

Proposed Revisions to Minnesota Rules, chapter 7023, Adopting Vehicle Greenhouse Gas Emissions Standards (Clean Cars Minnesota)

OAH Docket No. 71-9003-36416

Second Initial Response to Public Comments Submitted During the Pre-Hearing Public Comment Period, at the February 22 and 23, 2021 Public Hearings, and During the Post-Hearing Public Comment Period up to March 10, 2021.

I. Introduction

This document provides a second initial response to comments (Response) received on the above-referenced rulemaking. This document contains the MPCA's detailed responses to a number of public comments on the proposed amendments submitted during the pre-hearing public comment period, at the February 22 and 23, 2021 public hearings, and during the post-hearing public comment period up to March 10, 2021. This document does not respond to every comment received to date. The MPCA will review and consider every comment received and will submit a final response to all comments received in the public comment period before the close of the rebuttal period.

A. Notice and public hearing

The Minnesota Pollution Control Agency (MPCA or Agency) published our Notice of Intent to Adopt Rules with a Hearing (Notice) regarding the above-referenced proposed rule amendments in the *State Register* on December 21, 2020 (45 SR 663). The Notice provided for the submission of comments from December 21, 2020, through a public hearing to be held on February 22 and 23, 2021, and also provided for a post-hearing comment period. The comment period was extended until 4:30 p.m. on March 15, 2021, by order of Administrative Law Judge Palmer-Denig.

This rulemaking is limited in scope to amendments to Minn. R. chapter 7023 governing motor vehicle emission standards for greenhouse gas and other air pollutant emissions. The amendments are proposed under the authority of Minn. Stat. § 116.07, subd. 4, which authorizes the MPCA to adopt rules for the prevention, abatement, and control of air pollution, and Minn. Stat. § 116.07, subd. 2, which authorizes the MPCA to adopt "maximum allowable standards of emission of air contaminants from motor vehicles." The MPCA presented information demonstrating that the proposed amendments are needed and reasonable as required by Minn. Stat. §§ 14.131 and 14.14, subd. 2, through an affirmative presentation of facts at the hearing, and in the Statement of Need and Reasonableness (SONAR) and the supporting exhibits to the SONAR, including a Technical Support Document (TSD).

B. MPCA's goals for the rulemaking and discussion of proposed vehicle emission standards

The MPCA is proposing amendments to Minnesota Rules, chapter 7023, Adopting Vehicle Greenhouse Gas Emission Standards (Clean Cars Minnesota). The Agency's proposed rule revisions can be summarized as the adoption of vehicle emission standards, including the low-emission vehicle (LEV) standard and the zero-emission vehicle standard (ZEV), and the creation of a voluntary early action credit mechanism.

The MPCA is proposing to adopt these standards to address three primary needs: first, to address climate change, specifically greenhouse gas (GHG) emissions from the transportation sector in Minnesota; second, to reduce air pollution, protect public health, and advance environmental justice; and third, to avoid backsliding on environmental protections.

C. MPCA review of comments and organization of MPCA's response to comments

This document supplements information in the SONAR (Hearing Exhibit D) in the matter of proposed amendments to Minnesota Rules, chapter 7023, Adopting Vehicle Greenhouse Gas Emission Standards (Clean Cars Minnesota). This document contains the MPCA's detailed responses to a number of public comments on the proposed amendments submitted during the pre-hearing public comment period, at the February 22 and 23, 2021 public hearings, and during the post-hearing public comment period up to March 10, 2021.

In this document, the MPCA responds to comments that have been made in the record thus far that the MPCA believes may represent a misunderstanding or misconception of our proposed rule and related analysis. The Agency is responding to these comments to provide clarification to interested parties with time to allow them to review our responses and consider them as they develop comments during the rebuttal period. In addition to this document, the MPCA submitted a preliminary response to comments on February 22, 2021 (Exhibit L) and an addendum to our analysis on March 3, 2021 (Exhibit O). This Response is considered a supplement to the information in the SONAR.

The MPCA has received 274 written comments as of March 10, 2021. This number includes 137 written comments (through February 12, 2021) that were addressed in Exhibit L. The Agency also heard oral comments from more than 70 testifiers during the two-day hearings.

The MPCA has heard from many commenters to-date on this rule proposal, with a large number of commenters both in support and in opposition. The MPCA notes that the comments it has received generally fall into the same categories as the comments received by the Agency prior to the hearing, which were cataloged in our February 22 preliminary response to comments (Exhibit L). Commenters have indicated their support for increased electric vehicle (EV) availability, support for GHG emission reductions, and support for the health and equity benefits of the proposed rule, among other issues. Commenters have also expressed concern related to costs, EV performance, statutory authority, and other issues. The Agency will read and consider every comment and will respond to and catalog comments in our final response to comments filed prior to the close of the rebuttal period.

In this document, the MPCA addresses several comments made during the public hearings. In particular, this response will address comments related to a misinterpretation of the MPCA's TSD, the proposed early action credit mechanism, the use of a vehicle sales website in the SONAR, the use of incorporation by reference, and the impact to heavy-duty trucks and farm equipment. In this initial Response, the Agency focuses on clarifying particular aspects of our analysis and SONAR, and will respond to all comments in our final response to comments to be filed prior to the close of the rebuttal period.

II. MPCA's response to comments

- (a) Commenters identified concerns with MPCA's projections for EV sales under the ZEV standard in Minnesota. One commenter stated, "In 2024, the first year of the ZEV mandate, the MPCA estimates manufacturers will need to deliver 18,852 EVs to Minnesota to comply. Yet the analysis on page 51 of the technical document shows only 7,410 of those are expected to sell"**

(Backhaus testimony, hearing transcript February 23, 2021). Another commenter stated, “Today approximately 3,000 EVs are sold in Minnesota in a single year. Under the example provided by PCA about 17,000 vehicles will need to be sold in model year 2025, not seven, and this represents a more than 450 percent increase in EV sales compared to today” (Rege testimony, hearing transcript February 22, 2021).

These comments misinterpret the purpose of this analysis, which is not to predict the future of EV sales, but, rather, to understand the potential impact that the proposed ZEV standard would have over and above a scenario without the policy, often called a reference or business-as-usual scenario. It is a standard goal of policy analysis to analyze the impact that a proposed policy would have compared with a business-as-usual case, and that is what the MPCA has done here.

A purpose of the ZEV standard is to increase the delivery and sale of EVs in Minnesota to be more than would be delivered and sold without the policy in place (business as usual). The result of the MPCA’s analysis shows a “gap” between this business-as-usual case and the ZEV policy case, which is expected and reasonable. It is reasonable to expect that regulated parties would need to act above and beyond a business-as-usual scenario in order to comply with a regulation that is intended to require new, additional action. If the projections of EV deliveries under the business-as-usual Reference scenario and the Clean Cars scenario were equal, there would be less of a need for a ZEV standard because the Clean Cars Minnesota rule would not be prompting additional EVs to be delivered to Minnesota.

Based on the historical widespread compliance seen in other states, plus the proposed early action credit mechanism and one-time allotment of one year’s worth of ZEV credits establishing an initial bank of ZEV credits for manufacturers, it is reasonable to assume that manufacturers would be able to comply with the regulatory requirements that are analyzed by the MPCA.

The MPCA would like to clarify some aspects of our analysis of possible EV deliveries under the Clean Cars Minnesota rulemaking compared with business as usual. Due to the flexibilities built into the ZEV standard, it is not possible to predict an exact number of EVs that would be delivered for sale under the ZEV standard in Minnesota. However, to understand the potential impact of the rule proposal, the agency estimated the possible number of EVs that might result from the rule compared to a scenario where Minnesota does not adopt the Clean Cars Minnesota rule.

The business-as-usual EV sales projections in Table 25 of the TSD are reasonable but also conservative, as they are based on linear extrapolations of recent annual Minnesota EV sales growth over time. In fact, Minnesota’s EV sales have not been growing linearly, but have instead been growing at increasing rates year-over-year. Pages 9-13 of the TSD describe different business-as-usual EV sales projections and the Agency’s choice to use the reasonable but conservative linear extrapolation of EV sales for our business-as-usual scenario. Pages 13-16 of the TSD describe the Agency’s method for estimating potential future EV deliveries under the ZEV standard in Minnesota.

Page 51 of the TSD explains the MPCA’s modeling of projected EV sales comparing these two possible future scenarios: business as usual without a ZEV standard in Minnesota and ZEV compliance. For example, Table 25 on page 51 of the TSD shows that for model year 2025 (which roughly corresponds to the calendar year 2024 mentioned by the commenter), the MPCA projects that 18,852 EVs (battery electric vehicles and plug-in hybrid electric vehicles combined) would need to be delivered to Minnesota to meet ZEV compliance, while in the absence of a ZEV standard, the business-as-usual EV sales

projection would be 7,410 EVs for model year 2025. The difference between these two projections is the estimated additional model year 2025 EVs that may be sold in Minnesota due to the ZEV standard. It is reasonable that projected EV sales under a ZEV standard would be higher than in the absence of a ZEV standard.

The Agency's analysis does not purport to predict the number EVs that the dealers will be able to sell, as the commenter suggests. Instead, it shows the difference between estimated business-as-usual deliveries of EVs and estimated deliveries of EVs under the Clean Cars Minnesota rule. Any interpretation that MPCA projections suggest that dealers will need to carry more EVs on their lots than they are capable of selling is incorrect. Manufacturers and dealers will have at least two years to prepare for the ZEV standard and have ample opportunities to support growth in consumer demand and otherwise prepare for the standard going into effect. In addition, the MPCA, other state agencies, and our partners continue to invest in supportive programs and initiatives, including building out EV charging infrastructure and awareness and education campaigns. The MPCA also notes that the EV sales projections in Table 25 do not factor in the potential use of manufacturers' initial bank of ZEV credits. The initial ZEV credit banks would provide manufacturers flexibilities to use banked credits to assist in compliance and supplement EV sales in the early years of rule implementation.

The MPCA agrees with the commenter that roughly 3,000 EVs were sold in Minnesota in 2019 and that our projections of EV sales for model year 2025 under the ZEV compliance scenario would represent a 450% increase over current Minnesota EV sales. However, EV sales are expanding rapidly and even without a ZEV standard in place, MPCA's conservative business-as-usual estimates project EV sales to reach 7,410 EVs by model year 2025, which is a 147% increase. EV sales have been growing rapidly: between 2015 and 2019, EV sales in Minnesota increased by 488%, and just between 2017 and 2019 sales increased by 127%. EV sales in Minnesota have seen approximately a 61% annual growth rate.¹ Past EV sales data shows that a 450% increase in EV sales over the course of the five years between 2019 and 2024 is reasonable.

The MPCA appreciates the opportunity to address these comments to explain how the Agency approached its modeling of the ZEV emission standard compared to a business-as-usual scenario. This approach is intended to show the impact of the policy on achieving a goal of the rule itself, which is to encourage manufacturers to deliver additional EVs to Minnesota.

(b) A commenter stated "Our understanding is that the PCA rejected cap proportional credits in favor of its proposed approach because it cannot assess regulations that do not exist beyond 2025. Respectfully, the PCA's rationale makes no sense. Indeed, California's regulations can continue indefinitely beyond 2025, granted, at the same level as the model year 2025 standards. And California has already clearly articulated intent to adopt regulations that will push EV sales to 100 percent by 2035.... Adopting the most expensive regulatory program with

¹ 2013-2018 sales: Alliance of Automobile Manufacturers Advanced Technology Vehicles Sales Dashboard. Data compiled by the Alliance of Automobile Manufacturers using information provided by IHS Markit (2011-2018) and Hedges & Co. (2019) When the data was pulled by the MPCA, the data had last been updated on 8/20/2019. <https://autoalliance.org/energy-environment/advanced-technology-vehicle-sales-dashboard/>. (Alliance of Automobile Manufacturers merged with the Association of Global Automakers in early 2020 to form the Alliance for Automotive Innovation). 2019 totals were provided by the Alliance for Automotive Innovation (Auto Innovators), since the complete 2019 sales data was unavailable on the Advanced Technology Vehicle Sales Dashboard.

only a one-year view is simply bad public policy.” (Rege testimony, hearing transcript February 22, 2021)

The Agency recognizes that the standards in the proposed rule continue after 2025. The standards increase in stringency until model year 2025 (model year 2028 in the case of particulate matter) and then plateau—but do not stop (SONAR pgs. 12-13). The Agency analyzed the potential impact of the rule on emissions and costs to consumers over a 10-year period (SONAR pgs. 70-75 and 77-81; Addendum Exhibit O). We also analyzed the impact of a variety of possible credit bank mechanisms over a 10-year period (TSD pgs. 96-110).

The Agency also recognizes that California and the U.S. Environmental Protection Agency may address future model years’ standards in some manner in the coming years. As noted throughout this rulemaking process, if California adopts new vehicle emissions standards beyond model year 2025, the MPCA would need to analyze those new standards in the context of any future federal standards and determine whether to continue to follow California’s standards. If the Agency believes new California emissions standards are needed and reasonable for Minnesota, the MPCA would need to conduct another rulemaking process to adopt those standards. However, since potential future standards have not yet been proposed, much less adopted, the MPCA did not rely upon speculative statements in our analysis of the existing ZEV standard.

Regarding the comment about rejecting the concept of providing a proportional bank of ZEV credits with caps on the use of those credits, the MPCA analyzed a variety of credit bank scenarios, ranging from providing proportional credits to offering only an early-action credit mechanism, but decided to propose adoption of the early action-credit mechanism and one-time allotment instead. The MPCA developed this initial ZEV credit bank proposal as a compromise that balances the need for compliance flexibility in the early years of implementation along with the goal of increasing EV adoption in Minnesota beyond business-as-usual EV sales growth. Although the MPCA believes this approach to be reasonable on its own, the Agency also notes that we have received both comments that suggest our proposal is too conservative and comments that suggest we are too liberal in our proposed approach.

(c) A commenter stated that using cars.com to identify vehicle availability undercounts vehicles offered for sale because cars.com is an advertising platform that not all dealers choose to use. (Backhaus testimony, hearing transcript February 23, 2021)

The MPCA does not dispute (although it cannot confirm) the figures cited by the commenter at the hearing. However, the commenter misinterpreted the intent of the analysis presented by the MPCA in the SONAR. The MPCA used cars.com on pages 48-50 of the SONAR as a publically-available source of information to provide a rough comparison of vehicle availability across jurisdictions, specifically similarly-sized communities in other Clean Car states. This rough comparison is not intended to be a comprehensive census of EVs for sale across the entire state.

The MPCA’s SONAR findings regarding EV availability align with testimony from many commenters who identified challenges in finding and purchasing EVs in the quantity and variety that they want. Many commenters testified about fruitless searches for EVs on lots in Minnesota and some testified that they instead had to procure their EVs from other states. An out-of-state dealer who does business in a cold-

weather ZEV state testified that he was able to procure a larger volume of EVs because he did business in a ZEV state and that he had successfully integrated the sale of EVs into his business model as a car dealer in a cold-weather, rural state (Lee testimony, hearing transcript February 23, 2021).

(d) Commenters mentioned concerns about the impact of possible future standards and some expressed confusion over how the proposed incorporation by reference would work. Some commenters have expressed concerns that adopting the ZEV standard would require the state to eliminate gas- and diesel-fueled vehicles under future ZEV standards (Backhaus testimony, hearing transcript February 23, 2021; Stromberg, mailed comment March 9, 2021; Johnson, faxed comment March 9, 2021).

Some commenters have expressed concern that the proposed rule would allow the MPCA to adopt future, yet-unwritten emission standards “automatically” because the MPCA has used incorporation by reference, as amended, in its proposed rule (Backhaus testimony; proposed Minn. R. 7023.0150, subpt. 2).

As the MPCA has stated throughout the rulemaking, it will not—and indeed cannot—automatically adopt future emission standards without undertaking a separate rulemaking process (SONAR pgs. 40–41; MPCA hearing presentation slide 43). It appears that this confusion stems from commenters’ understanding of incorporation by reference, how the rule is written, and how California modifies its rules when it adopts new standards. The MPCA hopes that the following description will help to clarify these concepts and address commenters’ concerns.

The MPCA is proposing to incorporate several provisions of California’s regulations using a common rulemaking tool called “incorporation by reference.” This means that instead of copying-and-pasting language from other sources, an agency can instead provide a reference to that source material, provided that the source material is “conveniently available to the public” (Minn. Stat. § 14.07, subd. 4). The proposed rule language uses “as amended” in order to ensure the rule is kept up-to-date with any minor housekeeping updates that could occur in the California code. As noted in the SONAR, “California has made minor housekeeping updates to its rules every few years” (SONAR pg. 41). Including “as amended” in the proposed rule serves only to capture these minor updates, if they occur at all, to the existing California code that is now proposed for adoption.

Any new, future emission standards adopted by California will be housed in entirely separate parts of its administrative code (SONAR pg. 41). The MPCA is not adopting these parts in this rulemaking because they, like the future standards themselves, do not yet exist. When new standards are finalized, the MPCA will have to consider whether to propose adoption of the new California standards via another rulemaking or whether to choose to follow the federal emission standards, which have not been created to date, either. The commenter is correct that decisions will have to be made once there are new standards to consider, but that time has not yet come.

Finally, the MPCA would like to address a related concern expressed by commenters that the proposed rule would require a future phase-out of internal combustion engine vehicles. First, as noted above, that is not what this rulemaking would achieve. The MPCA projects that the ZEV standard would result in EVs comprising approximately 6.2–7.4% of sales of *new* light-duty vehicles (SONAR pg. 43). Second, as noted

above, since the proposed rule does not automatically adopt new California emission standards, the MPCA would have to take affirmative steps via the same public rulemaking process in order to adopt any future standards. And finally, the MPCA continues to see vehicle emission standards as one tool the state can use to address climate change and the transportation sector. Increasing biofuels and building out EV infrastructure remain an important component of the state's response to climate change, even if those issues remain outside of the scope of this rulemaking.

(e) Commenters mentioned concerns about the proposed rule affecting heavy-duty trucks and farm equipment. One commenter also stated that the MPCA did not appropriately analyze the impact of the proposed rule on medium-duty vehicles. (Hausladen testimony, hearing transcript February 22, 2021; Zurn testimony, hearing transcript February 22, 2021)

The proposed Clean Cars Minnesota rule would adopt vehicle emissions standards for light- and medium-duty vehicles only and does not regulate heavy-duty vehicles or off-road equipment such as farm equipment. The proposed LEV emissions standards apply to the following vehicle types:

- Passenger car: vehicles designed mostly to transport 12 people or fewer.
- Light-duty truck: vehicles with a gross vehicle weight of under 8,500 pounds.
- Medium-duty vehicle: vehicles with a gross vehicle weight of between 8,501 and 14,000 pounds.
- Medium-duty passenger vehicle: medium-duty vehicles with a gross vehicle weight of less than 10,000 pounds and designed mostly to transport people.

The MPCA did not analyze the emissions or cost impacts of adopting emissions standards for medium-duty vehicles because currently the federal standards and the LEV standards are the same. It is therefore reasonable to assume that there would be no cost or emissions impacts of adopting the medium-duty vehicle standards. (SONAR pgs. 11-14)

III. Conclusions

This document addresses a number of the comments the MPCA has received on the Clean Cars Minnesota rulemaking. The Agency focused this document on clarifying issues raised in comments received through March 10, 2021. The MPCA will file a final response to comments addressing all comments received through the close of the comment period by the close of the rebuttal period on March 22, 2021.