

Minnesota Pollution Control Agency

Environmental Analysis and Outcomes Division

REQUEST FOR COMMENTS on Amendments being Considered to Rules Governing Water Quality Standards – Use Classification 1, *Minnesota Rules* chapters 7050, 7052, 7053, and 7060, Revisor’s ID Number R-04727

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) is requesting comments on amendments being considered to water rules, *Minnesota Rules*, chapter 7050 (Waters of the State), chapter 7052 (Lake Superior Basin Water Standards), chapter 7053 (State Waters Discharge Restrictions), and chapter 7060 (Underground Waters). This rulemaking is referred to as the Use Class 1 Rule. Comments should be submitted in writing according to the Public Comment section below.

In a previous Request for Comments (RFC) on this rulemaking published on December 13, 2021, the MPCA asked for comment regarding numerous potential changes to Class 1 water quality standards (WQS) including:

- Revising the rule language in chapters 7050 and 7060 to address gaps and inconsistencies in their application to surface and groundwater;
- Improving the alignment of Use Class 1 rules with the goals and provisions of the 1989 Minnesota Groundwater Protection Act (Minnesota Statutes, ch. 103H);
- Clarifying which waters need to be protected for the domestic consumption/drinking water use;
- Expanding Class 1 designations to include surface waters that are impacting groundwater, and potentially broadening the designation to include those surface waters that are impacting downstream surface water sources of drinking water;
- Updating existing numeric and narrative WQS for pollutants in Class 1 waters to reflect current science and adding new Class 1 WQS for emerging pollutants of concern, including per- and polyfluoroalkyl substances (PFAS), and potentially pesticides, pharmaceuticals, algal toxins, disinfection by-products, and/or additional industrial chemicals; and
- Potentially adding Groundwater Contaminant Management Zones as a mechanism to inform decision makers and the public about the presence and status of groundwater contaminant plumes.

An overview of these rule amendments is provided in the rule concept document available on the rulemaking webpage at <https://www.pca.state.mn.us/water/amendments-water-quality-standards-use-classification-1>.

The main purpose of this second RFC is to solicit comment on rules establishing WQS for PFAS as directed by [Minnesota Session Law – 2023, Chapter 60, H.F. No. 2310](#), specifically WQS for:

1. Perfluorooctanoic acid (PFOA);
2. Perfluorooctane sulfonic acid (PFOS);
3. Perfluorononanoic acid (PFNA);
4. Hexafluoropropylene oxide dimer acid (HFPO-DA, commonly known as GenX chemicals);
5. Perfluorohexane sulfonic acid (PFHxS); and
6. Perfluorobutane sulfonic acid (PFBS).

At this stage, we do not yet have a draft of new rule language. We want your feedback to inform us about the potential changes to Class 1 WQS and establishing WQS for the PFAS identified above. This is an opportunity to provide comments on the changes being considered to the rules and an opportunity for you to provide comment or information on any relevant issues related to this rulemaking.

The original RFC stated that a second RFC was planned to solicit public input and feedback on potential approaches to the rule amendments, and include the requirements related to the scientific peer review process used for WQS rulemaking. The review process is required for new or revised numeric WQS and is designed to expand awareness and increase transparency of the MPCA's peer review of technical support documents. The MPCA now plans a third RFC for this purpose.

Subject of Rules. The MPCA requests comment on amendments being considered to rules governing WQS for Class 1 use – domestic consumption (i.e., waters that provide water for drinking, food processing, and similar). WQS are a primary tool to protect the quality of lakes, rivers, and other water bodies for uses such as fishing, swimming, and sustaining healthy aquatic life, and to support the needs of people and industry for domestic consumption, industrial use, irrigation needs, and navigation. The Clean Water Act requires states to designate beneficial uses for all waters and develop WQS to protect each use. WQS include numeric standards that identify specific levels of a substance, chemical, or other type of pollutant that will protect the beneficial use and may also include a narrative description of the conditions necessary to protect water quality for a beneficial use. Numeric and narrative WQS are used to determine the need for effluent limits in National Pollutant Discharge Elimination System/State Disposal System permits, and to assess if waters are meeting beneficial uses.

The Class 1 beneficial use protects waters used as a source for drinking water (domestic consumption). These protections apply to some specific surface waters that are listed in rule, and all groundwater. The MPCA is planning to amend the existing rules by significantly updating and clarifying protections for Class 1 waters and revising and updating the numeric and narrative WQS related to domestic consumption.

Statutory Requirements. The state rulemaking process requires agencies to consider several specific topics as it develops rules. The MPCA requests any information pertinent to the subject of the rule amendments, and specifically requests any information on:

1. Whether the cost of complying with the rule in the first year after the rule takes effect will exceed \$25,000 for one small city or business (*Minnesota Statutes*, section 14.127).
2. Whether local governments might be required to adopt or amend an ordinance or other regulation in response to the changes (*Minnesota Statutes*, section 14.128).
3. The cumulative effect of the rule amendments with other federal and state regulations as related to the specific purpose of the rule (*Minnesota Statutes*, section 14.131(8)). Cumulative effect means the incremental impacts that result from the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules.

Persons Affected. Amendments to these rules are likely to affect municipal water suppliers/utilities, municipal and industrial dischargers to surface waters; local and statewide lake and river associations; and members of the general public with an interest in the protection of Minnesota's waters. Because the planned amendments are applicable to both surface and groundwater, any person in Minnesota may potentially be affected by this rulemaking.

Where to Get More Information. The webpage for this rulemaking at <https://www.pca.state.mn.us/water/amendments-water-quality-standards-use-classification-1> provides information about updates to the use Class 1 rules. The MPCA will post rulemaking documents on this webpage as they become available.

If you are interested in being notified of opportunities for public comment, when the draft rules are available for review, and of other activities relating to this (or other MPCA rulemakings) register for GovDelivery bulletins at <https://public.govdelivery.com/accounts/MNPCA/subscriber/new>. The GovDelivery topic for this rulemaking "use class changes - Class 1 Rule" is located under the topic heading "Public Notices and Rulemaking."

Statutory Authority. *Minnesota Statutes*, section 115.03; *Minnesota Statutes*, section 115.44; *Minnesota Statutes*, section 115.03, subdivision 1; *Minnesota Statutes*, section 115.44; and Minnesota Session Law – 2023, Chapter 60, H.F. No. 2310, Article 3, section 33.

Public Comment. Interested persons or groups may submit written comments on these planned rule amendments and on other information related to this rulemaking until **4:30 p.m. on Monday, October 30, 2023**. Submit written comments or information to the Office of Administrative Hearings (OAH) Rulemaking e-Comments website at <https://minnesotaoah.granicusideas.com>. Any questions about submitting comments via the Rulemaking e-Comments website should be directed to William Moore, Office of Administrative Hearings, telephone 651-361-7893, William.T.Moore@state.mn.us. Comments received are public and will be available for review at the OAH Rulemaking eComments website at <https://minnesotaoah.granicusideas.com/discussions> and at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620.

The MPCA will not publish a notice of intent to adopt rules until more than 60 days have elapsed from the date of this request for comments. The MPCA does not plan to appoint an advisory committee to comment on the planned rule amendments.

MPCA Contact Person. The MPCA contact person is Mary H. Lynn at the MPCA, 520 Lafayette Road North, St. Paul, MN 55155-4194; telephone 651-757-2439; and mary.lynn@state.mn.us. Technical questions on the planned rule amendments should be directed to Cathy O'Dell at the MPCA, telephone 651-757-2621 or catherine.odell@state.mn.us. You may also call the MPCA at 651-296-6300 or 800-657-3864 or use your preferred relay service info.pca@state.mn.us.

Alternative Format. Upon request, the information in this notice can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the MPCA contact person via the contact information listed above.

Note: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the Administrative Law Judge if and when the MPCA starts a proceeding to adopt rules. The MPCA is required to submit to the Administrative Law Judge only those written comments received in response to the draft rules after they are proposed. If you submit comments during the development of the rules and you want to ensure that the Administrative Law Judge reviews your comments, you must resubmit the comments after the rules are formally proposed.



Katrina Kessler, Commissioner
Minnesota Pollution Control Agency

August 14, 2023
Date