

**STATE OF MINNESOTA  
MINNESOTA POLLUTION CONTROL AGENCY**

**ORDER ADOPTING RULES**

**Adoption of Rules Governing Air Quality  
Minnesota Rules Chapters 7002 Permit Fees,  
7005 Definitions and Abbreviations, 7007 Air  
Emission Permits, 7009 Ambient Air Quality  
Standards, 7011 Standards for Stationary Sources,  
7017 Monitoring and Testing Requirements, and  
7019 Emission Inventory Requirements**

**OAH Docket No. 71-9003-37193**

**Revisor's ID Number: R-4678**

**WHEREAS:**

1. The Minnesota Pollution Control Agency (MPCA) has complied with all notice and procedural requirements in *Minnesota Statutes*, chapter 14, *Minnesota Rules*, chapter 1400, and other applicable law.
2. During the public comment period on the rule, the MPCA received no requests for a public hearing. As identified in the Notice of Intent to Adopt Rules (Notice) published in the October 18, 2021, *State Register*, if 25 or more persons submit valid written requests for a public hearing on the rules, hearings will be held following the procedures in Minn. Stat. §§ 14.131 to 14.20. The MPCA did not hold a public hearing on the proposed rules because it received no requests. The MPCA received no requests for notice of submittal of the rules to the Office of Administrative Hearings.
3. The MPCA received one comment on the proposed rules during the public comment period from October 18, 2021, through December 6, 2021. The MPCA has made no modifications to the proposed rules as a result of comments received during the public comment period. The MPCA response to the comment received are presented in Findings No. 8 through 11.
4. The MPCA made two modifications it determined were needed based upon additional review of the proposed rules during the public comment period. These modifications are presented in Findings No. 12 through 16. The modifications in Findings No. 12 through 16 are set forth in a revised version of the proposed rules, which is attached to this Order Adopting Rules (Attachment 1).
5. The modification to the proposed rules is not substantially different from the proposed rules based on the criteria set forth in Minn. Stat. § 14.05, subd. 2.
6. The issue of substantial difference is addressed in detail with regard to the modifications. In general, the Notice provided fair warning that this rule change could result because it notified readers of the subject matter of the rule such that they could understand that their interests could be affected, the subject matter and issues in the Notice are the same as the subject matter and issues addressed in the modifications, and the effect of the modifications is not greatly

different from the rules as originally proposed. The modifications are clearly within the scope of “Subject of Rules,” and are related in general to Minnesota’s air quality rules governing air emissions and activities, all of which were announced in the Notice. The modifications are a logical outgrowth of the Notice.

7. The MPCA finds that under the listed criteria of Minn. Stat. § 14.05, subd. 2, the rule with the modifications set forth in this Order Adopting Rules are not substantially different from the rule as originally proposed.

#### **MPCA RESPONSE TO COMMENTS**

8. The MPCA received one comment letter on the proposed rules from Stephen Vrchota, Pope Douglas Solid Waste Management, dated December 2, 2021. Pope Douglas Solid Waste Management operates a municipal waste combustor facility, which processes garbage and recycling in both counties.
9. The commenter submitted the following:

##### Minnesota Rule 7011.1201 DEFINITIONS

With the exception of “Class C waste combustor”, all waste combustor Class definitions (Class A, Subp. 9 existing; Class I, Subp. 13 existing; Class II, Subp. 14 existing and proposed; Class III, Subp. 15 existing; Class IV, Subp. 16 existing) are defined as “Class XXX waste combustor” means that the design capacity for a waste combustor unit is.....

To remain consistent with all other waste combustor Class definitions, we would propose that the definition of Class C waste combustor, Subp. 11, be changed from “Class C waste combustor means that the total design capacities for all waste combustor units at a stationary source is.....” to “Class C waste combustor means that the design capacity for a waste combustor unit is.....”

If there is just cause for the definition of Class C waste combustors to differ from all other waste combustor Class definitions as noted above, we would propose that the definition of Class C waste combustor, Subp. 11, be changed to “Class C waste combustor means that the total design capacities for all waste combustor units at a stationary source MEETING THIS DEFINITION is.....” This proposed change would differentiate Class C waste combustors from other waste combustor Classes that may be located at the stationary source.

The commenter is suggesting that the definition should be modified so that the conditions apply to each waste combustor unit, rather than looking at the total design capacity of facility. In the proposed rules, the MPCA revised the definitions in Minn. R. 7011.1201 of a Class C waste combustor (subpart 11) and a Class II waste combustor (subpart 14) so that the dates of state rules correspond with the dates in federal rules that distinguish between “new” and “existing” small municipal solid waste combustors. This change was made to align the definition of Class C units, that is, existing units, with Code of Federal Regulations, title 40, part 62, subpart JJJ.

10. The conditions within the definition of Class C unit are to be read as taken together—all conditions must apply in order to be a Class C unit. The conditions in Minn. R. 7011.1201, subpart 11 are: the total of the design capacities for all units is more than 15 mmbtu/hr (million

British thermal unit/hour) and less than 93.75 mmbtu/hr, the waste combustor units combust primarily municipal solid waste or refuse derived fuel, and construction of the waste combustor was commenced on or before August 30, 1999 (emphasis added). Units constructed after August 30, 1999, are not included in the determination of which units at a facility are Class C units.

11. In evaluating the need to revise the proposed rules based on this comment, the MPCA reviewed its application of the definition to operating waste combustors in the air emission permits for the commenter’s facility, as shown in Table 1 below. We first identified which units have been constructed prior to August 30, 1999. We identified the waste combustor design capacity, then summed, as shown in Table 2. For those units constructed before August 30, 1999, the sum of their operating capacities is greater than 15 mmbtu/hr and less than 93.75 mmbtu/hr. All facilities reviewed combust primarily municipal solid waste or refuse derived fuel. Because these units meet all three conditions of the definition of a Class C waste combustor these units are defined as Class C units. The MPCA then further considered any future scenario where a modification at the waste combustor facility may make a difference, such as the shutdown of a Class C unit. Again, the remaining units at the commenter’s facility meet each of the conditions of the definition of a Class C waste combustor. Therefore, the MPCA did not make the requested change.

**Table 1. All facilities**

Facility/Unit	Design capacity (mmbtu/hr)	Date of initial construction
Olmsted County Unit 1	44.9	1987
Olmsted County Unit 2	44.9	1987
Olmsted County Unit 3	89.8	2007
Pope Douglas Unit 1	27.5	10/1/1997
Pope Douglas Unit 2	27.5	10/1/1997
Pope Douglas Unit 3	55.0	4/5/2011
Prairie Lakes/Perham Unit 1	45.8	1985
Prairie Lakes/Perham Unit 2	45.8	1985
Polk County Unit 1	17.6	1987
Polk County Unit 2	17.6	1987

**Table 2. Specific facilities constructed on or before August 30, 1999**

Facility Units	Total facility capacity <= 8/30/1999 (mmbtu/hr)
Olmsted County Units 1 and 2	89.75
Pope Douglas Units 1 and 2	55
Prairie Lakes/Perham Units 1 and 2	91.6
Polk County Units 1 and 2	35.1

**MODIFICATIONS TO THE RULE BASED ON ADDITIONAL MPCA REVIEW.**

**7007.0950 EPA REVIEW AND OBJECTION.**

**Change to Part 7007.0950, subpart 3, item A, subitem (1).**

12. The MPCA finds a correction is needed to subpart 3, item A, subitem (1). Subitem (1) requires the petitioner to provide a copy of the petition to the commissioner. Subpart 3, item A, subitem (1) is

modified by adding “and applicant” in reference to whom the petitioner is required to provide a copy of the petition. This revision is needed to meet federal requirements for public petitions to the U.S Environmental Protection Agency administrator at 40 CFR 70.8(d). This modification does not change the intent of the rule. It is reasonable to revise state rule to align with federal rules.

Part 7007.0950, subp. 3

***Subp. 3. Public petitions to administrator regarding part 70 permits.***

*A. If the administrator does not object in writing to a part 70 permit or a major amendment to a part 70 permit under subpart 2, any person may petition the administrator within 60 days after the expiration of the administrator's 45-day review period to make such objection., if:*

*(1) the petitioner provides a copy of the petition to the commissioner and applicant;*

*(2) the petitioner includes the elements required in Code of Federal Regulations, title 40, section 70.12(a);*

*(3) the petitioner submits the petition to the administrator according to the procedures required in Code of Federal Regulations, title 40, section 70.14; and*

*(4) the petition is based only on objections to the part 70 permit or the amendment that were raised with reasonable specificity during the public comment period provided in part 7007.0850, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless grounds for such objection arose after such period.*

13. The MPCA finds this modification does not make the proposed rule substantially different. Adding “and applicant” when referencing whom the petitioner must provide a copy of the petition to corrects an oversight in the proposed rules and now aligns state rule with federal rule. This modification is clearly within the scope of the “Subject of Rules” Chapter 7007 as announced in the Notice. This modification is a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result.

## **7011.0070 LISTED CONTROL EQUIPMENT AND CONTROL EQUIPMENT EFFICIENCIES.**

### **Change to Part 7011.0070, subpart 2**

14. During the public comment period on the rule, the MPCA determined that the requirements to request use of an alternative control equipment efficiency or capture efficiency as they relate to the “performance test approved by the commissioner” are not clear and cause confusion. Therefore, a modification is needed in this subpart.
15. The MPCA’s experience has been that entire performance test reports are often included with a permit application for a part 70, state, registration, capped, or general permit; or no report documentation is submitted at all. The MPCA reviews and approves performance test reports in a separate process, rather than as part of the application process for these permits. Subpart 2 is modified to require that the verification or approval letter and the required operating parameters in the application or notice are to be included with the request for use of an alternative control equipment efficiency or capture efficiency. This modification is reasonable because it makes the rule clearer by specifically identifying what performance test documentation must be included with the request for use of an alternative control equipment efficiency or capture efficiency. It will also help improve permit application processing because the correct information will be submitted with the initial permit application.

Part 7011.0070, subp. 2

**Subp. 2. Alternative control equipment and capture efficiencies; control efficiencies for hazardous air pollutants.** *The owner or operator of a stationary source may use an alternative control equipment efficiency or capture efficiency or both for the control equipment listed in subpart 1, if the actual control efficiency or capture efficiency has been verified by a performance test approved by the commissioner under parts 7017.2001 to 7017.2060. The owner or operator of a stationary source may use a control equipment efficiency for listed control equipment for a hazardous air pollutant, if the control efficiency has been verified by a performance test approved by the commissioner under parts 7017.2001 to 7017.2060. The request for the alternative control efficiency or capture efficiency or both may be made through a permit application for a part 70, state, registration, capped, or general permit, or in a required notice or application submitted under parts 7007.1150 to 7007.1500, by including the verification or approval letter and the required operating parameters in the application or notice. The owner or operator of a stationary source must attain at all times the alternative control efficiency or capture efficiency or both for a piece of listed control equipment at the stationary source established under this subpart.*

16. The MPCA finds this modification does not make the proposed rule substantially different because it eliminates confusion about documentation requirements for requests for use of alternative control equipment and only makes the rule clearer. This modification is clearly within the scope of the “Subject of Rules” Chapter 7011 as announced in the Notice. This modification is a logical outgrowth of the Notice and comments process and the Notice provided fair warning that this rule change could result.
17. The MPCA concludes that it has complied with all notice and procedural requirements in *Minnesota Statutes*, chapter 14, *Minnesota Rules*, chapter 1400, and other applicable laws.
18. The MPCA concludes as required by *Minnesota Statutes*, chapter 14, and *Minnesota Rules*, chapter 1400, the Revisor of Statutes has approved the form of the rule, a copy of which is attached.
19. The MPCA concludes that the rules are needed and reasonable. The Statement of Need and Reasonableness justifies the need for and reasonableness of adopting these proposed rules.
20. The MPCA submitted the rules on March 2, 2022, to the Office of Administrative Hearings for review and approval.
21. Administrative Law Judge Jessica Palmer-Denig, issued her Report on March 11, 2022.
22. Administrative Law Judge Palmer-Denig found that the MPCA has the statutory authority to adopt the rules, and has complied with the procedural requirements of *Minnesota Statutes*, chapter 14, and *Minnesota Rules*, chapter 1400, and all other applicable procedural laws and rules.
23. The MPCA adopts the Office of Administrative Hearings Order on Review of Rules dated March 11, 2022, from Administrative Law Judge Palmer-Denig.

**ORDER**

**IT IS ORDERED** that the above captioned rules, in the form published in the *State Register* on October 18, 2021, with the modifications as indicated in the Revisor of Statutes rule, file number R-4678, dated December 17, 2021, are adopted.

March 28, 2022  
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Date

  
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Katrina Kessler, Commissioner  
Minnesota Pollution Control Agency