

Minnesota Pollution Control Agency

Environmental Analysis and Outcomes Division

REQUEST FOR COMMENTS

Planned New Rules Governing Air Toxics Regulations, *Minnesota Rules*, Chapter 7012 with Possible Amendments to Chapters 7002, 7005, 7007, 7017, and 7019; Revisor's ID Number R-04807

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) is requesting comments on possible new air rules, *Minnesota Rules*, Chapter 7012. The MPCA may consider updates to additional air rules chapters 7002, 7005, 7007, 7017, and 7019, should the need be identified in the rule review process. This rulemaking is referred to as the Air Toxics Regulations Rule and will apply to the facilities that emit air toxics and are located in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, or Washington. The MPCA is required to undertake this rulemaking to comply with [Laws of Minnesota 2023, chapter 60, article 8, section 5](#) and the scope of this rulemaking is limited to that purpose. The MPCA is considering amendments to the listed rule chapter and requests comments on the proposed amendments from affected or interested parties. See the [Comments](#) and [MPCA Contact Person](#) sections of this notice for information on how to submit comments.

This request for comments (RFC) is the MPCA's legal notice of its intent to begin rulemaking. This is the first of several opportunities for public comment and input on this rulemaking. At this stage, we do not have a draft rule; we want your feedback to inform us about the ideas described under the [Subject of Rules](#) section.

If you have other ideas related to this rulemaking that we need to consider, please submit them in writing. For example, we recognize that costs to regulated parties can be a concern with rulemaking, if you have cost information or data related to this rulemaking that you wish to share with us to inform our decisions, please submit that information. Submitting your ideas and information at this early stage in rulemaking allows us more time to address issues that may come up, and helps to ensure informed decision-making on our part. If the proposed rules affect you in any way, the MPCA encourages you to participate in the rulemaking process.

View the [Alternative Format/Accommodation](#) and [MPCA Contact Person](#) sections of this notice for information on requesting this document in an alternative format.

Subject of Rules. The MPCA requests comments on its possible new rules governing air toxics regulations for facilities that emit air toxics and are located in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, or Washington. The required content of the rules is contained in Laws of Minnesota 2023, chapter 60, article 8, section 5. Briefly, the legislature established definitions for air toxics and environmental justice area and directed the agency to adopt rules to implement and govern regulation of facilities that emit air toxics in the listed counties. The rules must address:

Subd. 4. Content of rules. (a) The rules required under subdivision 3 must address, at a minimum:

(1) specific air toxics to be regulated, including, at a minimum, those defined under subd. 1;

(2) types of facilities to be regulated, including, at a minimum, facilities that have been issued an air quality permit by the commissioner, other than an Option B registration permit under Minnesota Rules, part 7007.1120, and that:

(i) emit air toxics, whether the emissions are limited in a permit or not; or

(ii) purchase or use material containing volatile organic compounds;

(3) performance tests conducted by facilities to measure the volume of air toxics emissions and testing methods, procedures, protocols, and frequency;

(4) required monitoring of air emissions, including using continuous emission monitoring systems for certain facilities, and monitoring of production inputs or other production parameters;

(5) 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;

(6) record keeping related to air toxics emissions; and

(7) frequency of facility inspections and inspection activities that provide information about air toxics emissions.

(b) In developing the rules, the commissioner must establish testing, monitoring, reporting, record-keeping, and inspection requirements for facilities that reflect:

(1) the different risks to human health and the environment posed by the specific air toxics and amounts emitted by a facility, such that facilities posing greater risks are required to provide more frequent evidence of permit compliance, including but not limited to performance tests, agency inspections, and reporting;

(2) the facility's record of compliance with air toxics emission limits and other permit conditions; and

(3) any exposure of residents of an environmental justice area to the facility's air toxics emissions

Other states' air toxics programs have several common features such as emissions reporting, health thresholds that facilities must meet, health benchmarks in rule that are similar to air quality standards, modeling/monitoring requirements if air levels are above rule-based health benchmarks, and specific communication/engagement efforts. Most rely on air toxics evaluation during permitting, because it allows a facility and the state to tailor compliance requirements and ensure adequate emission reductions.

The MPCA is requesting comment on the features of an air toxics regulation rule such as:

- Setting risk thresholds that facilities must meet for all pollutants (e.g., 1 in 100,000 cancer risk facility wide)
- Setting health benchmarks in rule that are similar to ambient air quality standards
- Requiring a modeling or monitoring analysis to determine if air levels are above rule-based health benchmarks
- Requiring specific communication and/or engagement at certain air levels with fenceline communities
- Other aspects of air toxics programs in other states that MPCA should consider

The MPCA may consider other amendments and miscellaneous housekeeping changes to the identified rule chapters should the need be identified in the rule review process and as time permits. For example,

MPCA may choose to amend rules related to the required content described above for consistency, clarity, or to align the possible new rules with existing state rules or state statute changes.

Parties Affected. The new rules would likely affect the following in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, or Washington:

(1) People living in environmental justice areas. "Environmental justice area" *"...means one or more census tracts in Minnesota:*

(i) in which, based on the most recent data published by the United States Census Bureau:

(A) 40 percent or more of the population is nonwhite;

(B) 35 percent or more of the households have an income at or below 200 percent of the federal poverty level; or

(C) 40 percent or more of the population over the age of five has limited English proficiency; or

(ii) located within Indian Country, as defined in United States Code, title 18, section 1151;..."

(2) Owners or operator of permitted and unpermitted facilities that emit air toxics that would be regulated under this rule.

The MPCA may choose to appoint an advisory committee or other structure for eliciting public, stakeholder, and expert feedback on the possible rules during rule development.

Comments. Interested parties may submit written comments or information on these possible rules until **4:30 p.m. on Friday, September, 22, 2023**. During the public comment period associated with this RFC, submit written comments or information to the:

1) Office of Administrative Hearings (OAH) Rulemaking eComments website at <https://minnesotaoah.granicusideas.com>; or

2) OAH Attn: William Moore, OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620 or fax 651-539-0310.

You may view frequently asked questions about the OAH Rulemaking eComments website at https://mn.gov/oah/assets/ecomments-faq_tcm19-82012.pdf. Any questions about submitting comments via the Rulemaking eComments website should be directed to William Moore of the OAH at 651-361-7900 or by email at 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 OAH at the address listed above.

The MPCA will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this RFC. The MPCA does not anticipate that the rule amendments will require a local government to adopt or amend an ordinance or other regulation under *Minnesota Statutes* section, 14.128. Local governments may submit written information to the contrary.

The MPCA requests any information pertaining to the cumulative effect of the rule amendments with other federal and state regulations related to the specific purpose of the rule. Cumulative effect means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules.

NOTE: The MPCA will carefully consider all comments received in response to this RFC. However, these comments will not necessarily be included in the formal rulemaking record submitted to the Administrative Law Judge (ALJ) if and when a proceeding to adopt rules is started. The MPCA is required to submit to the ALJ only the written comments received in response to the draft rules after they are proposed with a Notice of Intent to Adopt Rules. If you submit comments during the RFC stage of rule development and want to ensure that the ALJ reviews them, you should resubmit your comments after the rules are formally proposed with a Notice of Intent.

Where to Get More Information. The concept document which includes a detailed explanation about the planned rule amendments, and other information about this rulemaking is available on the rulemaking webpage at <https://www.pca.state.mn.us/get-engaged/air-toxics-regulations>.

MPCA Contact Person. The MPCA contact person is Yolanda Letnes at the MPCA, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194; email yolanda.letnes@state.mn.us; telephone 651-757-2527. You may also call the MPCA at 651-296-6300 or 1-800-657-3864; use your preferred relay service.

1. During the public comment period associated with this request for comments:
 - a) Submit all comments in response to this notice as described under [Comments](#).
 - b) Submit any clarification questions or requests for more information to the MPCA contact person listed above.
2. After the public comment period closes, route communications to the following staff:
 - a) Rulemaking process: Yolanda Letnes at 651-757-2527 and yolanda.letnes@state.mn.us
 - b) Technical subject expert: Hassan Bouchareb at 651-757-2653 and hassan.bouchareb@state.mn.us

Rules Drafts. The MPCA has not yet drafted the possible rules. Parties interested in being notified when a draft of the rules is available and of other activities relating to this rulemaking are encouraged to register at:

http://public.govdelivery.com/accounts/MNPCA/subscriber/new?topic_id=MNPCA_526 (MPCA GovDelivery-Rulemaking: Air Toxics Regulations).

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the [MPCA contact person](#).

Statutory Authority. *Minnesota Statutes*, section 116.07, subdivision 4 authorizes the MPCA to adopt rules for prevention, abatement, or control of air pollution; and [Laws of Minnesota 2023, chapter 60, article 8, section 5](#), require the commissioner of the MPCA to adopt rules to implement and govern regulation of facilities that emit air toxics. The content of the rule is specified in the law.



Katrina Kessler, Commissioner
Minnesota Pollution Control Agency

June 27, 2023
