

March 24, 2025

The Honorable Judge Palmer-Denig  
Administrative Law Judge  
Office of Administrative Hearings  
600 Robert St. N.  
St. Paul, MN 55101

RE: In the Matter of the Proposed Permanent Rules Relating to Air Quality – Air Toxics Emissions Reporting Rule; Revisor’s ID Number R-4599; OAH Docket No.71-9003-39354

Dear Judge Palmer-Denig:

This letter contains the Minnesota Pollution Control Agency’s (MPCA’s) responses to comments it has received.

1. The Agency has met its burden to show that the proposed rule is needed and reasonable.

Minnesota Statutes, section 14.14, subdivision 2, requires the Agency to “make an affirmative presentation of facts establishing the need for and reasonableness of the proposed rules...”

The Agency has stated its affirmative presentation in its Statement of Need and Reasonableness (SONAR), which the Agency relies on to establish the need for and reasonableness of the proposed rules. The Agency’s evidence clearly meets the rational basis standard and compels one to conclude that the proposed rules are needed and reasonable.

2. The Agency has responded to the comments made and issues raised during the hearing and comment period.

**MPCA’s Rebuttal:** Two comments were made at the Air Toxics Emissions Reporting Rule Hearing on February 27, 2025. Two comments were submitted to the Office of Administrative Hearing’s eComments website by March 19, 2025, for the Air Toxics Emissions Reporting Rule post-hearing comment period. Many of the comments submitted included multiple components. The agency has summarized these comments and issues according to the document referenced and in the order of the subpart or item that they relate to. The Agency’s response follows each comment or issue.

### 1. General Comments

The MPCA received two general comments which are summarized and responded to as follows.

**Comment (Morley-A):** Andrew Morley from the Chamber of Commerce stated, “MPCA’s proposed rule does not address comments submitted prior to or during the rulemaking process. The SONAR does not support the broad applicability of the rule to sources or the number of included pollutants. MPCA did not leverage decades of existing air toxics data they already collect to explain why the details of the rule are appropriate or will create net benefits for Minnesotans.”

**Response:** See responses to **Comments (Morley-1)** through **(Morley-15)** in the pre-hearing response to comments (Hearing Exhibit I-2). The MPCA would like to note that it has considered all comments received prior to and during this rulemaking. For comment letters that had previously been submitted,

the MPCA incorporated responses in the SONAR (see Hearing Exhibit I-2; 1. General Comments; A. Comment letters from RFCs that were resubmitted with this notice).

**Comment (Morley-B):** Andrew Morley from the Chamber of Commerce stated, “Outside stakeholders in the business community have offered for years to create a group to offer advice on rulemaking. Practitioners and engineers are tasked to comply with these reporting requirements and could provide valuable insight on what is feasible for compliance. This offer was never taken up by the agency.”

**Response:** See response to **Comment (Morley-1)** in the pre-hearing response to comments (Hearing Exhibit I-2).

## **2. Statement of Need and Reasonableness (SONAR)**

The MPCA received three comments related to the content of the SONAR which are summarized and responded to as follows.

### A. Comments related to human health and the risks associated with air toxics:

**Comment (Morley-C):** Andrew Morley from the Chamber of Commerce stated, “Non-point source emissions (distributed, local-scale sources not typically regulated individually) have proven to contribute to individual air pollution exposure more than large, regulated facilities as a group. The 2020 letter includes a peer-reviewed study from an MPCA scientist on this exact topic. The 2023 letter reiterated those same points. Finally, the addendum to the 2025 letter noted that the SONAR acknowledges the impact of non-point sources such as transportation emissions and wood smoke as leading causes of negative health impacts.”

**Response:** See response to **Comment (Morley-2)** in the pre-hearing response to comments (Hearing Exhibit I-2).

**Comment (Morley -D):** Andrew Morley from the Chamber of Commerce stated, “The Chamber is on record suggesting a narrowly tailored list of air toxics since its first engagement and has remained consistent. The 2020 letter suggests starting with a limited set of sources and compounds with the most health risk, and the 2023 letter further supports that assertion. The 2025 letter notes that there is no evidence that MPCA screened existing data to find materials and sources that most adversely impact human health.”

**Response:** See the responses to **Comment (Morley-3)** and **Comment (Morley-5)** in the pre-hearing response to comments (Hearing Exhibit I-2).

### B. Comments related to air toxics regulations in neighboring states:

**Comment (Morley-E):** Andrew Morley from the Chamber of Commerce stated, “Despite the MPCA’s contention that ‘... 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’, Minnesota’s Rule does just the opposite. Tables 6 and 7 of the SONAR make it clear that Minnesota includes the most burdensome requirements, on balance, than the Neighboring States’ and EPA Region 5 States’ Rules.”

**Response:** See response to **Comment (Morley-14)** in the pre-hearing response to comments (Hearing Exhibit I-2). The MPCA notes that there are differences between the proposed air toxics emissions reporting rule and other states but provides the reasonableness for these differences in the SONAR on pages 71 and 72.

### 3. Proposed Rules

The MPCA received three comments related to specific rule parts which are summarized and responded to as follows.

- A. Part 7019.3110 AIR TOXICS EMISSIONS INVENTORY AND EMISSIONS REPORTING, Subp. 2. Air toxics required to be reported.

**Comment (Zaban-A):** Mark Zaban asked at the rule hearing, "I counted 907 chemicals in the -- was it an appendix to the SONAR? Are you expecting facilities to report on all 907 chemicals?"

**Response:** The MPCA provided a response to this question at the rule hearing, stating, "Yes, the facilities would be required to report all the pollutants that are included on that list of pollutants if they are emitting air emissions with those." Facilities must report any air toxic pollutants listed in SONAR Exhibit 1: Proposed Air Toxics Reporting List that are emitted by the facility. To MPCA's knowledge, no facility in Minnesota emits all 907 pollutants.

- B. Part 7019.3110 AIR TOXICS EMISSIONS INVENTORY AND EMISSIONS REPORTING, Subp. 3. De minimis reporting; exceptions.

**Comment (Keyes-A):** Janet Keyes of CHESS Inc. asked at the rule hearing, "The comment I have is for companies using material balance to do the calculations. Things such as chromium and nickel compounds have no de minimis. If you are using material balance you are relying on safety data sheets or environmental data sheets to obtain the information, given that those would not be required to show up if they are -- unless they are present in at least one-tenth of one percent. How are companies to determine that, for instance, the chromium or nickel or other no de minimis compounds are present if they don't show up on the safety data sheet and you're not required to actually analyze the products?"

At the time of the hearing, the MPCA responded, "We will need more time to consider the question further and respond to it during the rebuttal period."

**Comment (Keyes-B)** Janet Keyes also submitted a comment during the post hearing comment period and stated, "I have prepared and submitted the emissions reports for about ten D permit holders, a few Registration C permit holders, and two companies that were required to obtain the Low Emitting Facility permits. Many of these are or were collision repair facilities - small companies with fewer than 50 employees. They may use about 200 different paint products per year.

They do not do emissions testing, but use material balance for reporting.

We can handle the air toxics reporting. But the lack of de minimis for some products often found in paints will create an impossible situation for us. If it does not have to be included on a safety data sheet, we will have no way of determining if it is present. An example: a toner contains up to 0.8% of a chrome(III) complex black dye. We have included that in our calculations. But if another toner has 0.08% of that same dye, it will not be present on the SDS and we will not know it is present - but this proposal states we need to include it.

Page 47 of the SONAR states that it is reasonable to use the OSHA classifications of 0.1%/1% as the de minimis. The SONAR states that the MPCA would not expect facilities to test materials or contact the manufacturer if levels are below those cutoffs. But the SONAR does not explain why it is reasonable to have no de minimis for those the MPCA considers highly toxic."

**Response to Keyes-A and Keyes-B:** The MPCA appreciates this thoughtful question. The MPCA agrees that the information included on the Safety Data Sheets (SDSs) is the most reasonably available information for facilities using the material balance calculation method, and as stated on pages 47 and 72 of the SONAR, facilities would not be required to test their materials to comply with this rule.

Only pollutants listed on the SDSs need to be reported using the material balance calculation method, even if the pollutant is listed as having no de minimis for reporting. As stated on page 48 of the SONAR, if a pollutant that is included on the no de minimis list is included on the SDS and is present in a mixture at <0.1%, the facility would be required to use 0.1% to calculate emissions if using the material balance calculation method.

In conclusion, the Agency has addressed the concerns raised during the hearing and comment period. The Agency has shown that the rules are needed and reasonable. We respectfully submit that the Administrative Law Judge should recommend adoption of these rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Addison Otto".

Addison Otto  
MPCA Rule Coordinator

AO:mb

Enclosure: Exhibit I-2. Response to Comments

**Air Toxics Emissions Reporting Rule: Pre-Hearing Response to Comments**

RD-4599; OAH Docket No. 71-9003-39354

Seven comments were submitted to the Office of Administrative Hearing's eComments website by January 15, 2025, in response to the Minnesota Pollution Control Agency's (MPCA's) Dual Notice of Intent to Adopt Rules published November 25, 2024. Many of the comments submitted included multiple components. The agency has provided its preliminary responses to those comments below. The MPCA will respond to comments received during the rule hearing and the posthearing comment period in a future response to comments document.

**1. General Comments**

The MPCA received 2 general comments which are summarized and responded to as follows.

**A. Comment letters from Request for Comments (RFCs) that were resubmitted with this notice:**

Andrew Morley of the Chamber of Commerce resubmitted comment letters that had previously been submitted during the RFC periods for this rulemaking. The MPCA reviewed these letters when they were received, considered them, and incorporated responses to them in the SONAR on pages 19, 21, 25, 26, 36, and 48.

**B. Comments related to stakeholder engagement:**

**Comment (Morley-1):** Andrew Morley from the Chamber of Commerce stated, "Chamber members offered to meet with MPCA staff to work on potential policy or rules that met the agency's data needs without broad new mandates. Despite the offers, MPCA never convened a stakeholder group of regulated parties."

**Response:** The MPCA outlined its efforts to engage stakeholders and solicit input on this rulemaking, as well as this specific comment requesting that the agency convene an advisory group, in the SONAR on pages 17 to 19. The Minnesota legislature gave the MPCA an 18-month deadline to publish the Notice of Intent to Adopt Rules. The agency provided numerous opportunities for stakeholders to provide input on the rulemaking; however, with the limited time frame and the large quantity of pollutants that the agency needed to review, it would have been difficult to assemble a formal advisory committee or stakeholder group and still abide by the legislative deadline.

## **2. Statement of Need and Reasonableness (SONAR)**

The MPCA received 12 comments related to the content of the SONAR which are summarized and responded to as follows.

### **A. Comments related to human health and the risks associated with air toxics:**

**Comment (Morley-2):** Andrew Morley of the Chamber of Commerce stated, “Figure 1 in the SONAR includes MNRISKS data for all sources. To justify increased reporting for a subset of sources, MPCA should present total MNRISKS data and then data for only the sources to be covered by the rulemaking. That demonstration may illustrate that the covered sources are important for risk reduction. However, MPCA data released in various reports in the past have shown the opposite; namely, that regulated facilities are a small part of the overall air toxics emissions inventory and related risks.”

**Response:** The MPCA was directed by the legislature in Minn. Stat. § 116.062 to adopt rules requiring 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 for option B registration permits, to annually report air toxics emissions to the agency. The MPCA’s purpose for including Figure 1 in the SONAR is to show air toxics risk in the seven metropolitan counties. The MPCA agrees that the figure does depict other sources of air toxics emissions such as transportation. The main sources of air toxics emissions in the seven metropolitan counties are transportation and permitted facilities. The figure is demonstrating that most of the block groups (a subset of census tracts) in the seven metropolitan counties have an air pollution score greater than 1, which would be above health benchmarks. The SONAR for the proposed rule states that this reporting rule will not result in direct reduction in the emissions of air toxics but will improve air toxics emissions reporting. This figure is noting that air toxics emissions are a concern for the health of residents living in the seven metropolitan counties.

The MPCA develops inventories of traffic emissions with information from the Minnesota Department of Transportation (MNDOT), surveys wood burning homes, and models emissions for these sources. The proposed reporting for facilities is to confirm what facilities are emitting so that the MPCA has more accurate information on which areas have a higher risk and are most impacted. The air toxic emissions reported by facilities proposed in this rule will provide improved information to understand sources of risk to human health and the environment and which pollutants are driving this risk.

The MPCA submitted a report to the legislature in January 2025 titled, “The air we breathe: The state of Minnesota’s air quality”<sup>1</sup>. On page 20 of that report, the MPCA identified that, *“Permitted facilities are the third largest source of air toxics, emitting roughly one third as much air toxics pollution as neighborhood sources or transportation (13%).”* While facilities are the third largest source of emissions, they are the second largest source for risk in the seven metropolitan counties, demonstrating that the impact of those pollutants emitted could have a larger impact on human health. The report also stated, *“Even if a source ranks low for statewide contribution, it can still have a big local impact... People are exposed to myriad pollutants at varying concentrations every day, and some pollutants have a greater potential for health effects than others or can cause health effects at a lower exposure.”* Receiving air toxics emissions inventory reports from facilities on the specific pollutants they are emitting will further drive the agency’s understanding of local risks to human health and the environment. This information cannot be derived without the proposed rule that requires mandatory annual reporting of air toxics emissions from facilities.

**Comment (Morley-3):** Andrew Morley from Chamber of Commerce stated, “MPCA’s failure to present a case for how the rules it has proposed will provide any real value for public health or air pollution understanding. If there is no real value, MPCA should approach the rulemaking effort with a targeted and flexible approach. Its proposed rule is not targeted and pulls in an expansive list of materials with minimal off-ramps. The end result will require a significant effort from regulated facilities for negligible benefit in the real world... A refined approach should be pursued instead of the rule as proposed.”

**Response:** The MPCA was directed by the legislature in Minn. Stat. § 116.062 to adopt rules requiring facilities with an air permit, except for option B registration permits, to annually report air toxics emissions to the agency. The statute directed the MPCA to collect data on a broad list of air toxics. The agency developed specific criteria to narrow this list to target air toxics that pose a risk to human health and the environment. The MPCA did not include several air toxics that were on the full lists provided in statute for review including: certain PFAS that are not present or reported in Minnesota, or are salts and anions of OTM-45 and OTM-50 pollutants; certain pollutants that only have oral or other types of risk values because they would not be as relevant to risk modeling or where the inhalation risks are no longer relevant; pollutants only reported in other states in the TRI; and pollutants that have been banned. Page 46 of the SONAR discusses more about the criteria used. It is correct that emissions reporting alone will not result in direct health benefits to residents; however, improved emissions data

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<sup>1</sup> Swanson, A., Bouchareb, H. (January 2025) The air we breathe: The state of Minnesota’s air quality. Retrieved from: <https://www.pca.state.mn.us/sites/default/files/lraq-1sy25.pdf>

will support agency decision-making related to air toxics. The data currently are incomplete and as the MPCA has identified in the SONAR on pages 58 and 59, *“Better emissions data will improve the MPCA’s air quality modeling efforts, which will inform policy development... and can be used to assess health risks to communities”*. More details are outlined in the SONAR under Section 6. Regulatory analysis, item F. Also in the SONAR, on page 67 under Section 9. Performance-based rules, the agency outlines its compliance with Minn. Stat. § 14.002 which requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible.

B. Comments related to SONAR Exhibit 1: Proposed air Toxics Reporting List:

**Comment (Morley-4):** Andrew Morley of the Chamber of Commerce stated, “In fact, unless MPCA develops an inventory of non-point and transportation sources that also accounts for the proposed list of air toxics to be reported in the SONAR Exhibit 1, MPCA will only be able to provide the contribution of permitted or point sources to air quality within the state. Only accounting for the list of air toxic emissions and their associated risks from point sources will be an incomplete picture and will inaccurately bias the risk associated with point sources. This could lead to the MPCA focusing on point source risk reductions with inconsequential relative impact because those risks could be dwarfed by risks associated with transportation or non-point source contributions of the same pollutants... Unless and until MPCA can commit to a similarly robust inventory of the Exhibit 1 pollutants from transportation and non-point sources, MPCA should not require the reporting of such an extensive list of pollutants for permitted sources.”

**Response:** The MPCA was directed by the legislature in Minn. Stat. § 116.062 to adopt rules requiring facilities with an air permit, except for option B registration permits, to annually report air toxics emissions to the agency. The MPCA develops a statewide emissions inventory of all sources of air pollution, including permitted facilities, non-point sources, and transportation every three years. Developing an inventory requires different methods based on the source type and the availability of data from that source. The MPCA, therefore, uses different tools and methods for non-point and transportation emissions data estimation than point source emissions estimation.

The MPCA’s current statewide emissions inventory for non-point sources include emission estimates from non-HAP pollutants included in SONAR exhibit 1, similar to what is proposed to be reported by facilities in this rulemaking. All these data are available on the MPCA’s Emissions

Inventory website<sup>2</sup>. The MPCA estimates the emissions from these non-air-permitted sources with best practices that are standard, supported, scientific, and used by EPA, other states, and academia. All air toxics emissions from these sources are accounted for and assessed in the “Minnesota air toxics risk-screening tool (MNRISKS)”<sup>3</sup>.

**Comment (Morley-5):** Andrew Morley of the Chamber of Commerce stated, “In the SONAR section on ‘Pollutant lists reviewed’, MPCA notes that it 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 purpose of air toxics reporting and risks to human health and the environment.’ As such, MPCA acknowledges that some of the pollutants may not be important for the purpose of air toxics reporting and risks to human health. However, based on the SONAR, there appears to have been no effort to screen for the ones that are important. Therefore, there could be significant effort by permittees collectively to characterize and report emission levels that may not have consequential impacts to human health and the environment.”

**Response:** The commenter seems to mis-interpret the quote from the SONAR. The quoted text from the SONAR is explaining that Minn. Stat. § 116.062 would have allowed the agency to include a broader list of air toxics for reporting. Instead, the MPCA developed specific criteria for determining which air toxics to include for reporting to ensure that reporting was focused on pollutants with risks to human health and the environment, and narrowed the list based on those criteria.

The MPCA disagrees with the assertion that the agency did not screen for air toxics that are important for health risks. The agency used specific criteria to screen and develop the list of pollutants proposed to be reported. These criteria are listed on page 46 of the SONAR. The MPCA maintains that all of the pollutants listed in Exhibit 1 are important for air toxics reporting.

**Comment (Mascarenhas-1):** Brendan Mascarenhas from American Chemistry Council stated, “As noted above, to help ensure that any new requirements are effective, provide meaningful information, and are manageable for both regulators and the regulated community, the rule should focus only on substances with established risk values. This should not include TRI listed substances as these do not represent risk values... To the extent MPCA opts to consider TRI

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<sup>2</sup> Total statewide emissions by year by MPCA Data Services (February 7, 2025). Retrieved from:

<https://data.pca.state.mn.us/views/Airemissions-statewide/Trends?%3Aembed=y&%3AisGuestRedirectFromVizportal=y>

<sup>3</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/aq9-29.pdf>

substances, any consideration should be limited to those substances that have established risk values and have been formally evaluated against the underlying EPCRA criteria.” Mascarenhas also stated, “ACC recommends that new reporting requirements should apply only to pollutants with risk values that have been formally reviewed and approved through a regulatory process.”

**Response:** Minn. Stat. § 116.062 did not specify that the air toxics on the Toxic Release Inventory (TRI) list were to be limited only to those with established risk values that have been formally evaluated against the underlying EPCRA criteria. The statute stated that,

*“(C) For the purposes of this section, "air toxics" means chemical compounds or compound classes that are emitted into the air by a permitted facility and that are:*

*(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;”*

It is reasonable to include pollutants that do not have inhalation health benchmarks (IHBs) or established risk values because the MPCA was directed by the legislature in Minn. Stat. § 116.062 to adopt rules requiring permitted facilities to annually report air toxics emissions to the agency. It was not a requirement of that statute that the pollutants would need to have an IHB or risk values determined to be included in the proposed rule. Additionally, not all Hazardous Air Pollutants (HAPs) have IHBs, and thus do not have established risk values. For example, some of the pollutants included in the rule are per- and polyfluoroalkyl substances (PFAS), many of which do not currently have IHBs or established risk values, but new information on the health impacts and risks from these chemicals continues to emerge. 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. Page 15 of the SONAR includes a citation from the MPCA’s PFAS Monitoring Plan<sup>4</sup> that details the multipathway concerns for PFAS exposure. To limit the proposed list to only air toxics with IHBs or established risk values would not provide the full understanding of air toxics emissions in the seven metropolitan counties.

The emissions information that will be received as a result of this rulemaking in combination with inhalation health benchmarks (IHBs) allows the MPCA to assess risk (i.e. MNRISKS). IHBs are regularly updated from sources such as Integrated Risk Information System (IRIS), Agency

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<sup>4</sup> MPCA. PFAS Monitoring Plan. (March 2022). Retrieved from <https://www.pca.state.mn.us/sites/default/files/p-gen1-22b.pdf>

for Toxic Substances and Disease Registry (ATSDR), Provisional Peer-Reviewed Toxicity Values (PPRTV), etc. If these values were included in the proposed rule, it would need to be amended anytime a value is added or updated. The frequency of updates makes it unreasonable to include these values in rule. California's rule (CCR, Title 17, Division 3, Chapter 1, Subchapter 7.7, Articles 1 and 2.) has many PFAS required to be reported and most PFAS do not have IHBs or established risk values.

The MPCA evaluated the pollutants that were included in the proposed rule and provided the specific reasonableness for them in the SONAR on pages 35 to 46.

C. Comments related to future regulations:

**Comment (Mascarenhas-2):** Brendan Mascarenhas from American Chemistry Council stated, "It is critical that MPCA include clear, reasonable, and achievable permit and enforcement mechanisms in any future rulemaking. Future regulatory compliance timelines must be realistic and provide sufficient time for facilities to implement the necessary control technologies. We also ask that the MPCA provide support and clear, detailed guidance during the compliance phase to facilitate smooth transitions for affected facilities."

**Response:** This comment is about potential future rulemaking and therefore out of scope for this rulemaking comment period. This proposed rule does not involve permit changes or implementing control technologies. As it relates to this Air Toxics Reporting Rule, the MPCA intends to provide support to facilities as well as detailed guidance about how to report during the implementation of the rule.

D. Comments related to current reporting data:

**Comment (Morley-6):** Andrew Morley of the Chamber of Commerce stated, "MPCA says it will use the data from the rule to feed modeling and risk assessments at MPCA and US EPA. Further, it says '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.' These modeling and risk analysis activities are already happening, and it is misleading to use them as justification for new reporting with specific context."

**Response:** The MPCA was directed by the legislature in Minn. Stat. § 116.062 to adopt rules requiring facilities with an air permit, except for option B registration permits, to annually report air toxics emissions to the agency. It is correct that the MPCA is already collecting air toxics emissions data and using it for modeling; however, the inventory and risk modeling are incomplete because reporting of air toxics emissions is currently voluntary. Since current reporting is only voluntary, the MPCA is unsure of how accurate the data is, and because not all

facilities report, the MPCA is uncertain of all emissions that are occurring at this time. Required reporting will ensure that all emissions are accounted for at facilities and provide better risk estimates for the seven metropolitan counties. The agency has identified the deficiencies of voluntary reporting in the SONAR on pages 13, 20, and 56.

**Comment (Morley-7):** Andrew Morley of the Chamber of Commerce stated, “MPCA claims that sources have no incentive to report accurately in the current voluntary system. Yet the Agency fails to demonstrate or explain how 30+ years of voluntary reporting and detailed analysis show current data are inaccurate or otherwise incomplete in a way that impacts MPCA’s related policy and regulatory work... Page 15 of MPCA’s SONAR states that MPCA began collecting air toxics data from facilities in 2011. That is incorrect. MPCA has been collecting air toxics emissions data from facilities since at least the mid-1990s and was part of a US EPA Region 5 collaborative effort related to emissions and databases from at least the 1990s through the early 2000s. It is important that the record accurately reflect the duration of data collection efforts because having data for such a long period of time is important information against which to judge MPCA assertions and insinuations regarding the need for additional data collection.”

**Response:** In 2023, the Minnesota Legislature determined it was important for the agency to improve its collection of air toxics emissions data from facilities and adopted Minn. Stat. § 116.062 directing the MPCA to adopt rules requiring facilities with an air permit, except for option B registration permits, to annually report air toxics emissions to the agency. The MPCA would like to clarify that the agency began collecting voluntary air toxics emissions data from facilities via electronic reporting (e-Services) beginning in 2011. Prior to 2011, some facilities reported air toxics emissions voluntarily every three years, but it was not as coordinated an effort as air toxics reporting post-2011. While some facilities voluntarily report accurate and complete air toxics emissions data every three years, others provide incomplete information or have not reported air toxics emissions at all. Currently, over half of all facilities with an air permit in the seven metropolitan counties report emissions of air toxics in the voluntary triennial emissions inventory.

**Comment (Morley-8):** Andrew Morley of the Chamber of Commerce stated, “MPCA points to possible year-to-year variability in emissions as a reason for increasing the frequency of reporting from every-three-years to annually. Again, MPCA provides no data that shows air toxics emissions and concentrations fluctuate significantly that justifies its insinuation that more frequent data collection is necessary to close important gaps in knowledge.”

**Response:** While some businesses have standardized production and products used, this overlooks the variability in air toxics emissions that can occur within a single year for certain

businesses. Job shops or manufacturers may frequently make different products to the specification of customer demands and production orders. This often requires the use of different paints and coatings or manufacture of products with significant variations in air toxics metals and volatiles. Changes in the types and quantity of materials used alters the volume and composition of air toxics emissions. Three-year reporting intervals may obscure these significant year-to-year variations and potentially mask periods of elevated emissions that require attention. Annual reporting will provide a more accurate understanding of these fluctuations, allowing for more informed decision-making and potentially enabling more targeted pollution prevention strategies. More about the deficiencies of voluntary reporting are in the SONAR on page 13, 20, and 56.

E. Comments related to the potential for duplicative reporting:

**Comment (Morley-9):** Andrew Morley from the Chamber of Commerce stated, “MPCA references U.S. Environmental Protection Agency (EPA) Air Emissions Reporting Requirements (AERR) alignment. It should update the draft rule before final publication to match the AERR to the maximum extent possible.”

**Response:** The MPCA considered many aspects of the EPA’s proposed AERR when developing this rule. The EPA received hundreds of comments on the proposed AERR, and the timeline for the final rule is uncertain. With the agency’s legislative deadline to adopt a state rule in mind, the MPCA decided to move forward with the air toxics emissions reporting rule as proposed. If in the future AERR is finalized, the MPCA will reassess the need to amend the state rule. The MPCA has provided its consideration of alignment between this proposed rule and EPA’s AERR throughout the SONAR on pages 15, 21, 24, 28, 29, 32, 34, 36, 47, 48, 59, 60, 69, and 70.

**Comment (Mascarenhas-3):** Brendan Mascarenhas from American Chemistry Council stated, “MPCA Should Ensure that Any New Requirements Avoid Overly Burdensome Impacts on State Facilities and Duplicative Reporting Obligations.”<sup>5</sup>

**Response:** The MPCA will consider overlap of this rule with future federal requirements but would need to amend this rule to encompass any future changes. The EPA has not provided any updates on the proposed federal Air Emissions Reporting Rule (AERR). Although the MPCA has considered the possibility of aligning with EPA’s proposed AERR, the rule has not been finalized, and the MPCA cannot align with any currently comparable federal rule. Negating duplicative reporting to the TRI is a challenge, because only a small subset of facilities with an air permit

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<sup>5</sup> See full comment in American Chemistry Council comment letter on pages 42 and 43:  
<https://www.pca.state.mn.us/sites/default/files/aq-rule2-02k.pdf>

must report to the TRI. This proposed state rule would encompass all facilities in the seven metropolitan counties, except registration option B permits.

Mascarenhas also stated: “Unfortunately, it is unclear if MPCA provides any additional rationale to support this significantly more burdensome reporting schedule.” As stated in the earlier response to comment (Morley-8), while some businesses have standardized production and products used, some businesses change processes frequently and air toxics emissions that occur within a single year can vary. This is why annual reporting is reasonable to require to understand these variables. Additionally, this rule is not duplicative of NESHAPs and Title V Operating Permits because those do not require reporting.

**Comment (Flowers-1):** Patrick Flowers from Northern States Power Company stated, “The Air Toxics Report Timing Should Align with TRI Reporting Requirements. More closely aligning these report dates will reduce undue administrative burdens and help ensure consistent reporting. Specifically, we request a July 1 reporting deadline for the air toxics.”

**Response:** The MPCA appreciates the concern for inconsistent reporting and understands that duplicative reporting will be necessary for facilities that are required to report to both the EPA's TRI program and to MPCA. However, there are differences with the federal TRI requirements and the proposed rule as described in the SONAR on pages 69 and 70. Facilities will continue to be able to revise emissions after the April 1 deadline for the air toxics emissions inventory submittal during the 45-day summary review period per Minn. R. 7019.3000, Subp. 2. April 1 is a long-standing deadline for emissions inventory reporting in Minnesota. Facilities are therefore used to reporting by the April 1 deadline and MPCA believes it will be less burdensome for facilities to report all emissions data (including criteria pollutants and greenhouse gases) at the same time.

### **3. Proposed Rules**

The MPCA received 10 comments related to specific rule parts which are summarized and responded to as follows.

- A. Part 7007.0800 PERMIT CONTENT, Subp. 6. Reporting; Part 7007.1146 CAPPED PERMIT: COMPLIANCE REQUIREMENTS, Subp. 5 Reporting, Item A, Subitem (1); and Part 7007.1850 EMERGENCY PROVISION.

**Comment (Morley-10):** Andrew Morley of the Chamber of Commerce stated, “Emergency Affirmative Defense: The Chamber believes retaining these provisions to the extent practical and legal is imperative. Sources should not be held liable for emissions noncompliance resulting from an emergency situation beyond their control... The Chamber continues to recommend not

proceeding with the notice of intent to repeal the emergency affirmative defense provisions in chapter 7007. The proposed repeal should be delayed until active litigation between intervenors and the US EPA is concluded. Final briefs on this litigation were submitted to the court in November 2024, and oral arguments are scheduled for January 14, 2025. A court decision on the issue is expected before August 21, 2025, which is MPCA's current EPA-approved deadline to remove the T5-AD rule change language from the state rules. Because the outcome of this litigation—which could include a potential stay or vacatur—may impact the disposition of the T5-AD rule change, the Chamber reiterates that the only prudent thing to do is for MPCA to await final disposition of this challenge. If necessary, MPCA should seek another extension to the current repeal deadline to allow for both parties to adhere to the court's decision rather than risk actions that may run afoul of that decision."

**Response:** As explained in the SONAR on page 25, *"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."* Regardless of whether a noncompliance results from an emergency situation, facilities are still responsible for their emissions and must report deviations, but Compliance and Enforcement staff take into account emergency situation considerations. The repeal of emergency affirmative defense provisions will not result in a change to how the MPCA responds to emissions noncompliance.

EPA's final action "Removal of Title V Emergency Affirmative Defense Provisions From State Operating Permit Programs and Federal Operating Permit Program"<sup>6</sup> set a deadline for states to repeal their emergency affirmative defense provisions. While there is litigation pending against this provision, the provision has not been stayed by the courts and thus the deadline is legally binding. Due to the EPA's deadline to remove Title V emergency affirmative defense provisions from state rules, the MPCA cannot wait for litigation to be complete and must move forward since there is not a stay on the requirement. The agency has addressed this comment and provided the reasonableness for this decision on page 26 of the SONAR.

**Comment (Morley-11):** Andrew Morley of the Chamber of Commerce stated, "If or when the MPCA decides to repeal these provisions, it should retain them for air permits not issued

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<sup>6</sup> EPA. (August 21, 2023). Removal of Title V Emergency Affirmative Defense Provisions From State Operating Permit Programs and Federal Operating Permit Program. Retrieved from: <https://www.federalregister.gov/documents/2023/07/21/2023-15067/removal-of-title-v-emergency-affirmative-defense-provisions-from-state-operating-permit-programs-and>

pursuant to the Clean Air Act Title V operating permit program regulations. Since the MPCA permitting rules combine both the non-Title V and Title V operating permit programs, it is unclear how the removal or modification of the affirmative defense provisions will affect non-Title V facilities or why such a repeal would even be necessary. Minn. R. 7007.1850 does not disassociate the use of the affirmative defense between these types of permitted facilities, but the EPA's rule revoking the affirmative defense applies only to Title V permits. There is no basis for removing this provision for non-Title V permitted facilities."

**Comment (Flowers-2):** Patrick Flowers of Northern States Power Company stated, "The Emergency Affirmative Defense Provisions Should be Maintained as "State-Only" Rather Than Fully Repealed."

**Response:** The repeal of the affirmative defense provisions will apply to all Minnesota air permits; including both federal and state. As noted on page 25 of the SONAR: *"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."*

In the EPA's summary of this rule to repeal Title V emergency affirmative defense provisions from the Clean Air Act (CAA) (40 CFR parts 70 and 71), they state, *"These provisions, which have never been required elements of state operating permit programs, are being removed because they are inconsistent with the EPA's interpretation of the enforcement structure of the Clean Air Act (CAA or the Act) in light of prior court decisions from the U.S. Court of Appeals for the D.C. Circuit. The removal of these provisions is also consistent with other recent EPA actions involving affirmative defenses and would harmonize the EPA's treatment of affirmative defenses across different CAA programs."*

If the MPCA maintained a state-only provision, it would require additional rulemaking to allow this provision because the state rules currently do not differentiate with an emergency affirmative defense provision specific to state permits. The MPCA has no intention of adding a rule that would be inconsistent with the Clean Air Act.

The MPCA connected with the other states of the EPA Region 5 and all states who had the provisions (Wisconsin did not have them) are fully repealing the provision and not keeping any provisions for state-only permits or enforcement authority.

#### B. Part 7019.3000 EMISSION INVENTORY

**Comment (Morley-12):** Andrew Morley from the Chamber of Commerce stated, "With an expanded list of reportable materials, MPCA should clarify its expectations for pollutant testing and certifications of submittals. For example, many facilities do not add per- or polyfluoroalkyl

substances (PFAS) materials to their processes, but there may be trace amounts in raw materials or incoming water. MPCA must clarify whether companies will be expected to test for PFAS or other materials that are not part of their process or otherwise expected to be present. Are other speciation methods (e.g., safety data sheet information) subject to the requirements of the calculation hierarchy available for toxics reporting instead of testing?”

**Response:** A certification has been incorporated into the proposed rule and is included in part 7019.3000, subpart 1, item B, subitem (4) in which the responsible official must sign the report and make the certification. The proposed rule does not require testing of materials and does not require reporting air toxics that are not part of the facilities process(es). Facilities will be able to use the existing method hierarchy in part 7019.3030, subpart 1 for air toxics emissions reporting. The reasonableness for incorporating air toxics in the method hierarchy for emissions reporting calculations is included in the SONAR on pages 32 and 33 and applies to all pollutants. In the new section of rule under part 7019.3110 subpart 4, requirements for reporting individual pollutants within a group are proposed.

C. Part 7019.3020 CALCULATING ACTUAL EMISSIONS FOR EMISSION INVENTORY, Subp. 9. Control equipment and Subp. 10 Control efficiency factors.

**Comment (Morley-13):** Andrew Morley of the Chamber of Commerce stated, “The proposed language in Minn. R. 7019.3020, subps. 9 and 10, add new requirements for the use of specific control efficiencies. Current voluntary submittals likely use control efficiencies determined by regulated facilities. MPCA-specified efficiencies are less likely to represent specific equipment and operations than facility data. MPCA’s rule should allow for facility specific control efficiencies. These data will better represent real world emissions. Outside of the scope of this rule, some regulatory applicability analyses may require conservative assumptions as a factor of safety. This reporting rule is intended to represent actual emissions. Conservative assumptions that lead to higher emission estimates would not serve the purpose of the rule.”

**Response:** The MPCA agrees that the emissions reported should represent actual emissions. Minn. R. part 7019.3020, subp. 10 specifies the use of control efficiency factors when air toxics are included under the broader pollutant categories of volatile organic compounds or particulate matter. Facilities will be able to account for facility data when calculating air toxics. Facilities are not limited to the control efficiencies listed in Table A of Minn. R. part 7011.0070, Subp. 1a. For example, a facility may use data from a recent performance test or manufacturer data as a VOC control efficiency factor when calculating volatile air toxics. The facility may use a control efficiency factor as allowed under Minn. R. parts 7019.3060, 7019.3065, and 7019.3080. The MPCA has provided specific reasonableness for the use of control equipment and control efficiency factors in the SONAR on pages 30 and 31 and provides a comparison of facility

calculations for emissions with and without applying a grouped control efficiency factor to air toxics emissions in Table 1 on page 31.

D. Part 7019.3110 AIR TOXICS EMISSIONS INVENTORY AND EMISSIONS REPORTING, Subp. 2.  
Air toxics required to be reported.

**Comment (Morley-14):** Andrew Morley of the Chamber of Commerce stated, “In order to focus the health improvements for vulnerable communities in the seven metropolitan counties, and to be consistent with other states’ approaches for permitted facilities, the Chamber would support a regulation that requires annual reporting of the more concise list of air toxics pollutants in EPA’s Federal HAP list.”

**Response:** Minn. Stat. § 116.062 directed the MPCA to consider broad categories of air toxics that go beyond the federal HAP list (see page 12 of the SONAR). The MPCA developed reasonable criteria to evaluate these broad categories and appropriately narrow the list of air toxics for reporting based on these criteria. These criteria are defined in the SONAR mostly by what was not included in the proposed rule, although the detailed specific reasonableness for each pollutant that was included can be found in the SONAR on pages 35 to 46. In general the MPCA did not include: certain PFAS that are not present or reported in Minnesota, or are salts and anions of OTM-45 and OTM-50 pollutants; certain pollutants that only have oral or other types of risk values because they would not be as relevant to risk modeling or where the inhalation risks are no longer relevant; pollutants only reported in other states in the TRI; and pollutants that have been banned. Page 46 of the SONAR discusses more about the criteria used. The MPCA did include: all HAPs, all PFAS on the TRI list, all the pollutants for which MDH has develop Health Based Values (HBVs) or Risk Assessment Advice (RAA), all pollutants on IRIS, TRI, and MPCA’s emissions inventory list that had inhalation health benchmarks or multipathway concerns (including Persistent, Bioaccumulative, and Toxic – PBTs), and pollutants of concern in Minnesota – including many PFAS that are prevalent in our state specifically.

**Comment (Gupta-1):** Shalini Gupta stated, “The MPCA should require reporting of sulfuryl fluoride as an air toxic. It can be emitted from permitted sources and it is toxic.”

**Response:** Thank you for this recommendation. The agency has reviewed and considered adding this pollutant to the proposed rule; however, sulfuryl fluoride does not currently meet the criteria the MPCA considered for air toxics pollutants to be reported in this rulemaking (identified on page 46 of the SONAR). The MPCA may consider adding this pollutant to the list of air toxics required to be reported in a future rulemaking.

Sulfuryl fluoride is not a HAP, is not a PFAS, the Minnesota Department of Health (MDH) has not developed a Health Based Value (HBV) or risk assessment advice (RAA) for it, it does not have an inhalation risk from any source (MDH, IRIS, or others considered in the SONAR), it has not been assessed by IRIS to have an inhalation risk value, it has not been reported to the MPCA in the voluntary triennial emissions inventory or in the years 2022 or 2023 to the TRI by any facility in Minnesota, and it has not been purchased in Minnesota since 2020. This pollutant doesn't meet these criteria as stated, but if there were new information provided about how it does meet the criteria, we could consider adding it to the list of pollutants.

E. Part 7019.3110 AIR TOXICS EMISSIONS INVENTORY AND EMISSIONS REPORTING, Subp. 3. De minimis reporting; exceptions.

**Comment (Morley-15):** Andrew Morley of the Chamber of Commerce stated, "MPCA includes some de minimis allowances based on material safety data sheets. That is positive."

**Response:** Thank you for your comment.

**Comment (Mascarenhas-4):** Brendan Mascarenhas from American Chemistry Council stated, "MPCA should provide clear and science-based guidelines on emission thresholds to help ensure the rule is effective and manageable for both regulators and industry and results in an air toxics regulatory program that is grounded in sound science... The de minimis standard should be maintained. The de minimis standard is a long-standing policy that is designed to help generate meaningful information and focus on priority levels of substances. It also provides for the minimization of unreasonable burdens to quantify minute amounts of a chemical substance."

**Response:** The MPCA has proposed a de minimis for reporting using material balance calculations in this section and has provided reasonableness in the SONAR on pages 46-50. Facilities using material balance calculations will need to calculate their emissions to determine if they need to report. For facilities that do not use material balance calculations, the MPCA will require reporting of each pollutant so that facilities do not have to determine if there is a threshold for reporting or not. This is intended to reduce the burden of reporting for facilities.

**Comment (Flowers-3):** Patrick Flowers from Northern States Power Company stated, "The Air Toxics Reporting Regulations Should Establish Reporting Thresholds for Each Air Toxic. Reporting thresholds can – and should – be tailored to the specific characteristics and potential human health and environmental impact of each air toxic."

**Response:** Using the commenter's proposed approach, facilities would need to calculate their emissions to determine if they need to report based on the threshold. Instead, to simplify

reporting, the MPCA is requiring facilities to report all air toxics emissions (except for facilities using material balance calculations) rather than having to determine an individual threshold for each air toxic they are emitting. The MPCA provided a comparison to other states on page 71 of the SONAR and stated, *“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.”*