

April 21, 2025

**VIA EFILING ONLY**

Addison Otto  
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**Re: In the Matter of the Proposed Amendments to Rules Governing Air Quality – Air Toxics Emissions Reporting Rule  
OAH 71-9003-39354; Revisor R-4599**

Dear Addison Otto:

Enclosed herewith and served upon you is the **REPORT OF THE ADMINISTRATIVE LAW JUDGE** in the above-entitled matter. The Administrative Law Judge has determined there are no negative findings in these rules.

The Office of Administrative Hearings has closed this file and is returning the rule record, along with a transcript of the hearing, so that the Minnesota Pollution Control Agency can maintain the official rulemaking record in this matter as required by Minn. Stat. § 14.365. Please ensure that the agency's signed order adopting the rules is filed with our office. The Office of Administrative Hearings will request copies of the finalized rules from the Revisor's office following receipt of that order. Our office will then file the adopted rules with the Secretary of State, who will forward one copy to the Revisor of Statutes, one copy to the Governor, and one to the agency for its rulemaking record. The Minnesota Pollution Control Agency will then receive from the Revisor's office three copies of the Notice of Adoption of the rules.

The Minnesota Pollution Control Agency's next step is to arrange for publication of the Notice of Adoption in the State Register. Two copies of the Notice of Adoption provided by the Revisor's office should be submitted to the State Register for publication. A permanent rule does not become effective until five working days after a Notice of Adoption is published in the State Register in accordance with Minn. Stat. § 14.18.

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed  
Amendments to Rules Governing Air  
Quality – Air Toxics Emissions Reporting  
Rule

**REPORT OF THE  
ADMINISTRATIVE LAW JUDGE**

This matter is pending before Administrative Law Judge Jessica A. Palmer-Denig upon a request by the Minnesota Pollution Control Agency (MPCA) for approval of proposed rules.

The MPCA proposes to amend Minnesota Rules governing the administration of its air emissions reporting program as directed by Minn. Stat. § 116.062 (2024).<sup>1</sup> The amendments primarily focus on requiring facilities with an air permit located in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, or Washington counties (seven metropolitan counties) to report air toxics emissions on an annual basis to the MPCA, except those facilities issued an Option B registration permit.<sup>2</sup> The amended rules also propose to repeal provisions, as directed by the Environmental Protection Agency (EPA), allowing an air permittee under Title 5 (Title V) of the Clean Air Act (CAA) to assert an affirmative defense for noncompliance in case of an emergency.<sup>3</sup>

The Administrative Law Judge held a rulemaking hearing on February 27, 2025, through an interactive video conference on the WebEx platform. The rulemaking hearing and this Report are part of a larger process provided under the Minnesota Administrative Procedure Act.<sup>4</sup> The process is designed to promote public participation in the formulation of administrative rules, and to ensure that state agencies meet all of the requirements for the adoption of rules.<sup>5</sup> The rulemaking hearing was held to allow the MPCA and the Administrative Law Judge to hear public comments regarding the impact of the proposed rules and any changes that might be appropriate. Further, the hearing process provided the public an opportunity to review, discuss, and critique the proposed rules, and to ensure a fully developed rulemaking record. In addition to the comments received at the public hearings, the public was permitted to submit written comments into the record through March 26, 2025.

For the proposed rules to be approved, the MPCA must establish that the rules are needed and reasonable; the rules are within the agency's statutory authority; the agency has fulfilled all procedural requirements; and that any modifications to the rules

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<sup>1</sup> Exhibit (Ex) D-1 at 8 (Statement of Need and Reasonableness – “SONAR”).

<sup>2</sup> *Id.*; see also Minn. Stat. § 116.062(b) (requiring annual reporting by owners and operators of facilities issued an air quality permit, but exempting “a facility issued an Option B registration permit” under Minn. R. 7007.1120 (2023)).

<sup>3</sup> Ex. D-1 at 8.

<sup>4</sup> See Minn. Stat. §§ 14.131-.20 (2024).

<sup>5</sup> See Minn. Stat. § 14.001(1)-(3), (5) (2024).

made after the proposed rules were initially published in the *State Register* are within the scope of the matter that was originally announced.

## SUMMARY OF CONCLUSIONS

The MPCA established it has the statutory authority to adopt the proposed rules, it has complied with all procedural requirements of law and rule, and that the proposed rules are needed and reasonable. Therefore, the Administrative Law Judge **APPROVES** the proposed rules and recommends they be adopted.

Based upon all the record, including the Agency's exhibits, and the oral and written comments received, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

### I. Background Regarding the Proposed Rules

1. The MPCA began collecting air toxics emissions data in 2011.<sup>6</sup> The current reporting system for air toxic emissions by facilities to MPCA is voluntary and reporting occurs every three years.<sup>7</sup>

2. Under the current voluntary system, facilities have no incentive to report air toxics emissions accurately,<sup>8</sup> and reports can be incorrect and incomplete, leaving the MPCA with gaps in the data that it needs to inform policy development and rulemaking.<sup>9</sup> Enforcement authority to ensure complete and accurate reporting of air toxics emissions is vital for the MPCA to be able to assess risks to human health for Minnesotans and to prioritize actions by the agency that reduce air toxics emissions.<sup>10</sup>

3. Additionally, air toxic emissions can fluctuate from year to year due to several factors, for example: economic conditions, contractual work, project-based operations, product availability, and alterations in product formulations.<sup>11</sup> Annual reporting and analysis emissions data is essential to aid the MPCA in understanding air toxics emissions from facilities, allowing the MPCA to assess the extent of variation and to determine recommendations for future reduction of air toxics emissions.<sup>12</sup>

4. In 2023, the Minnesota Legislature passed Minn. Stat. § 116.062 which directed that the Commissioner of the MPCA must "require owners and operators of a facility issued an air quality permit by the [MPCA], except a facility issued an Option B registration permit . . . to annually report the facility's air toxics emissions to the [MPCA], including a facility not required as a condition of its air quality permit to keep records of

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<sup>6</sup> Ex. D-1 at 15.

<sup>7</sup> *Id.* at 12-13.

<sup>8</sup> *Id.* at 13.

<sup>9</sup> *Id.* at 12.

<sup>10</sup> *Id.* at 13.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

air toxics emissions.”<sup>13</sup> The Commissioner was also directed to “determine the method to be used by a facility to directly measure or estimate air toxics emissions.”<sup>14</sup>

5. The definition of “air toxics” under Minn. Stat. § 116.062(c) is “chemical compounds or compound classes that are emitted unto 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.

6. The statute further directed that reporting requirements would apply to facilities “located in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, or Washington” that are issued an air quality permit by the MPCA, except for Option B registration permits.<sup>15</sup>

7. By receiving annual reporting air toxics emissions as mandated in Minn. Stat. § 116.062, the MPCA will obtain data essential for understanding air toxics emissions from facilities in the seven-county metropolitan area.<sup>16</sup> The MPCA will use this data to develop policy and to guide its decision-making to promote future reductions of air toxics emissions,<sup>17</sup> and will be better able to inform communities about health and environmental impacts from air toxics.<sup>18</sup>

8. Additionally, effective August 8, 2023, the EPA repealed a regulation under the CAA Title V operating permit program regulations through which a facility could claim an emergency affirmative defense.<sup>19</sup> The EPA determined that the emergency affirmative defense provisions were inconsistent with the CAA and set a deadline for states to remove that language from their EPA-approved Title V state permitting programs by August 21, 2024, or to seek an extension to remove the

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<sup>13</sup> Minn. Stat. § 116.062(b).

<sup>14</sup> *Id.*

<sup>15</sup> Minn. Stat. § 116.062(a).

<sup>16</sup> Ex. D-1 at 10.

<sup>17</sup> *Id.* at 10, 12-13.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 9.

language as soon as practicable.<sup>20</sup> The MPCA requested and received an extension of the deadline until August 21, 2025.<sup>21</sup>

9. Because the EPA directed states to remove the defense from their rules, and since Minnesota’s rules do not differentiate between federal and state permits, the MPCA decided not to retain an emergency affirmative defense for use in non-Title V state operating permits.<sup>22</sup>

## **II. Rulemaking Authority**

10. Minn. Stat. § 116.07 (2024) grants the MPCA broad authority to regulate in the area of air quality.

11. Under Minn. Stat. § 116.07, subd. 4(a), the MPCA may adopt, amend, and rescind rules and standards regarding the prevention, abatement, or control of air pollution. Such rules or standards, “without limitation . . . 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.”<sup>23</sup>

12. Minn. Stat. § 116.062(b) specifically directed the MPCA to “complete rulemaking . . . in order to make the reporting requirements [for air toxics emissions] enforceable.”

13. As noted above, Minn. Stat. § 116.062 defined “air toxics” for the purposes of the statute and this associated rulemaking, identified the geographic area for these reporting requirements, and specified the facilities to which the standards would apply.

14. The MPCA has the statutory authority to adopt the proposed rules under Minn. Stat. §§ 116.07, .062.

## **III. Procedural Requirements of Minn. Stat. Ch. 14 and Minn. R. Ch. 1400**

### **A. Publication and Notices**

15. Minn. Stat. § 14.101, subd. 1 (2024) requires that an agency solicit comments from the public on the subject matter of a proposed rulemaking at least 60 days prior to the publication of a notice of intent to adopt rules or a notice of hearing. Such notice must be published in the *State Register*.

16. On July 24, 2023, the MPCA published a Request for Comments in the *State Register* seeking comments on its planned new rules governing required annual reporting on air toxics emissions from permitted facilities (except those with Option B

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 10.

<sup>23</sup> Minn. Stat. § 116.07, subd. 4(a).

registration permits) located in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, or Washington counties.<sup>24</sup> The MPCA explained that “mandatory air toxics emissions reporting would ensure that MPCA programs to address the disproportionate exposure to air toxics in certain communities can be effective and based on correct and complete information.”<sup>25</sup> The MPCA identified three main goals for the rulemaking:

- (1) Establish the requirements for air toxics emissions reporting for permitted facilities on an annual basis (Minn. R. 7019.3000 and 7019.3020);
- (2) Identify the air toxics to be reported (Minn. R. ch. 7019); and
- (3) Amend permit and reporting processes to align with annual air toxics emissions reporting (Minn. R. ch. 7002; Minn. R. 7007.1300, subs. 3 and 4; and Minn. R. ch. 7008).

17. On April 1, 2024, the MPCA published a second Request for Comments in the *State Register*.<sup>26</sup> In addition to restating matters covered by the first Request for Comments, the MPCA explained that the purpose of the second request was to provide notice of its intent to repeal sections of Minn. R. ch. 7007 allowing a Title V air permittee to assert an emergency affirmative defense.<sup>27</sup> The MPCA noted that it proposed to repeal that language through this rulemaking because this matter involved amendments impacting permitted air emissions and was an upcoming permanent air rulemaking.<sup>28</sup>

18. The MPCA complied with the requirements of Minn. Stat. § 14.101 (2024) by publishing a request for comments at least 60 days prior to issuing a notice of its intent to adopt rules.<sup>29</sup>

19. Minn. Stat. § 14.22, subs. 1-2 (2024), provide that an agency may publish a dual notice in which it indicates that it will hold a public hearing on a rule, but that the hearing will be cancelled unless 25 or more persons request that the hearing be held. If the agency does not receive a sufficient number of hearing requests, the rule may be adopted without a hearing.<sup>30</sup> In addition to other required notices, notice must be given to persons who have registered their names with the agency under Minn. Stat. § 14.14, subd. 1a, which requires each agency to maintain a list of persons who have registered with the agency for the purpose of receiving rulemaking notices.

20. Minn. R. 1400.2080, subp. 6 (2023), further provides that:

A dual notice must be mailed at least 33 days before the end of the comment period and must be published in the *State Register* at least 30 days before the end of the comment period. If a hearing is required

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<sup>24</sup> Ex. A-1 (Request for Comments published July 24, 2023).

<sup>25</sup> *Id.* at 3.

<sup>26</sup> Ex. A-2 (Request for Comments published April 1, 2024).

<sup>27</sup> *Id.* at 3.

<sup>28</sup> *Id.*

<sup>29</sup> See Ex. F (Dual Notice).

<sup>30</sup> Minn. Stat. § 14.22, subs. 1-2.

after using a dual notice, there must be at least ten days between the end of the comment period and the start of the hearing.

21. On October 2, 2024, the Office of the Revisor of Statutes approved publication of the MPCA's proposed rule language.<sup>31</sup>

22. On October 30, 2024, the MPCA requested approval of its Notice of Intent to Adopt Rules with or without a Hearing (Dual Notice). The Administrative Law Judge approved the Dual Notice by Order dated November 1, 2024.<sup>32</sup>

23. The MPCA published the Dual Notice, entitled Dual 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, in the *State Register* issued on November 25, 2024.<sup>33</sup> The Dual Notice stated that if 25 or more people submitted written requests for a public hearing by January 15, 2025, the Administrative Law Judge would hold a virtual public hearing on February 27, 2025, via WebEx beginning at 3:00 p.m. and continuing until at least 6:00 p.m.<sup>34</sup> The Dual Notice provided information on how persons could submit comments on the proposed rules and how persons could join the hearing via the internet or telephone.<sup>35</sup> The Dual Notice also advised the public that comments could be submitted until January 15, 2025, and provided directions as to the method for submitting comments.<sup>36</sup>

24. On November 25, 2024, the MPCA emailed and mailed the Dual Notice to all persons and entities on its official rulemaking list.<sup>37</sup> The official rulemaking list included all persons and entities who requested to be placed on the MPCA's GovDelivery system for the purpose of receiving notice on rulemaking for air toxics emissions reporting.<sup>38</sup> The Dual Notice was emailed to 2,258 GovDelivery subscribers.<sup>39</sup>

25. The MPCA complied with the notice and timing requirements of Minn. Stat. §§ 14.14, .22 (2024) and Minn. R. 1400.2080, subp. 6.

26. Under Minn. Stat. §§ 14.131, .23 (2024), an agency must send a copy of its SONAR to the Legislative Reference Library at the time that its notice of hearing or notice of intent to adopt rules is mailed. On December 10, 2024, the MPCA emailed a copy of the SONAR to the Legislative Reference Library as directed by Minn. Stat. §§ 14.131, .23.<sup>40</sup>

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<sup>31</sup> Ex. C.

<sup>32</sup> Order on Review of Dual Notice (Nov. 1, 2024).

<sup>33</sup> Ex. F (Dual Notice).

<sup>34</sup> *Id.* at 4-5.

<sup>35</sup> *Id.* at 5.

<sup>36</sup> *Id.* at 4.

<sup>37</sup> Ex. G-1 (Certificate of Mailing Dual Notice).

<sup>38</sup> Ex. G-2 (GovDelivery email bulletin); Ex. G-3 (Certificate of Accuracy of the Mailing List).

<sup>39</sup> Ex. G-2.

<sup>40</sup> Ex. E.

27. Under Minn. Stat. § 14.116 (2024), when an agency mails notice of its intent to adopt rules, it must send a copy of the notice and a copy of the SONAR to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules and to the Legislative Coordinating Commission. On December 10, 2024, the MPCA emailed a copy of the Dual Notice and the SONAR to the Legislative Coordinating Commission, the chairs and ranking minority party members of the legislative policy and finance committees with jurisdiction over air emissions, and the chief authors of Minn. Stat. § 116.062.<sup>41</sup>

28. The MPCA complied with the notice requirements of Minn. Stat. §§ 14.116, .131, .23.

## **B. Additional Notice Requirements**

29. In addition to other notice requirements, Minn. Stat. § 14.14, subd. 1a(a), requires that an agency 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.” Minn. Stat. § 14.131 further requires that an agency include in its SONAR a description of its efforts to provide this additional notice. Alternatively, the agency must detail why additional notification efforts were not made.<sup>42</sup>

30. Pursuant to Minn. R. 1400.2060 (2023), an agency may request approval of its plan for giving additional notice of proposed rules. If the agency requests approval, it must make the request and receive approval before it publishes notice of the proposed rules.<sup>43</sup> If the notice plan is approved, such approval indicates the Office of Administrative Hearings’ final determination that the additional notice plan is adequate if implemented as described by the agency.<sup>44</sup>

31. On October 10, 2024, the MPCA filed an Additional Notice Plan for review and approval. The Administrative Law Judge approved the Additional Notice Plan by Order dated October 15, 2024.<sup>45</sup>

32. On November 22, 2024, the MPCA provided notice according to its approved Additional Notice Plan to MPCA Air Mail electronic newsletter subscribers via an email containing a hyperlink to the webpage where electronic copies of the Dual Notice, SONAR, and proposed rule amendments could be viewed.<sup>46</sup>

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<sup>41</sup> Ex. K-1 and K-2 (Certificate of Sending Dual Notice and SONAR to Legislators and Legislative Coordinating Commissions and cover letter).

<sup>42</sup> Minn. Stat. § 14.131.

<sup>43</sup> Minn. R. 1400.2060, subp. 1.

<sup>44</sup> *Id.*, subp. 4.

<sup>45</sup> Order on Review of Additional Notice Plan (Oct. 15, 2024).

<sup>46</sup> Ex. H (Certificate of Giving Additional Notice under the Additional Notice Plan).

33. On November 25, 2024, the MPCA also provided notice as follows:<sup>47</sup>

- (1) Published Notice of Intent to Adopt Rules on the MPCA's Public Notice webpage at:  
<https://www.pca.state.mn.us/public-notice>;
- (2) Provided specific notice to tribal authorities via email with a hyperlink to electronic copies of the SONAR, and proposed rule amendments to the 11 federally recognized tribes in Minnesota;
- (3) Provided specific notice to the American Petroleum Institute and the Minnesota Chamber of Commerce via email with a hyperlink to electronic copies of the Notice, SONAR, and proposed rule amendments;
- (4) Provided specific notice to associations and environmental groups including facility groups, agricultural groups, jurisdictional groups, neighborhood groups, human health groups, and environmental health groups; and
- (5) Posted relevant rulemaking updates and associated documents including the Notice, SONAR, and proposed rule on the Air Toxic Emissions Reporting webpage at  
<https://www.pca.state.mn.us/get-engaged/air-toxics-emissions-reporting>.

34. On December 10, 2024, the MPCA also provided specific notice to EPA Region 5, including a hyperlink to electronic copies of the Dual Notice, SONAR, and proposed rule amendments.<sup>48</sup>

35. In addition to these notices, the MPCA published four articles in 2023 and 2024 in Air Mail, a quarterly newsletter sent to 3,832 subscribers.<sup>49</sup>

36. The MPCA also conducted meetings and made presentations to state and local government, tribal, and private industry stakeholders during 2024.<sup>50</sup>

37. The MPCA did not convene an advisory committee of key stakeholders due to the limited time frame for commencing this rulemaking.<sup>51</sup>

38. The MPCA complied with its Additional Notice Plan and fulfilled the additional notice requirements provided in Minn. Stat. §§ 14.14, subd. 1a(a), .131.

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Ex. D-1 at 18-19. The number of subscribers was counted as of August 14, 2024. *Id.* at 18.

<sup>50</sup> *Id.* at 19.

<sup>51</sup> *Id.*

### **C. Rule Hearing and Submission of Written Comments**

39. The Administrative Law Judge conducted a public rulemaking hearing on February 27, 2025, in accordance with Minn. Stat. § 14.14, subd. 2a.<sup>52</sup>

40. The MPCA's panel at the hearing included: Kayla Billett, Associate General Counsel; Megan Kuhl-Stennes, Air Policy Planner; Rachel Olmanson, Air Emissions Inventory Coordinator; and Addison Otto, Rule Coordinator.<sup>53</sup>

41. At the hearing, the MPCA submitted the documents required by Minn. R. 1400.2220, subp. 1(A)-(K) (2023).<sup>54</sup>

42. Two members of the public asked questions of the MPCA during the public hearing.<sup>55</sup>

43. Pursuant to Minn. Stat. § 14.15, subd. 1, the Administrative Law Judge extended the comment period by an additional 20 days following the hearing. After the end of that comment period, the MPCA and interested persons were allowed an additional five working days in which to submit rebuttal comments.

44. The Office of Administrative hearings received two comments during the post-hearing comment period. The MPCA also submitted a rebuttal comment during the rebuttal comment period.

### **IV. Statutory Requirements**

#### **A. Regulatory Factors**

45. The Administrative Procedure Act requires an agency adopting rules to address eight factors in its SONAR.<sup>56</sup> The statutory factors are:

- (1) 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;
- (2) 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;

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<sup>52</sup> See Public Hearing Transcript (Tr.) (Feb. 27, 2025).

<sup>53</sup> Tr. at 19-20. See Minn. R. 1400.2220, subp. 4 (2023) ("Agency representatives or other persons thoroughly familiar with the proposed rules and the statement of need and reasonableness must be available at the hearing for questioning by the judge and other interested persons or to briefly summarize all or a portion of the statement if requested by the judge.").

<sup>54</sup> Exs. A-K. See *also* Ex. L.

<sup>55</sup> Tr. at 45, 49.

<sup>56</sup> Minn. Stat. § 14.131.

- (3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;
- (4) 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;
- (5) 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;
- (6) 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;
- (7) 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; and
- (8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule and reasonableness of each difference.<sup>57</sup>

#### **1. Classes of Persons Affected, Benefitted, or Bearing Costs of the Proposed Rule**

46. The MPCA maintains that the parties most affected by, and that will bear costs associated with the proposed rules, are facilities with air permits (except option B permits) in the seven metropolitan counties that emit toxic air pollutants.<sup>58</sup> Option B permittees are excluded because they were specifically exempted by Minn. Stat. § 116.062, and because this class of permittees has minimal air toxics emissions.<sup>59</sup> The MPCA estimates a total of 666 potentially impacted facilities in the seven metropolitan counties, 406 of which are located within one mile of an area of concern for environmental justice.<sup>60</sup> The MPCA anticipates that some of these permittees only have emissions from combustion processes, for which the MPCA will continue to use the current process for voluntary reporting and will calculate emissions using activity data and EPA and state emissions factors.<sup>61</sup>

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<sup>57</sup> *Id.*

<sup>58</sup> Ex. D-1 at 51.

<sup>59</sup> *Id.* at 52.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

47. The MPCA itself will be impacted by the proposed rules, as it is the agency charged with implementing, administering, and enforcing the new rules.<sup>62</sup>

48. The proposed rules on air toxics emissions reporting may indirectly impact the health of all Minnesotans living in or near the seven metropolitan counties, which amounts to 56 percent of the state's population, and may particularly benefit communities that bear disproportionate impacts from air pollution.<sup>63</sup> According to data collected by the MPCA, communities in the metropolitan area that bear the heaviest burdens of air pollution tend to be communities of concern for environmental justice.<sup>64</sup> The MPCA defines these areas as those which have higher proportions of lower-income residents, higher proportions of BIPOC residents, a high proportion of individuals with limited proficiency in English, and Tribal census areas.<sup>65</sup> The MPCA estimates that 61 percent of facilities that emit air toxics are located in or near communities of concern for environmental justice.<sup>66</sup>

49. In addition, the proposed repeal of the Title V emergency affirmative defense will technically apply to every facility with an air permit located within Minnesota.<sup>67</sup> However, the MPCA notes that the repeal will directly affect only one facility, because currently only that facility has a permit that includes the emergency affirmative defense provisions.<sup>68</sup>

## **2. Probable Costs to the Agency and Other Agencies for Implementation and Enforcement and Effect on State Revenues**

50. The MPCA is the only agency with regulatory responsibilities under the proposed rules. Several divisions of the MPCA will be impacted by adoption of the rules, including the areas of air emissions inventory, compliance and enforcement, small business environmental assistance program (SBEAP), and air pollution risk assessment.<sup>69</sup>

51. MPCA staff will review air emissions inventories to conduct quality assurance and quality control of the data provided by affected facilities; update the inventory's air toxics pollutant list and database with the pollutants and emission factors; and may develop a separate emissions inventory database for the seven metropolitan county area and assist facilities with their air toxics reporting. The MPCA anticipates hiring 1.20 to 1.85 additional full time equivalent (FTE) staff members in the first year after enactment of the proposed rules to complete implementation work. For subsequent years, the MPCA estimates it will need 0.45 to 1.15 FTEs. Based on the current average annual cost for an FTE, the MPCA estimates staffing costs attributable

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 51, 53.

<sup>64</sup> *Id.* at 53.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 52.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 54.

to the proposed rules will be between \$210,000 and \$324,000, in the first year and between \$79,000 and \$201,000 annually in subsequent years.<sup>70</sup>

52. The MPCA's compliance and enforcement program will enforce the proposed rules, requiring an estimated 0.5 FTE in additional compliance and enforcement staff annually at an estimated cost of \$87,500 per year.<sup>71</sup>

53. The MPCA's SBEAP assists regulated facilities in complying with all state environmental regulations. The MPCA estimates it will need an additional 0.2 FTEs in the first year and 0.13 FTEs in subsequent years to fulfill this function, at an annual cost of \$35,000 in the first year and around \$23,000 per year in subsequent years.<sup>72</sup>

54. The MPCA anticipates the proposed rules will provide some additional work for its risk assessors, but that the new rules will also reduce their work in other ways. As a result, the MPCA expects the additional costs and savings will roughly offset each other.<sup>73</sup>

55. In total, the MPCA estimates its costs in connection with the proposed rules 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.<sup>74</sup>

56. The MPCA states that the proposed rules are not expected to have an impact on state revenues. The MPCA already received funding for the air toxics emissions reporting rule implementation.<sup>75</sup>

### **3. Less Costly or Less Intrusive Methods for Achieving the Purpose of the Proposed Rule**

57. The primary purpose of these rules is to require air toxics emissions reporting in the seven metropolitan counties of Minnesota, allowing the MPCA to continue to pursue its mission to protect human health and the environment and to inform the public.<sup>76</sup>

58. The MPCA considered alternative methods for achieving the purpose of the proposed rules. Options it considered included continued voluntary emissions reporting, monitoring near emissions sites, requiring reporting from air toxics manufacturers, and requiring facility-wide data reporting. The MPCA concluded that these methods were variously out-of-scope for the governing statute, would result in imprecise data collection, or would result in the receipt of inadequate information. The

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 54-55.

<sup>75</sup> *Id.* at 55.

<sup>76</sup> *Id.*

MPCA determined that no other thorough and effective way to achieve the purpose of the rules and meet the legislative intent existed.<sup>77</sup>

#### **4. Description of Alternative Methods for Achieving the Purpose of the Proposed Rule Considered by the Agency and Why Alternatives Were Rejected**

59. The MPCA identified three alternative methods: air toxics emissions monitoring; voluntary air toxics emissions reporting; and air toxics emissions modeling. The MPCA indicates that it has relied on these alternatives for many years but that these strategies do not meet the need for air toxic emissions reporting.<sup>78</sup>

60. The MPCA determined that air toxics emissions monitoring is not a viable option for monitoring potentially 700 air toxics emitting facilities across the seven metropolitan counties. The MPCA asserts that air toxics emissions monitoring is not a cost-effective alternative to the proposed rules.<sup>79</sup>

61. The MPCA currently has 22 ambient air toxics monitoring sites in the seven metropolitan counties at an annual operating cost of \$20,000 per year for each site. These monitoring sites only measure for 74 pollutants. These sites also require lab testing for different analytes using EPA-approved methods. Currently, approximately 3,000 samples per year are tested at an average cost of \$130 per sample, resulting in testing costs near \$400,000 per year.<sup>80</sup>

62. The MPCA has also experimented with fence-line, near fence-line, and neighborhood air toxics monitoring. To effectively assess the emissions, monitors would be needed near each air toxic emitting facility, and ultimately each stack. To monitor the 666 facilities located in the seven metropolitan counties at a cost of \$20,000 per year would result in costs to the MPCA of \$13.78 million per year. Additional lab costs would come in at another \$12 million annually.<sup>81</sup>

63. As for voluntary reporting, facilities that voluntarily report air toxics emissions in the current triennial air toxics emissions inventory often over-report pollutants, causing modeling errors for emissions. Modeling errors must be corrected using the facility's North American Industry Classification System codes. Voluntary reporting will continue to lack accuracy and be incomplete, leading to data that is not sufficiently precise.<sup>82</sup>

64. With regard to emissions modeling, the EPA maintains a screening tool of air toxics risks called AirToxScreen which depicts cancer risks and chronic noncancer hazards for some pollutants. However, AirToxScreen is slow to be updated, such that

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<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 55-56.

<sup>80</sup> *Id.* at 55.

<sup>81</sup> *Id.* at 55-56.

<sup>82</sup> *Id.* at 56.

2020 results were released in 2024. Further, the MPCA notes that for nonreporting years, some emissions for AirToxScreen are estimated based on past data.<sup>83</sup>

65. The MPCA maintains a Minnesota-wide risk map called MNRISKS. This risk map uses data from the emissions inventory and models these emissions based on stack parameters given by each facility. The MPCA asserts that receiving accurate emissions information through the proposed rules will allow the MPCA to update the MNRISKS map and provide updated cancerous and noncancerous risk data to the reporting areas.<sup>84</sup>

## 5. Probable Costs of Complying with Proposed Rules, Including the Portion of the Total Costs Borne by Identifiable Categories of Affected Parties

66. The primary parties that will bear costs associated with the proposed rules are permitted facilities in the seven metropolitan counties.<sup>85</sup> The MPCA has identified 666 facilities by permit type, as follows.<sup>86</sup>

Permit type	Count
Capped	19
General Manufacturing	2
General Nonmetallic	24
Individual Federal	65
Individual State	53
Registration Option A	5
Registration Option C	136
Registration Option D	362
Total	666

67. The MPCA estimates that there will be some differences in compliance costs to facilities based on the type of permit held by the facility, such as internal staff costs, and/or costs for hiring external consultants to complete the reporting obligations.<sup>87</sup>

68. To gain insight into potential costs for facilities, the MPCA sought comments from affected facilities, asking: “How much will it cost (if anything) to

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<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 52 (Table 5. Facilities, listed by permit type, that would be affected by the proposed rule), 56. The MPCA repeatedly refers to the count of 666 facilities, but at one point identifies that there are 671 impacted facilities. *Id.* at 56. The small difference in these numbers is not material to a determination of whether the rules should be approved.

<sup>87</sup> *Id.* at 56.

complete air toxics reporting for this potential rule?" Nineteen facilities responded from a mix of permit types, ten of which provided cost estimates. The MPCA states that this sample size is too small to make more than a general inference of the costs, however, the MPCA estimates the average annual compliance costs per facility would be around \$5,000 to \$9,000, with costs decreasing after facilities establish systems to conduct reporting.<sup>88</sup>

69. The MPCA anticipates there will be no costs to facilities, the MPCA, or the public related to repealing the Title V emergency affirmative defense provisions.<sup>89</sup>

## **6. Probable Costs or Consequences of not Adopting the Proposed Rules, Including Costs Borne by Individual Categories of Affected Parties**

70. If the proposed rules are not adopted, the MPCA would continue to rely on the current system of voluntary reporting of air toxics emissions, a system that does not provide sufficient data. The MPCA would have to forego the benefits that will result from obtaining more accurate and complete annual reporting data.<sup>90</sup>

71. The MPCA posits that the proposed rules will allow it to obtain more complete information, promote better policy development, and increase transparency of facility emissions data, all of which are benefits that will be lost if the proposed rules are not adopted.<sup>91</sup>

72. The MPCA explains that if the Title V emergency affirmative defense provisions were not repealed, no costs would accrue for facilities, the public, or the MPCA. The MPCA believes that the provision has never been utilized.<sup>92</sup>

## **7. Assessment of Differences Between Proposed Rules and Existing Federal Regulations**

73. In addition to the requirements of Minn. Stat. § 14.131 regarding this factor, for a rulemaking relating to air quality standards, the MPCA's SONAR must also assess any differences between the proposed rule and federal standards, similar standards in states bordering Minnesota, and standards in other states within EPA Region 5.<sup>93</sup> The MPCA must provide specific analysis of the need and reasonableness for any difference between the proposed rules and these standards.<sup>94</sup>

74. The federal toxic release inventory (TRI) is an annual report of certain toxic chemical releases to air, water, and land by certain facilities. The TRI list of pollutants includes hazardous air pollutants under the CAA (HAPs); many per- and polyfluoroalkyl substances (PFAS) pollutants; persistent, bioaccumulative, and toxic

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<sup>88</sup> *Id.* at 56-8.

<sup>89</sup> *Id.* at 58.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 59.

<sup>93</sup> Minn. Stat. § 116.07, subd. 2(f).

<sup>94</sup> *Id.*

chemicals (PBTs); and other pollutants of concern to air, land, and water. The TRI, however, does not require facilities to report detailed information on facility controls, or units and process information.<sup>95</sup>

75. Under the EPA's Air Emissions Reporting Requirements<sup>96</sup> (AERR) states are required to report certain air emissions data and may voluntarily report other data. The EPA proposed revisions to the AERR in 2023, but the final rule has not yet been promulgated.<sup>97</sup> The MPCA maintains that its proposed rules should be adopted because uncertainty exists about the final result at the federal level.<sup>98</sup>

76. Several differences exist between the AERR proposal, TRI program, and MPCA's proposed air toxics emissions reporting rules. While there is some overlap between these reports and programs, the proposed rules will focus on the seven metropolitan counties.<sup>99</sup>

77. The MPCA also analyzed the differences between the proposed rules and the standards in neighboring states and within EPA Region 5. Wisconsin was one of the first states to require air toxics reporting with the adoption of mandatory reporting in 1988, and revised standards adopted in 2004. Wisconsin's standards require facilities to identify air toxics, including HAPs and other pollutants, 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. Ohio does not have voluntary or mandatory reporting rules.<sup>100</sup>

78. The MPCA states that the proposed rules will require reporting of more types of air toxics than rules in other states, but that it is reasonable to have rules that are more protective of human health. While some states have voluntary programs, Minnesota law now requires adoption of a mandatory reporting system. The proposed rules also contain a de minimis approach that eases the burden for facilities, and the rules require certain types of permittees to report rather than providing for reporting to be triggered at a specific emissions threshold. Given the range of approaches in other states and the requirements of Minn. Stat. § 116.062, the MPCA maintains that the proposed rules do not make Minnesota's air emissions reporting requirements significantly more or less stringent than the air programs in neighboring states and states within EPA Region 5.<sup>101</sup>

79. The MPCA contends that repealing the Title V emergency affirmative defense provisions will result in no differences between state and federal regulations.<sup>102</sup>

80. The MPCA has met the requirements of Minn. Stat. § 116.07, subd. 2(f).

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<sup>95</sup> Ex. D-1 at 69.

<sup>96</sup> See 40 C.F.R. Part 51, Subp. A.

<sup>97</sup> Ex. D-1 at 69.

<sup>98</sup> *Id.* at 60.

<sup>99</sup> *Id.* at 69-70.

<sup>100</sup> *Id.* at 70.

<sup>101</sup> *Id.* at 70-71.

<sup>102</sup> *Id.* at 60.

## 8. Cumulative Effect of the Rule with Other Federal and State Regulations

81. Minn. Stat. § 14.131 requires an assessment of the cumulative effect of the proposed rules with other regulations related to the purpose of the rules. The statute 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.”<sup>103</sup>

82. The MPCA explains that it does not expect the cumulative effect of these rules or the federal AERR to be significant. Because air toxic reporting is not required under the CAA, no overlap or impact from a federal rule exists. When the EPA finalizes the AERR, the MPCA will reevaluate the cumulative impact of aligning these rules. The MPCA notes that the EPA recently finalized the National Emission Standards for Hazardous Air Pollutants (NESHAPs), which could have an impact related to air toxics, but the proposed rules are specific to the natural and economic environment of Minnesota. NESHAPs are not reported to the MPCA, so the proposed rules are needed for Minnesota to gain information on its metropolitan air toxic emissions.<sup>104</sup>

83. The MPCA states that the cumulative impact of the proposed rules differ by facility. Not all facilities report to the TRI. If a facility reports to the TRI, its reporting to the MPCA may occasionally be redundant. However, the reporting processes occur in two different time periods, so parties will not be required to do regulatory reporting at the same time. The MPCA also notes that its possible adoption of several additional rules over the next three years could impact facilities, but that the MPCA has tried to coordinate regarding the adoption of other rules so that it does not burden regulated facilities.<sup>105</sup>

84. The MPCA asserts that 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.<sup>106</sup>

### B. Performance-Based Regulation

85. An agency is required to describe in its SONAR the manner in which the agency has considered and implemented the legislative policy supporting performance-based regulatory systems.<sup>107</sup> A performance-based rule is one that emphasizes “superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.”<sup>108</sup>

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<sup>103</sup> Minn. Stat. § 14.131.

<sup>104</sup> Ex. D-1 at 60.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Minn. Stat. §§ 14.002, .131 (2024).

<sup>108</sup> Minn. Stat. § 14.002.

86. The MPCA's consideration of performance-based regulation resulted in an approach that met its legislative directive while offering flexibility to regulated parties. The MPCA complied with this rule by:

- Providing facilities with numerous ways to calculate air toxics emissions found in rule part 7019.3030.
- Offering 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 the Consolidated Emissions Data Repository (CEDR) or by uploading spreadsheets of emissions information to CEDR.
- Continuing to calculate air toxics emissions for combustion processes using the most current EPA and state emission factors, along with fuel usage or activity data reported by facilities, reducing the 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, assisting 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 MPCA. 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.
- Providing a de minimis standard for reporting emissions from material balance calculations as derived from the Safety Data Sheet (SDS). This is consistent with Occupational Safety and Health Administration (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 standard and must be reported.
- Maintaining consistency in reporting and regulatory programs so these data can be used for modeling, risk evaluation, and the MPCA's understanding of air toxics in the seven metropolitan counties. The MPCA

sought to balance the need for consistent emissions reporting while offering flexibility where possible.<sup>109</sup>

87. The Administrative Law Judge concludes that the MPCA's proposed rules implement the performance-based policies provided in Minn. Stat. § 14.002.

**C. Consultation with the Commissioner of Minnesota Management and Budget**

88. Minn. Stat. § 14.131 requires that agencies consult with the Commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on local units of government.

89. On September 30, 2024, the MPCA sent a letter to MMB's Commissioner, along with the proposed rules and SONAR, seeking the required consultation.<sup>110</sup> On October 21, 2024, MMB provided its response indicating that the proposed amendments were not anticipated to have an impact on local governments or state revenues.<sup>111</sup>

**D. Cost to Small Businesses and Cities under Minn. Stat. § 14.127**

90. Minn. Stat. § 14.127 (2024), requires 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: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees.” The agency must make this determination before the close of the hearing record, and the Administrative Law Judge must review the determination and approve or disapprove it.<sup>112</sup>

91. The MPCA states that it completed a detailed analysis of costs to comply with its proposed rules.<sup>113</sup> It determined that no one business with less than 50 full-time employees will experience costs exceeding \$25,000 during the first year of reporting.<sup>114</sup> In general, the MPCA estimates that it would require over 50 hours of expensive consultant time to reach the cost threshold of \$25,000.<sup>115</sup> The MPCA estimated that small businesses will likely only need an average of approximately ten hours of consultant time.<sup>116</sup> The MPCA noted it was difficult to make clear comparisons for small businesses, but considering the responses received in facilities' informal comments, costs to businesses would be between \$5,000 and \$9,000 to comply with these rules.<sup>117</sup> Small business costs would likely fall within the lower end of this range, closer to an

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<sup>109</sup> Ex. D-1 at 67.

<sup>110</sup> Ex. K-3 (Letter to MMB and MMB Memorandum response).

<sup>111</sup> *Id.*

<sup>112</sup> Minn. Stat. § 14.127, subds. 1 and 2.

<sup>113</sup> Ex. D-1 at 68.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 69.

average of \$5,000 or less.<sup>118</sup> The MPCA notes that no costs are associated with using its e-services system, CEDR, to report air toxic emissions.<sup>119</sup> This is below the \$25,000 cost threshold posed in this section.

92. For cities within the seven metropolitan counties that have an air permit and would be subject to these rules, the MPCA states it should not cost more than \$25,000 to comply with the rules.<sup>120</sup> There are six cities holding a total of ten air permits in the seven-county metropolitan area.<sup>121</sup> Most cities with air permits subject to the rules have those permits for their boilers or generators.<sup>122</sup> The MPCA states it plans to continue the practice of calculating air toxics from boilers and generators based on how much fuel was used, and the best available emission factors from the EPA or the state.<sup>123</sup> This practice occurs now for reporting voluntary air toxics reporting, and the MPCA will continue assisting city permit holders with these calculations.<sup>124</sup>

93. The Administrative Law Judge finds that the MPCA has made the determinations required by Minn. Stat. § 14.127 and approves those determinations.

#### **E. Adoption or Amendment of Local Ordinances**

94. Under Minn. Stat. § 14.128 (2024), an agency must determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with a proposed agency rule. The agency must make this determination before the close of the hearing record, and the Administrative Law Judge must review the determination and approve or disapprove it.<sup>125</sup>

95. Local governments do not oversee any air permitting or reporting in their ordinances.<sup>126</sup> The MPCA determined the proposed amendments will not affect local ordinances or regulations.<sup>127</sup>

96. The Administrative Law Judge finds that the MPCA has made the determination required by Minn. Stat. § 14.128 and approves that determination.

#### **F. Consideration of Economic Factors**

97. In addition to the evaluation of costs and parties likely to incur costs resulting from the proposed rules, as required in Minn. Stat. § 14.131, the MPCA is required by Minn. Stat. § 116.07, subd. 6, to give due consideration to:

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<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> Ex. K-3 (MMB Response).

<sup>122</sup> Ex. D-1 at 69.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> Minn. Stat. § 14.128, subd. 1.

<sup>126</sup> Ex. D-1 at 68.

<sup>127</sup> *Id.*

the establishment, maintenance, operation and expansion of business, commerce, trade industry, 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 therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

98. The Administrative Law Judge concludes that the MPCA has adequately considered the economic factors associated with the proposed rules and has met the requirements of this statute by providing the required analysis regarding the proposed rules' possible economic impacts.<sup>128</sup>

### **G. Environmental Justice Policy**

99. Presidential Executive Order 12898, adopted 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."<sup>129</sup> That executive order stemmed from the provisions of the Civil Rights Act of 1964 which prohibits discrimination based on race, color, or national origin.<sup>130</sup> On January 21, 2025, Presidential Executive Order 12898 was revoked by Presidential Executive Order 14173.<sup>131</sup>

100. The MPCA has developed its own environmental justice policy, most recently revised in 2022, which 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.<sup>132</sup>

101. The MPCA maintains that when undertaking rulemaking, it considers how the impacts of a proposed rule are distributed across Minnesota and works to actively engage all Minnesotans in rule development.<sup>133</sup> In particular, the policy states:

Communities of color, indigenous communities, and low-income residents have a right to live in conditions that support a healthy

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<sup>128</sup> *Id.*

<sup>129</sup> Exec. Order No. 12898, 59 Fed. Reg. 7629 (Feb. 11, 1994).

<sup>130</sup> Ex. D-1 at 61.

<sup>131</sup> Exec. Order No. 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025).

<sup>132</sup> Ex. D-1 at 61.

<sup>133</sup> *Id.* While Presidential Executive Order 14173 revoked the federal government's environmental justice requirements, the MPCA must comply with its own state agency policies, and the MPCA addressed this issue in its SONAR. As a result, consideration of this issue as a part of the rulemaking is appropriate.

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.<sup>134</sup>

102. The MPCA states no negative environmental consequences are expected from the proposed rules.<sup>135</sup> In fact, the MPCA anticipates that areas of concern for environmental justice may benefit because these rules will allow the MPCA to obtain additional data to consider in future policy or rulemaking to protect the health and environment of residents living in and around the seven metropolitan counties.<sup>136</sup>

#### **H. Compliance with Statutory Analysis**

103. The Administrative Law Judge finds that the MPCA has met the requirements established by Minn. Stat. §§ 14.002, .127, .128, .131, 116.07 for assessing the impact of the proposed rules, including consideration and implementation of the legislative policy supporting performance-based regulatory systems, the impact on small businesses, and the fiscal impact on units of local government.

#### **V. Rulemaking Legal Standards**

104. The Administrative Law Judge must make the following inquiries: (1) whether the agency has statutory authority to adopt the rule; (2) whether the rule is unconstitutional or otherwise illegal; (3) whether the agency has complied with the rule adoption procedures; (4) whether the proposed rule grants undue discretion to government officials; (5) whether the rule constitutes an undue delegation of authority to another entity; and (6) whether the proposed language meets the definition of a rule.<sup>137</sup>

105. Under Minn. Stat. § 14.14, subd. 2, and Minn. R. 1400.2100(B), the agency must establish the need for, and reasonableness of, a proposed rule by an affirmative presentation of facts. In support of a rule, the agency may rely upon materials developed for the hearing record,<sup>138</sup> “legislative facts” (namely, general and well-established principles that are not related to the specifics of a particular case, but which guide the development of law and policy),<sup>139</sup> and the agency’s interpretation of related statutes.<sup>140</sup>

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<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 62.

<sup>136</sup> *Id.*

<sup>137</sup> See Minn. R. 1400.2100 (2023).

<sup>138</sup> See, *Manufactured Housing Institute v. Pettersen*, 347 N.W.2d 238, 240 (Minn. 1984); *Minnesota Chamber of Commerce v. Minnesota Pollution Control Agency*, 469 N.W.2d 100, 103 (Minn. Ct. App. 1991).

<sup>139</sup> Compare generally, *United States v. Gould*, 536 F.2d 216, 220 (8th Cir. 1976).

<sup>140</sup> See, *Mammenga v. Agency of Human Services*, 442 N.W.2d 786, 789-92 (Minn. 1989); *Manufactured Housing Institute v. Pettersen*, 347 N.W.2d 238, 244 (Minn. 1984).

106. A proposed rule is reasonable if the agency can “explain on what evidence it is relying and how the evidence connects rationally with the agency’s choice of action to be taken.”<sup>141</sup> By contrast, a proposed rule will be deemed arbitrary and capricious where the agency’s choice is based upon whim, is devoid of articulated reasons, or “represents its will and not its judgment.”<sup>142</sup>

107. An important corollary to these standards is that an agency is entitled to make choices between different possible regulatory approaches, so long as the alternative selected by the agency is a rational one.<sup>143</sup> Thus, while reasonable minds might differ as to whether one or another particular approach represents “the best alternative,” the agency’s selection will be approved if it is one that a rational person could have made.<sup>144</sup>

108. The delegation of rulemaking authority is drawn from the Minnesota Legislature and is conferred upon the agency. A judge does not fashion requirements that the judge regards as best suited for the regulatory purpose. The legal review under the Administrative Procedure Act begins with this important premise.<sup>145</sup>

## **VI. Analysis of the Proposed Rules**

109. The Administrative Law Judge has reviewed the entire record and has read and considered all comments submitted. This Report does not discuss every proposed rule change, comment received, or issue identified, but instead includes a discussion focusing on issues of serious concern to commenters or that give rise to a genuine dispute about the reasonableness of the MPCA’s regulatory choices.

110. The Department proposes to amend several rule chapters as follows:

- 1) Amending chapter 7002 to clarify a definition.
- 2) Amending chapter 7005 to add definitions.
- 3) Amending chapter 7007 to repeal emergency affirmative defense provisions.
- 4) Amending chapter 7019 to address emissions inventory requirements related to air toxics and adding a new section of chapter

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<sup>141</sup> *Manufactured Hous. Inst.*, 347 N.W.2d at 244.

<sup>142</sup> See, *Mammenga*, 442 N.W.2d at 789; *St. Paul Area Chamber of Commerce v. Minn. Pub. Serv. Comm’n*; 312 Minn. 250, 260-61, 251 N.W.2d 350, 357-58 (1977).

<sup>143</sup> *Peterson v. Minn. Dep’t of Labor & Indus.*, 591 N.W.2d 76, 78 (Minn. Ct. App. 1999).

<sup>144</sup> *Minnesota Chamber of Commerce v. Minnesota Pollution Control Agency*, 469 N.W.2d 100, 103 (Minn. Ct. App. 1991).

<sup>145</sup> See *Manufactured Housing Institute*, *supra*, 347 N.W.2d at 244 (instructing that the state courts are to restrict the review of agency rulemaking to a “narrow area of responsibility, lest [the court] substitute its judgment for that of the agency”); see also, *In the Matter of the Proposed Rules of the Minnesota Pollution Control Agency Governing Permits for Greenhouse Gas Emissions*, Minnesota Rules Chapters 7005, 7007 and 7011, Docket No. 8-2200-22910-1 at 20, REPORT OF THE ADMINISTRATIVE LAW JUDGE (Minn. Office Admin. Hearings Nov. 9, 2012).

7019 specific to the air toxics emission inventory and reporting requirements.<sup>146</sup>

111. Among the changes, the MPCA proposes language revisions in chapter 7019 to comply with recommendations made in the Office of the Revisor of Statutes' Minnesota Rules Drafting Manual, including changing "shall" to "must," and "which" to "that."<sup>147</sup> The MPCA also proposes to delete the term "agency" and add the term "commissioner."<sup>148</sup> The Department has established that these rule changes are needed and reasonable.

112. In proposed rule part 7019.3110, the MPCA intends to incorporate by reference an OSHA regulation on hazardous substances, Code of Federal Regulations, title 29, part 1910, subpart Z; a Report on Carcinogens published by the United States Department of Health and Human Services; and the IARC Monographs on the Identification of Carcinogenic Hazards to Humans, published by the International Agency for Research on Cancer. Pursuant to Minn. Stat. § 14.07, subd. 4 (2024), an agency may incorporate by reference into its rules the text from a variety of sources, including federal regulations and publications and documents determined by the Office of the Revisor of Statutes to be conveniently available to the public. If the Revisor's Office certifies that the form of a rule is approved, that approval constitutes the Revisor's finding that the publication or other document is conveniently available to the public.<sup>149</sup> The Revisor's Office approved the form of the proposed rules.<sup>150</sup>

113. As described in greater detail above, the MPCA proposes to delete rule language allowing a permittee to assert an affirmative defense of emergency. These provisions are found in Minn. R. 7007.0800, subp. 4, .1146, subp. 5 (2023).<sup>151</sup> The MPCA also proposes to repeal Minn. R. 7007.1850 (2023), which defines an "emergency" and provides standards related to the assertion of an emergency affirmative defense.<sup>152</sup>

114. Several commenters objected to the MPCA's repeal of this language. The Minnesota Chamber of Commerce asserts that the MPCA should defer action on this portion of the proposed rules until matters currently in litigation have concluded, and it contends that the MPCA should seek another extension of the current EPA-approved repeal deadline.<sup>153</sup> Northern States Power Company-Minnesota d/b/a Xcel Energy (Xcel Energy) argues that the MPCA should adopt an emergency affirmative defense that

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<sup>146</sup> Ex. C; Ex. D-1 at 22.

<sup>147</sup> Ex. C; Ex. D-1 at 22.

<sup>148</sup> Ex. C; Ex. D-1 at 23.

<sup>149</sup> Minn. Stat. § 14.07, subd. 4.

<sup>150</sup> See Ex. C.

<sup>151</sup> Ex. C at 2.

<sup>152</sup> *Id.* at 20.

<sup>153</sup> Comment of the Chamber of Commerce at 3 (Jan. 15, 2025). The Chamber of Commerce filed another comment during the post-hearing comment period as well, to which it attached its prior comment and its previous submissions made to the MPCA. See Comment of the Chamber of Commerce (Feb. 24, 2025). Both comments were submitted by Andrew Morley, the Chamber of Commerce's Environmental Policy Director.

applies to “state-only” permit provisions and the application of state law.<sup>154</sup> It contends that the EPA allows for this approach.<sup>155</sup>

115. The MPCA notes that while litigation related to the affirmative defense provisions may be pending, the repeal requirement has not been stayed, and it considers the deadline to remove this language from state law to be binding.<sup>156</sup> Regarding a state-only defense, the MPCA contends that the EPA determined the emergency affirmative defense was not consistent with the CAA.<sup>157</sup> The MPCA states that it would be required to commence another rulemaking proceeding to develop a defense applying only to state permits under state law, but that it will not take an action inconsistent with the determination that such a provision is inconsistent with the CAA. Further, the MPCA determined that other states in EPA Region 5 that have such emergency provisions are fully repealing those standards and will not retain a state-only standard, making its actions consistent with those of the other states in this region.

116. The MPCA has established that it has made a rational regulatory choice to fully repeal the emergency affirmative defense provisions in the current rules. It has also established through an affirmative presentation of facts that repeal of this language is needed and reasonable.

117. The MPCA proposes amending Minn. R. 7005.0100 (2023) to add subparts 2c, 2d, and 44b, which in turn define “air toxics,” “air toxics reporting facility,” and “toxic release inventory list,”<sup>158</sup> all of which relate to amendments proposed in chapter 7019.

118. Revisions to chapter 7019 make up the majority of the MPCA’s proposed rule changes, as the MPCA proposes to amend this chapter to require air toxics reporting facilities to submit an annual emission inventory report, provides instruction as to the calculation of emissions, establishes the method of calculation, and identifies the list of specific air toxics that must be reported.<sup>159</sup>

119. The Chamber of Commerce posed several objections. It objects to the MPCA’s process for soliciting public participation regarding the content of the rules and specifically objects to the MPCA’s reliance on MNRISKS data.<sup>160</sup> It further contends that the MPCA has failed to establish that the rules it proposed “will provide any real value,” and that the rules will require “a significant effort from regulated facilities for negligible benefit in the real world.”<sup>161</sup>

120. The MPCA responds that the legislature directed it to undertake this rulemaking and established the parameters for emissions reporting in Minn. Stat.

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<sup>154</sup> Comment of Xcel Energy at 3 (Jan. 15, 2025).

<sup>155</sup> *Id.*

<sup>156</sup> Ex. I-2 at 11.

<sup>157</sup> *Id.* at 12.

<sup>158</sup> *Id.* at 1.

<sup>159</sup> *Id.* at 3-18.

<sup>160</sup> Comment of the Chamber of Commerce at 1-2 (Jan. 15, 2025).

<sup>161</sup> *Id.* at 2.

§ 116.062.<sup>162</sup> Regarding the level of stakeholder engagement, the MPCA notes that the legislature provided an 18-month deadline for the MPCA to publish notice of the rulemaking, and that it would have been difficult to convene a formal advisory committee or a stakeholder group in that limited amount of time.<sup>163</sup> The MPCA acknowledges that MNRISKS data includes other sources of air toxics emissions, including transportation, but notes that permit holders are the second largest source of emissions in the seven-county metropolitan area, and that the proposed rules will provide additional data to narrow down the emissions resulting from the operations of air toxics permit holders.<sup>164</sup>

121. The Chamber of Commerce's post-hearing comment notes that there are over 900 air toxics for which reporting will be required. It states that the MPCA should have adopted a narrowly tailored list of air toxics, and that there is no evidence that the MPCA screened existing data to find materials and sources that impact human health.<sup>165</sup> A member of the public also asked about the number of toxics identified by the rule and asked whether the MPCA expected facilities to report regarding all of these substances.<sup>166</sup> The American Chemistry Council commented that the regulatory process should apply only to pollutants with established risk values.<sup>167</sup> One commenter asked the MPCA to add a substance, sulfuryl fluoride, to the list of air toxics subject to reporting.<sup>168</sup>

122. The MPCA responds that it developed the list of air toxics identified in the rules to target substances that pose a risk to human health and the environment.<sup>169</sup> Minn. Stat. § 116.062 established categories of air toxics subject to reporting requirements, and the MPCA notes that the statute's broad categorization would have allowed the agency to adopt a more extensive list of reportable substances.<sup>170</sup> The SONAR provides extensive details regarding the process used to identify air toxics for which emissions reporting would be required.<sup>171</sup> The MPCA determined that the rules should include:

all HAPs, all PFAS on the TRI list, all the pollutants for which [the Minnesota Department of Health] has developed Health Based Values (HBVs) or Risk Assessment Advice (RAA), all pollutants on [the Integrated Risk Information System], TRI, and MPCA's emissions inventory list that had inhalation health benchmarks or multipathway concerns (including Persistent, Bioaccumulative, and

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<sup>162</sup> Ex. I-2 at 2.

<sup>163</sup> *Id.* at 1.

<sup>164</sup> *Id.* at 1-2.

<sup>165</sup> Comment of the Chamber of Commerce at 2 (Feb. 24, 2025).

<sup>166</sup> Comment of Mark Zaban (Tr. at 49-50).

<sup>167</sup> Comment of the American Chemistry Council at 3 (Jan. 15, 2025).

<sup>168</sup> Comment of Shalina Gupta (Jan. 15, 2025).

<sup>169</sup> Ex. I-2 at 3.

<sup>170</sup> *Id.* at 5.

<sup>171</sup> See Ex. D-1 at 35-46.

Toxic – PBTs), and pollutants of concern in Minnesota – including many PFAS that are prevalent in our state specifically.<sup>172</sup>

123. The MPCA explains that it chose not to 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.<sup>173</sup>

124. The MPCA states that it considered adding sulfuryl fluoride, but that this substance does not meet the criteria for air toxics reporting in this rulemaking, though it may be examined in another rulemaking proceeding.<sup>174</sup>

125. Some commenters addressed the proposed de minimis standard.<sup>175</sup> One commenter asked about material balance calculations, the absence of a de minimis standard for highly toxic pollutants, and how facilities will determine their emissions.<sup>176</sup>

126. In proposed rule part 7019.3110, the MPCA outlines the de minimis standard and explains that facilities can use an SDS to determine whether they need to report emissions when estimating using a material balance calculation.<sup>177</sup> In its rebuttal comment, the MPCA confirmed that: “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,” and that facilities using the material balance calculation method are not required to test their materials to comply with the rule.<sup>178</sup> The MPCA also addressed this issue in the SONAR stating: “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.”<sup>179</sup>

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<sup>172</sup> Ex. I-2 at 14.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> Comment of the American Chemistry Council at 4 (Jan. 15, 2025).

<sup>176</sup> Comment of Janet Keyes of Chess, Inc. (Tr. at 46); Comment of Janet Keyes (Feb. 27, 2025) (“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.”)

<sup>177</sup> Ex. D-1 at 46.

<sup>178</sup> MPCA Rebuttal Comment at 4 (Mar. 24, 2025).

<sup>179</sup> Ex. D-1 at 48. While the Administrative Law Judge approves the rules as written, she encourages the MPCA to consider whether to add language to the rules providing clarification on this issue. Such clarifying language would not make the rule substantially different under Minn. Stat. § 14.05, subd. 2 (2024). The MPCA notes that small businesses often use the material balance approach for calculating emissions from non-combustion activities, Ex. D-1 at 47, and providing clear direction consistent with the MPCA’s intent may further ease the burdens of compliance for small businesses.

127. Regarding substances that have no de minimis amount, the MPCA explained in the SONAR that some highly toxic pollutants must be reported at any amount. The MPCA stated:

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.<sup>180</sup>

128. The Minnesota Chamber of Commerce, the American Chemistry Council and Xcel Energy expressed concerns about duplication of reporting.<sup>181</sup> The MPCA acknowledged that there could be some overlap in reporting. It notes that once the federal AERR is finalized, it will reexamine and determine if the rules should be further amended.<sup>182</sup> The MPCA also notes that negating duplicative reporting to the TRI is a challenge because only a small subset of facilities holding air permits must report to the TRI, and further notes there are differences between the TRI requirements and the proposed rules.<sup>183</sup>

129. The MPCA has established that it made rational regulatory choices falling within its authority regarding aspects of the rules challenged by commenters.

130. The MPCA has established that its proposed amendments to chapters 7002, 7005, 7007, and 7019 are needed and reasonable. All amendments proposed by the MPCA in this rulemaking are **APPROVED**.

Based upon the Findings of Fact and the contents of the rulemaking record, the Administrative Law Judge makes the following:

## CONCLUSIONS

1. The Administrative Law Judge has authority and jurisdiction to review these rules under Minn. Stat. §§ 14.14, .15, .50 (2024), and Minn. R. 1400.2100.

2. The MPCA gave notice to interested persons in this matter and fulfilled its additional notice requirements.

3. The MPCA fulfilled the procedural requirements of Minn. Stat. § 14.14 and all other procedural requirements of law or rule.

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<sup>180</sup> *Id.*

<sup>181</sup> Comment of the Chamber of Commerce at 2 (Jan. 15, 2025); Comment of the American Chemistry Council at 2 (Jan. 15, 2025); Comment of Xcel Energy at 2 (Jan. 15, 2025).

<sup>182</sup> Ex. I-2 at 9.

<sup>183</sup> *Id.* at 9-10.

4. The MPCA demonstrated it has statutory authority to adopt the proposed rules and fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.50(i), (ii) (2024).

5. The Dual Notice, the proposed rules, and the SONAR complied with Minn. Stat. § 14.131, Minn. R. 1400.2080 (2023), and other requirements of law and rule.

6. The MPCA has demonstrated the need for and reasonableness of its proposed rules by an affirmative presentation of facts in the record, as required by Minn. Stat. §§ 14.14 and 14.50(iii).

7. The record does not establish a basis for disapproval of the rules under Minn. R. 1400.2100.

8. As part of the public comment process, a number of stakeholders urged the MPCA to adopt revisions to the proposed rules. In each instance, the MPCA's rationale in declining to make the requested revisions to its rules was well grounded in this record and reasonable.

9. A finding or conclusion of need and reasonableness with regard to any particular rule does not preclude, and should not discourage, the MPCA from further modification of the proposed rules – provided that the rule finally adopted is not “substantially different” (under Minn. Stat. § 14.05, subd. 2) and is based upon facts in the rulemaking record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

#### **RECOMMENDATION**

**IT IS HEREBY RECOMMENDED** that the proposed rules be **ADOPTED**.

Dated: April 21, 2025

  
JESSICA A. PALMER-DENIG  
Administrative Law Judge

## **NOTICE**

This Report must be available for review to all affected individuals upon request for at least five working days before the agency takes any further action on the rules. The Agency may then adopt the final rules or modify or withdraw its proposed rules. If the Agency makes any changes in the rules, it must submit the rules to the Chief Administrative Law Judge for a review of the changes prior to final adoption. Upon adoption of final rules, the Agency must submit a copy of the Order Adopting Rules to the Chief Administrative Law Judge. After the rules' adoption, the OAH will file certified copies of the rules with the Secretary of State. At that time, the Agency must give notice to all persons who requested to be informed when the rules are adopted and filed with the Secretary of State.