corrections, clarifications, and updates to its solid and hazardous waste rule chapters, including revising the requirement from four copies to one; providing for the use of electronic means as specified by the Commissioner, where appropriate; and revising cross-references as needed.

3. Updates to solid waste, *Minn. R. pt. 7035* (2020 ORR)

Aspects of *Minn. R. 7035* regulate the transportation of infectious waste that relate to activities of the Minnesota Department of Health, which has amended their rules regulating infectious waste management. As a result, some requirements in this part are obsolete or require correction. Additional requirements correspond to marking and placarding requirements of the federal hazardous material regulations administered by the U.S. Department of Transportation, which supersede conflicting state requirements.

4. Updates to hazardous waste, *Minn. R. pt. 7045*

The Land-Related Housekeeping Rule (Revisor's ID #04155) will also address the obsolete portions of the rules and relevant cross-references listed below. The MPCA notes that removal of the obsolete language does not necessarily mean that the requirement no longer exists. In some cases, removal of the requirement still leaves behind a modified requirement or relocated requirement to improve readability:

(2020 and 2022 ORRs)

Minn. R. pt. 7045.0075, subpart 2, item E, and 7045.0135, subpart 1a, item F. These subparts list special requirements that apply to the management of comparable fuels or comparable syngas fuels under 40 CFR § 261.38. Federal rules related to comparable syn/gas exclusions in 40 CFR § 261.38 were vacated by the U.S. Court of Appeals for the District of Columbia on June 27, 2014. The EPA then implemented this change into federal regulation on April 8, 2015, by repealing the comparable syn/gas exclusions. During rule development, the MPCA determined that repeal of part 7045.0075, subp. 2, item E was no longer necessary. Therefore, the MPCA removes it from the ORR.

Minn. R. pt. 7045.0125, subpart 12. This subpart provides requirements that apply to the export of industrial ethyl alcohol. The MPCA is adopting the revised federal hazardous waste import and export regulations, including industrial ethyl alcohol export, to replace the former state hazardous waste export rules.

Minn. R. pt. 7045.0135, subpart 2b, items B and C. This subpart contains requirements regarding additions, modification, or exceptions to incorporated federal provisions. Federal updates render the requirements under items B and C obsolete.

Minn. R. pt. 7045.0248, subpart 4. This subpart provides reporting requirements for exported waste, which are rendered obsolete. The MPCA is now adopting revised federal hazardous waste import and export regulations and their respective definitions relating to exporter regulation in place of former state hazardous waste export rules.

Minn. R. pt. 7045.0261. The MPCA originally identified only a portion of pt. 7045.0261 as obsolete in the 2015 Obsolete Rules Report (ORR) but will propose additional revisions to repeal and replace requirements based on new federal hazardous waste manifest regulations.

Minn. R. pt. 7045.0294, subpart 2. This subpart contains recordkeeping provisions for alternate manifests, which are now obsolete with the MPCA's online electronic reporting system for generator licenses, which is available through the MPCA's e-Services portal. Current manifest exception report retention requirement is also obsolete based on the new federal hazardous waste manifest regulations.

Minn. R. pt. 7045.0302. This part provides special conditions that apply to international shipments. This part is rendered obsolete with the revised federal hazardous waste import and export regulations.

Minn. R. pt. 7045.0322. This part incorporates federal requirements for transfrontier shipments of hazardous waste. The MPCA is adopting the revised federal hazardous waste import and export regulations in their entirety in place of the former state hazardous waste import and export rules, which makes this existing part obsolete.

Minn. R. pt. 7045.0452, subpart 3, item E and 7045.0556, subpart 3, item D. Part 7045.0452, subpart 3, item E contains requirements regarding the submittal of tracking documents and the length of time they must be maintained. This requirement is rendered duplicative with the planned adoption of relevant transboundary movements of hazardous waste federal regulations

adopted via incorporation by reference. Part 7045.0556, item D contains requirements for notices that are also rendered obsolete.

Minn. R. pt. 7045.0474. This part contains general manifest requirements, rail- and water-shipment requirements, document-tracking requirements, and state-only waste requirements that are no longer necessary with the adoption of federal hazardous waste manifest regulations.

Minn. R. pt. 7045.0675, subpart 5. This subpart contains transfrontier requirements for parties who generate, transport, or store precious metals for recovery. The MPCA is adopting the revised federal hazardous waste import and export regulations, including those potentially applicable to shipments of precious metals for recovery, in place of former state hazardous waste import and export rules.

Minn. R. pt. 7045.0692. This part contains requirements that apply with the burning of hazardous waste for energy recovery in boilers or industrial furnaces that are not regulated by thermal treatment standards. The MPCA is repealing an outdated exception from the requirements otherwise applicable to hazardous waste being burned.

Minn. R. pt. 7045.0835. The MPCA is proposing to repeal part 7045.0835, which relates to used oil containing polychlorinated biphenyls. No other rules in this or other chapters cross reference to this part. The MPCA has observed that it is, therefore, very commonly unread, and not followed by the used oil handlers it was intended to apply to.

Minn. R. pt. 7045.0990, subpart 1. The MPCA simplifies the used oil and used oil filter rules by relocating the used oil filter definitions from current part 7045.0990, subpart 1, to revised part 7045.0790, which is the same location as the definitions of all other used oil terms. See changes to part 7045.0790.

Minn. R. pts. 7045.0075, 7045.0262, 7045.0265, 7045.0375, 7045.0381, 7045.0385, 7045.0391, 7045.0476, 7045.0580, and 7045.0582. These parts contain requirements related to manifests. The MPCA is planning to repeal the current state hazardous waste rules in their entirety and adopt the federal hazardous waste regulations by reference under proposed *Minn. R. 7045.0581* to ensure Minnesota regulated parties comply with the most current standards.

(2013 and 2015 ORRs)

Minn. R. pt. 7035.9120, subparts 4 and 5. Aspects of these subparts regulating transportation of infectious waste relate to activities of the Minnesota Department of Health, which has amended their rules regulating infectious waste management. As a result, some requirements in this part are obsolete or require correction. Additional requirements correspond to marking and placarding requirements of the federal hazardous material regulations administered by the U.S. Department of Transportation, which supersede conflicting state requirements.

Minn. R. pt. 7045.0075, subpart 5. This subpart provides a mechanism to petition for the use of an alternate manifest for hazardous waste transportation. As of 2014, U.S. Environmental Protection Agency (EPA) regulations prohibit the use of alternate manifests.

Minn. R. pt. 7045.0125, subparts 4–6. These subparts, which relate to the transportation of hazardous waste being recycled, contain an obsolete citation to repealed *Minn. Stat. § 221.0355*.

Minn. R. pt. 7045.0206, subpart 6, item B. This part establishes generator size determination requirements. Obsolete requirements related to polychlorinated biphenyls are being deleted.

Minn. R. pt. 7045.0230, subpart 1a. This part establishes very small quantity generator license application requirements, which are duplicative because of proposed language revisions.

Minn. R. pt. 7045.0243, subpart 3, item G. This part establishes the terms and conditions of a hazardous waste generator license; item G is obsolete because the MPCA's process for issuing licenses has changed.

Minn. R. pts. 7045.0261, subpart 1a, item B; 7045.0294, subpart 1a; and 7045.0381, subpart 5. These subparts provide the option of using an alternate manifest, which is no longer allowed under the federal hazardous waste manifest program.

Minn. R. pt. 7045.0325, subpart 2. This subpart provides exceptions to the federal uniform hazardous waste manifest. The EPA has preempted and prohibited all state manifest requirements at variance with the federal manifest.

Minn. R. pt. 7045.0365, subpart 3. Item I in this subpart establishes requirements applicable to hazardous waste transfer facilities. These requirements conflict with federal recordkeeping requirements of the regulations administered by the U.S. Department of Transportation under the authority of the Hazardous Material Transportation Act.

Minn. R. pt. 7045.0371. This part, which requires hazardous wastes to be transported in accordance with applicable state statutes and federal requirements, contains an obsolete reference to repealed *Minn. Stat.* § 221.0355.

Minn. R. pt. 7045.0395, subpart 5. This subpart requires specific actions in response to a spill of hazardous waste, which are preempted by the Federal Hazardous Materials Transportation Act.

Minn. R. pt. 7045.0686. This part establishes the requirements for the management of spent or waste household batteries. In 2005, the MPCA adopted the Federal Universal Waste Rule (*Minn. R. pt. 7045.1400*), under which all spent or waste household batteries became eligible for management in Minnesota as universal wastes in lieu of the stricter previous requirements of this part. MPCA staff are not aware of any remaining operators operating under the requirements of this part when managing these batteries.

Minn. R. pt. 7045.0875, subpart 8, item B. This part establishes that used oil processor/refiner must submit biennial reports, which the MPCA no longer requires.

Minn. R. pt. 9210.0120, subpart 5, and Minn. R. pt. 9210.0810, subpart 1. These rules relate to the administration of solid waste grants and contracts. The parts of these rules that refer to providing notice specifically through publication in the *State Register* were rendered obsolete by the implementation of the new SWIFT system.

The MPCA has started rulemaking to make minor corrections, clarifications, and updates to its solid and hazardous waste rule chapters and various cross-references; this rulemaking will also address the obsolete rules identified above. Addressing these obsolete requirements will involve changes to several chapters of Minnesota rules. The MPCA intends to complete this rulemaking, referred to as the Land-Related Housekeeping Rules (Revisor's ID #04155), in 2024.

5. MPCA Board Rules (2015 ORR)

The 2015 Legislative session eliminated the MPCA Citizens' Board (*Minn. Stat.* § 116.02, subd.6 and 8 (<https://www.revisor.mn.gov/laws/?id=4&year=2015&type=1>)). *Minn. R. ch. 7000* and several other MPCA rules include obsolete references to the Board and its activities. The MPCA planned to address these obsolete rules by working with the Office of the Revisor of Statutes to prepare proposed legislation repealing obsolete rule provisions related to the Board according to Laws 2015, First Special Session chapter 4, article 4, section 149.

Revisor's Instruction. *The Revisor of Statutes shall prepare draft legislation to amend statutes to conform with structural changes to the Minnesota Pollution Control Agency under sections 114–117 and 150. The Revisor shall submit the proposed legislation to the chairs of the House of*

Representatives and senate committees with jurisdiction over environment and policy by January 1, 2016.

The MPCA expected that the necessary legislation would also grant editorial authority to the Office of the Revisor of Statutes to eliminate references to the Board in rules. This legislation was not introduced. The MPCA will continue to investigate legislative and administrative rulemaking options for eliminating the obsolete references and, as appropriate, refine language in housekeeping rule efforts on a case-by-case basis.

6. Green House Gas Emissions Rules (2014 ORR)

Portions of the federal Green House Gas Emissions Rules were vacated by a 2014 U.S. Supreme Court decision. The MPCA is waiting to initiate rulemaking to repeal the obsolete MN Rules until the EPA finalizes its proposed rule amendments to address the vacated portions of the rule.

If you have any questions regarding this report, please feel free to contact me at 651-757-2777.

Sincerely,

A handwritten signature in blue ink that reads "Tom Johnson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Tom Johnson
Government Relations Director
Commissioner's Office

TJ/KI