

Minnesota Pollution Control Agency

Environmental Analysis and Outcomes Division

DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Parties Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number R-4599

Proposed Amendment to Rules Governing Air Quality, *Minnesota Rules*, chapters 7002, 7005, 7007, and 7019.

Proposed Repeal to Rules Governing Air Quality, *Minnesota Rules*, chapter 7007.1850.

Overview. This notice is the Minnesota Pollution Control Agency's (MPCA) legal notice of its intent to adopt air quality rules. The purpose of these rules, known as the "Air toxics emissions reporting rule," is to establish new rules for air toxics emissions reporting requirements as directed by *Minnesota Statutes*, section 116.062, and to repeal emergency affirmative defense provisions as directed by the Environmental Protection Agency (EPA).

This notice provides an opportunity for public comment and input on the proposed rules. Anyone who would like to comment on the proposed rule language must submit written comment or a written request for a hearing on the proposed rules by the deadline identified below. The [Subject of Rules](#) section provides further description of these proposed rules. If the proposed rules affect you in any way, the MPCA encourages you to participate in the rulemaking process.

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

Introduction. The MPCA intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings (OAH), *Minnesota Rules* parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. However, if 25 or more parties submit a written request for a hearing on the rules by 4:30 p.m. on January 15, 2025, the MPCA will hold a public hearing. View the [Request a Hearing](#) section of this notice for information on requesting a hearing.

Subject of Rules. The MPCA proposes to amend several chapters of Minnesota's air quality rules.

Air Toxics Emissions Reporting

Minnesota Rules require that air permitted facilities submit an annual air emissions inventory for criteria air pollutants including particulate matter, ammonia, volatile organic compounds (VOCs), lead, nitrogen dioxide, carbon monoxide, and sulfur dioxide. The MPCA collects voluntary air toxics emissions data from facilities every three years for hazardous air pollutants (HAPs), per- and polyfluoroalkyl substances (PFAS), and additional air toxics of concern in Minnesota. The criteria pollutant and air toxics emissions data collected are used by the MPCA and EPA to assess community health risks.

The proposed rules would require air permitted facilities located in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, or Washington counties (except those with Option B registration permits) to annually report air toxics emissions, as directed by Minn. Stat. § 116.062. The proposed rules will help identify and prioritize areas of concern. However, the air toxics emissions data will be incomplete because the statute authorizing this rulemaking does not apply to air permitted facilities statewide.

Proposed amendments or additions of the following chapters are described below.

- **Chapter 7002.0015.** Changes to an existing definition of “Chargeable pollutant,” to clarify that these are emissions that facilities are assessed a fee to emit.
- **Chapter 7005.0100.** Changes to add a definition of “Air toxics,” “Air toxics reporting facility,” and “Toxics release inventory (TRI) list”.
- **Chapter 7019.3000.** Changes to include requirements for annual air toxics air emissions inventory report submittals to be consistent with criteria air pollutant emissions inventory reports. Changes to include language to clarify mercury emissions reporting.
- **Chapter 7019.3020.** Changes to include requirements for calculating air toxics emissions as directed by Minn. Stat. § 166.062(b).
- **Chapters 7019.3030, 7019.3060, and 7019.3080.** Changes to include the methods for calculating air toxics emissions that are consistent with the existing methods for criteria air pollutant emissions. Changes to include requirements for reporting air toxics emissions.
- **Chapter 7019.3110.** Changes to add a new section, “Air Toxics Emission Inventory and Emissions Reporting” requirements. The new section includes:
 - The list of air toxics required to be reported. To address Minn. Stat. § 116.062 (c), a definition of “Air toxics” is proposed to include, by reference, HAPs and PFAS included on the TRI list. Additional pollutants of concern that have inhalation risks, are persistent, bioaccumulative, and toxic chemicals (PBTs), or have known health, environmental, or ecological effects are included in this section. Some additional PFAS pollutants are also included that can be detected with performance testing.
 - A de minimis for reporting when the material balance method of calculation is used for calculating air toxics emissions. There are several pollutants that do not have a de minimis and all emissions must be reported.
 - Calculation methods that must be used to estimate emissions.
 - Recordkeeping requirements related to air toxics emissions calculations.

Emergency Affirmative Defense Provisions

The MPCA is proposing to repeal certain sections of chapter 7007 that allow a Title V air permittee to assert emergency affirmative defense. This amendment is in response to the EPA’s final rule effective August 8, 2023, that removed emergency affirmative defense provisions from the Clean Air Act Title V operating permit program regulations. The EPA determined that the emergency affirmative defense provisions are inconsistent with the Clean Air Act. The EPA 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 repeal of this language is proposed in this rulemaking because it involves amendments that effect permitted air emission facilities and is an upcoming permanent air rulemaking.

Proposed repeals were made to certain subparts within Chapter 7007.0800 and 7007.1146, and all of Chapter 7007.1850.

Where rule chapters are open for this rulemaking, minor housekeeping edits to modernize rule language and format that do not change the intent of existing rule language are also proposed.

Comments. You have until 4:30 p.m. on January 15, 2025, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules.

Submit written comments to the:

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

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

You may view frequently asked questions about the OAH Rulemaking eComments website at https://mn.gov/oah/assets/ecomments-faq_tcm19-82012.pdf. Any questions about submitting comments via the Rulemaking eComments website should be directed to William Moore of the OAH at 651-361-7900 or by email at william.t.moore@state.mn.us; please note that you may not submit rulemaking comments by phone or email.

Comments received are public and will be available for review at the OAH Rulemaking eComments website at <https://minnesotaoah.granicusideas.com/discussions> and at the OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620.

The MPCA encourages comments. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change that you desire. Any comments that you have about the legality of the proposed rules must also be made during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that the MPCA hold a hearing on the rules. You have until **4:30 p.m. on January 15, 2025**, to submit your written request for a hearing to the:

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

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

You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the MPCA cannot count it when determining whether to hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

You may also direct questions on the use of the OAH's Rulemaking eComments website to William Moore at 651-361-7900 or by email at william.t.moore@state.mn.us; please note that you may not submit rulemaking comments by phone or email.

Withdrawal of Requests. If 25 or more parties submit a valid written request for a hearing, the MPCA will hold a public hearing unless a sufficient number of parties withdraw their requests in writing. If a public hearing is required, the MPCA will follow the procedures in *Minnesota Statutes*, sections

14.131 to 14.20. The MPCA reserves the option to remove any section of the rule that may be controversial and to proceed without a hearing on the noncontroversial parts of the proposed rules.

Modifications. The MPCA might modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted to the MPCA or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the MPCA follows the procedure under *Minnesota Rules*, part 1400.2110. The public is also advised that depending upon the comments received the MPCA may withdraw the proposed changes.

Cancellation of Hearing. The MPCA will cancel the hearing scheduled for February 27, 2025, if the MPCA does not receive requests for a hearing from 25 or more parties. If you requested a public hearing, the MPCA will notify you before the scheduled hearing whether it will be held. You may also call the MPCA contact person at 651-757-2754 after January 15, 2025, to find out whether the hearing will be held.

Notice of Hearing. If 25 or more parties submit valid written requests for a public hearing on the rules, the MPCA will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The MPCA will hold the hearing on the date and at the time and place listed below. The hearing will continue until all interested people have been heard. Administrative Law Judge Jessica Palmer-Denig is assigned to conduct the hearing. Judge Palmer-Denig's Legal Assistant William Moore can be reached at OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620, telephone 651-361-7900, and fax 651-539-0310 or william.t.moore@state.mn.us.

If 25 or more parties submit a written request for a hearing, the ALJ will conduct the hearing on **February 27, 2025**, by WebEx beginning at **3:00 pm**.

Hearing link:

<https://minnesota.webex.com/minnesota/j.php?MTID=m34ec09f32f341ae36733ebaba420fe9a>

Meeting number: 2499 766 4902

Meeting password: yGaMJiPA342

For audio connection, join the hearing by phone:

Call: 1-415-655-0003 (US Toll)

Access code: 2499 766 4902

The hearing continues until all parties are heard, or until the ALJ adjourns the hearing (no earlier than 6:00 pm). The MPCA may schedule additional days of hearing if necessary. All interested or affected parties will have an opportunity to participate by submitting either oral or written data, statements, or arguments. You may submit a statement without appearing at the hearing. To find out whether the MPCA will adopt the rules without a hearing or if it will hold the hearing, you should contact the [MPCA contact person](#) after January 15, 2025 and before February 27, 2025.

Hearing Procedure. If the MPCA holds a hearing, you and all interested or affected people, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the ALJ to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the ALJ may order that this five-day comment period is extended for a longer period but not more than 20 calendar days. After the comment period, there is a five-working-day rebuttal period when the MPCA and any interested person may respond in writing to any new

information submitted. No one may submit additional evidence during the five-day rebuttal period. The OAH must receive all comments and responses submitted to the ALJ via the OAH Rulemaking eComments website at <https://minnesotaoah.granicusideas.com/discussions> no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the OAH Rulemaking eComments website at <https://minnesotaoah.granicusideas.com/discussions> and at the OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620 [OAH]. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, section 14.131 to 14.20. You may direct questions about the procedure to the ALJ.

The MPCA requests that any person submitting written views or data to the ALJ before the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the MPCA contact person.

MPCA Contact Person. The MPCA contact person is Addison Otto at the MPCA, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194; telephone 651-757-2754; and addison.otto@state.mn.us. You may also call the MPCA at 651-296-6300 or 1-800-657-3864; use your preferred relay service. Please note that you may not submit rulemaking comments by phone or email.

Availability of Rules. A copy of the proposed rules is published in the *State Register* after this notice, or they can be viewed on the rule webpage at <https://www.pca.state.mn.us/get-engaged/air-toxics-emissions-reporting>. A free copy of the proposed rules is also available upon request by contacting the [MPCA contact person](#). One copy per request will be sent.

Availability of Statement of Need and Reasonableness. The statement of need and reasonableness (SONAR) summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the MPCA contact person. You may review or obtain copies for the cost of reproduction by contacting the [MPCA contact person](#). A copy of the SONAR is available during the public comment period at <https://www.pca.state.mn.us/get-engaged/air-toxics-emissions-reporting>.

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

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You should direct questions regarding this requirement to the Campaign Finance and Public Disclosure Board at Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone 651-539-1180 or 1-800-657-3889.

Statutory Authority. The statutory authority to adopt the rules is *Minnesota Statutes*, section 116.07, subdivision 4 which authorizes the MPCA to adopt rules for prevention, abatement, or control of air pollution, and *Minnesota Statutes*, section 116.062 Air Toxics Emissions Reporting which authorizes the MPCA to adopt rules to require facilities to submit air toxics emissions reports.

Adoption Procedure if No Hearing. If no hearing is required, the ALJ will issue a report on the proposed rules and the MPCA may adopt the rules after the end of the comment period. The MPCA will submit the rules and supporting documents to the OAH for a legal review. You may ask to be notified of the date the rules are submitted to the office. If you want either to receive notice of this, to receive a copy of the adopted rules, or to register with the MPCA to receive notice of future rule proceedings, submit your request to the [MPCA contact person](#).

Adoption Procedure after a Hearing. If a hearing is held, the ALJ will issue a report on the proposed rules. You may ask to be notified of the date that the ALJ's report will become available and can make this request at the hearing or in writing to the ALJ. You may also ask to be notified of the date that the MPCA adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by writing to the [MPCA contact person](#).

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

September 30, 2024

Date signed

**STATE OF MINNESOTA
POLLUTION CONTROL AGENCY**

Katrina Kessler

This document has been electronically signed.

Katrina Kessler, P.E.
Commissioner