



## **STATEMENT OF NEED AND REASONABLENESS**

In the Matter of Proposed Revisions of Minnesota  
Rule Chapters 7002, 7005, 7007, and 7019; Revisor  
ID No. RD-4599

Environmental Analysis and Outcomes Division

November 2024

General information:

- 1) Availability: The *State Register* notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the Agency's webpage for this rulemaking: <https://www.pca.state.mn.us/get-engaged/air-toxics-emissions-reporting>.
- 2) View older rule records at: <https://www.revisor.mn.gov/rules/status/>.
- 3) Agency contact for information, documents, or alternative formats: Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Addison Otto, Rule Coordinator, Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, MN 55155-4194; telephone 651-757-2754; 1-800-657-3864; email [addison.otto@state.mn.us](mailto:addison.otto@state.mn.us); or use your preferred telecommunications relay service.
- 4) How to read a sample Minnesota Statutes citation: Minn. Stat. § 116.07, subd. 2(f)(2)(ii)(A) is read as Minnesota Statutes section 116.07, subdivision 2, paragraph (f), clause (2), item (ii), subitem (A).
- 5) How to read a sample Minnesota Rules citation: Minn. R. §, 7150.0205, subp. 3(B)(3)(b)(i) is read as Minnesota Rules, chapter 7150, part 0205, subpart 3, item B, subitem (3), unit (b), subunit (i).

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# Acronyms, abbreviations, or definitions

**AERR** – Air Emissions Reporting Requirements (40 CFR Part 51 Subpart A)  
**ALJ** – Administrative Law Judge  
**AP-42** – Compilation of Air Pollutant Emissions Factors from Stationary Sources  
**ATSDR** – Agency for Toxic Substances and Disease Registry  
**BIPOC** – Black, indigenous, and other people of color  
**CAA** – Clean Air Act  
**CAERS** – Combined Air Emissions Reporting System  
**CALEPA-OEHHA** – California Environmental Protection Agency – Office of Environmental Health Hazard Assessment  
**CAPs** – Criteria Air Pollutants and precursors, including ammonia and VOCs  
**CAS** – Chemical Abstracts Service  
**CEDR** – Consolidated Emissions Data Repository  
**CEM** – Continuous Emission Monitor  
**CFR** – Code of Federal Regulations  
**CO** – Carbon Monoxide  
**EJ** – Environmental Justice  
**EPA** – United States Environmental Protection Agency  
**EPCRA** – Emergency Planning and Community Right-to-Know Act  
**GHGs** – Greenhouse Gases  
**HAPs** – Hazardous Air Pollutants listed in the CAA  
**HBVs** – Health Based Values  
**IARC** - International Agency for Research and Cancer  
**IAs** – Insignificant Activities  
**IRIS** – Integrated Risk Information System  
**IUR** – Inhalation Unit Risk  
**MACT** – Maximum Achievable Control Technology  
**MDH** – Minnesota Department of Health  
**Minn. R.** – Minnesota Rules  
**Minn. Stat. ch. or §** – Minnesota Statutes chapter or section  
**MMB** – Minnesota Management and Budget  
**MN** – Minnesota  
**MNIT** – Minnesota IT Services  
**MNRISKS** - Minnesota air toxics risk-screening tool  
**MPCA or Agency** – Minnesota Pollution Control Agency  
**NAAQS** – National Ambient Air Quality Standards  
**NEI** – National Emissions Inventory  
**NESHAPs** – National Emission Standards for Hazardous Air Pollutants  
**NH<sub>3</sub>** - Ammonia  
**NOIA** – Notice of Intent to Adopt  
**NO<sub>x</sub>** – Nitrogen Oxides  
**NTP** – National Toxicology Program  
**OAH** – Office of Administrative Hearings  
**OSHA** – Occupational Safety and Health Administration  
**OTM-45** – EPA Other Test Method 45  
**OTM-50** – EPA Other Test Method 50

**PBTs** – Persistent, Bioaccumulative, and Toxic Chemicals  
**PFAS** – Per-and polyfluoroalkyl substances  
**PM** – Particulate Matter  
**PM<sub>10</sub>** – Particulate Matter with an aerodynamic diameter less than or equal to 10 microns  
**PM<sub>2.5</sub>** – Particulate Matter with an aerodynamic diameter less than or equal to 2.5 microns  
**PPRTV** – Provisional Peer-Reviewed Toxicity Values  
**RAA** – Risk Assessment Advice  
**RFC** – Request for Comments  
**RfC** – Reference Concentration  
**SBEAP** – Small Business Environmental Assistance Program  
**SDS** – Safety Data Sheet  
**SIP** – State Implementation Plan  
**SO<sub>2</sub>** – Sulfur Dioxide  
**SONAR** – Statement of Need and Reasonableness  
**TCE** – Trichloroethylene  
**Title V** – Title 5 of the Clean Air Act  
**TRI** – Toxics Release Inventory  
**VOCs** – Volatile Organic Compounds

# 1. Introduction and overview

## A. Introduction

The Minnesota Pollution Control Agency (MPCA or Agency) is proposing amendments to Minnesota Rules governing the administration of its air emissions reporting program in Minnesota as directed by the 2023 Minnesota Legislature in Minn. Stat. § 116.062. The primary focus of the proposed amendments includes the addition of a new section of rule governing the requirement for facilities with an air permit located in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, or Washington counties, herein referred to as “the seven metropolitan counties”, except facilities issued an option B registration permit, to report air toxics emissions on an annual basis to the MPCA. The proposed first reporting year will be the 2026 emissions inventory, with the first report due on or before April 1, 2027. An amendment is also proposed to repeal the sections of chapter 7007 that allow a Title 5 of the Clean Air Act (Title V) air permittee to assert an affirmative defense for noncompliance in case of an emergency as directed by the Environmental Protection Agency (EPA).

Current Minnesota Rules require annual emission inventory reporting for facilities statewide for criteria air pollutants (CAPs) (particulate matter, lead, nitrogen dioxide, carbon monoxide, and sulfur dioxide), ammonia, and volatile organic compounds (VOCs). Facilities that emit more than three pounds of mercury per year must report those emissions annually. Some facilities are also required to report greenhouse gas (GHG) emissions annually.

In addition, the MPCA collects voluntary air toxics emission data from facilities triennially to align with the EPA’s current voluntary Hazardous Air Pollutant (HAP) emissions reporting program. The MPCA provides facilities with a list of air toxics to be included in the voluntary triennial report, including Hazardous Air Pollutants (HAPs), per- and polyfluoroalkyl substances (PFAS), and additional air toxics of concern in Minnesota.

- HAPs are a list of 188 chemicals and chemical groups identified in the Clean Air Act (CAA) amendments (United States Code, title 42, section 7412) that are known to cause or may cause cancer or other adverse health, environmental, or ecological effects.
- PFAS are defined in Minn. Stat. § 116.943 as, “a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.” PFAS are persistent, meaning they don’t break down easily, and problematic chemicals that are known to bioaccumulate in the environment and living organisms. PFAS exposure has been linked to harmful health effects in humans and animals.

The CAP and air toxics emissions data collected by the MPCA is used in the Agency’s air toxics risk-screening tool called “Minnesota air toxics risk-screening tool (MNRISKS).”<sup>1</sup> In addition, the MPCA reports this data to the EPA. The EPA uses these data for their own “Environmental Justice Screening and Mapping Tool” or “EJScreen”<sup>2</sup> that maps air pollution modeling as it relates to environmental justice indexes. The EPA also uses these data for their air toxics screening assessment tool called “AirToxScreen”<sup>3</sup> which shows communities’ health risks based on air toxics emissions. The criteria and

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<sup>1</sup>Ellickson, K., Kvale, D., Vadali, M., Freeburg, E.W., Sienko, A. (March 2023). MNRISKS: Minnesota statewide screening of health risks from air pollution. Retrieved from: <https://www.pca.state.mn.us/sites/default/files/aa9-29.pdf>

<sup>2</sup> EJScreen: EPA’s Environmental Justice Screening and Mapping Tool (Version 2.3). (August 9, 2024). Retrieved from <https://ejscreen.epa.gov/mapper/>

<sup>3</sup> AirToxScreen: Air Toxics Screening Assessment. (2020). Retrieved from <https://experience.arcgis.com/experience/a0deb771dbcd40d0a46f83adc51747/@ra>



air toxics data the MPCA submits to EPA, including the air toxics data submitted to the toxics release inventory (TRI)<sup>4</sup>, is also used to create the National Emission Inventory (NEI)<sup>5</sup>, including analyses, reports, and summaries.

No National Ambient Air Quality Standards (NAAQS) for specific air toxics have been established by the EPA besides lead<sup>6</sup>; however, the CAA requires the EPA to develop National Emission Standards for Hazardous Air Pollutants (NESHAPs) that identify stationary source standards for HAP emissions. The intent of the program is to reduce overall emissions of HAPs.

The proposed air toxics emissions reporting rule will include the requirement that facilities with air permits in the seven metropolitan counties, except facilities issued an option B registration permit, must submit an annual emissions inventory that includes the emissions of:

- 1) HAPs;
- 2) PFAS, persistent, bioaccumulative, and toxic chemicals (PBTs), and other pollutants of concern that are on the TRI list under Code of Federal Regulations, title 40, section 372.65, as amended;
- 3) Chemicals and chemical groups for which the Minnesota Department of Health (MDH) has developed health-based values (HBVs) or risk assessment advice (RAA);
- 4) Chemicals that have been assessed for their risk to human health by the EPA's Integrated Risk Information System (IRIS) and that have an inhalation toxicity value from IRIS;
- 5) Chemicals previously reported to the agency in the most recent voluntary triennial emissions inventory, including some PFAS; and
- 6) PFAS that can be detected using Other Test Method 45 (OTM-45) or Other Test Method 50 (OTM-50);

Chapter 7007, which includes Title V emergency affirmative defense provisions, is currently open for this air toxics emissions reporting rule. The EPA determined that the emergency affirmative defense provisions are inconsistent with the CAA and set a deadline for states to remove this language from state rules by August 21, 2024, or to seek an extension and remove the language as soon as practicable. The MPCA requested and was granted an extension until August 21, 2025. The MPCA is proposing to repeal the Title V emergency affirmative defense provisions found in chapter 7007 in response to the EPA's final rule effective August 8, 2023, that removed emergency affirmative defense provisions from the CAA Title V operating permit program regulations.

Where applicable, the new and revised rules will be submitted to the EPA for inclusion in the Minnesota State Implementation Plan (SIP). The SIP is required by states, territories, or other local air districts to demonstrate compliance with the air quality standards of the CAA. The SIP contains state rules and statutes, as well as site- and area-specific plans, permits, and orders that ensure that Minnesota has the needed authorities to maintain attainment with the NAAQS as required by the CAA. Any revisions to these rules or statutes must be submitted to EPA to be approved and incorporated into the SIP. All contents of Minnesota's SIP can be found in 40 Code of Federal Regulations (CFR) Part 52, Subpart Y,

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<sup>4</sup> Toxics Release Inventory (TRI) Program. (July 30, 2024). Retrieved from <https://www.epa.gov/toxics-release-inventory-tri-program>

<sup>5</sup> National Emissions Inventory (NEI). (May 6, 2024). Retrieved from <https://www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei>

<sup>6</sup> Note that lead is both an air toxic and a CAP included in both NAAQS and air toxics provisions of the CAA. Facilities are already required to report lead emissions annually.

and is federally enforceable.

A Request for Comments (RFC) on planned amendments to the rules governing air quality was published in the *State Register* on July 24, 2023. A second RFC was published in the *State Register* on April 1, 2024 specific to the repeal of emergency affirmative defense provisions. The MPCA considered comments received during these comment periods and all comments received during this rulemaking in developing the rule amendments.

This document fulfills the requirements of the Minnesota Administrative Procedures Act (Minn. Stat. ch. 14), which requires a Statement of Need and Reasonableness (SONAR) justifying and explaining the need for the proposed rule amendments. It also addresses the statutory requirements associated with the proposed administrative rules.

## B. Statement of general need

The purpose and need of the proposed rule is to fulfill the requirements set forth by Minn. Stat. § 116.062 to require air toxics emissions reporting in the seven metropolitan counties of Minnesota. Collecting the emissions data for these pollutants will improve the MPCA's understanding of air toxics emissions within this area of the state. These data could drive future rulemaking that ensures the MPCA maintains an effective air program in Minnesota that is protective of human health and the environment. The specific reasonableness of the requirement to report each of these chemicals is listed in Section 5(B) of this SONAR.

The Agency needs these amendments to improve data collection on air toxics emissions. These data may provide the information needed to guide future regulation that is protective of Minnesota's air quality and is consistent with the MPCA's environmental justice priorities.

The intended outcome of this proposed rulemaking is to inform communities about health or environmental impacts from air toxics, and to work with air permitted facilities to understand their emissions and estimate human health risk from exposure to these air toxics. The MPCA uses the air toxics emissions data to assess risk from exposure and guide agency policy, permitting, and enforcement actions.

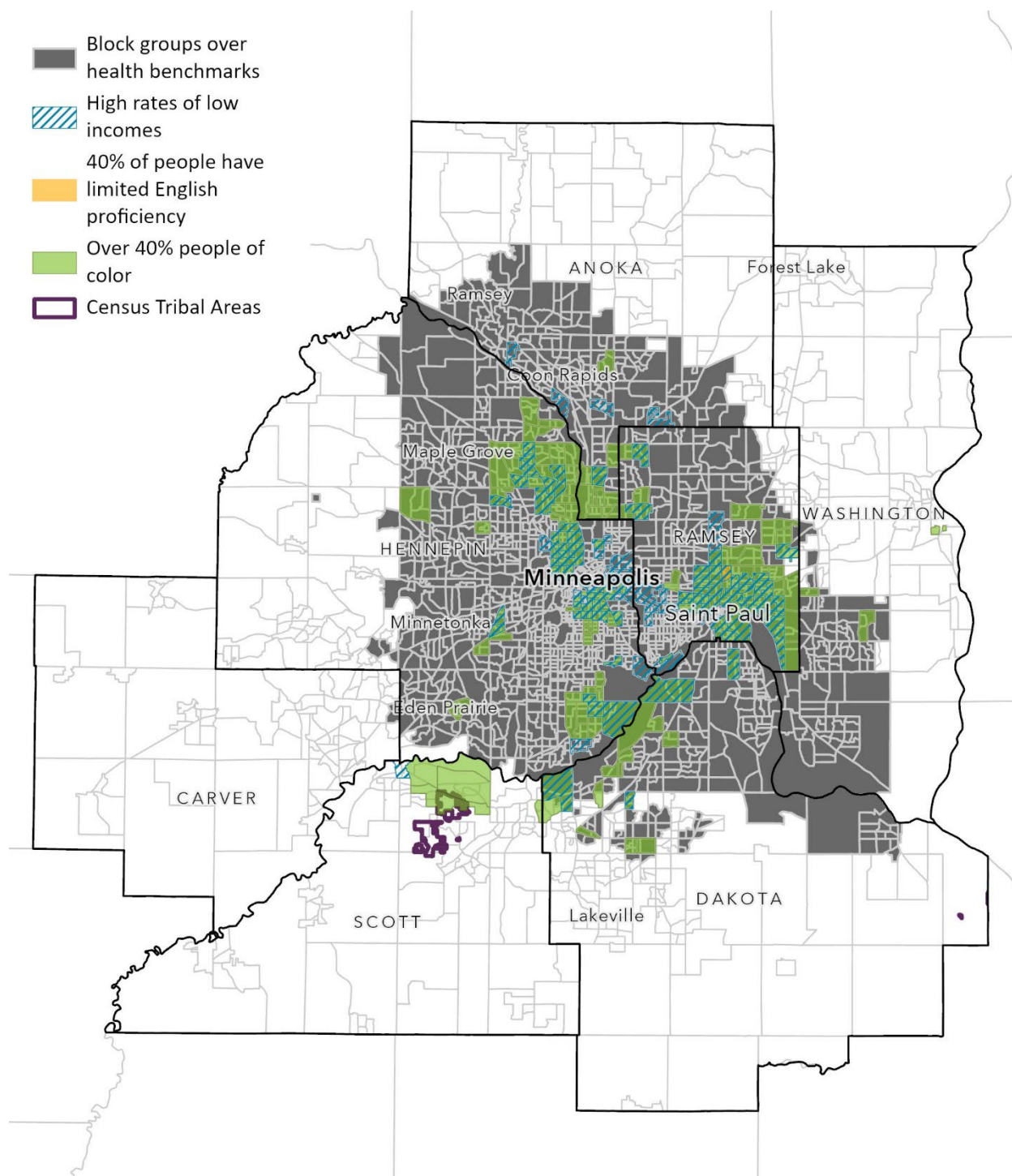
The MPCA has also been directed by the EPA to remove the sections of chapter 7007 that allow a Title V air permittee to assert emergency affirmative defense. The Agency needs this repeal to maintain a level of regulation that is protective of Minnesota's air quality and to provide consistency with federal regulations as outlined in the CAA.

Ambient air monitoring data of carbonyls, metals, and VOCs, which are HAPs under CAA, show that the average air quality across Minnesota is generally good, but not for everyone. Some people are exposed to more pollution or multiple kinds of pollution and are more vulnerable to the health impacts of exposure. These groups of people are more likely to be impacted by air pollution and located in population centers. The MPCA is initiating programs to address the disproportionate exposure to air toxics at the impacted neighborhood and community scale. A community may encompass an area such as a town, neighborhood, or a few city blocks. A community may also be a group of people who are demographically similar in some way, also known as a population, such as an age cohort or racial or ethnic group.

As depicted in Figure 1, 78% of block groups (a subset of census tracts) are above health benchmarks for air toxics pollution. A health benchmark is the amount of air pollution that is unlikely to result in health effects after a specific exposure period. Of the 78% of block groups, an estimated 29% are in areas of concern for environmental justice. The MPCA considers tribal areas and census tracts with higher

concentrations of low-income residents, people of color, or limited English proficiency as areas of increased concern for environmental justice.

**Figure 1. Data from 2017 MNRISKS modeling depicts emissions from all sources including transportation, point sources, wood smoke, etc. and estimated areas of concern for environmental justice in the seven metropolitan counties.**



This rulemaking will affect the 3,197,231 residents who live in the seven metropolitan counties of Minnesota as of 2022 according to the Minnesota State Demographic Center's PopFinder<sup>7</sup>. With 5,742,036 residents living state-wide in Minnesota, this rulemaking will contribute to the MPCA's understanding of the air quality and health risks for 56% of the state's population.

The current air toxics emissions reporting is on a voluntary basis and only occurs every three years. While some facilities provide their air toxics emissions data to the MPCA when requested, there is no incentive for them to provide accurate data or confirm air toxics emissions calculations. Voluntary reporting can result in incorrect and incomplete information, leaving the Agency with gaps in the data that is needed to inform policy development and rulemaking.

This rulemaking will result in mandatory emissions reporting. Per Minn. Stat. § 116.062, the MPCA is also proposing that the frequency of reporting change from triennial to annual reporting. Receiving air toxics emissions data from facilities on a triennial basis delays the Agency's understanding of emission changes over time, and thus slows the response rate to any emission increases. By requiring air toxics emissions data on an annual basis, the MPCA will be able to provide current data that accurately represents air quality within the state. Facilities that are not located in one of the seven metropolitan counties will continue to be asked to voluntarily report air toxics emissions to the MPCA.

The current voluntary triennial air toxics reporting requests that some facilities report HAPs, certain PFAS, and other air toxics emissions of concern in Minnesota. Minn. Stat. § 116.062 has identified that the MPCA should include pollutants in the annual air toxics emissions inventory that are known to have adverse health, environmental, and ecological effects. The lists provided by statute include:

- 1) HAPs listed under the federal CAA, 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 TRI under the federal Emergency Planning and Community Right-to-Know Act, United States Code, title 42, section 11023, as amended;
- 3) chemicals for which MDH has developed HBVs or RAA;
- 4) chemicals for which the risk to human health has been assessed by either the federal EPA's IRIS; or
- 5) chemicals reported by facilities in the agency's most recent triennial emissions inventory.

### C. Scope of the proposed amendments

The following chapters of Minnesota rules are being affected by the proposed changes:

- 1) Amendments to chapter 7002 Definitions to update a definition that needed clarification.
- 2) Amendments to chapter 7005 Definitions to add new definitions.
- 3) Amendments to chapter 7007 Permit Content to repeal Title V emergency affirmative defense provisions.
- 4) Amendments to chapter 7007 Capped Permit: Compliance Requirements to repeal Title V emergency affirmative defense provisions.

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<sup>7</sup> PopFinder For Minnesota, Counties, & Regions. (2022). Retrieved from <https://mn.gov/admin/demography/data-by-topic/population-data/our-estimates/pop-finder1.jsp>

- 5) Amendments to chapter 7019 Emission Inventory to modernize formatting and add provisions that require air toxics reporting facilities to submit an annual emissions inventory relating to air toxics.
- 6) Amendments to chapter 7019 Calculating Actual Emissions for Emission Inventory to modernize formatting and add language as it relates to calculating air toxics emissions and the use of control efficiency factors.
- 7) Amendments to chapter 7019 Method of Calculation to modernize formatting and add language as it relates to the method of calculation used for air toxics emissions and reporting individual pollutants.
- 8) Amendments to chapter 7019 Volatile Organic Compound (VOC) Material Balance to add language as it relates to air toxics.
- 9) Amendments to chapter 7019 Emission Factors to add language as it relates to air toxics.

The following new part of Minnesota Rules Chapter 7019 is proposed:

- 1) Chapter 7019.3110 Air Toxics Emission Inventory and Emissions Reporting establishes requirements for what must be included in the air toxics emission inventory.

## **2. Background**

### **A. Current emissions and reporting**

Since current reporting for air toxics is voluntary, the MPCA has no enforcement authority to require facilities to report air toxics. Facilities that voluntarily report air toxics emissions have no incentive to accurately report them. Some facilities may report more air toxic emissions than they emit. This may demonstrate compliance with their permit but does not provide the MPCA with an accurate data of air toxics emissions. High air toxics emissions reported by facilities can be cause for concern to the MPCA. Enforcement authority to ensure complete and accurate reporting of air toxics emissions is vital to assessing risk to human health for Minnesotans and prioritizing future opportunities for reducing air toxics emissions.

Air toxics emissions can fluctuate year to year due to several factors: economic conditions, contractual work, project-based operations, product availability, and alterations in product formulations. Annual reporting and analysis of these data is essential for understanding air toxics emissions from facilities. Such insights can help the Agency assess the extent of variation and guide recommendations for future reduction of air toxics emissions.

### **B. Pollutant lists reviewed**

The MPCA was directed to review the pollutant lists found in Minn. Stat. § 116.062 that include chemicals that may or may not be important for the purposes of air toxics reporting and risks to human health and the environment. These five lists contain many chemicals, some of them overlapping and included on multiple lists. Many of these chemicals have been evaluated for risk to human health by multiple sources, including MDH, EPA, and other government agencies.

#### **HAPs listed under the CAA**

HAPs are air pollutants known to cause cancer and other serious health impacts, such as reproductive effects or birth defects, or adverse environmental effects, and are defined in the CAA. The reference concentration (RfC) and inhalation unit risk (IUR) of a pollutant are used by risk assessors to assess the

toxicity of air toxics and to estimate the risk levels associated with exposures to a given pollutant. The RfC of a pollutant is the estimate of continuous inhalation exposure to the human population without a distinguishable risk of harmful effects during a lifetime. RfCs are derived from no observed adverse effect level (NOAEL), lowest observed adverse effect level (LOAEL), and health benchmarks. IUR is an estimate of the increased cancer risk from inhalation exposure of a given pollutant at a concentration of 1 µg/m<sup>3</sup> for a lifetime. Generally, a lower RfC or IUR will result in a higher risk. An uncertainty factor is applied to these values to account for limitations of the data used. Toxicity values (RfCs and IURs) come from a variety of sources including IRIS, California Environmental Protection Agency – Office of Environmental Health Hazard Assessment (CALEPA-OEHHA), Agency for Toxic Substances and Disease Registry (ATSDR), Provisional Peer-Reviewed Toxicity Values (PPRTV), and MDH.

### **Chemicals reported as released into the air by a facility located in the state for the TRI**

The TRI is an annual report of certain toxic chemical releases to air, water, and land by facilities that meet chemical activity thresholds and are either in a covered industry sector and exceed the employee threshold or are specifically required to report based on determination by the EPA Administrator under the Emergency Planning and Community Right-to-Know Act (EPCRA) 313(b)(2). While the data collected under the TRI program are useful to MPCA and are used for comparison with certain voluntary emissions reporting, there are major gaps in the types of facilities that report to TRI. TRI reporting requires facilities to report total air toxics emissions as facility-wide stack and/or fugitive releases. While this information is useful, more detailed emissions information at the unit or process level is needed to accurately conduct risk assessments and to use for air quality modeling. Only a subset of facilities with air permits in Minnesota are required to report to TRI. There were 336 Minnesota facilities that reported air releases to the 2023 TRI and 145 of the facilities (43%) were located in the seven metropolitan counties.<sup>8</sup> As of September 23, 2024, there are 666 permitted facilities in the seven metropolitan counties that will be subject to air toxics reporting per this rule.

### **Chemicals assessed by EPA's IRIS for risk to human health**

In 1985, IRIS was created by EPA to provide health effects of pollutants in a database accessible to other agencies. The goal of IRIS was to promote internal consistency in the EPA program office and regional health assessments. The mission of the IRIS program is to identify and characterize the health hazards of chemicals found in the environment. Across the EPA and other state agencies, IRIS is the preferred source for human health toxicity values.

### **Chemicals for which MDH has developed HBVs or RAA**

In the early 2000s, MDH started to develop their own health-based guidance values to evaluate potential human health risks from exposure to chemicals in ambient air. These health-based guidance values are derived from values already published in other sources including IRIS, CALEPA-OEHHA, ATSDR, and PPRTV.

According to the MDH website<sup>9</sup>:

*“MDH currently develops Health Based Values (HBVs) and Risk Assessment Advice (RAA) when there is a need for guidance to evaluate health risks to chemicals in air, often by request of the Minnesota Pollution Control Agency or other state agencies. HBVs are developed after undergoing a comprehensive chemical review of available toxicity studies. RAA may contain greater uncertainty*

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<sup>8</sup> TRI Data and Tools. (August 9, 2024). Retrieved from <https://www.epa.gov/toxics-release-inventory-tri-program/tri-data-and-tools>

<sup>9</sup> Air Guidance Values. (May 31, 2024). Retrieved from <https://www.health.state.mn.us/communities/environment/risk/guidance/air/table.html>



*than HBVs as a result of a less rigorous chemical review or because toxicity information is more limited. MDH also develops RAA on a case-by-case basis for specific conditions or specific sites. It is not appropriate to apply a site-specific RAA to other sites without consulting MDH.*

*HBVs and RAA have not been promulgated using a public rulemaking process. Instead, an HBV/RAA is technical guidance made available by MDH.”*

### **Chemicals reported by facilities to the agency in the most recent triennial emissions inventory**

The MPCA began collecting voluntary air toxics emissions data from facilities in 2011. Early emissions inventory reports included HAPs and additional air toxics. Over time, the MPCA has added chemicals of concern and developed a growing and evolving list of pollutants for the voluntary triennial air toxics emissions inventory.

In 2020, MPCA added five PFAS pollutants that had drinking water health standards, or Maximum Contaminant Levels. The MPCA’s PFAS Monitoring Plan<sup>10</sup> explains why these are important:

*"PFAS are contaminants that easily cross media; for example, many PFAS emitted to the atmosphere are deposited on land where they can contaminate soil, surface water, and fish. Air emissions from stationary sources have caused widespread environmental contamination of multiple media in the surrounding region.*

*Single industrial facilities have the potential to cause widespread environmental impacts when PFAS is released through air emissions and is deposited in soil or groundwater offsite, or is carried offsite by water runoff. Our understanding of PFAS releases to air and subsequent impacts to other media is less advanced than our understanding of direct PFAS discharges to water; however, MPCA has traced air emissions releases of PFAS constituents to water quality impairments in the state. Incidents of cross-media PFAS impacts are being discovered nationwide. Characterizing which permitted air facilities use PFAS products and may be releasing PFAS to the air is a key first step in reducing PFAS impacts to surrounding surface water, soil, and groundwater.”*

After additional research and understanding of the widespread impact of PFAS in Minnesota, many more PFAS compounds were added to the 2023 voluntary air toxics reporting list. Only ten facilities reported PFAS emissions on their 2023 emissions inventory reports.

### **C. EPA’s proposed air emissions reporting requirements**

On August 9, 2023, the EPA proposed revisions to the Air Emissions Reporting Requirements (AERR), herein referred to as the “AERR proposal”<sup>11</sup>, that would require major and minor facilities and small entities to report HAP emissions to the EPA. The comment period for the AERR proposal closed November 17, 2023. Although the EPA’s AERR may intersect with the currently proposed rule changes, the MPCA has been directed by state statute to develop rules related to air toxics reporting requirements in the seven metropolitan counties and to publish its Notice of Intent to Adopt (NOIA) the proposed rules in the *State Register* by November 26, 2024. If the EPA’s proposed AERR is adopted, the current proposed Minnesota rule may need to be amended to align with federal requirements. EPA’s AERR rule is expected to be finalized December 2024. If the MPCA had insight into the final AERR rule, the requirements could potentially be incorporated into this rule, but since that insight has not been

<sup>10</sup> MPCA. PFAS Monitoring Plan. (March 2022). Retrieved from <https://www.pca.state.mn.us/sites/default/files/p-gen1-22b.pdf>

<sup>11</sup> Revisions to the Air Emissions Reporting Requirements. (August 9, 2023). Retrieved from <https://www.federalregister.gov/documents/2023/08/09/2023-16158/revisions-to-the-air-emissions-reporting-requirements>

provided, it is reasonable that the Agency pursue its own rule based on Minn Stat. § 116.062 to meet the timeline set forth by the Minnesota Legislature.

#### D. Air emissions modeling

EPA's Air Toxics Screening Assessment (AirToxScreen) is a screening tool that is updated annually for state, local, and tribal air agencies, and the public. The tool helps to identify pollutants, emission sources, and locations that an agency may wish to study further to better understand any possible risk to public health from air toxics. This tool uses air toxics emissions information that is reported; however, air toxics emissions are seldom reported annually (except for TRI facilities that are required to report annually), therefore, the EPA estimates air toxics emissions for years when reporting has not occurred.

EJScreen is EPA's environmental justice mapping and screening tool. EJScreen provides a way to display information and includes a method for combining environmental and demographic indicators into Environmental Justice (EJ) indexes.

The MPCA has created its own tool called the Minnesota air toxics risk-screening tool (MNRISKS). This tool is used to conduct risk-based prioritizations such as evaluating and comparing impacts from source types, identifying areas where specific chemicals are a concern, or comparing differences in impacts in any area of Minnesota. Additionally, this tool displays areas of concern for environmental justice. The tool is updated every three years with the voluntary reporting of air toxics emissions, and only covers the state of Minnesota. With the adoption of this rule, MNRISKS can be updated for the seven metropolitan counties annually. This will provide the most current information for this area. Furthermore, this will provide information for Minnesota before the EPA releases AirToxScreen for a given year.

#### E. Emergency affirmative defense provisions

The EPA's CAA Title V operating permit program regulations included provisions for which a facility can claim emergency affirmative defense. The EPA repealed this language from 40 CFR parts 70 and 71 in a final ruling effective August 8, 2023, and set a deadline for states to remove the language from their EPA-approved Title V state permitting program by August 21, 2024, or to seek an extension to remove the language as soon as practicable. Minn. R. chapter 7007 Permits and Offsets, contains the state's emergency affirmative defense provisions.

In Minnesota, there is currently only one Title V permitted facility that has emergency affirmative defense provisions in their permit. These provisions allow a facility to claim an emergency if sudden and reasonably unforeseeable events beyond the control of the owners and operators requires immediate corrective action to restore normal operation, and that causes the stationary source to exceed a technology-based emissions limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. These provisions do not, however, include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. The existing emergency affirmative defense provisions found in Minnesota rules do not differentiate between individual Title V federal operating permits and non-Title V state operating permits. The EPA has directed states to remove these provisions from their rules, and since the rules do not differentiate between federal and state permits, the MPCA does not intend to keep this provision for use in non-Title V state operating permits. The MPCA requested an extension from the EPA's August 21, 2024 deadline to repeal the state's emergency affirmative defense provisions and was granted an extension until August 21, 2025. A second RFC was published in the *State Register* on April 1, 2024, to notify the public that the MPCA intends to repeal the necessary sections from chapter 7007 in the air toxics emissions reporting rulemaking since this chapter is already open for amendments.



### 3. Public participation and stakeholder involvement

The MPCA conducted several outreach activities while developing these rule amendments. This was done in part to comply with the requirements of Minnesota’s rule making process, but also to notify, engage, and inform potentially interested parties about this rulemaking and solicit their input on the MPCA’s proposed concepts for amending the rules. This section describes the MPCA’s public outreach efforts and the steps it took to develop and solicit input on the rule amendments.

#### A. Webpages

The MPCA maintains the following webpages that are publicly accessible and relevant to this rulemaking:

- Air toxics emissions reporting at <https://www.pca.state.mn.us/get-engaged/air-toxics-emissions-reporting>. The MPCA updated this rule-specific webpage to reflect the legislative directive for this rulemaking on July 3, 2023, to provide the public with background and other information relevant to this rulemaking, including rulemaking documents and a target schedule for rule adoption. The air toxics emissions reporting rule webpage has been updated routinely to inform the public of stakeholder meetings and developments related to this rulemaking. The MPCA will continue to update the rule webpage to include information about the proposed rule amendments and rulemaking documents, including the proposed rule language, a final version of this SONAR, and other supporting documents. This will ensure that potentially interested parties can continue to participate in the rulemaking process after the MPCA publishes its Notice of Intent to Adopt Rules in the *State Register*.
- Minnesota Rulemaking at <https://www.pca.state.mn.us/get-engaged/proposed-rules>. The MPCA’s rulemaking webpage provides the public with centralized information about current rulemaking projects and the rulemaking process. It also explains how the public can receive notifications about rule changes. The MPCA’s “Public Rulemaking Docket,” updated monthly, is located on this webpage, and includes information about current rulemaking projects such as the rule webpage, contact person, and timeline.

#### B. GovDelivery

The MPCA uses a self-subscription service called “GovDelivery” to provide updates and public notices electronically (via email) to interested and affected persons on a wide range of topics, including administrative rulemakings. Any person may visit the GovDelivery subscription page at <http://public.govdelivery.com/accounts/MNPCA/subscriber/new> to subscribe and choose the notifications they want to receive.

The MPCA lists rule projects on the “Public Rulemaking Docket” (see above). Once a rule project becomes active (meaning it is no longer listed as a future project), a GovDelivery self-subscription list for that specific rulemaking is established. GovDelivery is used to send new rule project alerts to individuals who have signed up to receive notice for all rulemakings.

On June 30, 2023, the MPCA sent a GovDelivery notice to 3,566 subscribers of all active rulemaking lists to provide a general overview of each of the current rulemakings. The air toxics emissions reporting rule was included with a link to the rule-specific webpage.

On July 24, 2023, the MPCA sent a GovDelivery notice to 1,190 subscribers of the list, “Rulemaking: Air toxics emissions reporting” for a notice of RFC. Also on the same date, the MPCA provided specific notice of the comment period for the rulemaking to the 11 federally recognized tribes in Minnesota.

Notification sent to the designated tribal contact persons for air quality contained the information in the July 24, 2023, GovDelivery notice about the new rulemaking.

On April 1, 2024, the MPCA sent a GovDelivery notice to 1,672 subscribers of the list, “Rulemaking: Air toxics emissions reporting” for a notice of a second RFC. Also on the same date, the MPCA provided specific notice of the comment period for the rulemaking to the 11 federally recognized tribes in Minnesota. Notification sent to the designated tribal contact persons for air quality contained the information in the April 1, 2024, GovDelivery notice about the new rulemaking.

On April 22, 2024, the MPCA sent a GovDelivery notice to 1,688 subscribers of the list, “Rulemaking: Air toxics emissions reporting”, and 3,246 subscribers of the list, “Small Business Environmental Assistance Program” for notice of two public webinars and a SmartComment period seeking feedback on proposed rule concepts. SmartComment is the Agency’s informal public comment portal that is used to solicit feedback on public notices that are not required to be published in the *State Register* nor submitted to the Office of Administrative Hearings (OAH). Subscribers of Small Business Environmental Assistance Program were notified because small businesses are likely to be impacted by this rulemaking. Also, on the same date, the MPCA provided specific notice of the comment period for the rulemaking to the 11 federally recognized tribes in Minnesota. The MPCA maintains a contact list for the federally recognized tribes and edits the list quarterly. Notification sent to the designated tribal contact persons for air quality contained the information in the April 22, 2024, GovDelivery notice about the webinars and SmartComment period.

On May 20, 2024, the MPCA sent a GovDelivery notice to 1,775 subscribers of the list, “Rulemaking: Air toxics emissions reporting” for notice that the SmartComment period seeking feedback on proposed rule concepts was closing May 22, 2024.

The MPCA also promoted the GovDelivery list for this rulemaking and encouraged interested persons to subscribe by posting a related announcement on the air toxics emissions reporting webpage. There are 1,834 persons subscribed to the GovDelivery list specific to this rulemaking as of August 14, 2024.

The MPCA will continue to send GovDelivery notice of public notices and other relevant information for this rulemaking as discussed in Section 8, Notice plan.

### C. Newsletters

The MPCA also uses GovDelivery to send interested parties electronic newsletters that include updates on rulemaking. Any person may visit the GovDelivery subscription page and sign up for MPCA newsletters that they would like to receive. For this rulemaking, the MPCA included articles in the Air Mail newsletter, which provides updates on air quality issues. Air Mail is a quarterly newsletter that goes out to 3,832 subscribers as of August 14, 2024. Subscribers to this newsletter include a wide range of stakeholders, including private citizens, regulated parties, consultants, small business owners, government entities of all levels, nonprofits, and media organizations.

The MPCA published articles about this rulemaking in the following newsletters:

- On August 11, 2023, an article in the Air Mail newsletter provided an overview of four air quality rulemakings that were starting, including the air toxics emissions reporting rule. It provided links to the reporting rule webpage and the RFC webpage.
- On November 7, 2023, an article in the Air Mail newsletter reminded facilities to report their voluntary triennial air toxics emissions and included information about the proposed reporting rule, links to the reporting rule webpage, and contact information.

- On May 16, 2024, an article in the Air Mail newsletter referred subscribers to the MPCA's proposed rule concept document and the informal SmartComment period that was open until May 22, 2024.
- On August 16, 2024, an article in the Air Mail newsletter provided links to the proposed rule concept document, the recording of the air toxics emissions reporting rule webinar, and the air toxics emissions reporting rulemaking webpage. The article provided a brief overview of the structure for reporting, the methods for calculating air toxics, and the proposed de minimis for reporting.

The MPCA will continue to publish updates for this rulemaking in Air Mail newsletter, as discussed in Section 8, Notice plan.

## D. Meetings

On January 10, 2024, the MPCA met with Minneapolis Health Department staff to discuss what was known about the rule and timeline.

On April 24, 2024, the MPCA sent invitations to provide feedback on the open informal SmartComment period and attend the May 1<sup>st</sup> webinars to the list of facility contacts for facilities located in the seven metropolitan counties, except option B registration permits. This list contained 527 email addresses. Note that some email addresses are associated with multiple facilities, so the total number of contacts are less than the total number of facilities impacted by this rule.

On May 1, 2024, the MPCA presented an overview of the proposed rule concepts and pollutant list, solicited input, and answered questions about the proposed concepts. The webinar presentation and recording of the meeting was made available to the public after the meeting and was uploaded to the rule webpage.

On May 14, 2024, the MPCA presented the proposed rule concepts at the Minnesota Department of Employment and Economic Development Small Business Meeting.

On June 20, 2024, the MPCA presented the proposed rule concepts at the Aggregate and Ready-Mix Association of Minnesota Environment Committee.

On July 17, 2024, the MPCA presented the proposed rule concepts at the Minnesota Asphalt Pavement Association Environmental, Health, and Safety Committee.

The MPCA also presented a brief summary of the proposed air toxics reporting rule at other stakeholder presentations including:

- November 9, 2023, at the Air and Waste Management Conference on the Environment.
- February 22, 2024, at the Minnesota Tribal Environmental Committee.

A comment was made during the first RFC period to urge the creation of an advisory committee of key stakeholders to consult with the Agency before publishing the draft rule. The MPCA considered this and the feedback that an advisory committee would offer; however, due to the limited time frame the legislation gave the Agency to publish a NOIA, the MPCA decided that an advisory committee would not be assembled for this rule. With this comment in mind, and the Agency's desire to seek input from the broader community before publishing the NOIA, the MPCA held an informal comment period from April 22, 2024 to May 22, 2024 to solicit feedback on the proposed rule concepts and Proposed Air Toxics Reporting List.

## 4. Statutory authority

The MPCA has a general statutory authority to adopt these rules under Minn. Stat. § 116.07, subd. 4 as follows:

*Subd. 4. Rules and standards. (a) Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the Pollution Control Agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1967, chapter 882, for the prevention, abatement, or control of air pollution. Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to sources or emissions of air contamination or air pollution, to the quality or composition of such emissions, or to the quality of or composition of the ambient air or outdoor atmosphere or to any other matter relevant to the prevention, abatement, or control of air pollution.*

In addition, the MPCA has specific statutory authority to adopt these rules under Minn. Stat. § 116.062, Minnesota Session Law – 2023, H. F. No. 2310, chapter 60, article 8, section 2 as follows:

*Sec. 2. Air Toxics Emissions Reporting. (b) The commissioner must require owners and operators of a facility issued an air quality permit by the agency, except a facility issued an Option B registration permit under Minnesota Rules, part 7007.1120, to annually report the facility's air toxics emissions to the agency, including a facility not required as a condition of its air quality permit to keep records of air toxics emissions. The commissioner must determine the method to be used by a facility to directly measure or estimate air toxics emissions. The commissioner must amend permits and complete rulemaking, and may enter into enforceable agreements with facility owners and operators, in order to make the reporting requirements under this section enforceable.*

Under these state statutory provisions, the MPCA has the necessary statutory authority to adopt the proposed amendments into Minnesota Rules.

## 5. Reasonableness of the amendments

### A. General reasonableness

Current reporting for air toxics emissions in Minnesota is voluntary and occurs every three years. Some facilities report air toxics emissions data, but reporting is limited and not consistent across the seven metropolitan counties. As a result, air toxics emissions information is less accurate and less complete in some communities compared to others. This makes it difficult for the MPCA to accurately identify risks to human health from air toxics exposure. While voluntary reporting results in some known information, additional data on air toxics emissions in the seven metropolitan counties of Minnesota is needed to better understand sources of air toxics emissions, what types of air toxics are emitted, and the amount of air toxics emitted. Requiring annual air toxics emissions reporting by facilities in the seven metropolitan counties is reasonable for the reasons described in this section.

This proposed rule is reasonable because the MPCA has reviewed air toxics reporting requirements in neighboring states and those in EPA's Region 5, a geographical region spanning Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. Wisconsin was one of the first states to require air toxics reporting. Their mandatory reporting rule (ch. NR 445, Wis. Admin. Code) was first adopted in 1988 and last revised in 2004. Wisconsin's rule requires facilities to identify air toxics, which include HAPS, and additional pollutants (referred to in rule as "Hazardous air contaminants"), quantify emissions, and reduce or control emissions where necessary. Illinois, Iowa, North Dakota, and South Dakota also

require HAP emission reporting for certain facilities. Indiana and Michigan request voluntary air toxics reporting from facilities. More detailed information on air toxics emissions reporting requirements of surrounding states is included in section 14 (Table 6 and Table 7).

The MPCA intends to use the data reported by facilities in their air emissions inventory reports to model air toxics emissions and the risks associated with them, understand how air toxics could be reduced through a regulatory program, and gain better knowledge of the types and quantity of air toxics emitted in the seven metropolitan counties. The MPCA will use these data for MNRISKS and will also report air toxics emissions data received from facilities to the EPA. The EPA will use these data for their own tools and modeling, including AirToxScreen, EJScreen, and the NEI analysis. The EPA also uses these data to develop regulations to limit emissions of HAPs and to periodically conduct risk and technology reviews of regulations. Air toxics emissions data is also used by EPA for air quality modeling, used in rulemaking, and for understanding and assessing risks from different chemicals. The MPCA does not wish to burden facilities but considers the benefits of air toxics emissions data from reporting to far outweigh the burden of annual reporting. The specific reasonableness of these amendments is further discussed in item B of this section.

In the seven metropolitan counties, 78% of block groups, a subset of a census tract, are above health benchmarks, and an estimated 29% (of the 78%) are in areas of concern for environmental justice (see Figure 1). The Agency has prioritized reducing the disproportionate impacts from air pollution as one of its long-term goals. Furthermore, the MPCA's 2024-2028 Strategic Plan<sup>12</sup> contains specific goals and strategies to identify and address areas where residents are disproportionately impacted by exposures to known pollutants. To align with the Strategic Plan, the MPCA needs more information regarding what air toxics are emitted and where they are emitted to better protect Minnesotans and the environment.

The MPCA intends for this air toxics emissions reporting rule to align with existing methods for reporting, submitting, and certifying the emissions inventory for annual CAP and GHG reporting.

Both formal comment letters received during the initial RFC period requested that the air toxics required to be reported should be listed in the rule. The MPCA has considered these comments and has listed and incorporated by reference all pollutants required to be reported in the rule. The specific reasonableness regarding each individual pollutant is detailed in item B of this section.

The two formal comment letters received during the initial RFC period also requested that the MPCA avoid duplicative reporting and align with the EPA AERR proposal. The MPCA agrees that it would be best to avoid redundant reporting. At this time, it is unclear when the EPA will finalize the AERR and what the final requirements will be in the rule. The MPCA is required to publish its NOIA the proposed rules in the *State Register* by November 26, 2024. The MPCA agrees that a single reporting process would result in consistent data across the state. Once the AERR is finalized by the EPA, the MPCA may need to re-evaluate reporting requirements, with a goal of reducing the reporting burden on facilities and ensuring consistency and quality of data reported. However, the AERR proposal will likely not address all components of the legislative mandate including facilities required to report and the pollutants considered. Because of the timing requirements, however, the MPCA is required to move forward with this rulemaking to meet the deadline dictated by the legislative language in Minn. Stat. § 116.062, promulgated by the Minnesota Legislature during the 2023 legislative session. It is reasonable to promulgate a rule based on statutes enacted by the Minnesota Legislature.

The rule chapters open for the air toxics emissions inventory includes chapter 7007 which contains the

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<sup>12</sup> Strategic plan 2024-2028: goals and strategies. (2024). Retrieved from <https://www.pca.state.mn.us/sites/default/files/p-qen1-28.pdf>

state's emergency affirmative defense provisions. The EPA has directed states to remove affirmative defense provisions from their EPA-approved Title V programs and from individual operating permits. It is reasonable to update rule language for consistency with federal regulations. The specific reasonableness for the repeal of this language is detailed in item B of this section.

## B. Specific reasonableness

Minn. Stat. ch. 14 requires the MPCA to explain the facts establishing the reasonableness of the proposed rules. "Reasonableness" means that there is a rational basis for the MPCA's proposed action. Explained in this section is the specific reasonableness of the proposed rules, together with an explanation of the need for each change. Since this rulemaking affects multiple chapters of existing air quality rules, the rule changes are grouped by rule chapter to aid the reader in reviewing this document. The proposed rule amendments include the following:

- 1) Amendments to chapter 7002 to clarify a definition.
- 2) Amendments to chapter 7005 to add definitions.
- 3) Amendments to chapter 7007 to repeal emergency affirmative defense provisions.
- 4) Amendments to chapter 7019 that affect emission inventory requirements as they relate to air toxics and a new section of chapter 7019 specific to the air toxics emission inventory and reporting requirements.

As recommended by the Office of the Revisor of Statutes, a number of existing language changes have been made as a stylistic matter to modernize the rule language where possible, for example, changing "shall" to "must." The Office of the Revisor of Statutes, "Minnesota Rules Drafting Manual," recommends using "must" not "shall" to impose duties. The existing rules are also updated to change "which" to "that", and "agency" to "commissioner" where appropriate.

The revisions to the rule parts listed below, revised by deleting "shall" and adding "must" where necessary are made without changing the applicability of the rules. These revisions are reasonable because they provide consistency and clarity to the proposed rules.

- Part 7019.3000 subpart 1 item A.
- Part 7019.3000 subpart 1 item B subitems (3) and (4).
- Part 7019.3000 subpart 1 item C subitems (1), (2), and (3).
- Part 7019.3000 subpart 2.
- Part 7019.3020 subparts 3, 5, 6, 7, and 8.
- Part 7019.3030 subparts 1 and 2.

The revisions to the rule parts listed below, revised by deleting "which" and adding "that" are made without changing the applicability of the rules.

- Part 7019.3000 subpart 1 item B subitem (4).
- Part 7019.3000 subpart 1 item C subitem (2).
- Part 7019.3000 subpart 2.
- Part 7019.3020 subparts 3, 5, 6, and 7.

The revisions to the rule parts listed below, deleting the term “agency”, and adding the term “commissioner” do not change the effect or applicability of the rules.

- Part 7019.3000 subpart 1 item A.
- Part 7019.3000 subpart 1 item C subitems (2) and (3).
- Part 7019.3000 subpart 2.
- Part 7019.3020 subpart 9.

The specific reasonableness for each proposed amendment to existing rule language and the proposed new section of rule are detailed in the following sections.

## **CHAPTER 7002 PERMIT FEES**

Chapter 7002 applies to all facilities required to obtain an air emission permit from the MPCA under chapter 7007.

### Part 7002.0015 DEFINITIONS

Subp. 2a. **Chargeable Pollutant.** The existing definition of “chargeable pollutant” is revised to clarify that these are pollutants for which facilities are charged a fee when emitted; however, the existing definition does not include any language relating to fees. It is reasonable to clarify a definition that will not impact any other sections of rule or the way the term is already being used.

## **CHAPTER 7005 DEFINITIONS AND ABBREVIATIONS**

Chapter 7005 provides the definitions and abbreviations used in the state air pollution control rules and the MPCA’s air program. Definitions in existing Minn. R. 7005.0100 apply to all rules related to air pollution control or air quality. New terms and definitions proposed in this rulemaking will have general applicability to the air quality program.

### Part 7005.0100 DEFINITIONS

Subp. 2c. **Air toxics.** A definition of “air toxics” is added to the rule to define air toxics more broadly. The Minn. Stat. § 116.062 statutory definition of “air toxics” was explicitly defined to mean “*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.”*

The MPCA evaluated the chemical compounds and compound classes from each of these lists to develop the list of air toxics in rule, but the term “air toxics” could include chemicals that are not listed on one of the five lists outlined by statute. It is reasonable to add a definition to rule to broadly define air toxics for Minnesota.

The chemicals and chemical compounds that are listed in rule have been included because they are

known or suspected to cause cancer or other serious health effects, or adverse environmental and ecological effects. This definition is similar to definitions that have been adopted in other state rules and by the EPA. This definition excludes CAPs because they are already required to be reported in rule and already have an ambient air quality standard. This definition also references the list of air toxics required to be reported, and where that list can be found within the rule. Previously, the term “air toxics” was undefined and used loosely to refer to the list of chemicals known as HAPs that are defined in the CAA and in Minnesota Rule (Minn. R. 7007.0100, subp. 12a). It is reasonable to propose a definition of air toxics that is meant to encompass a larger group of chemicals and chemical compounds that are known or suspected to cause cancer or other serious health effects, or adverse environmental and ecological effects when emitted into the air by facilities or other sources.

Subp. 2d. **Air toxics reporting facility.** A definition of “air toxics reporting facility” is proposed to define which facilities are required to report air toxics emissions. It is reasonable to include this definition because the statute specifies that reporting requirements only extend to facilities located in the seven metropolitan counties that are not registration option B permitted facilities. If, in the future, the EPA adopts revisions to the AERR rule, or the statute is amended so that air toxics emission reporting requirements become applicable statewide, this term will either need to be amended or repealed from state rule. The MPCA anticipates that the air toxics emissions reporting rule may be statewide in the future, but since the statutory language applies only to the seven metropolitan counties, it is reasonable to include this definition for clarity purposes.

Subp. 44b. **Toxic release inventory list.** A definition of “toxic release inventory list” or “TRI list” is added to reference the list of chemicals and chemical categories promulgated by the EPA under title 42, section 11023, of the Federal Emergency Planning and Community Right-to-Know act, and under Federal Code title 40 section 372.65. This term is only used in the new section of Minn. R. 7019.3110 when outlining the air toxics required to be reported. Including this definition allows the MPCA to incorporate PFAS on the TRI list by reference. The TRI list is a list of chemicals identified in US Code of Federal Regulations, so incorporating by reference allows this list to be updated by the EPA without having to open and amend the rule at the state level. It is reasonable to reference this list because many facilities are familiar with it and already report the chemicals listed to the EPA. Incorporating this list by reference is also reasonable because the EPA’s and MPCA’s understanding of the risks of PFAS is rapidly changing, and new PFAS pollutants are added to the TRI list each year. The MPCA believes referencing the PFAS pollutants on the TRI list will provide the best emissions information and will not delay facilities reporting new and emerging PFAS. Adding additional PFAS pollutants by rule would delay crucial PFAS emissions reporting.

## **CHAPTER 7007 PERMITS AND OFFSETS**

Chapter 7007 provides the conditions regarding the issuance of permits to construct, modify, reconstruct, or operate emissions units, emissions facilities, or stationary sources that emit any air pollutant, and the revocation, reissuance, or amendment of those permits.

### Part 7007.0800 PERMIT CONTENT

Subp. 6. **Reporting.** Subpart 6 outlines the reports that are required by a permit to be submitted to the commissioner. Subpart 6 is revised to delete existing item F because it allows permittees to assert an affirmative defense for deviations caused by emergencies. This language has been repealed from the EPA’s CAA Title V permit provisions because the EPA determined that this provision is inconsistent with the intent of the CAA. It is reasonable to update rule language for consistency with federal regulations. In addition, the EPA has directed states to remove this provision from state rules.



#### Part 7007.1146 CAPPED PERMIT: COMPLIANCE REQUIREMENTS

Subp. 5. **Reporting.** Subpart 5 outlines the reports that an owner or operator of a source with a capped permit must submit in the annual emission inventory to the commissioner. Subpart 5, item A, subitem (1) is revised to delete reference to the ability for permittees to assert an affirmative defense for deviations that endanger human health or the environment and that are caused by emergencies. This language has been repealed from the EPA's CAA Title V permit provisions because the EPA determined that this provision is inconsistent with the intent of the CAA. It is reasonable to update rule language for consistency with federal regulations. In addition, the EPA has directed states to remove this provision from state rules.

#### Part 7007.1850 EMERGENCY PROVISION.

Part 7007.1850 is proposed for repeal. The EPA published the final action "Removal of Title V Emergency Affirmative Defense Provisions From State Operating Permit Programs and Federal Operating Permit Program", published July 27, 2023, at 88 FR 47029, Docket ID No. EPA-HQ-OAR-2016-0186. EPA stated that these affirmative defense provisions have never been required elements of state operating permit programs and are being removed because they are inconsistent with the EPA's interpretation of the enforcement structure of the CAA considering prior court decisions from the U.S. Court of Appeals for the D.C. Circuit. This action requires states to submit program revisions to the EPA to remove affirmative defense provisions from their EPA-approved Title V programs and from individual operating permits. Part 7007.1850 is proposed for repeal to meet this directive from EPA. It is reasonable to update rule language for consistency with federal regulations.

The MPCA received comments during the second RFC period from the Minnesota Chamber of Commerce and the American Petroleum Institute that were opposed to including the removal of these provisions in the proposed air toxics emissions reporting rule. The MPCA has considered these comments and has decided to move forward with the repeal of these provisions as required by the EPA.

While this repeal is not directly related to the proposed air toxics emissions reporting rulemaking, it is an urgent matter that EPA is requiring the MPCA and other states to act on. The proposed air toxics emissions reporting rule opens the same air chapters for revisions, and it allows the MPCA to resolve the issue as swiftly and efficiently as possible.

The comments received also urged that the MPCA maintain state-only emergency affirmative defense provisions. The MPCA does not intend to make changes to the state permit program that are inconsistent with federal rules, so the MPCA is opting not to keep this rule available for state individual permits. Furthermore, in the EPA's final action at 88 FR 47029, EPA notes that they are removing affirmative defense provisions across different CAA programs and the removal of these provisions from state and federal operating permit programs is consistent with the removal of the similar provisions in other CAA programs such as New Source Performance Standards and NESHAPs. Maintaining state-only emergency defense provisions, while EPA is actively working to remove these provisions from various CAA programs, is counter to maintaining consistency with federal rules.

Additionally, facilities are required to report deviations from permit conditions, which may or may not constitute a violation, regardless of whether the deviation occurred due to emergency factors. The MPCA's Compliance and Enforcement staff assess these deviations on an individual basis when determining enforcement follow up and have the ability to account for emergency factors that may have contributed to reported deviations.

While there is litigation pending against the EPA on this provision, there is not a stay on the action and MPCA must move forward and remove the provision from Minnesota Rules<sup>13</sup>. It is reasonable to repeal rules that are not used, and this provision only directly impacts the permit of one facility in the state. Any references to part 7007.1850 are also proposed to be amended. It is reasonable to amend rule language that is obsolete.

## **CHAPTER 7019 EMISSION INVENTORY REQUIREMENTS**

Chapter 7019 provides the conditions regarding the emission inventory and calculation of actual emissions for air emission sources. Changes proposed to existing sections in this rulemaking will provide clarification for facilities reporting emissions. The new section proposed in this rulemaking will outline the requirements for facilities that must also report air toxics emissions.

### Part 7019.3000 EMISSION INVENTORY

Subp. 1. **Emission inventory required.** Subpart 1 outlines the emission inventory requirements.

A new item A that consists of some existing rule language states who is required to submit an emission inventory. The existing rule language requires that emission reporting facilities submit an annual emission inventory report of CAPs. Language is added to this item that requires air toxics reporting facilities to submit an annual emission inventory of air toxics emissions. The requirements for the emission inventory that are outlined in this section for CAP and GHG emission reporting facilities are the same as what is proposed to be required for air toxics reporting facilities. The emission inventory for both types of facilities must be submitted on or before April 1 following the calendar year being reported and must include a certification signed by the responsible official. It is reasonable to update this section to include language that requires air toxics reporting facilities to submit an emission inventory. It is reasonable to require annual air toxics reporting because legislation mandated it, and air toxics emissions can cause adverse impacts to human health and the environment. Air toxics emissions can change from year to year, so reporting air toxics emissions each year is reasonable to request.

A new item B is added to clarify the criteria that the emission inventory report must meet. The criteria for the report are then broken out in subitems (1) through (4). The current rule language that outlines these criteria is in paragraph format. Restructuring these criteria into a list format is reasonable because it will provide clarity to facilities and agency staff on what criteria the emission inventory report is required to meet.

One comment received during the initial RFC period noted that MPCA should incorporate certifications for air toxics reporting. The MPCA agrees and has proceeded with the requirement that the air toxics emissions inventory report must be certified by a responsible official. This is the same process that is used for the current annual emissions inventory reporting.

Subitems (1), (3), and (4) consist of existing rule language that has been clarified. Subitem (2) has been added with similar language to subitem (1), but applies specifically to the requirements for air toxics reporting facilities and references the new proposed section of rule specific to the air toxics emission inventory (7019.3110). It is reasonable to add rule language that provides clarification for what parts of rule facilities should refer to in order to meet the criteria requirements for the emission inventory.

Subitem (3) is revised to simplify the rule language and add consistency with other parts of Chapter 7019. Rule language for the current emission inventory requires a report submission deadline “on or before April 1 of the year following the year being reported”. This is the same proposed report

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<sup>13</sup> SSM Litigation Group v. EPA (United States Court of Appeals for the District of Columbia Circuit, Case number 23-1267, September 19, 2023). Retrieved from SSM Litigation Group v. EPA, No. 23-1267, D.C. Cir.

submission deadline for the air toxics emissions inventory. Facilities are already familiar with this due date, so it is reasonable to use the same due date for the air toxics emissions inventory.

The proposed revision to add the term “calendar” before the term “year” to clarify the length of time for which the report is required can also be found in subpart 1, item A, subitem (3); item C, subitem (1); and subpart 2. It is reasonable to propose rule changes that provide clarity and consistency throughout a rule chapter.

Subp. 3. **Mercury emission sources.** Subpart 3, item A consists of existing rule language which states the emission inventory requirements for mercury emission sources statewide. With the addition of the proposed air toxics emission inventory, the mercury reporting requirements for facilities located in the seven metropolitan counties will be different from the rest of the state. The last sentence of this item which states, “The initial report must cover the first full calendar year following September 29, 2014.” is proposed to be removed from the rule language because its intent during a previous rulemaking was to cover the initial implementation of the mercury reporting rule changes from voluntary triennial reporting to annual reporting. The implementation of this reporting has now been in effect for many years, so this requirement in rule is no longer relevant. It is reasonable to repeal rule language that is outdated.

A new item B is added that includes existing rule language regarding the reporting requirements for stationary sources with air emissions of mercury. No changes are proposed to this language.

A new item C is added to clarify that those stationary sources that are air toxics reporting facilities located in the seven metropolitan counties must report their air emissions of mercury as outlined in the proposed air toxics emission inventory section under part 7019.3110. It is reasonable to add rule language that provides clarification for what parts of rule facilities should refer to in order to meet the criteria requirements for the emission inventory.

Subp. 4. **Possible mercury emission sources.** Subpart 4 is revised to reference “subpart 1” rather than “item A” in part 7019.3030 since the formatting of 7019.3030 is proposed to be updated. It is reasonable to update references that are no longer relevant.

#### Part 7019.3020 CALCULATING ACTUAL EMISSIONS FOR EMISSION INVENTORY

The overall format of this part of rule is outdated and does not include titled subparts followed by items, subitems, units, and subunits. All the items A through H have been updated to titled subparts 1 through 9, and a new subp. 10 has been added. It is reasonable to propose changes that do not affect the intent of the rule but modernize the structure and language of the rule.

Subpart 1. **Scope.** Subp. 1 states the scope of calculating actual emissions for the emission inventory. This is the first sentence of the existing rule language found in item A and no changes are proposed.

Subp. 2. **Insignificant activities.** Subp. 2 outlines the activities that are not required to be reported for both emission reporting and air toxics reporting facilities. Similar language can be found in the existing rule language under item A but is proposed to be broken out separately from subp. 1 for clarity.

The instances in which emissions from insignificant and conditionally insignificant activities are required to be reported are further broken out in new items A and B.

A new item A is added but is comprised of existing rule language that states that emissions from activities that are not insignificant for the purposes of permitting must be reported.

A new item B is added but is comprised of existing rule language that states that the commissioner may request an inventory of fugitive emissions.

At this time, the MPCA is not requesting that facilities report air toxics emissions from insignificant activities (IAs), because if they are insignificant for the purposes of permitting, then they are insignificant for the purposes of reporting emissions as well. This is consistent with the reporting requirements for CAP and GHG emissions.

The MPCA's current emissions inventory reporting rules and requirements are directly tied to permitting rules. Facilities are not required to report emissions from IAs for CAPs or Greenhouse Gases (GHGs). IAs are addressed in the Code of Federal Regulations Permit Application Rules (Part 70.5 (c)). The EPA's rules for Part 70 permits allow states to adopt lists of IAs (40 CFR 70.5(c)). The MPCA's list includes activities that do not have to be listed in a permit application (7007.1300, subpart 2), activities that must be listed in a permit application (subpart 3), and a specific list of sources that may be listed only in a first-time Part 70 permit application (subpart 4). Per this regulation, the MPCA addresses these activities in Minn. R. Part 7007.1300 and Minn. R. Part 7008.4000. The intent of the IAs lists is to streamline the permit application process for both regulated sources and MPCA permitting and compliance activities by specifying those where emissions require minimal regulatory oversight. Additionally, adding all or some IAs for air toxics emissions reporting would require a significant amount of agency resources and would be burdensome to facilities. The Agency would need to include all IAs in the emissions reporting system, Consolidated Emissions Data Repository (CEDR), and potentially the Agency permitting database, Tempo. Furthermore, compliance and enforcement activities and reviewing emissions data would be difficult since the Agency would not be able to identify if a facility failed to report emissions for IAs. The Agency believes risk assessments, modeling, and air data analysis will be accurate and protective of human health without including the potentially diminutive emissions from IAs. Since facilities are not required to report CAP or GHGs emissions for these activities, and the administrative burden for the Agency would be large and complex, it is reasonable not to require reporting of air toxics emissions for IAs.

The Agency has latitude to change the designation of an emissions source from an IA to an emission unit that is listed in a permit. This is an action that would take place during the permit drafting process. Reasons for changing an emissions source from an IA to an emission unit include: if the equipment is newly subject to a site-specific permit condition, rule changes such that the IA no longer qualifies, if a facility's emissions are very close to a permit threshold and emissions resulting from the IA may result in exceeding that threshold, if there are a large number of IAs that when cumulated result in emissions that are no longer insignificant, and others.

The MPCA reviewed air toxics emissions reporting rules in other states and found that many do not require reporting of emissions associated with certain IAs. The states that are explicit about not reporting them include Oregon, Iowa (calling them "Exemptions"), Illinois, North Dakota, and Wisconsin. Other states are silent about them and do not address including them. Each state may have a different list and/or definition of what activities are considered insignificant.

A comment was received during the initial RFC period from American Petroleum Institute that stated the term "insignificant" should be defined. The MPCA finds the EPA's AERR proposal definition of "insignificant" lacking clarity. The MPCA has asked EPA to clearly define if air toxics emissions associated with IAs will be required to be reported when the final rule of the AERR is completed. Since the AERR is still not finalized to inform this rulemaking, the MPCA is proposing not to require facilities to report air toxics emissions from IAs.

The final revisions to the AERR rule may require reporting of emissions for certain IAs. If promulgated, this requirement would be inconsistent with emissions reporting requirements currently found in Minn.

R. part 7019.3020. The MPCA does not require reporting of IAs for CAP and GHG emissions because it would be an undue burden on facilities and the Agency. For emissions that are considered to be “insignificant” for the purpose of permitting, it is reasonable to consider these emissions insignificant for air toxics emissions reporting. The MPCA will continue to assess the list of IAs (listed in Minn. R. part 7007.1300) and conditionally IAs (listed in Minn. R. part 7008.4000) to ensure that air toxics emissions associated with these activities do not pose a significant risk to human health or the environment. If the EPA’s final revisions to AERR require air toxics reporting for IAs, the MPCA will adopt the EPA’s requirements for reporting IAs for air toxics reporting because the state cannot have rules that are less restrictive than federal law.

**Subp. 3. Calculating emissions.** Subp. 3 states how facilities must calculate emissions, except for facilities issued an option A, C, or D registration permit or a capped permit. The requirements for calculating emissions for option A, C, or D registration permits and capped permits are outlined in the following subparts 4 through 7, so the phrase “Except as provided in subparts 4 to 7” was added to direct those facilities to the subpart that pertains to them. It is reasonable to add rule language that provides clarification for what parts of rule facilities should refer to in order to meet the requirements for calculating emissions for the emission inventory.

**Subp. 4. Calculating emissions for option A permits.** Subp. 4 states how facilities issued an option A registration permit must calculate emissions. A sentence was added to the end of the existing rule language for this subpart to direct facilities to calculate emissions using the methods outlined in parts 7019.3030 to 7019.3100 in rule. This is not a new requirement for option A permitted facilities, but the reference was not specifically called out in the existing rule language. It is reasonable to add rule language that provides clarification for what parts of rule facilities should refer to in order to meet the requirements for calculating emissions for the emission inventory.

**Subp. 5. Calculating emissions for option C permits.** Subp. 5 states how facilities issued an option C registration permit must calculate emissions. The term “calendar” is added before the term “year” to provide clarity and consistency with other parts of Chapter 7019. Language is added to this subpart to include what methods should be used for calculating air toxics emissions for option C permitted facilities that are also air toxics reporting facilities located in one of the seven metropolitan counties. It is reasonable for air toxics reporting facilities to calculate air toxics emissions with the same approach used to calculate VOC emissions, because the calculations used for both VOC and air toxics emissions require the use of the material balance calculation method under section 7019.3060. Tracking material usage and referencing Safety Data Sheets (SDS) allows a facility to calculate both VOCs and air toxics from any given material used. Option C facilities may also have combustion processes and are required to report fuel usage or hours of operation and design capacity associated with these activities. The MPCA currently calculates emissions associated with combustion activities using the activity data reported by the facility and the best available EPA and state emission factors. The MPCA will continue to use this approach for calculating emissions associated with combustion processes, including air toxics, for option C permitted air toxics reporting facilities. It is reasonable to add rule language that provides clarification for what parts of rule facilities should refer to in order to meet the requirements for calculating emissions for the emission inventory. The sentence “The actual emissions shall be calculated by the commissioner” is proposed to be removed from this subpart, because the commissioner is not responsible for calculating actual emissions for option C permitted facilities. The owner or operator of the emission reporting facility submitting the report is required to calculate the emissions for their facility. Option C permitted facilities will be required to calculate VOC and air toxics emissions associated with non-combustion processes; however, as stated above, the MPCA will continue to calculate emissions associated with combustion processes. It is reasonable to remove rule language that is

inaccurate or no longer relevant.

**Subp. 6. Calculating emissions for option D permits.** Subp. 6 states how facilities issued an option D registration permit must calculate emissions. No changes other than minor housekeeping are proposed for this subpart. The methods available for option D permitted facilities to calculate air toxics emissions are included in existing rule language under section 7019.3030.

**Subp. 7. Calculating emissions for capped permits.** Subp. 7 states how facilities issued a capped permit must calculate emissions. No changes other than minor housekeeping are proposed for this subpart. The methods available for capped permits to calculate air toxics emissions are included in existing rule language under section 7019.3030.

**Subp. 8. Material balance.** Subp. 8 states what facilities submitting an emission inventory based on material balance calculations must include in their submission, and what recordkeeping is required. The word “material” in “material safety data sheets” is proposed to be removed because the term has since been updated by the Occupational Safety and Health Administration (OSHA) to “safety data sheets” OSHA oversees safety data sheets as part of their Hazard Communication Standard. The term “air toxics” is proposed to be added to clarify that facilities must also maintain a record of safety data sheets or vendor certification for material balance calculations as they pertain to air toxics emissions reporting. It is reasonable to require air toxics reporting facilities to keep records pertaining to air toxics so the Agency can verify that emission calculations are accurate. The phrase “a period of” is proposed to be removed and the phrase “of submittal of” is proposed to be substituted with “is submitted” to simplify the rule language. It is reasonable to propose changes that simplify rule language to make it easier to understand.

**Subp. 9. Control equipment.** Subp. 9 outlines the scenarios in which the emission inventory may be based on the use of control equipment. A reference to this language as an “item” is proposed to be updated to “subpart” in response to the modernization of the rule structure. A portion of the last sentence of this subpart that reads, “but no earlier than the date three years after EPA grants full program approval of the Agency's permit program under Title V of the Clean Air Act.” is proposed to be repealed. The EPA approved the MPCA’s permit program in 2001. This language was originally meant to act as an exclusion for facilities permitted before the EPA approved the state’s permit program; however, this exclusion only applies to two facilities in the state, and the repeal of this language will not affect the way they calculate their emissions for the emission inventory. It is reasonable to repeal rule language that is outdated and that will not affect the way the rule is enforced.

**Subp. 10. Control efficiency factors.** A new subp. 10 is added so that air toxics reporting facilities submitting an emission inventory can use control efficiency factors defined in rule for calculating emissions. It is reasonable to add rule language that provides clarification for what parts of rule facilities should refer to in order to meet the requirements for calculating emissions for the emission inventory. It is reasonable to allow facilities using control equipment under Minn. R. 7019.3020 subp. 9 to apply a control efficiency factor for calculating air toxics emissions, as outlined in the hierarchy provided in Minn. R. 7005.0100, subp. 9b. because these are the methods outlined by EPA and have been peer reviewed with historical data and engineering guidance. Emissions calculations for the emissions inventory may be based on the use of control equipment only if the use of the specific control equipment is required under conditions of a permit or applicable requirement as defined in part 7007.0100, subp. 7, or is included in a notification received by the agency under part 7007.1150, item C.

A new item A is added to direct facilities to which control efficiency factor should be used for volatile air toxics. It is reasonable for facilities to use VOC control efficiency factors for calculating air toxics emissions because the categorization of a pollutant as an air toxic does not affect the ability of a

pollutant to be controlled as a VOC.

A new item B is added to direct facilities to which control efficiency factor should be used for particulate air toxics. It is reasonable for facilities to use particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM<sub>10</sub>) control efficiency factors for particulate air toxics because PM<sub>10</sub> serves as a middle ground in the classification of particulate matter (PM) between PM and particulate matter with an aerodynamic diameter less than or equal to 2.5 microns (PM<sub>2.5</sub>).

The MPCA has assessed that the options for control efficiency factors provided in Minn. R. 7005.0100, subp. 9b beyond a verified performance test are reasonable to use for the purposes of calculating air toxics emissions. Although these options (such as emission factors from AP-42: Compilation of Air Pollutant Emissions Factors from Stationary Sources)<sup>14</sup>, EPA databases, and manufacturers), will not be as accurate as source-specific data from a verified performance test, when used appropriately, they will allow a facility to calculate emissions with adequately representative data. It is reasonable for air toxics reporting facilities to use a consistent approach for calculating CAP emissions and air toxics emissions. This approach will result in more realistic emissions data that will allow the Agency to create policies and prioritize air pollutant reduction efforts based on data that accurately reflect air toxics emitted from a facility. If facilities do not apply control efficiency factors to air toxics emissions calculations, emissions will be greatly overestimated. This would have adverse implications for modeling such as MNRISKS or incorrectly prioritizing facilities for agency initiatives. This would also affect the EPA's identification of high-risk facilities in tools such as AirToxScreen and EJScreen. Allowing facilities to apply the proper control efficiency factors will save the facilities and the Agency time and resources spent investigating high emissions that are not realistic because the reported emissions are not accounting for control equipment. This will allow the Agency to focus on facilities that are high emitters of air toxics and prioritize policies and future rulemaking that results in the reduction of emissions in areas that actually have high air toxics emissions that are impacting human health and the environment.

The MPCA has experience working with facilities to review and revise voluntary air toxics emissions reported to the Agency. In many instances, facilities that are operating control equipment report air toxics emissions without applying the appropriate control efficiency factor to calculate actual emissions of air toxics. As described above, this results in air toxics emissions that are greatly overestimated. For example, the hypothetical facility in Table 1 below reported over six tons more air toxics emissions when not applying the control efficiency factor of 96%. When applying the control efficiency factor, the total emissions are much lower at 0.271 tons.

**Table 1. Comparison of facility calculations for emissions from painting solvents using a material balance calculation with and without applying a grouped control efficiency factor to air toxics emissions.**

<b>Pollutant</b>	<b>Control Efficiency Factor (96%) applied to both VOC and air toxics (tons)</b>	<b>Control Efficiency Factor (96%) only applied to VOC (tons)</b>
Formaldehyde	0.034	0.850
Methanol	0.029	0.725
Phenol	0.208	5.200
VOC	0.337	0.337
Total air toxics	0.271	6.775

<sup>14</sup> AP-42: Compilation of Air Emissions Factors from Stationary Sources. (June 12, 2024). Retrieved from <https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors-stationary-sources>

## Part 7019.3030 METHOD OF CALCULATION

The overall format of this part of rule is outdated and does not include titled subparts followed by items, subitems, units, and subunits. Items A through C have been updated to titled subparts 1 through 3, and a new subp. 4 has been added. Subitems (1) through (4) under the previous item A have been updated to items A through D. It is reasonable to propose changes that do not affect the intent of the rule but modernize the structure and language of the rule.

Subpart 1. **Method hierarchy.** Subp. 1 states which method of calculation should be used for reporting actual emissions in a hierarchy of most preferred to least preferred methods. Language was added to specify the requirements for air toxics reporting facilities issued an option D registration permit or capped permit. Owners or operators with option D registration permits or capped permits may aggregate emissions for similar units for calculating emissions for the emission inventory. This is consistent with requirements for CAP and GHG emissions reporting per Minn. R. 7007.1130, Subp. 4 and 7007.1147, Subp. 1. It is reasonable for emissions reporting requirements to be consistent and align with existing compliance requirements. A reference to “subitems” is proposed to be updated to “item” in response to the modernization of the rule structure.

No changes are proposed to the existing rule language found in items A, B, and D, previously subitems (1), (2), and (4), other than updating their format from subitems to items.

Item C, previously subitem (3), is proposed to be updated to reference both VOC and air toxics material balance found in 7019.3060. Facilities using material balance to calculate their air toxics emissions must use the material balance calculations outlined in 7019.3060. It is reasonable to add rule language that provides clarification for what parts of rule facilities should refer to in order to meet the criteria requirements for the emission inventory. A typo for sulfur dioxide is also proposed to be updated. The current abbreviation for this chemical compound in this part of rule is “SO<sub>2</sub>” but should be Sulfur Dioxide (SO<sub>2</sub>) since the “O” refers to the two oxygen atoms bonded to the sulfur atom. It is reasonable to correct mistakes that do not affect the intent of the rule.

EPA guidance published in AP-42 includes a long-established hierarchy that is used by states and facilities to estimate emissions. EPA guidance acknowledges that although performance testing and continuous emission monitoring (CEM) are preferred and are the best method for estimating emissions, other methods, such as applying emission factors, may be the only method available. The Introduction to AP-42, Volume 1 includes a hierarchy of acceptable emission calculation methods that includes the cost of method compared to the reliability of the estimate.<sup>15</sup> The cost of using an emission factor or material balance calculation is negligible compared to the cost and burden that would be imposed by requiring all facilities to use performance testing or CEM data to estimate emissions. The technology is not available to use performance testing and CEM methods for all pollutants. For example, EPA has developed two performance tests for PFAS: OTM-45 and OTM-50. These performance tests only include analytical methodologies to test for certain PFAS compounds. There is not currently technology to complete performance testing or CEM for all PFAS compounds. It is reasonable to allow facilities to use different approaches to calculate emissions included in AP-42 because these methods are widely used and accepted for creating emissions inventories by other states and the EPA. These methods are also included as acceptable methods for facilities to use in the EPA AERR proposal.

It is also reasonable to apply the method hierarchy to air toxics reporting because facilities already use the methods outlined in the hierarchy for reporting CAP and GHG emissions. It is reasonable to apply the

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<sup>15</sup> The Introduction to AP-42, Volume I, Fifth Edition, U.S. EPA, January 1995, Retrieved from <https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors>



same approach for air toxics emissions. Facilities also use this method hierarchy currently for voluntary air toxics emissions reporting. Emission factors, material balance calculations, or a facility proposal may be the only available and reasonable approach to calculate emissions for some air toxics.

Subp. 2. **Option B permit fees.** The language found in subp. 2 outlines the scope of this subpart which applies to option B registration permitted facilities who choose to be assessed a fee.

A new item A is proposed that consists of existing rule language regarding how actual facility emissions must be calculated. Rule language that reads “The owner or operator of a facility issued an option B registration permit under part 7007.1120 that chooses to be assessed a fee under part 7002.0025, subpart 1, item C, subitem (1), shall” is proposed to be removed because it is repetitive.

A new item B is proposed that consists of existing rule language regarding the consideration of pollution control equipment effects on emissions.

It is reasonable to propose changes that do not affect the intent of the rule but modernize the structure and language of the rule.

Subp. 3. **Selecting calculation method.** Subp. 3 states how facilities should select a calculation method. The phrase “provided that” is proposed to be substituted with “if” to simplify the rule language. The term “calendar” is added before the term “year” to provide clarity and consistency with other parts of Chapter 7019. It is reasonable to propose rule changes that provide consistency throughout a rule chapter.

Subp. 4. **Reporting individual pollutants.** A new subp. 4 is added to clarify the level of detail to which pollutants must be reported. Many air toxics belong to groups of compounds, especially on the CAA HAP list. The term “compound” is defined in the CAA HAP list as “for all listings which contain the word compounds and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemicals’ infrastructure.” The MPCA is proposing to use similar language in this rule because reporting individual pollutants will provide the MPCA and EPA with more accurate air toxics emissions data that will be important for assessing risk to human health. It is also likely that the EPA will require the MPCA to report emissions data this way in the future.

Based on experience working with facilities reviewing and revising voluntary air toxics emissions, the MPCA is aware that it may not be possible to always report all individual pollutants that are part of groups at the unit or process level. For example, if a facility is estimating emissions using the material balance calculation approach, detailed composition information may not be available on the SDS. There may be cases where some individual pollutants are included, but not all individual pollutants in a pollutant group can be included, or there may be cases where only the group is listed on the SDS (e.g., Glycol Ethers). In addition, the MPCA’s list of individual pollutants that belong to a group is not exhaustive, so facilities may have to report groups of pollutants in the case of rarely used pollutants that are not individually listed in the e-reporting system. Therefore, the MPCA is proposing to allow facilities different options for reporting.

Ideally, a facility would be able to report emissions of all individual pollutants associated with a group. This is possible when a facility is calculating emissions using the material balance approach and the SDS includes detailed information on every individual pollutant that is included in the material.

The MPCA expects that detailed information will usually be available when facilities are using the methods outlined in Chapter 7019.3030 to calculate emissions. For example, if a facility is calculating emissions using a material balance approach, the detailed composition of a material is typically available on the SDS.

### Reporting Emissions from Processes Using Solvent Compounds:

In the example found in Table 2, since all information is available and known for every individual glycol ether pollutant, the facility must report emissions for each individual pollutants for a unit or process.

**Table 2. Example of a facility reporting emissions of glycol ether compounds from a painting process where each individual pollutant is known and listed on the SDS.**

Pollutant	Emissions (tons)
BUTYL CARBITOL ACETATE	1
CARBITOL ACETATE	1
CELLOSOLVE	2
CELLOSOLVE ACETATE	2

The same process might instead contain two individual glycol ether pollutants (e.g., Cellosolve and Cellosolve acetate) that are known and listed on the SDS, and other glycol ether pollutants that are not specified. In the example found in Table 3, the facility must report all individual pollutants known and the unit or process level, and account for the remaining emissions under the group (Glycol Ethers (Unspecified)).

**Table 3. Example of a facility reporting emissions of glycol ether compounds from a painting process where two individual glycol ether pollutants are known and listed on the SDS, and other glycol ether pollutants are not specified.**

Pollutant	Emissions (tons)
GLYCOL ETHERS ( <i>Unspecified</i> )	2
CELLOSOLVE	2
CELLOSOLVE ACETATE	2

There may be a third scenario where the SDS does not include any detailed information on individual pollutants that are part of the glycol ether group. In the example found in Table 4, the facility can report all emissions at the unit or process level under the group (e.g., Glycol Ethers (Unspecified)).

**Table 4. Example of a facility reporting emissions of glycol ether compounds from a painting process where none of the glycol ether pollutants are specified.**

Pollutant	Emissions (Tons)
GLYCOL ETHERS ( <i>Unspecified</i> )	6

In all three cases found in Tables 2, 3, and 4, all six tons of glycol ether emissions associated with the unit or process are accounted for.

For metals that are part of groups of pollutants, facilities must report emissions for the unit/process for the metal portion of the metal group when reporting emissions as the group (e.g. Nickel or Cobalt).

This reporting approach is consistent with the language in the EPA's AERR proposal. It is reasonable to request individual pollutants be reported because some individual pollutants that are part of groups of pollutants have varying levels of toxicity and different health and environmental impacts. For example, currently some facilities voluntarily report emissions of the grouped pollutant, chromium, rather than emissions for the specific chromium pollutants emitted such as hexavalent chromium and trivalent chromium. Hexavalent chromium is extremely toxic whereas trivalent chromium is much less toxic. Therefore, it is important to distinguish between the two when reporting emissions.

More detailed emissions information will support tools such as MNRISKS, AirToxScreen, and EJScreen, and will ensure that the Agency develops policies to appropriately prioritize reducing emissions and identify facilities that pose the highest risk to human health and the environment. This approach is reasonable because the MPCA needs to ensure the most accurate information is reported, while recognizing that in some cases it may not be possible for facilities to report emissions at the unit or process level for all individual pollutants that are part of grouped pollutants. The individual pollutants that belong to a group of pollutants that are required to be reported are detailed in SONAR Exhibit 1.

#### Part 7019.3060 VOLATILE ORGANIC COMPOUND (VOC) MATERIAL BALANCE

The term “air toxics” is added multiple times in this part of rule because facilities using material balance to calculate their VOC emissions will be using the same method of calculation for air toxics emissions. Facilities may choose to use material balance to calculate VOC or air toxics emissions because other methodologies such as CEM data (7019.3040) or performance testing (7019.3050) may not be available and may be cost prohibitive. Emission factors are also not available for every activity and pollutant, so material balance calculations may be the only method available for facilities to estimate emissions. Material balance calculations are an acceptable and low-cost methodology that utilizes records of material use that facilities may already record for other business purposes. This method may result in overreporting of emissions, but the MPCA accepts overreporting for material balance because it is often the only reporting option available to those facilities. Additionally, facilities are already required to keep records for tracking and reporting VOC emissions. It is reasonable to add rule language that assists facilities in meeting the requirements for the emission inventory.

#### Part 7019.3080 EMISSION FACTORS

Item B references the control efficiency factors that may be used. Emission factors are a widely used and accepted method to develop emission inventories and estimate emissions when other information is not available. An emission factor is a representative value that is based on specific activities associated with the pollutant emitted. Emission factors are developed with available source test data and typically represent long-term averages for all facilities in the source category. Emission factors are developed by the EPA (AP-42) and MPCA.

The term “air toxics” is added to clarify that these requirements also apply to air toxics emissions. It is reasonable to add rule language that assists facilities in meeting the criteria requirements for the emission inventory.

#### Part 7019.3110 AIR TOXICS EMISSION INVENTORY AND EMISSIONS REPORTING

Subpart 1. **Air toxics emission inventory required.** Subp. 1 identifies who is responsible for reporting air toxics emissions. It is reasonable to provide the scope of a proposed section of rule so that affected parties know whether a particular section applies to them or not.

Subp. 2. **Air toxics required to be reported.** Subp. 2 identifies what air toxics are required to be included in the annual air toxics emission inventory.

Item A references HAPs, a list of air pollutants within the CAA that is already defined in rule. It is reasonable to incorporate this list by reference because amendments to the list by the EPA will not require additional rulemaking at the state level and will ensure that the regulated parties will use the most current version of the list. HAPs are widely known by owners and operators of facilities with air permits and have been established in the CAA since the 1990s. Historically, the HAPs list has not changed significantly since it was first established.

Item B references PFAS, defined in state statute, that are on the TRI list, a federal list of specific toxic chemical listings. The EPA updates this list frequently (often annually in recent years) to add additional PFAS compounds. The science around PFAS is rapidly changing and methods to test for these chemicals are evolving and improving. While there are thousands of PFAS in existence, PFAS pollutants of concern are the most important to be reported and this list contains PFAS pollutants of widespread concern. The MPCA will maintain the complete air toxics reporting list, including all specific compounds and their corresponding Chemical Abstracts Service (CAS) numbers, for use by facilities for reporting their air toxics for the annual emissions inventory to ease the burden of reporting for facilities. It is reasonable to incorporate this list by reference because amendments to the list by the EPA will not require additional rulemaking at the state level and will ensure that the regulated parties will use the most current version of the list. It is also reasonable to use this list so Minnesotans will be able to track the latest reports of PFAS emissions by facilities as the science and methods for testing are evolving.

When assessing TRI pollutants, MPCA staff considered many aspects of this list. Emissions associated with TRI pollutants are reported to EPA by some facilities. The MPCA considered adding all the TRI pollutants because it may make reporting easier for facilities. Ultimately, the MPCA decided against adding all TRI pollutants and included only those identified as PFAS on the TRI List, those with inhalation risks or those that were reported as air releases by TRI reporting facilities in Minnesota. The TRI was developed in the 1990s and some pollutants have been on the list for decades despite their dwindling use. Similar to the IRIS list, including pollutants reported that have an inhalation risk is most important and reasonable to include for use later in risk assessment modeling.

One comment received during the initial RFC period stated that the air toxics list should be limited to the federal list of HAPs and potentially the TRI PFAS list. The MPCA considered this suggestion, but due to the legislative directive and the specific environment in Minnesota, there were additional pollutants that the MPCA needed to consider for reporting in Minnesota. It remains unclear if the TRI PFAS list will be included in the final AERR rule revisions and the MPCA determined that the TRI PFAS and other pollutants of concern specific to Minnesota must be included for reporting.

Item B also lists other PFAS that owners or operators of an air toxics reporting facility must report. These PFAS are listed separately from the other individually listed pollutants because not all facilities use materials that result in PFAS emissions. Listing PFAS pollutants separately will ease the burden of reviewing the pollutants listed in rule for reporting facilities that do not emit PFAS.

#### **PFAS Reported in the Most Recent Triennial Emissions Inventory:**

<u>Chemical Abstracts Service (CAS) number</u>	<u>Pollutant</u>
209482-18-8	1-(4-Butoxyphenyl)tetrahydrothiophenium perfluorobutanesulfonate
359-49-9	2,3,3,3-Tetrafluoropropanoic Acid
27619-93-8	4:2FTS - 4:2 Fluorotelomer sulfonate sodium
27619-94-9	6:2 Fluorotelomer sulfonate sodium salt
27619-96-1	8:2 Fluorotelomer sulfonate sodium salt
355-42-0	Perfluorohexane
365971-87-5	Perfluorotetradecanoate
335-24-0	Potassium perfluoro-4-ethylcyclohexanesulfonate

2923-16-2	Potassium trifluoroacetate
2250081-67-3	Sodium 4,8-dioxa-3H-perfluorononanoate
2806-15-7	Sodium perfluorodecanesulfonate
21934-50-9	Sodium perfluoroheptane sulfonate
4021-47-0	Sodium perfluorooctanesulfonate
1493-13-6	Trifluoromethanesulfonic acid
144317-44-2	Triphenylsulfonium nonafluorobutanesulfonate

It is reasonable to require facilities to report these air toxics emissions because these pollutants are of concern in Minnesota and have been reported or are prevalent in Minnesota. This aligns with the MPCA's PFAS Monitoring Plan to identify sources of PFAS.

**PFAS that can be detected using Other Test Method 45 (OTM-45):**

<u>Chemical Abstracts Service (CAS) number</u>	<u>Pollutant</u>
120226-60-0	10:2 Fluorotelomer sulfonic acid
763051-92-9	11-Chloroperfluoro-3-oxaundecanesulfonic acid
2991-50-6	2-(N-Ethylperfluorooctanesulfonamido)acetic acid
2355-31-9	2-(N-Methylperfluorooctanesulfonamido)acetic acid
53826-13-4	2-(Perfluorodecyl)ethanoic acid
53826-12-3	2-(Perfluorohexyl)ethanoic acid
27854-31-5	2-(Perfluorooctyl)ethanoic acid
914637-49-3	2H,2H,3H,3H-Perfluorooctanoic acid
70887-84-2	2H-Perfluoro-2-decenoic acid
812-70-4	3-(Perfluoroheptyl)propanoic acid
70887-88-6	3-(Perfluoropentyl)-3-fluoro-2-propenoic acid
356-02-5	3:3 Fluorotelomer carboxylic acid
919005-14-4	4,8-Dioxa-3H-perfluorononanoic acid
757124-72-4	4:2 Fluorotelomer sulfonic acid
27619-97-2	6:2 Fluorotelomer sulfonic acid
39108-34-4	8:2 Fluorotelomer sulfonic acid
756426-58-1	Perfluoro(2-((6-chlorohexyl)oxy)ethanesulfonic acid)
863090-89-5	Perfluoro(4-methoxybutanoic acid)
113507-82-7	Perfluoro-2-ethoxyethanesulfonic acid
151772-58-6	Perfluoro-3,6-dioxaheptanoic acid
377-73-1	Perfluoro-3-methoxypropanoic acid
335-77-3	Perfluorodecanesulfonic acid

79780-39-5	Perfluorododecanesulfonic acid
375-92-8	Perfluoroheptanesulfonic acid
375-85-9	Perfluoroheptanoic acid
68259-12-1	Perfluorononanesulfonic acid
754-91-6	Perfluorooctanesulfonamide
2706-91-4	Perfluoropentanesulfonic acid
2706-90-3	Perfluoropentanoic acid
72629-94-8	Perfluorotridecanoic acid
2058-94-8	Perfluoroundecanoic acid
83329-89-9	Potassium 11-chloroeicosafluoro-3-oxaundecane-1-sulfonate
1260224-54-1	Sodium perfluorododecanesulfonate

It is reasonable to require facilities to report these air toxics emissions because as more facilities perform stack testing using OTM-45, these facilities will need to be able to report chemicals that can be detected from stack test methods. Additionally, stack tests may be required in permits or other regulatory measures and those data need to be reported. These chemicals were in the most recent MPCA triennial air toxics emissions inventory.

**PFAS that can be detected using Other Test Method 50 (OTM-50):**

<u>Chemical Abstracts Service (CAS) number</u>	<u>Pollutant</u>
375-61-1	1,1,1,2,2,3,3,4,4,5,5-Undecafluoropentane
811-97-2	1,1,1,2-Tetrafluoroethane
420-46-2	1,1,1-Trifluoroethane
2252-84-8	1H-Heptafluoropropane
375-17-7	1H-Nonafluorobutane
355-37-3	1H-Perfluorohexane
375-83-7	1-Hydroperfluoroheptane
3330-14-1	2H-Perfluoro-5-methyl-3,6-dioxanonane
335-65-9	8H-Perfluorooctane
75-73-0	Carbon tetrafluoride
75-45-6	Chlorodifluoromethane
75-72-9	Chlorotrifluoromethane
75-10-5	Difluoromethane
593-53-3	Fluoromethane
116-15-4	Hexafluoropropene
115-25-3	Octafluorocyclobutane
559-40-0	Octafluorocyclopentene
354-33-6	Pentafluoroethane
678-26-2	Perflenapent
428-59-1	Perfluoro(methyloxirane)
3330-15-2	Perfluoro-3-(1H-perfluoroethoxy)propane
355-25-9	Perfluorobutane
76-16-4	Perfluoroethane
335-57-9	Perfluoroheptane
355-42-0	Perfluorohexane
307-34-6	Perfluorooctane
76-19-7	Perfluoropropane
116-14-3	Tetrafluoroethylene
75-69-4	Trichlorofluoromethane
75-46-7	Trifluoromethane

It is reasonable to require facilities to report these air toxics emissions because as more facilities

perform stack testing using OTM-50, facilities will need to report emissions that can be detected from stack test methods. Additionally, stack tests may be required in permits or other regulatory measures and these data need to be reported. While these chemicals are not included on any list included in the legislative statute, it is reasonable to add these chemicals because the MPCA anticipates that more facilities will be testing for these PFAS chemicals in the coming years. Furthermore, the MPCA would have added these PFAS chemicals to the next triennial air toxics reporting list after this test method was released by the EPA on January 25, 2024<sup>16</sup>.

**Additional PFAS:**

<u>Chemical Abstracts Service (CAS) number</u>	<u>Pollutant</u>
1478-61-1	Bisphenol AF

Bisphenol AF (CAS # 1478-61-1) is included because it is a PFAS of high concern in Minnesota. It is reasonable to require facilities to report these emissions because this pollutant is highly toxic to human health and prevalent in Minnesota.

Item C lists out additional pollutants that must be included in the air toxics emissions inventory. It also specifies that pollutant compounds include any specific chemical that contains the named chemical within its infrastructure. For example, “aluminum compounds” include aluminum, aluminum fluoride, aluminum oxide, etc. It is reasonable to reference chemical compounds, when possible, because it simplifies the list in rule. The full list of air toxics that must be reported will be provided in guidance, including specific compounds and their corresponding CAS numbers, but the MPCA may not be aware of every specific pollutant in a group and the lists of individual pollutants included under the groups of pollutants are not comprehensive. When facilities submit their emissions inventory, if a pollutant that is part of a compound is not specifically listed or unavailable for selection in e-services, facilities must account for emissions associated with all pollutants that are part of compounds as defined by the CAA and report those emissions under the group (e.g. Cobalt compounds or Nickel compounds). Listing as compounds will provide flexibility while ensuring that facilities are reporting individual pollutants if possible. In this item, the MPCA is also proposing to use similar language to the EPA’s definition of “compounds” in the CAA.

Minn. Stat 116.062 has identified that “air toxics” are chemical compounds or compound classes that are emitted into the air by a permitted facility and include HAPs, chemicals listed on the TRI list, chemicals for which MDH has developed HBVs or RAA, chemicals for which risk to human health has been assessed by the EPA IRIS, or chemicals previously reported to the MPCA in the most recent triennial emissions inventory. The MPCA has assessed these chemicals and chemical compounds and has identified those that are reasonable to require emissions reporting for.

The specific reasonableness for each chemical and chemical compound proposed in this section of rule that is not incorporated by reference as a HAP or a TRI PFAS is included below. CAS numbers are listed for pollutants when available.

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<sup>16</sup> Other Test Method 50 (OTM-50) Sampling and Analysis of Volatile Fluorinated Compounds from Stationary Sources Using Passivated Stainless-Steel Canisters. (August 14, 2024). Retrieved from [https://www.epa.gov/system/files/documents/2024-01/otm-50-release-1\\_0.pdf](https://www.epa.gov/system/files/documents/2024-01/otm-50-release-1_0.pdf)



**Pollutants with HBVs or RAA identified by MDH:**

<u>Chemical Abstracts Service (CAS) number</u>	<u>Pollutant</u>
75-71-8	Dichlorodifluoromethane
7631-86-9	Silica

It is reasonable to require facilities to report these air toxics emissions because they all have inhalation values that can be used to estimate the exposure risk for these given pollutants.

According to the MDH website<sup>17</sup>, “The Minnesota Department of Health (MDH) develops health-based guidance values to evaluate potential human health risks from exposures to chemicals in ambient air. An air guidance value is a concentration of a chemical that is likely to pose little or no risk to human health.

Air guidance values may be used by the public, industry, state and local risk managers, and other stakeholders to assist in evaluating potential health risks to people from exposures to a chemical in air. MDH does not enforce air guidance values.

Air guidance values are developed using public health protective practices that protect susceptible portions of the population (including but not limited to children, pregnant women and their fetuses, individuals compromised by pre-existing diseases, and elderly persons). However, these values may not be protective of hypersensitive individuals who may respond to low level chemical exposures. Additionally, the values do not determine health risk from exposure to several toxic chemicals at once.”

There are about 90 chemicals that the MDH has developed air guidance values for. Two of those chemicals, dichlorodifluoromethane, and silica, do not appear on other lists the MPCA evaluated as directed by statute, so the MPCA added these two chemicals to the reporting list.

**Pollutants that have been assessed by IRIS.** The following pollutants have been assessed by EPA’s IRIS and have either inhalation risks or other risks to human health associated with their emissions.

**Pollutants with inhalation risks:**

<u>Chemical Abstracts Service (CAS) number</u>	<u>Pollutant</u>
140-57-8	Aramite
12674-11-2	Aroclor 1016
12672-29-6	Aroclor 1248
11097-69-1	Aroclor 1254
103-33-3	Azobenzene
108-86-1	Bromobenzene
1306-38-3	Ceric oxide
12789-03-6	Technical chlordane
10049-04-4	Chlorine dioxide
75-68-3	1-Chloro-1,1-difluoroethane

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<sup>17</sup> Air Guidance Values. (May 31, 2024). Retrieved from <https://www.health.state.mn.us/communities/environment/risk/guidance/air/table.html#:~:text=The%20Minnesota%20Department%20of%20Health,no%20risk%20to%20human%20health>

75-45-6	Chlorodifluoromethane
110-82-7	Cyclohexane
50-29-3	DDT
156-60-5	(E)-1,2-Dichloroethylene
637-92-3	Ethyl t-butyl ether
111-76-2	2-Butoxyethanol
591-78-6	2-Hexanone
7783-06-4	Hydrogen sulfide
1318-09-8	Amphibole-group minerals
78-93-3	Methyl ethyl ketone
2385-85-5	Mirex
55-18-5	N-Nitrosodiethylamine
924-16-3	N-Nitrosodibutylamine
930-55-2	N-Nitrosopyrrolidine
107-98-2	1-Methoxy-2-propanol
75-65-0	tert-Butyl alcohol
109-99-9	Tetrahydrofuran
26471-62-5	Toluene diisocyanate
96-18-4	1,2,3-Trichloropropane
526-73-8	1,2,3-Trimethylbenzene
95-63-6	1,2,4-Trimethylbenzene
108-67-8	1,3,5-Trimethylbenzene

The MPCA added all IRIS inhalation risk pollutants to the list of air toxics pollutants required to be reported. It is reasonable to require facilities to report these air toxics emissions because they all have inhalation values that can be used to estimate the exposure risk for these given pollutants.

**Pollutants without inhalation risks:**

<u>Chemical Abstracts Service (CAS) number</u>	<u>Pollutant</u>
10061-01-5	(Z)-Dichloropropene
85-68-7	Benzyl butyl phthalate
9016-87-9	Polymeric diphenylmethane diisocyanate

(Z)-Dichloropropene (CAS # 10061-01-5) is included because it has been identified by IRIS as a likely human carcinogen. It is reasonable to require facilities to report these emissions because this pollutant is toxic if inhaled and is also an environmental hazard.

Butyl benzyl phthalate (CAS # 85-68-7) is included because although the inhalation risk has not been assessed, it has an IRIS oral risk and is an IRIS carcinogen. The EPA also identified it as a high-priority

substance in December of 2019, and it is currently undergoing risk evaluation<sup>18</sup>. It is reasonable to require facilities to report these emissions because they may cause health effects and an inhalation risk may be derived in the future.

Polymeric diphenylmethane diisocyanate (CAS # 9016-87-9) is included because it has an IRIS inhalation risk. It is reasonable to require facilities to report these emissions because they can cause respiratory irritation and may cause damage to organs through prolonged exposure.

**Pollutants on the TRI list:** The following pollutants are on the TRI list and have either been reported by Minnesota TRI facilities or are PBTs.

**Pollutants with an inhalation toxicity value:**

<u>Chemical Abstracts Service (CAS) number</u>	<u>Pollutant</u>
563-47-3	3-Chloro-2-methylpropene
77-73-6	Dicyclopentadiene
7697-37-2	Nitric acid

These air toxics are included in this section of rule because they were reported by TRI facilities in Minnesota and have an inhalation toxicity value. It is reasonable to require facilities to report these emissions because at least one facility is emitting each of these pollutants in Minnesota. In addition, the MPCA has inhalation values for these pollutants, so the risks associated with these pollutants can be calculated.

**Pollutants without an inhalation toxicity value:**

<u>Chemical Abstracts Service (CAS) number</u>	<u>Pollutant</u>
71-36-3	1-Butanol
64-18-6	Formic acid
62-56-6	Thiourea

1-Butanol (CAS # 71-36-3) is included because it is used and emitted by many furniture manufacturers in Minnesota and surrounding areas. It is reasonable to require facilities to report these emissions because it is reported by MN TRI facilities.

Formic acid (CAS # 64-18-6) is included because it has been reported by Minnesota TRI facilities. It is reasonable to require facilities to report these emissions because this pollutant is an irritant and can be toxic if inhaled.

Thiourea (CAS # 62-56-6) is included because Minnesota TRI facilities have reported emissions of this pollutant. It is reasonable to require facilities to report these emissions because this pollutant is an irritant and can be toxic if inhaled. At least one facility in Minnesota has reported this pollutant to TRI.

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<sup>18</sup> Risk evaluation for butyl benzyl phthalate-1,2-benzene- dicarboxylic acid, 1- butyl 2(phenylmethyl) ester. (August 14, 2024). Retrieved from <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluation-butyl-benzyl-phthalate-12-benzene>

**Pollutants that are PBTs:**

<u>Chemical Abstracts Service (CAS) number</u>	<u>Pollutant</u>
309-00-2	Aldrin
40487-42-1	Pendimethalin

It is reasonable to require facilities to report these air toxics emissions because these chemicals have multi-pathway concerns. If emissions of these air toxics result in deposition into water or they are otherwise consumed, they are persistent in the environment as well as toxic to humans.

**Pollutants on the MPCA's most recent triennial air toxics emissions inventory list.** The following pollutants are on the MPCA's most recent triennial air toxics emissions inventory list.

Pollutants with similar specific reasonableness. Pollutants with similar specific reasonableness are grouped in the section below.

**Pollutants of concern identified by the Great Lake Commission (GLC):**

<u>Chemical Abstracts Service (CAS) number</u>	<u>Pollutant</u>
1912-24-9	Atrazine
	Copper compounds
117-84-0	Di-n-octyl phthalate

It is reasonable to require facilities to report these air toxics emissions because these chemicals are of concern to the Great Lakes and the MPCA has tracked emissions of these chemicals in the triennial air toxics emissions inventory. They can be emitted into the air but are most concerning when they enter waterbodies through atmospheric deposition.

**Pollutants that are Trichloroethylene (TCE) replacements:**

<u>Chemical Abstracts Service (CAS) number</u>	<u>Pollutant</u>
540-59-0	1,2-Dichloroethylene
5131-66-8	1-Butoxy-2-propanol
10061-02-6	Trans-1,3-Dichloropropene

It is reasonable to require facilities to report these air toxics emissions because they are relevant to Minnesota due to the ban on TCE and are alternatives that have high toxicity. Additionally, these chemicals can cause irritation if inhaled and can adversely impact the environment.

**Aldehyde compounds with EPA emission factors:**

<u>Chemical Abstracts Service (CAS) number</u>	<u>Pollutant</u>
	Aldehyde
100-52-7	Benzaldehyde
123-73-9	(E)-Crotonaldehyde
123-72-8	Butyraldehyde

It is reasonable to require facilities to report these air toxics emissions because aldehyde compounds can cause irritation if inhaled. These chemicals have been tracked on the MPCA's triennial air toxics emissions inventory.

**Pollutants known to be emitted by foundries:**

<u>Chemical Abstracts Service (CAS) number</u>	<u>Pollutant</u>
	Aluminum compounds
	Vanadium compounds

It is reasonable to require facilities to report these air toxics emissions because these pollutants are voluntarily reported by some facilities and can cause irritation if inhaled. These pollutants are also known to be emitted by foundries.

**Additional pollutants included on the MPCA's Triennial Air Toxics Emissions Inventory List:**

<u>Chemical Abstracts Service (CAS) number</u>	<u>Pollutant</u>
95-50-1	Dichlorobenzene, 1,2-
541-73-1	Dichlorobenzene, 1,3-
156-59-2	(Z)-1,2-Dichloroethylene

It is reasonable to require facilities to report these air toxics emissions because these pollutants can cause irritation in humans and are also an environmental hazard.

**Additional pollutants:**

<u>Chemical Abstracts Service (CAS) number</u>	<u>Pollutant</u>
	Zinc Compounds

Zinc compounds for which the EPA has issued NESHAPs are included in this section of rule. It is reasonable to require facilities to report these air toxics emissions because these pollutants are voluntarily reported by some facilities and are tracked in the MPCA's triennial air toxics emissions inventory.

Pollutants with Individual Specific Reasonableness. Pollutants with individual specific reasonableness are listed in the section below.

<u>Chemical Abstracts Service (CAS) number</u>	<u>Pollutant</u>
115-07-1	1-Propene
67-64-1	Acetone
105-60-2	Caprolactam
25321-22-6	Dichlorobenzene
7664-93-9	Sulfuric acid
540-88-5	tert-Butyl acetate

1-Propene (CAS # 115-07-1) is included because it is tracked in the MPCA's triennial air toxics emissions inventory, and it has a chronic inhalation risk from CALEPA-OEHHA. It is reasonable to require facilities to report these emissions because this pollutant has chronic inhalation risks and guidance developed.

Acetone (CAS # 67-64-1) is included because it is reported by some facilities and tracked in the MPCA's triennial air toxics emissions inventory. It is reasonable to require facilities to report these emissions because Acetone has an inhalation toxicity value.

Caprolactam (CAS # 105-60-2) is included because it has been tracked as part of the MPCA's voluntary

air toxics emissions inventory and has an inhalation risk determined by CALEPA-OEHHA. It is reasonable to require facilities to report these emissions because this pollutant is an irritant and can cause respiratory irritation.

Dichlorobenzene (CAS # 25321-22-6) is included because it has a TRI inhalation risk value and is tracked in the MPCA's triennial air toxics emissions inventory. It is reasonable to require facilities to report these emissions because it is reported by some facilities and the inhalation risk can be calculated given the emissions.

Sulfuric acid (CAS # 7664-93-9) is included because it is tracked in the MPCA's triennial air toxics emissions inventory, it has an inhalation risk, and is considered toxic to the respiratory system according to CALEPA-OEHHA. It is reasonable to require facilities to report these emissions because this pollutant is reported by facilities in Minnesota and the inhalation risk can be calculated.

Tert-Butyl acetate (CAS # 540-88-5) is included because it is tracked in the MPCA's triennial air toxics emissions inventory, is a potential carcinogen, and has an inhalation risk according to CALEPA-OEHHA. It is reasonable to require facilities to report these emissions because at least one facility is reporting this pollutant in Minnesota.

Although Minn. Stat. § 116.062 directs that the MPCA rulemaking on air toxics reporting could require reporting for any pollutant included in the CAA HAPs list, included on the TRI list, chemicals for which MDH has developed HBVs or RAA, chemicals for which risk to human health have been assessed by the EPA IRIS, or chemicals previously reported to the MPCA in the most recent triennial emission inventory, the Agency has reviewed each of those pollutants and is not proposing to require reporting for all of them. This reasoning is based on criteria developed by MPCA to ensure chemicals of most concern are reported. Chemicals that have been banned for several years, are no longer in use, or those that do not have inhalation risks or multipathway concerns were not included. It is reasonable not to require facilities to report chemicals that are no longer used or not relevant to air pollution concerns.

In general, the MPCA did not include:

- Pollutants with only oral or other types of values other than inhalation values because the MPCA would not be able to model risks without inhalation values;
- PFAS that are not known to be present or reported in Minnesota;
- PFAS that are salt and anions of OTM-45 or OTM-50 pollutants because reporting emissions of the main pollutants is sufficient for reporting purposes;
- Pollutants with inhalation risks that are archived because the inhalation risks are no longer relevant; and
- Pollutants only reported by facilities located in other states to TRI.

Overall, it is reasonable to only include pollutants that are known to be relevant to Minnesota and to ensure that facilities are not overburdened with reporting emissions of pollutants that are not of the highest concern.

**Subp. 3. De minimis reporting; exceptions.** Subp. 3 item A outlines the minimum emissions that the MPCA requires to be reported and identifies how facilities can use a materials' SDS to determine if they need to report the emissions of an air toxic when estimating emissions with a material balance calculation. It is reasonable to base de minimis for reporting on the SDS because it is easy for facilities to reference and for agency compliance and enforcement staff to verify at the time of a facility inspection. Certain air toxics are required to be reported as low as 1%, or 0.1% if the air toxic is a carcinogen or

potential carcinogen, on an SDS. This is based on the health hazard classification of the chemical. The de minimis levels are dictated by determinations made by the National Toxicology Program (NTP), Annual Report on Carcinogens, the International Agency for Research and Cancer (IARC) Monographs, or 29 CFR Part 1910, Subpart Z, Toxic and Hazardous Substances, OSHA. Each of these documents, listed in subitems (1) through (3), have been incorporated by reference. Toxic chemicals listed as carcinogens or potential carcinogens under NTP (classified as a known or reasonable anticipated to be human carcinogens), IARC (classified as 1, 2A, or 2B), or 29 CFR Part 190, Subpart Z, have a 0.1% de minimis concentration level. These are typically referred to as “OSHA carcinogens.” All other toxic chemicals have a 1% minimum concentration level for reporting on an SDS, thus the de minimis for these pollutants is 1%.

It is reasonable to use the OSHA classifications of 0.1% for human carcinogens or potential carcinogens and 1% for other toxic chemicals as the de minimis for reporting because it will simplify reporting for facilities rather than requiring different de minimis thresholds for different air toxics. In addition, a facility will not be required to complete additional calculations every year to determine if emissions need to be reported. The use of the OSHA standard of 0.1% or 1% is also reasonably low enough to ensure that facilities are reporting quantities of emissions that might adversely affect the environment or human health. Some air toxics present risk to human health at very small concentrations, so this lower reporting limit ensures that emissions of that type do not go unreported.

This approach is reasonable because the MPCA would not expect facilities to test the materials or contact the chemical manufacturer to determine what level of an air toxic is included in the material used if it is present in concentrations below 0.1% or 1%. If testing materials, concentrations below this level may be below method detection limits for the testing methodology. In addition, the Agency also does not believe that requiring testing beyond this concentration would provide additional benefit to assess risk to human health. Requiring testing of materials would also be burdensome and potentially costly to facilities.

The de minimis only applies to facilities using the material balance approach to estimate emissions. If a facility is estimating emissions using a performance test or CEM data and the air toxic is detected, even at low amounts, a facility must report emissions. Furthermore, if a facility is using an available emission factor to calculate emissions, the facility must report emissions regardless of the amount of emissions.

Many facilities that are also small businesses use the material balance approach for calculating emissions for non-combustion activities. This de minimis approach is meant to help ease some of the cost and time burden on small businesses by enabling them to use the SDS, which they are required to keep on hand, to calculate air toxics emissions. The MPCA carefully considered the impact of this de minimis approach and weighed the benefits and potential negative outcomes, but this approach is a reasonable balance of cost, convenience, and reporting air toxics to the greatest extent, especially considering small businesses and the information available to them.

The MPCA currently calculates air toxics emissions for combustion processes using representative EPA and state emission factors and fuel usage or activity data reported by facilities. The MPCA will continue to use this approach for mandatory air toxics reporting. Many facilities that have registration and general permits are only required to report emissions for combustion processes. These facilities will not be required to report anything additional than what they are currently reporting since the MPCA will calculate air toxics emissions for them.

There are no de minimis thresholds associated with current required reporting of CAP and GHG emissions. There are also no de minimis thresholds currently established for the MPCA’s voluntary air toxics reporting. Furthermore, the EPA’s AERR proposal does not include reporting thresholds for major

sources (Type A and Type B facilities as defined in 40 CFR Part 51, Appendix A to Subp. A), so this approach would also be fairly consistent with the AERR proposal for major sources. The AERR proposal includes risk-based reporting thresholds for non-major sources; however, due to the reasons stated above, the MPCA has decided to pursue a different approach.

One comment received during the initial RFC period stated that thresholds for reporting should be consistent with AERR. The EPA's AERR proposal would require major sources (Type A and Type B) to report all HAP emissions annually. The AERR proposal includes no minimum reporting thresholds for major sources, and risk-based thresholds for HAPs for non-Type A and B facilities (non-major sources and small entities). The MPCA considered these thresholds; however, the AERR proposal only provides thresholds for HAPs, and the MPCA is proposing facilities report additional pollutants including PFAS and others that do not have risk thresholds in the AERR proposal. Also, to reduce complexity and maintain consistency, the MPCA is proposing to use the same reporting approach for all facilities, whereas the AERR proposal includes different requirements for major and non-major sources. Furthermore, there are no reporting thresholds in rule associated with CAPs, GHGs, or mercury emissions reporting. To reduce complexity in reporting emissions, the MPCA is proposing a de minimis for reporting that is found on SDSs for some pollutants when estimating emissions using the material balance calculation method.

The MPCA will ensure that any new pollutants added or removed from the HAP or TRI PFAS list are reflected in the list of pollutants that will be provided to facilities prior to reporting. Facilities will not be required to track EPA updates to the HAP or TRI PFAS lists. MPCA will also provide facilities with the OSHA standards of 0.1% or 1% for each pollutant on the reporting list since standards are updated periodically and the MPCA does not want to add complexity or burden to facilities to track these federal standards.

Item B identifies the air toxics for which emissions of any amount are required to be reported in the annual air toxics emission inventory. Generally, these are pollutants that are highly toxic even at low emission levels. The MPCA is including a list of pollutants in which all emissions must be reported regardless of the de minimis thresholds outlined in item A. In addition, health risks for some air toxic pollutants, such as certain PFAS compounds, are unknown at this time, so requiring facilities to report all emissions will allow the MPCA to better assess and analyze these data. If health risks are established in the future, the MPCA will be able to better assess risk. If one of the pollutants that is included on the no de minimis list is included on an SDS as present in a mixture at <0.1%, the facility is required to use 0.1% to estimate emissions using a material balance approach.

This item also specifies that pollutant compounds include any specific chemical that contains the named chemical within its infrastructure. For example, "arsenic compounds" include arsenic pentoxide, arsenic acid, arsenic trioxide, arsenous acid, arsine, etc. It is reasonable to reference chemical compounds, when possible, because it simplifies the list in rule. The MPCA will maintain and provide facilities with the full list of air toxics that must be reported before the start of the reporting period, including specific individual pollutants that are part of groups and their corresponding CAS numbers.

The MPCA carefully determined the list of chemicals for which all emissions must be reported. These include the most hazardous of the HAPs and PBTs, and in small amounts can still cause harm to human health and the environment. Since the health risks associated with specific PFAS pollutants is evolving and complex, and the technology to measure PFAS is changing rapidly, the MPCA believes all PFAS emissions for the PFAS compounds listed must be reported, even if they are present in small amounts.

The TRI will no longer have a reporting exemption for facilities that use PFAS in small, or de minimis, concentrations as a result of the EPA's recently published final rule October 31, 2023 (40 CFR Part



372.28). The rule also designates the de minimis exemption unavailable for purposes of supplier notification requirements to downstream facilities for all chemicals on the list of chemicals of special concern, which also includes certain PBTs like lead, mercury, and dioxins. This change ensures that purchasers of mixtures and trade name products containing these chemicals are informed of their presence in mixtures and products they purchase. It is reasonable to require this of facilities because the EPA rule has made it possible to do so by requiring additional reporting by suppliers under 40 CFR Part 372.28.

The following chemicals are air toxics that facilities must report all emissions of.

**Pollutants that are PBTs:**

<u>Chemical Abstracts Service (CAS) number</u>	<u>Pollutant</u>
309-00-2	Aldrin
57-74-9 & 12789-03-6	Chlordane
	Dioxins/Furans
76-44-8	Heptachlor
118-74-1	Hexachlorobenzene
	Lead compounds
	Mercury compounds
72-43-5	Methoxychlor
40487-42-1	Pendimethalin
	Polychlorinated biphenyls (PCBs)
	Polycyclic organic matter (POM)
8001-35-2	Toxaphene
1582-09-8	Trifluralin

It is reasonable to require facilities to report these air toxics emissions because they can bioaccumulate in plants, animals, and people and cause adverse health and environmental effects. These pollutants also remain in the environment for long periods of time.

**Pollutants with individual specific reasonableness.** Pollutants with individual specific reasonableness are listed in the section below.

<u>Chemical Abstracts Service (CAS) number</u>	<u>Pollutant</u>
	Arsenic compounds
	Cadmium compounds
	Chromium compounds
	Cobalt compounds
75-21-8	Ethylene oxide
	Nickel compounds
	PFAS listed in subpart 2, item D
	PFAS on the TRI list

Arsenic compounds are included in this section of rule because they are all HAPs, and some of them also have MDH and IRIS inhalation risks. It is reasonable to require facilities to report all emissions of arsenic compounds because these compounds can cause cancer and other adverse health effects.

Cadmium compounds are included in this section of rule. It is reasonable to require facilities to report all emissions of cadmium compounds because it is a metal, emissions can be monitored, it has a toxicity value, is a carcinogen, and can be harmful to the environment.

Chromium compounds are included in this section of rule. It is reasonable to require facilities to report all emissions of chromium compounds because some chromium compounds, like hexavalent chromium, are very toxic and can cause adverse health effects.

Cobalt compounds are included in this section of rule. It is reasonable to require facilities to report all emissions of cobalt compounds because the EPA is investigating cobalt and has determined that it is more hazardous than originally thought. Cobalt is a carcinogen and has an inhalation value.

Ethylene oxide (CAS # 75-21-8) is included in this section of rule because it is a HAP and has an IRIS inhalation risk. It is reasonable to require facilities to report all emissions of ethylene oxide because this is a very toxic chemical that is being regulated by EPA. On March 14, 2024, EPA announced final amendments to the NESHAP for ethylene oxide commercial sterilizers. The EPA is currently working with facilities with sterilizers to reduce their ethylene oxide emissions.

Nickel compounds are included in this section of rule. It is reasonable to require facilities to report all emissions of nickel compounds because nickel is known to be a carcinogen and has an inhalation value associated with it.

PFAS listed under subp. 2 item D and PFAS on the TRI list (includes 196 PFAS pollutants as of May 17, 2024) are included in this section of rule. It is reasonable to require these PFAS emissions be reported because they are found frequently in Minnesota waters, plants, and soils. All PFAS compounds are persistent and bioaccumulative, and as Minnesota works to regulate and clean up PFAS contamination, it is important to identify sources of PFAS pollution even in very small amounts. This also aligns with the Agency's PFAS Monitoring Plan goals to gather Minnesota-specific information, identify areas of particular concern, and to gather data that supports PFAS source reduction and pollution prevention.

Subp. 4. **Calculating actual emissions.** Subp. 5 item A states which section of rule that facilities, except for option C registration permits, should reference when calculating actual air toxics emissions. It is

reasonable to add rule language that provides clarification for what parts of rule facilities should refer to in order to meet the criteria requirements for the emission inventory.

Item B specifies which section of rule those facilities issued an option C registration permit should reference when calculating actual air toxics emissions. It is reasonable to add rule language that provides clarification for what parts of rule facilities should refer to in order to meet the criteria requirements for the emission inventory.

Subp. 5. **Recordkeeping.** Subp. 6 item A states what records facilities should keep in regard to air toxics emissions and the duration of maintaining those records. It is reasonable for facilities to maintain records for a period of five years after the date of submittal because other sections of rule (Chapters 7007, 7011, 7017, and 7019) also require maintaining records for five years. It is reasonable that facilities provide these records to the commissioner at their request because it allows the MPCA to verify that the recordkeeping requirements outlined in this section are being met.

Item B states that facilities must keep record of SDS or vendor certification for any air toxics-containing materials. It is reasonable to require facilities to keep record of their SDS or vendor certification for an air toxic-containing material purchased or used because the facility or MPCA may need these records to verify that emissions reported are accurate for a period of five years, not indefinitely.

Item C states that facilities who assume a reduction of air toxics due to material disposal must keep record of the amount of that material disposed and the corresponding calculations for what they believe should be subtracted from the overall emissions of that air toxic. It is reasonable to require facilities keep records of the amount of material recycled or disposed of, and their calculations for what should be subtracted from that air toxic's emissions so MPCA staff can verify that their calculations are representative of what should be subtracted from the air toxic's emissions and ensure that the material was recycled or disposed of properly.

Item D states that facilities must maintain records of their calculations for each air toxic emitted. It is reasonable to require facilities keep records of their calculations so that MPCA staff can verify that emission inventory data reported is accurate.

## **6. Regulatory analysis**

### **A. Description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

The purpose of the proposed amendments and new section of rule is to require air toxics emissions reporting in the seven metropolitan counties of Minnesota. This rule will allow the MPCA to inform the public and continue to pursue its mission to protect human health and the environment. The parties that will be most affected are facilities with air permits (except option B registration permits) in the seven metropolitan counties that emit toxic air pollutants, and the MPCA who will monitor and enforce the rule. The MPCA will also process and analyze the additional emissions data that will result from the rule, and potentially take further actions to respond to potential health impacts from pollution.

An indirect result of this rule is that the health of all Minnesotans living in or near the seven metropolitan counties could be better safeguarded if the MPCA is able to identify and respond to emissions that cause health impacts more quickly and effectively. In particular, overburdened metropolitan area communities that bear disproportionate impacts from air pollution may benefit from this proposed rule; including communities with higher proportions of black, indigenous, and other people of color (BIPOC) residents, lower income residents, and communities otherwise overburdened by

social determinants of health. The following are categories of affected groups. See section 6(E) for an analysis and presentation of the costs and benefits of the proposed rule to these groups.

The purpose of the proposed repeal of Title V emergency affirmative defense provisions is to align with the CAA and EPA’s directive for states to remove the provisions from state rules. Only one facility in the state of Minnesota has emergency affirmative defense provisions included in its permit. The repeal of Title V emergency affirmative defense provisions will technically apply to every facility with an air permit located within Minnesota; however, to the MPCA’s knowledge, this provision has never been utilized by a facility. Compliance and enforcement staff will still have the ability to use discretion in the case of emergency circumstances or equipment malfunction, so the effect of the repeal is not expected to significantly impact facilities.

**i. Facilities in the seven metropolitan county area that emit toxic air pollutants**

As described above, the proposed rule would require nearly all facilities in the seven metropolitan counties with an air permit to report their emissions of air toxics to the MPCA. Option B permittees are not included in this rulemaking because they have minimal air toxics emissions and are not included in the legislative directive. Based on MPCA air permit and geographic environmental justice data, there are 666 permitted facilities that will be required to report air toxics emissions, and an estimated 406 facilities are located in or within one mile of an area of concern for environmental justice.

**Table 5. Facilities, listed by permit type, that would be affected by the proposed rule, and the number of estimated facilities in or within one mile of an area of concern for environmental justice.<sup>19</sup>**

Permit type	Count	Estimated in or within one mile of an area of concern for environmental justice
Capped	19	13
General Manufacturing	2	2
General Nonmetallic	24	12
Individual Federal	65	39
Individual State	53	36
Registration Option A	5	3
Registration Option C	136	93
Registration Option D	362	208
Total	666	406 (61%)

Some facilities with air permits are portable facilities, including hot-mix asphalt and non-metallic mining facilities, such as sand and gravel mines that can change operation locations. The MPCA does not expect many of these facilities to have air toxics beyond combustion processes. Based on previous emission inventory reports, the MPCA expects facilities with a General Permit for Nonmetallic Mining (MNG490000), and some facilities with option A, option D and option C registration permits to only have air toxics emissions associated with combustion processes. The MPCA will continue to follow the current process used for voluntary reporting and calculate air toxics emissions for combustion units using activity data (fuel usage or hours of operation and design capacity) and the best available EPA and state emission factors. Facilities that only report CAP and GHG emissions for combustion units will not be required to do any additional calculations or report air toxics emissions since the MPCA will do these calculations automatically. Facilities will only need to review the calculations and adjust if needed. The

<sup>19</sup> Based on MPCA data as of August 27, 2024.

specific reasonableness for this is discussed in greater detail in section 5 item B of this SONAR under 7019.3020 subpart 5.

It is estimated that 18 out of 136 option C facilities and an estimated 295 out of 362 option D facilities located in the seven metropolitan counties may have additional air toxics to report that are associated with non-combustion activities. There are 144 facilities with capped, general manufacturing, option A, individual state permits, or individual federal permits (Title V permits) and it is expected that most of these facilities will be required to calculate and report air toxics emissions. There are an estimated 457 facilities that may be affected by the proposed rule. As is detailed below in Section 6(E), owners and operators of these facilities would incur costs to meet these requirements. These impacted businesses will vary in size, but all should have the capability to comply with the proposed rule without suffering a heavy financial burden. Because this rule only applies to facilities in the seven metropolitan counties, and because the markets for the products produced by these facilities are generally large, it is unlikely that these increased facility costs will be passed on to the consumers of these products in a significant way.

## **ii. The MPCA**

The MPCA will be the sole Minnesota government agency responsible for implementing, administering, and enforcing the proposed rule. This will require additional MPCA staff time from different programs within the Agency but no other significant agency resources. The specific MPCA programs that will require additional staff and the anticipated costs for these staff are detailed below in Section 6(B).

## **iii. Residents of the seven metropolitan counties, especially those in communities overburdened by air pollution**

Exposure to air toxic pollutants have been shown to have numerous impacts on human health. The specific health effects of the several hundred air toxics included in this rule have generally been shown to result in increased risks of cancer, harm to the nervous system and brain, birth defects, irritation to the eyes, nose and throat, coughing and wheezing, impaired lung function, and cardiovascular system harms.<sup>20</sup> Thus, the 3,197,231 Minnesotans living in and around the seven metropolitan counties as of 2022 according to the Minnesota State Demographic Center's PopFinder could benefit from reduced emissions of air toxic pollutants. Data from MNRISKS, presented in Figure 1, indicate that 78% of census block groups in the seven metropolitan counties exceed one or more health benchmarks for air toxics pollution from all emitting sources. While the proposed rule will not directly reduce these emissions, there are indirect and secondary benefits from the MPCA having more timely and accurate information about air toxics emissions. This information could enable the MPCA to respond more quickly and effectively to emission increases or new health-based data from pollution.

In particular, as Figure 1 and Table 5 show, the communities in the metropolitan area that bear the heaviest burdens of air pollution tend to be communities of concern for environmental justice. The MPCA defines these areas as those which have higher proportions of lower-income residents, higher proportions of BIPOC residents, high proportion of limited proficiency in English, and Tribal census areas. Table 5 shows that an estimated 61% of the facilities that emit air toxics and would be affected by the proposed rule are located in or near areas of concern for environmental justice. Of the census block groups that exceed health benchmarks for air toxics pollution shown in Figure 1, 29% are in areas of concern for environmental justice. This rule will enable the MPCA to collect accurate air toxics emissions data and identify where there is unacceptable risk. Reducing risks to metropolitan area communities,

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<sup>20</sup> Toxic Air Pollutants. (October 25, 2023). Retrieved from <https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/toxic-air-pollutants>

especially those overburdened by air pollution, would align with MPCA's mission to protect human health. See Section 7 below for a more thorough equity analysis of the proposed rule.

**B. The probable costs to the Agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

The MPCA will be the only Minnesota state agency with a responsibility to implement and enforce the proposed rule. Various programs within the MPCA will be involved, including air emissions inventory, compliance and enforcement, small business environmental assistance program (SBEAP), and air pollution risk assessment.

MPCA staff who review air emissions inventories will need to conduct quality assurance and quality control of the data provided by affected facilities. They will also need to update the inventory's air toxics pollutant list and database with the pollutants as well as their emission factors. This will be especially important for any new PFAS incorporated into the TRI list after rule promulgation. Because the proposed rule only applies to the seven metropolitan counties, these staff may need to maintain a separate emissions inventory database for the seven metropolitan county area compared to the rest of the state. These staff may also need to provide assistance to facilities with their air toxics reporting. Because the MPCA's emissions inventories program will need to conduct these updates to adjust to the proposed rule once it is in place, there will be a need for increased staff resources in the first year after enactment of the rule compared to subsequent years when the updates are already in place. The MPCA estimates that in total, the emission inventory program will need an additional 1.20 to 1.85 full-time equivalent staff members (FTEs) in the first year after enactment of the rule, and 0.45 to 1.15 FTEs in subsequent years to conduct this work. These estimates include staff that are directly employed with the MPCA as well as staff that work at the MPCA but are employed by Minnesota IT Services (MNIT). The current average annual cost for an FTE to the MPCA, including all overhead costs, is \$175,000. Thus, the estimated total additional annual staff cost to the MPCA's emission inventory program resulting from the proposed rule is between \$210,000 and \$324,000 in the first year and between \$79,000 and \$201,000 in subsequent years.

The MPCA's compliance and enforcement program will be tasked with enforcing the proposed rule. The MPCA has estimated that the additional compliance and enforcement staff needed will be 0.5 FTE, and this will not change from year to year after the proposed rule is in place. Based on the average annual FTE cost of \$175,000, this equates to an estimated \$87,500 per year as a result of the proposed rule.

The MPCA's SBEAP currently assists regulated facilities throughout the state to comply with all state environmental regulations. Helping facilities comply with the proposed rule will be no exception. The MPCA has estimated that the additional small business assistance staff time resulting from the proposed rule will be around 0.2 FTEs in the first year after the rule is enacted. In subsequent years, the MPCA anticipates that reporting facilities will need less assistance with complying with the proposed rule and estimates the additional small business staff time will equate to 0.13 FTEs after the first year. Again, at an average annual FTE cost of \$175,000, this equates to approximately \$35,000 in costs to the Agency in the first year and around \$23,000 per year in subsequent years as a result of the proposed rule.

The work of MPCA risk assessors may also be affected by the proposed rule. However, although the MPCA anticipates that the rule will provide some additional work to these staff, it will also reduce the work of these staff in other ways. The MPCA expects the additional time and time savings to roughly offset each other, so the proposed rule is cost neutral for MPCA risk assessors.

In total, summing the estimated annual costs for all MPCA programs described above that will be

impacted by the proposed rule, the estimated total annual cost to the MPCA to implement and enforce the rule will be between \$333,000 to \$446,000 in the first year after rule adoption and between \$189,000 to \$311,000 in subsequent years.

The proposed rule is not expected to have any impact on state revenues. The MPCA will not be collecting fees from permit holders as part of their reporting obligations included in this proposed rule, and there are no other elements of the proposed rule that will lead to any inflows into or outflows out of the state's coffers. The MPCA received funding from the State Legislature for the air toxics emissions reporting rule implementation.

**C. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

The purpose of this rule is to require air toxics emissions reporting in the seven metropolitan counties of Minnesota. This rule will allow the MPCA to inform the public and continue to pursue its mission to protect human health and the environment. Although the MPCA considered alternative methods for achieving this purpose, including continued voluntary emissions reporting, and monitoring for toxic air pollutants at or near emissions sources instead of requiring reporting (see Section 6(D) below), the MPCA reached the conclusion that there is no other thorough and effective way to achieve this purpose and meet the legislative intent.

The MPCA considered a few methods that may have been less costly, but they did not have the same results as the proposed rule. Those methods include:

- Requiring reporting from manufacturers of air toxics sold in Minnesota. This would be less costly for the permit holders but is out of scope for what the statute required of the MPCA in this rulemaking.
- Requiring the reporting of facility-wide emissions. This would result in less precise data and not enough information for the purposes that the MPCA will use the data.

As the MPCA implements and adjusts to the rule, the MPCA will identify potential cost-savings opportunities for internal processes and for facilities with air permits.

**D. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.**

The MPCA has examined the alternatives to this rule and has relied on them for many years with few results that meet the needs of air toxics emissions reporting. Alternatives include:

- Air toxics emissions monitoring;
- Voluntary air toxics emissions reporting; and,
- Air toxics emissions modeling.

Air Toxics Emissions Monitoring

With nearly 700 potential air toxics emitting facilities across the seven metropolitan counties, and limited ability for the agency to monitor for all chemical emissions requested in reporting, monitoring is not a viable alternative. The MPCA currently has 22 ambient air toxics monitoring sites in the seven metropolitan counties. The annual cost for running these sites is \$20,000 per year at each site. In addition to operating costs, these sites also require lab testing for different analytes using EPA-approved methods like Toxic Organics – 15 (TO-15) analysis method. At the current rate of about 3,000 samples per year at an average cost of \$130 per sample, these costs are currently close to \$400,000 per year. Additionally, the MPCA has experimented with fence-line, near fence-line, and neighborhood air toxics

monitoring. Many air toxics are most important to monitor at fence-line or near fence-line for accuracy as many air toxics volatilize or change chemical composition rapidly after exiting the facility. In order to effectively assess these emissions, monitors would be needed near each air toxic emitting facility, and ultimately each stack. Cumulatively, with 666 facilities located in the seven metropolitan counties, and a cost of \$20,000 per year to operate an air toxic monitoring site at each facility, this would cost the MPCA \$13.78 million per year. Current air toxics monitoring sites can only monitor for 74 pollutants. At a cost of \$13 million to maintain over 600 sites, that only measure 74 pollutants, plus additional lab costs (likely an additional \$12 million annually), monitoring is not a viable alternative, and certainly not a cost-effective alternative to this rulemaking effort.

#### Voluntary Air Toxics Emissions Reporting

Over half of air toxic emitting facilities currently report air toxics in the voluntary triennial air toxics emissions inventory. Since reporting is voluntary, and accuracy is not always a priority, many facilities often overreport pollutants. These overreports are discovered when modeling is completed, and a large risk is shown to be present from that facility. When the MPCA requests confirmation on the emissions, they are often found to be overreported. The MPCA has to fill in gaps with modeled emissions at facilities based on what is known from reported emissions and some understanding of each facility based on their North American Industry Classification System (NAICS) codes. Modeling risks based on directly reported emissions is important. The MPCA could maintain voluntary reporting and modeling, but these efforts would continue to be lacking completeness and accuracy. The MPCA has applied continuous improvements to the voluntary emissions inventory to ease reporting as much as possible, but it has not resulted in all facilities reporting.

#### Air Toxics Emissions Modeling

The EPA maintains its own screening tool of air toxics risks called AirToxScreen. This depicts cancer risks, and chronic noncancer hazards for some pollutants, across the United States. There is usually a delay in updating AirToxScreen. For example, AirToxScreen 2020 was released in May 2024. Furthermore, for nonreporting years, some emissions are estimated based on past data. The MPCA maintains a Minnesota-wide risk map called MNRISKS. This risk map is created using data from the emissions inventory and modeling these emissions based on stack parameters given by each facility. Receiving accurate emissions information will allow the MPCA to update the MNRISKS map and provide updated cancerous and noncancerous risk data to the reporting areas.

#### **E. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.**

As detailed in Section 6(A), the primary parties that will be affected and will bear the costs associated with the proposed rule will be permitted facilities in the seven metropolitan counties. Table 5 categorizes the 666 facilities that would be affected according to permit type. There may be some categorical differences in compliance costs with the proposed rule to facilities based on the type of permit held by the facility. For example, the MPCA expects registration option C facilities to have lower costs than registration option D and Individual State permittees. Costs to facilities may include internal staff costs and/or costs for hiring external consultants to complete the reporting obligations. Besides additional staff time, whether internal staff or external consultants, it is not expected that facilities affected by this rule will need any other operational or capital resources (i.e., equipment) to fulfill the reporting obligations.

To glean information and insight into how much the proposed rule will cost these facilities, the MPCA sought comments from affected facilities during an informal comment period using SmartComments



and posed the question, among others, “How much will it cost (if anything) to complete air toxics reporting for this potential rule?” Nineteen facilities responded with comments, which included registration option C permittees, registration option D permittees, Individual State permittees, and others. Of the nineteen respondents, ten provided their estimates of how much it would cost to complete their air toxics reporting requirements under the proposed rule. The MPCA can make some general inferences of probable compliance costs with the proposed rule from these comment responses, but the sample size of respondents was not large enough to extrapolate an estimate of the average compliance costs for the entire population of 671 facilities that will be affected by the proposed rule with a high degree of confidence and statistical significance. For the facilities that provided cost estimates, the average low-end cost was approximately \$5,400 with a high-end average cost of approximately \$8,800. The lowest cost estimate for facilities that responded with cost information was \$300 and the highest was \$20,000. The MPCA is interpreting these to be estimates of annual (as opposed to one-time) costs, although this was not explicitly stated in the question posed. The MPCA also believes that facilities are likely to face nominally decreasing costs from year to year as systems to comply with the proposed rule are established and entrenched. Two-thirds of respondents reported that they would likely hire an external consultant to assist with this work. The MPCA deems all these responses as reasonable and likely to be credible. Ideally, the MPCA would like to subdivide these responses according to permit type (see Table 5), but unfortunately the small sample size of respondents precludes doing this with a high level of confidence. The MPCA’s *a priori* expectation that registration option C facilities would likely face lower compliance costs than registration option D and Individual State facilities was not borne out by the responses, but again, this is likely due to the small sample size of respondents.

Based on the data reported in the responses, the MPCA believes it is reasonable to estimate an average annual compliance cost per facility of around \$5,000 to \$9,000. For most or all facilities, the MPCA does not expect that these compliance costs will place an excessive financial hardship on them that could threaten the viability of their businesses. Based on the 458 capped, general manufacturing, registration option A, registration option C, registration option D, and individual state or federal permitted facilities located in the seven metropolitan counties that will be affected by the proposed rule, the estimated total annual compliance cost across all affected facilities would be approximately \$2.2 to \$3.9 million. The most recent economic data for Minnesota estimates the total state domestic product revenue to be around \$470 billion<sup>21</sup> so the costs to comply with this rule represent between 0.0005% to 0.0008% of our total economy. Of the largest permittee types (see Table 5 and Section 6(A)), registration option D facilities (295 affected facilities) and option A, general manufacturing, Individual State, or Federal facilities (144 affected facilities) are expected to face higher compliance costs with the proposed rule than registration C facilities (18 affected facilities).

As mentioned above in Section 6(B), MPCA’s SBEAP staff will work with affected facilities to help them comply with the proposed rule and may also be able to help them identify and implement cost savings measures. It is likely that facilities that responded to MPCA’s SmartComment request did not take this into consideration and as a result may have overestimated the costs to comply. For example, some registration option D facilities are already required to track, but not report, much of the data that the proposed rule will require them to report. These are facilities that emit over five tons of VOCs, and based on MPCA’s most recent emissions inventory data, comprise about a quarter of the registration option D facilities in the state. Presumably, the added costs to comply with the proposed rule will be

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<sup>21</sup> Economy of Minnesota. (Accessed June 14, 2024). Retrieved from <https://usafacts.org/topics/economy/state/minnesota/>

lower for these facilities, and the MPCA can work with the regulated facilities to identify this and other cost savings measures. Additionally, as mentioned above, the MPCA expects annual compliance costs to decrease as facilities establish systems for conducting the reporting. Since the MPCA assumes the facilities who responded were estimating their compliance costs in the first year after rule adoption, it is reasonable to conclude that this also contributes to the reported cost estimates likely being overestimations of ongoing annual compliance costs.

The repeal of Title V emergency affirmative defense provisions will result in no cost to facilities to comply with the rule, and no cost to the MPCA or the public because the rule will be repealed.

**F. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.**

The alternative to not adopting the proposed rule would result in a “business-as-usual” continuation of the current system of voluntary reporting of air toxics emissions in the seven metropolitan counties which results in insufficient data. Simply put, the cost of not adopting the proposed amendments to rules governing air toxics emissions reporting would be foregoing the benefits that the proposed rule is expected to result in. Because these benefits are largely not a direct result of adopting the rule, they can be seen as “secondary” or “indirect” benefits and are difficult to quantify. Thus, much of the following discussion of expected benefits of the proposed rule is qualitative and descriptive in nature. The direct benefit of the proposed rule would be having better information on air toxics emissions in the seven metropolitan counties that will lead to improved understanding, awareness, and decision making related to the provision and distribution of that information. Although it is difficult in this instance to place a quantitative value on this information, qualitatively this information could enable the MPCA to identify and solve air quality and exposure problems, enabling the Agency to better achieve its mission of safeguarding and improving public health in Minnesota. Better emissions data will improve the MPCA’s air quality modeling efforts, which will inform policy development.

The proposed rule will increase transparency of facility emissions data. The MPCA uses a variety of avenues to communicate this information to the general public in both direct and indirect ways. These include published emissions inventories and permitted facility air emissions data available on the Agency’s web site.<sup>22</sup> This improved and more transparent information builds public confidence and trust. This could strengthen the public’s understanding of the potential harm from toxic air pollutants and provide a greater capacity for meaningful involvement in the development and implementation of local pollution management policies. The proposed rule will provide the seven metropolitan county area communities the data needed to understand significant sources of air pollution that may be impacting them and to address existing environmental justice issues.

Availability of emissions information to Minnesota’s residents, corporations, and government regulators provides a better basis for future policy analysis, and this benefits society as a whole. Accurate and transparent information is necessary for the implementation of efficient approaches to air quality management that meet environmental goals with lower costs as compared to other approaches.

The air toxics emissions data that is reported as a result of this rulemaking may be used to inform policy decisions and other rulemakings including the current air toxics emissions regulations and cumulative impacts rules. Furthermore, this data will provide the MPCA with annual air toxics emissions data that

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<sup>22</sup> Point source air emissions data by MPCA Data Services. (February 16, 2024). Retrieved from [https://public.tableau.com/app/profile/mpca.data.services/viz/Pointsourceairemissionsdata\\_v10\\_5-11130/Byfacility](https://public.tableau.com/app/profile/mpca.data.services/viz/Pointsourceairemissionsdata_v10_5-11130/Byfacility)

can be used to assess health risks to communities.

Not adopting the repeal of Title V emergency affirmative defense provisions will result in no cost to facilities, the MPCA or the public because to the MPCA's knowledge the provision was never utilized.

**G. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.**

Minn. Stat. § 14.131, requires that the MPCA consider the proposed amendments in relation to any corresponding federal requirements. In addition to this requirement to benchmark with the federal program, there is an additional requirement in Minn. Stat. § 116.07, subd. 2, (f), that requires the MPCA to benchmark with the federal program and with other states bordering Minnesota and with other states within EPA Region 5. The assessment is discussed in section 14 of the SONAR.

The current AERR (40 CFR Part 51 Subpart A) requires State, local, and some tribal agencies to annually report emissions of CAPs to the EPA for Type A and Type B facilities, or major sources (these include Individual State permits and Part 70 Federal permits). Under the current rule, carbon monoxide (CO), nitrogen oxides (NO<sub>x</sub>), VOCs, SO<sub>2</sub>, ammonia (NH<sub>3</sub>), PM<sub>2.5</sub>, PM<sub>10</sub>, and lead must be reported. State, local, and tribal agencies may optionally report HAP emissions and other pollutants to EPA.

On August 9, 2023, the EPA released a proposal to revise the AERR to require certain facilities to annually report HAP emissions. The proposed updates would require major sources, as defined by EPA in 40 CFR Part 51.30 (Appendix A to Subpart A<sup>23</sup>), to report all HAP emissions, and there are no reporting thresholds. The proposal also includes requirements for other facilities, defined by EPA as minor sources and small entities, to report HAP emissions if emissions are above a specific pollutant reporting threshold based on human health risk. The new requirements would apply statewide. There are other potential data elements some facilities would be required to report, including release point locations, control equipment information, and many others. As proposed, the new requirements could start with the 2026 emissions inventory year, with facilities reporting in 2027. MPCA staff are uncertain when the EPA rule will be finalized and what changes will be made to the requirements based on public comments submitted to EPA during the RFC period. There are many differences in the EPA AERR proposal and the MPCA's proposed air toxics emissions reporting rule. The air toxics emissions reporting rule would require facilities in the seven metropolitan counties, except for option B registration facilities, to report annual air toxics emissions, including HAP emissions as well as other pollutants of concern in Minnesota. Minnesota also has current rules that require certain facilities to report mercury and lead emissions and requires facilities other than Type A and Type B facilities to obtain air permits and report air emissions annually. This proposed air toxics emissions reporting rule would require all facilities in the seven metropolitan counties that have an active air permit, except for registration option B facilities to report air toxics emissions. Besides Type A and Type B facilities (major sources), it is unclear what facilities will be required to report under the EPA AERR proposal. It is unlikely that all facilities that would be subject to the MPCA's proposed air toxics emissions reporting rule would be included under the AERR proposal. Also, there will likely be facilities that are not required to have an air permit that will be required to report HAP emissions under the EPA AERR proposal. The AERR proposal could potentially require facilities to report HAP emissions associated with IAs, whereas the proposed air toxics emissions reporting rule is not requiring facilities to report emissions related to IAs.

The AERR proposal also includes two options for reporting: (1) Owners/operators report HAP emissions

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<sup>23</sup> Appendix A to Subpart A of Part 51, Title 40. (December 17, 2008). Retrieved from <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-51/subpart-A/appendix-Appendix%20A%20to%20Subpart%20A%20of%20Part%2051>

directly to EPA using EPA's reporting system, Combined Air Emissions Reporting System (CAERS) or, (2) the State reports HAP emissions to EPA on behalf of the owners/operators. The MPCA would prefer to report HAP emissions to EPA on behalf of owners/operators to avoid duplicative reporting for owners/operators, and to maintain the high-quality data of Minnesota's point source emission inventory. It is reasonable to continue to move forward with the proposed air toxics emissions reporting rule as directed by Minn Stat. § 116.062 since there is uncertainty in what will be included in the final AERR. Also, the MPCA believes that it is important to require emissions reporting of additional air toxics of concern beyond HAPs to accurately assess risk to communities and protect human health and the environment. It is reasonable to move forward with this rule since EPA's AERR will not include all air permitted facilities in the seven metropolitan counties. It is important to require reporting for facilities as directed by Minn Stat. § 116.062.

Repealing the Title V emergency affirmative defense provisions will result in no differences between state and federal regulations.

**H. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.**

Minn. Stat. § 14.131 defines "cumulative effect" as "the impact that results from incremental impact of the proposed rule in addition to the other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time."

The MPCA does not expect the cumulative effect of this rule or the federal AERR to be significant. As air toxics reporting is not required by the CAA, currently there is no overlap or any impact from a federal rule. If the EPA finalizes the updates to the AERR, the MPCA will evaluate the cumulative impact of aligning these rules. The EPA has finalized many NESHAPs in the recent past and these could be seen as potentially impactful relative to air toxics, and this proposed rule. However, this rule has been written for the specific natural and economic environment in Minnesota. This rule seeks to target Minnesota-specific emissions reporting. NESHAPs do not require emissions reporting to MPCA, so this rule remains necessary to achieve the goal to understand Minnesota's metropolitan air toxics emissions.

Since not all facilities report air releases to the Toxic Release Inventory, the cumulative impact for this rule and TRI reporting would be different depending on the facility. If a facility has to report to the TRI as well as the MPCA, it will be occasionally redundant. These reporting processes are required in two different quarters, so it is not overly burdensome in the same time period.

MPCA's cumulative impact of the adoption of several rules over the next three years could have an impact on facilities. The MPCA has been diligent to engage all the rule teams to coordinate and communicate about the work of each rule team and build off each of the rules so as not to be overly burdensome to facilities.

Repealing the Title V emergency affirmative defense provisions will result in no differences between state and federal regulations so there will be no cumulative effect.

## 7. Environmental justice policy

The MPCA's Environmental Justice Framework 2015 – 2018, on page 3, describes the MPCA's history with environmental justice:

*"Following action on the national level, the MPCA began formally working on environmental justice in the mid-1990s. Presidential Executive Order 12898, issued in 1994, directed each federal agency to make 'achieving environmental justice part of its mission by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority and low-income populations.'*

The Presidential Executive Order built on Title VI of the Civil Rights Act of 1964. Title VI prohibits discrimination based on race, color, or national origin. As a recipient of federal funding, the MPCA is required to comply with Title VI of the Civil Rights Act.

The MPCA developed a policy for environmental justice that closely mirrors the EPA policy. The MPCA's policy, last revised in 2022, states:

*"The Minnesota Pollution Control Agency expects the fair treatment and meaningful involvement of communities of color, Indigenous communities, and low-income communities in agency actions and decisions that affect them. It is the policy of the MPCA that an outcome of its work, in addition to protecting and improving the environment and public health, must address environmental justice concerns.*

*"Fair treatment" means no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.*

*Meaningful Involvement happens when:*

- People have an opportunity to participate in decisions about activities that may affect their environment and/or health;*
- The public's contribution can influence the regulatory agency's decision;*
- Community concerns are considered in the decision-making process; and*
- The decision makers seek out and facilitate the involvement of those potentially affected.*

*• Communities of color, indigenous communities, and low-income residents have a right to live in conditions that support a healthy and fulfilling life. The MPCA is committed to using its authority and influence to identify and support opportunities that improve environmental conditions and reverse generations of environmental inequities in areas of concern, enhancing environmental quality, and providing economic opportunities for future generations of Minnesotans."*

As explained in the Environmental Justice Framework on page 7, when undertaking rulemaking the MPCA considers how the impacts of a proposed rule are distributed across Minnesota and works to actively engage all Minnesotans in rule development. This review of the impacts and meaningful involvement are provided in this section of the SONAR for ease of review with the rest of the Regulatory Analysis, though these analyses are not required under the Administrative Procedures Act (Minn. Stat. ch. 14).

The MPCA defines areas of concern for Environmental Justice as areas in Minnesota that, based on the most recent data published by the United States Census Bureau, meets one or more of the following criteria<sup>24</sup>:

- (1) 40 percent or more of the area's total population is nonwhite;
- (2) 35 percent or more of households in the area have an income that is at or below 200 percent of the federal poverty level;
- (3) 40 percent or more of the area's residents over the age of five have limited English proficiency; or
- (4) the area is located within Indian country, which is defined as federally recognized reservations and other Indigenous lands.

The MPCA uses this definition to prioritize areas with the potential for disproportionate environmental impacts and to target its delivery of regulatory services to correct these disproportionate impacts. The MPCA's efforts to prioritize bringing regulatory services to areas of concern for environmental justice includes its rulemaking actions. This SONAR includes an equity analysis to ensure that the proposed rule will not contribute to existing inequities and, at best, will reduce these inequities by bringing increased net benefits to areas of concern for environmental justice.

### **Equity analysis**

To implement the "fair treatment" aspect of the Environmental Justice Framework policy, the MPCA would generally complete an equity analysis considering and documenting how the proposed rule may affect low-income populations and communities of color.

The MPCA does not expect the proposed rule to have any negative environmental consequences. The MPCA expects that areas of concern for environmental justice, in general, may benefit because this rule will result in data that can drive future policy or rulemaking to protect the health and environment for residents living in and around the seven metropolitan counties. Currently, areas of concern for environmental justice in the seven metropolitan counties tend to be overburdened with air pollution and related health risks relative to other areas. These health risks are exacerbated by lack of access to quality health care services, barriers to education, poverty, racial discrimination, transportation emissions, lack of community social status, low housing quality, and other structural, social, and economic inequities. In addition, the location of pollutant emission sources and their tendency to be in closer proximity to areas of concern for environmental justice than other areas is a key factor in health risk inequities and is another reason this proposed rule seeks to obtain improved emissions data for these areas.

As depicted above in Figure 1, areas of concern for environmental justice in the seven metropolitan counties tend to bear heavier pollution burdens than other areas based on known sources of toxic air pollution. In the seven metropolitan counties, 78% of census block groups exceed health benchmarks for air toxics pollution. Of census block groups with health benchmark exceedances, an estimated 29% are in areas of concern for environmental justice. This is largely because 61% of the facilities that emit air toxics, and would be affected by the proposed rule, are in areas of concern for environmental justice (see Table 5). Thus, to the extent that this rule could enable the MPCA to better respond to emission increases and better achieve its mission to protect human health, the metropolitan area communities

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<sup>24</sup> Understanding environmental justice in Minnesota. (Accessed August 15, 2024).  
<https://www.pca.state.mn.us/about-mpca/environmental-justice>

that could see the highest benefit are the areas of concern for environmental justice currently overburdened by air pollution.

Moreover, as described above in Section 6(F), providing increased and improved information on air toxics emissions could enable communities to take more actions to reduce their exposure to risk and safeguard their health as well as generally inspire higher public confidence and trust. These benefits will also largely impact areas of concern for environmental justice as they are the areas that tend to have more facilities emitting air pollutants in or near them when compared to other areas. Annual air toxic pollutant emissions data can be used to advance the MPCA's and Minnesota's environmental justice goals by increasing the understanding of potential impacts of air toxics emissions from regulated facilities in areas which have been historically burdened by undisclosed pollution. Data from the emissions inventory and MNRISKS helps us understand and demonstrate that there are disproportionate impacts of air pollution. The MPCA can then craft policy, future rulemaking, and programs to address those disproportionate impacts.

### **Meaningful involvement**

In order to strive for "meaningful involvement," the MPCA works to seek out and facilitate the involvement of those potentially affected by the proposed rule, particularly those populations that have historically not been as engaged in the public process.

As described in Section 3, there has been stakeholder involvement during the development of the proposed rules. While there was no specific plan developed to reach out to areas of concern for environmental justice, the MPCA believes that stakeholder outreach has ensured that most affected communities are aware of the rule. Additionally, during the formal public comment period, all interested and affected parties may submit comments on the proposed rulemaking.

The air toxics emissions data will be used in future health risk modeling and assessments. The MPCA seeks to engage the community and inform the public to understand risks from reported pollutants. While this rule is not intended to directly reduce risks from emissions reductions, MPCA does encourage the public to call out areas of concern for risk based on this information. MPCA intends to share the information about reported pollutants.

Once this rule is in place and emissions data are regularly reported and updated, communities can engage with these data on an annual basis and, with the MPCA, recognize changing emissions or areas of concern.

Additionally, all emissions data are submitted to EPA and are used to develop public tools including AirToxScreen, EJScreen, and the NEI. This is important for federal grant programs as well as providing transparency across the nation.

## **8. Notice plan**

Minn. Stat. § 14.131 requires that an agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made.

The MPCA utilizes a self-subscription service for interested and affected persons to register to receive rule related notices. Request for US Mail service is also available. Rule projects are listed on the Agency's Public Rulemaking docket. Once projects are active (i.e., no longer listed as a future project), a self-subscription list for that specific rule is established and an electronic notice is sent to individuals who have self-subscribed to receive notice for all rulemakings. The Agency also purchases the League of Minnesota Cities' email address list on a yearly basis. The list is used to reach out to new government

officials that may not be familiar with the electronic delivery system used by the MPCA to send rule notices, public notices, and other information. Examples of the government officials are Minnesota Cities, County Chairs, Zoning and Planning, Commissioners, and Solid Waste Officers. An electronic message is sent inviting individuals to subscribe to topics that interest them. The MPCA sent an electronic message to the government officials on March 4, 2024.

## A. Notice

On November 25, 2024, the MPCA published a notice requesting comments on planned rule amendments to Minnesota Rules Chapters 7002, 7005, 7007, and 7019. The notice was placed on the MPCA's rule-specific webpage at: <https://www.pca.state.mn.us/get-engaged/air-toxics-emissions-reporting>

- 1) Minn. Stat. § 14.14, subd. 1a. The MPCA intends to send an electronic notice with a hyperlink to electronic copies of the Notice, SONAR and the proposed rule amendments to all parties who have registered with the MPCA for the purpose of receiving notice of rule proceedings, as required by Minn. Stat. § 14.14, subd. 1a, on the date the Notice is published in the *State Register*. Parties within this group that have requested non-electronic notice will receive copies of the Notice and the proposed rule amendments in hard copy via US Mail.
- 2) Minn. Stat. § 14.116. The MPCA intends to send a cover letter with a hyperlink to electronic copies of the Notice, SONAR and the proposed rule amendments to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule amendments as required by Minn. Stat § 14.116. The timing of this notice will occur at least 33 days before the end of the comment period as it will be delivered via United States Mail. This statute also states that if the mailing of the notice is within two years of the effective date of the law granting the Agency authority to adopt the proposed rules, the Agency must make reasonable efforts to send a copy of the notice and SONAR to all sitting house and senate legislators who were chief authors of the bill granting the rulemaking. This requirement applies because a bill was authored within the past two years granting rulemaking authority.
- 3) Minn. Stat. § 14.111 requires an agency to provide a copy of the proposed rule changes to the Commissioner of Agriculture no later than thirty days before publication of the proposed rule in the *State Register* if the rule has an impact on agricultural land. This rule is not expected to impact agricultural land or farming operations. The Commissioner of Agriculture will not be notified of potential rule changes.

## B. Additional notice

Minn. Stat. § 14.14 requires that in addition to its required notices:

*“each agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication.”*

The MPCA considered these statutory requirements governing additional notification and as detailed in this section, intends to fully comply with them. In addition, as described in Section 3, Public participation, and stakeholder involvement, the MPCA has made reasonable efforts thus far to notify and involve the public and stakeholders in the rule process, including various meetings and publishing the RFC.



The MPCA intends to request that the Office of Administrative Hearings review and approve the Additional Notice Plan, pursuant to Minn. R. 1400.2060. The MPCA's plan to notify additional parties includes the following:

- 1) Publish its Notice of Intent to Adopt Rules on the MPCA's Public Notice webpage at: <https://www.pca.state.mn.us/public-notice>.
- 2) Provide specific notice to tribal authorities. Notably, the Shakopee Mdewakanton Sioux Community is located within the seven metropolitan county area (Scott County). The MPCA maintains a contact list for the 11 federally recognized tribes in Minnesota. The MPCA will send specific electronic notice to the designated air tribal contact person of Minnesota's tribal communities. The notice will be sent on or near the day the proposed rule amendments are published in the *State Register* and will have a hyperlink to the webpage where electronic copies of the Notice of Intent to Adopt Rules, proposed rule amendments, and SONAR can be viewed.
- 3) Provide specific notice to the two entities, American Petroleum Institute, and the Minnesota Chamber of Commerce, that submitted comments during both RFC public comment periods. Electronic or U.S. mail notice will be sent to these entities on or near the day the proposed rule amendments are published in the *State Register*, and will have a hyperlink to the webpage where electronic copies of the Notice, proposed rule amendments, and SONAR can be viewed.
- 4) Provide specific notice to associations and environmental groups. The notice will be sent to the following associations and environmental groups on or near the day the proposed rule amendments are published in the *State Register*, and will have a hyperlink to the webpage where electronic copies of the Notice, proposed rule amendments, and SONAR can be viewed.
  - Aggregate & Ready-Mix Association of Minnesota;
  - Alliance of Automotive Service Providers;
  - American Coatings Association;
  - American Forest and Paper Association;
  - American Lung Association;
  - Association of Metropolitan Municipalities;
  - Association of Minnesota Counties;
  - Association of Woodworking and Furnishing Suppliers;
  - Bottineau Neighborhood Association;
  - Center for Earth, Energy, & Democracy;
  - Chemical Coaters Association;
  - Clean Air Minnesota;
  - Clean Up the River Environment;
  - Clean Water Action;
  - Clean Water Legacy;
  - Clean Water Minnesota Isaak Walton League Minnesota Chapter;
  - Coalition of Greater Minnesota Cities;
  - Complete Health Environmental and Safety Services;

- Conservation Minnesota;
- East Philips Neighborhood Institute;
- Environmental Initiative;
- Food & Water Watch;
- Hamline Midway Coalition;
- Iron Mining Association;
- Land Stewardship Project;
- League of Minnesota Cities;
- Metro Blooms;
- Metropolitan Airport Commission;
- Metropolitan Council;
- Minnesota Asphalt Pavement Association;
- Minnesota Association of Metal Finishers;
- Minnesota Association of Small Cities;
- Minnesota Association of Townships;
- Minnesota Bio-fuels Association;
- Minnesota City/County Management Association;
- Minnesota Center for Environmental Advocacy;
- Minnesota Corn Growers Association;
- Minnesota Department of Employment and Economic Development Small Business Development Centers;
- Minnesota Environmental Partnership;
- Minnesota Environmental Science and Economic Review Board;
- Minnesota Farm Bureau;
- Minnesota Milk Producers Association;
- Minnesota Propane Association;
- Minnesota Turkey Growers Association;
- Printing Industry Midwest;
- Sierra Club North Star Chapter;
- Voyageurs Conservancy; and
- All facilities in Minnesota with an air permit except for option B registration permits.

**Note that some members of these entities may already subscribe to receive GovDelivery notices.**

- 5) Provide specific notice to EPA Region 5. The notice will be sent to EPA Region 5 on or near the day the proposed rule amendments are published in the *State Register*, and will have a hyperlink to the webpage where electronic copies of the Notice of Intent to Adopt Rules, proposed rule amendments, and SONAR can be viewed.
- 6) Provide notice in an electronic newsletter. The MPCA uses an electronic newsletter to provide updates and information about air-related rulemakings, as explained above in Section 3. The MPCA will provide notice in its Air Mail newsletter with a hyperlink to the

webpage where electronic copies of the Notice of Intent to Adopt Rules, proposed rule amendments, and SONAR can be viewed.

- 7) Post rulemaking updates and documents including the proposed rule amendments and SONAR on the Air Toxic Emissions Reporting webpage at <https://www.pca.state.mn.us/get-engaged/air-toxics-emissions-reporting>.

The MPCA believes that by following the steps of this Additional Notice Plan, and its regular means of public notice, including early development of the GovDelivery mail list for this rulemaking, publication in the *State Register*, and posting on the MPCA's webpages, the MPCA will adequately provide additional notice pursuant to Minn. Stat. § 14.14, subd. 1a.

## 9. Performance-based rules

Minnesota Stat. § 14.002 requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of the MPCA's regulatory objectives while allowing maximum flexibility to regulated parties and to the MPCA in meeting those objectives.

MPCA seeks to comply with Minnesota Stat. § 14.002 to develop rules that are not overly prescriptive and inflexible. Rules must also be clear and defined so as best to help facilities comply. MPCA complies with this rule through:

- Providing facilities with numerous ways to calculate air toxics emissions found in 7019.3030.
- Assistance by the SBEAP to aid with calculating air toxic emissions for small businesses.
- Allowing numerous ways to input air toxics emissions data through direct reporting in CEDR or uploading spreadsheets of information to CEDR.
- Continuing to calculate air toxics emissions for combustion processes using the most current EPA and state emission factors and fuel usage or activity data reported by facilities. This will reduce time facilities need to spend on calculations and data entry.
- Continuing to populate e-services with emissions and activity data from the previous reporting year. This will assist facilities with review and input of data and improve quality of emissions data.
- Continuing to maintain a database of emissions factors. Emission factors will also continue to be available for selection in e-services.
- Establishing an emissions reporting due date on or before April 1. Facilities have three months to compile emissions from the previous year and report them to the Agency. Facilities will continue to have a 45-day summary review period to make any necessary corrections to emissions data before it is finalized by the MPCA. This aligns with existing required reporting.
- Identifying a de minimis for reporting emissions from material balance calculations as derived from the SDS. This is consistent with OSHA standards of 0.1% for carcinogens or potential carcinogens and 1% for other pollutants. The MPCA is not requiring facilities to test materials or go beyond information available to them on SDS for emissions reporting except for materials that do not have a de minimis and must be reported.
- Maintaining consistency in reporting and regulatory programs so these data can be used for modeling, risk evaluation, and the Agency's understanding of air toxics in the seven metropolitan counties. This proposed rule seeks to balance the needs for consistent emissions reporting while offering flexibility where possible.

## **10. Consideration of economic factors**

In exercising its powers, the MPCA is required by identical provisions in Minn. Stat. § 116.07, subdivision 6 and Minn. Stat. § 115.43, subdivision 1 to give due consideration to:

*...the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result there from, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances...*

The MPCA considers the effects that economic factors have on the feasibility and practicability of the proposed rule when determining whether and how to adopt rules. The MPCA seeks to implement the least-cost regulatory solutions if it does not compromise environmental goals or regulatory responsibilities.

The MPCA has met the requirements of this statute by the discussions provided in Section 6 Regulatory analysis of this SONAR regarding the possible economic effect of the proposed rules.

## **11. Consult with MMB on local government impact**

As required by Minn. Stat. § 14.131, the MPCA will consult with Minnesota Management and Budget (MMB). We will do this by sending MMB copies of the documents that we send to the Governor's office for review and approval on the same day we send them to the Governor's office. We will do this before publishing the Notice of Intent to Adopt. The documents will include: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The MPCA will submit a copy of the cover correspondence and any response received from MMB to the OAH at the hearing or with the documents it submits for Administrative Law Judge (ALJ) review.

## **12. Impact on local government ordinances and rules**

Minn. Stat. § 14.128, subd. 1, requires an agency to make a determination of whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule.

The MPCA has determined that the proposed amendments will not have any effect on local ordinances or regulations. Local governments do not oversee any air permitting or reporting in their ordinances, so there will be no additional burden or effect on them.

## **13. Costs of complying for small business or city**

Minn. Stat. § 14.127, subs. 1 and 2 require an agency to "determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees."

The MPCA has done a general analysis of how much it will cost to comply with this rule. Detailed analysis is completed in Section 6. The specific analysis for the cost of complying for small businesses determined that no one business with less than 50 full-time employees will exceed \$25,000 in costs during the first year of reporting. The MPCA estimates that it would require over 50 hours of expensive consultant time to reach the cost threshold of \$25,000. MPCA staff estimated that for small businesses, these efforts will take approximately 10 hours on average. Even for a small business that has never calculated their air

toxic emissions before, it should not take more than 50 hours to do so. The MPCA is confident in this analysis because feedback from facilities by permit type was requested through an informal SmartComment comment period, including how much time they anticipate it would take to calculate and report emissions to comply with this rule. While it was difficult to make clear comparisons for small businesses, the MPCA estimates, based on the responses received, that it will cost businesses between \$5,000 and \$9,000 to comply with this rule. Small business costs will likely fall within the lower end of this range; closer to an average of \$5,000 or less. This is below the \$25,000 cost threshold posed in this section.

Additionally, there is no cost to using the Agency's e-services system, CEDR, to report air toxic emissions. The MPCA has also made upgrades to the system recently to allow for input of spreadsheets that contain all emissions. While this is likely more helpful for large facilities, it demonstrates the MPCA's responsiveness to the needs of facilities. MPCA's SBEAP currently helps small businesses that are not major sources of emissions with their emission inventory for both CAPs and voluntary air toxics reporting. This service is intended to continue with the implementation of this rule. The SBEAP assists many registration and state individual permit holders with reporting their data to the CEDR air emissions reporting tool.

If cities within the seven metropolitan counties have an air permit that would be subject to this rule and would be required to report air toxics, it would also not cost more than \$25,000 to comply with this rule. Most cities with air permits that would be subject to this rule have permits for their boilers or generators. The MPCA intends to continue with the practice of calculating air toxics from boilers and generators based on the input of how much fuel was used and the best available emission factors from the EPA or the state. This practice occurs now for reporting CAPs, GHGs, and with the voluntary air toxics reporting. The MPCA intends to continue to assist city permit holders with these calculations.

## **14. Differences with federal and other state standards**

Minn. Stat. § 116.07 subd. 2 requires that for proposed rules adopting air quality, solid waste, hazardous waste, or water quality standards, the SONAR must include an assessment of any differences between the proposed rule and existing federal standards adopted under the CAA, title 42, section 7412(b)(2); Clean Water Act, United States Code, title 33, sections 1312(a) and 1313(c)(4); and the Resource Conservation and Recovery Act, United States Code, title 42, section 6921(b)(1); similar standards in states bordering Minnesota; and similar standards in states within the EPA Region 5; and a specific analysis of the need and reasonableness of each difference.

### **A. Differences with federal standards**

The federal TRI is an annual report of certain toxic chemical releases to air, water, and land by facilities that meet chemical activity thresholds and are either in a covered industry sector and exceed the employee threshold or are specifically required to report based on determination by the Administrator under EPCRA 313(b)(2). The TRI requires facilities to report releases of chemicals as fugitive and stack totals. The TRI list of pollutants includes HAPs, many PFAS pollutants, PBTs, and other pollutants of concern to air, land, and water. The TRI does not require facilities to report detailed information on facility controls, or units and process information.

The EPA's current AERR requires states to report air emissions data for CAPs on behalf of permitted facilities, but states may optionally report HAPs and other pollutants. States must report an "every-year inventory" and a triennial inventory. The every-year inventory includes annual emissions from large point sources. The triennial inventory includes annual emissions from point sources, non-point sources, and on-road and non-road mobile sources. States may also optionally report emissions from wild and

prescribed fires to the events data category. On August 9, 2023, the EPA proposed revisions to the AERR. This has been discussed in detail in earlier sections (1, 2, 5, and 6) of this report. The MPCA awaits the final rule promulgation to determine exact differences between this proposed rule and EPA's AERR. There are several differences between the AERR proposal, TRI program, and MPCA's proposed air toxics emissions reporting rule. The AERR proposal is based on authorities in the CAA, whereas the TRI is based on the authorities of the EPCRA. The TRI collects chemicals as a facility total of all stacks and all fugitives, whereas the AERR proposal and MPCA's proposed air toxics emissions reporting rule would require stack and fugitive emissions to be reported at the process or unit level. The AERR proposal and TRI program have different emission reporting thresholds and require different pollutants to be reported at different levels of detail. There will be overlap in what facilities will be required to report under each rule, but there will also be differences as described in previous sections. More facilities would be required to report under the proposed AERR requirements compared to the TRI program. The MPCA's proposed air toxics emissions reporting rule includes the seven metropolitan counties, whereas the TRI and AERR proposal require reporting for facilities across the entire state.

## **B. Differences with other state standards**

The MPCA has reviewed air toxics reporting requirements in neighboring states (North Dakota, South Dakota, Iowa, and Wisconsin) and those in EPA's Region 5, a geographical region spanning Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Wisconsin was one of the first states to require air toxics reporting. Their mandatory reporting rule (ch. NR 445, Wis. Admin. Code) was first adopted in 1988 and last revised in 2004. Wisconsin's rule requires facilities to identify air toxics, which include HAPS and additional pollutants (referred to in rule as "Hazardous air contaminants"), quantify emissions, and reduce or control emissions where necessary. Illinois, Iowa, North Dakota, and South Dakota require HAP reporting for certain facilities. Indiana and Michigan request voluntary air toxics reporting from facilities. Ohio does not request voluntary air toxics reporting and does not have a mandatory reporting rule.

In general, the proposed requirements in the MPCA's air toxics emissions reporting rule do not make Minnesota's air emissions inventory reporting requirements significantly more or less stringent than air programs in neighboring states and the EPA. It is difficult to compare since each state has differences within their air toxics reporting and permitting programs including definitions, activities requiring permits, permit types, etc. Some states require certain facilities to report HAP emissions and additional air toxics, as defined by each state, whereas other states request voluntary reporting. In addition, the federal proposed AERR could result in significant changes to other states' current air programs. A summary of the air toxics reporting required in other states is included below.

**Table 6. Comparison of Neighboring States' Air Toxics Reporting Rules**

State	Rule	Air Toxics Reporting
Iowa	Iowa Admin. Code Rule 567	Required annual reporting of HAPs for Title V and minor sources if they meet the minimum reporting requirement of greater than 0.005 tons/yr/pollutant.
North Dakota	North Dakota Century Code, Chapter 23.1-06	Required annual reporting of HAPs for Title V, synthetic minor and selected minor source facilities if they meet the minimum reporting requirement of greater than 0.05 tons/year.
South Dakota	South Dakota, Ch. 74:37	Required annual reporting of HAPs if a specific regulation (NESHAP or Maximum Achievable Control Technology (MACT)) applies to the facility.

**Table 7. Comparison of EPA Region 5 States' Air Toxics Reporting Rules**

State	Rule	Air Toxics Reporting
Illinois	Ill. Admin. Code tit. 35, Part 254 – Annual Emissions Report	Required annual reporting of HAPs if a specific regulation (NESHAP or MACT) applies to the facility.
Indiana	N/A	Voluntary annual reporting of HAPs.
Michigan	N/A	Voluntary annual reporting of HAPs.
Ohio	N/A	No air toxics reporting required.
Wisconsin	Ch. NR 445, Wis. Admin. Code – Wisconsin's Air Toxics Rule  Ch. NR 438, Emissions Inventory Reporting Rule	Required annual reporting of HAPs and additional air toxics if facility is above a pollutant-specific risk threshold.

Minnesota's proposed rule will differ from states that only require HAPs emissions reporting because the MPCA is proposing that the emissions of additional pollutants of concern also be reported, including PFAS pollutants. It is reasonable to include reporting of air toxics of concern in the proposed rule because it will result in rules that are more protective of human health and the environment.

Minnesota's proposed rule will differ from states that only request voluntary reporting from facilities because Minn. Stat. § 116.062 has required that the MPCA adopt rules to require air toxics emissions reporting from facilities, and the purpose of the rule itself is to make this reporting required and enforceable. It is reasonable to mandate reporting because the state has general statutory authority and legislative directive to do so.

The MPCA is also proposing different reporting thresholds compared to other states. The MPCA's de minimis approach is reasonable because it requires fewer initial calculations to determine whether a facility has to report a certain air toxic. This is intended to ease the burden of reporting for facilities.

Additionally, the MPCA's proposed rule is clear about which facilities must report air toxics depending on the type of permit they hold, not based on reporting thresholds. It is reasonable to provide clarity about which facilities must report air toxics emissions in the proposed rule.

Lastly, the MPCA's proposed rule would require annual reporting of air toxics emissions. This is the same reporting frequency found in neighboring states and other EPA Region 5 states with air toxics emissions reporting rules. It is reasonable to require a reporting frequency that aligns with other states.

## **15. Authors, witnesses, and SONAR exhibits**

### **A. Authors**

- 1) Megan Kuhl-Stennes, Air Policy Planner, Environmental Analysis and Outcomes (EAO) Division, MPCA, is the technical lead for this rulemaking.
- 2) Rachel Olmanson, Air Emissions Inventory Coordinator, EAO Division, MPCA, is a technical lead in air data analysis for this rulemaking.
- 3) David Bael, Economic Policy Analyst, EAO Division, MPCA, is the economist for this rulemaking.

### **B. Witnesses and other staff**

- 1) The agency expects that the proposed amendments will be noncontroversial. In the event that a hearing is necessary, the agency anticipates having the listed authors testify as witnesses in support of the need for and reasonableness of the rules.
- 2) Leslie Fredrickson, MPCA. Leslie is the General Counsel to the agency and will introduce the required jurisdictional documents into the record.
- 3) Addison Otto, MPCA. Addison is the project rule coordinator and will testify on any Minnesota Administrative Procedures Act process questions.

### **C. SONAR exhibits**

- 1) S-1: the "Proposed Air Toxics Reporting List" is located at the end of this document.

## **16. Conclusion**

In this SONAR, the agency has established the need for and the reasonableness of each of the proposed amendments to Minn. R. Chs. 7002, 7005, 7007, and 7019. The agency has provided the necessary notifications and in this SONAR documented its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules.

Based on the forgoing, the proposed amendments are both needed and reasonable.



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Katrina Kessler, Commissioner  
Minnesota Pollution Control Agency

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September 30, 2024

Date