

This document contains the comments the MPCA received during the Request for Comments public comment period July 24, 2023, through September 8, 2023, for the planned new rules governing Air Quality (Odor Management Rule), Revisor ID # R-4808.

39353 Minnesota Pollution Control Agency Request for Comments on Odor Management Rule

Closed Sep 08, 2023 · Discussion · 3 Participants · 1 Topics · 3 Answers · 0 Replies · 1 Votes

3

PARTICIPANTS

1

TOPICS

3

ANSWERS

0

REPLIES

1

VOTES

SUMMARY OF TOPICS

SUBMIT A COMMENT

 3 Answers · 0 Replies

Important: All comments will be made available to the public. Please only submit information that you wish to make available publicly. The Office of Administrative Hearings does not edit or delete submissions that include personal information. We reserve the right to remove any comments we deem offensive, intimidating, belligerent, harassing, or bullying, or that contain any other inappropriate or aggressive behavior without prior notification.

Tony Kwilas · Citizen · (Postal Code: unknown) · Sep 07, 2023 2:17 pm

 1 Votes

Attached are the Minnesota Chamber of Commerce comments

Abigail Bryduck · Citizen · (Postal Code: unknown) · Sep 08, 2023 8:45 am

 0 Votes

Minnesota Asphalt Pavement Association Comments on the rule are attached

Desiree McDowell · Citizen · (Postal Code: unknown) · Sep 08, 2023 2:00 pm

 0 Votes

Sanimax's Comments to the Odor Management Rulemaking are attached.



September 8, 2023

Administrative Law Judge James Mortenson
Minnesota Office of Administrative Hearings

Comments submitted electronically through OAH's website

The following letter contains the Minnesota Chamber of Commerce's (Chamber) comments in response to the Minnesota Pollution Control Agency's (MPCA) request for comments on rulemaking for an Odor Management Rule. As laid out in its request, the MPCA "is planning new rules to require the development and submittal of an odor management plan by facilities located in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, or Washington counties when determined by the MPCA commissioner that the facility emitted an objectionable odor."

In its initial request for comments, MPCA referenced enabling legislation from the 2023 Minnesota legislative session that directs MPCA to develop and issue rules that will:

1. Establish that "no person may cause or allow emission into the ambient air of any substance or combination of substances in quantities that produce an objectionable odor beyond the property line of the facility that is the source of the odor."
2. Identify the types of facilities that are exempt from the odor management requirements.
3. Establish an odor standard or standards for air pollution that may qualify as an objectionable odor under Minnesota Statutes, section 116.064.
4. Define the process for determining if an odor is objectionable.
5. Define the process for investigating and addressing odor complaints.
6. Provide guidance for what must be included when developing odor management plans.
7. Determine procedures and criteria for determining the success or failure of an odor management plan.

The Chamber's comments will follow those elements.

- 1. Establish that "no person may cause or allow emission into the ambient air of any substance or combination of substances in quantities that produce an objectionable odor beyond the property line of the facility that is the source of the odor"**

The Chamber believes a rule will be most effective if it creates an objective and science-based approach that can be practically implemented by MPCA and entities subject to the rule. We encourage MPCA to review odor management rules and programs implemented by other states and localities to determine approaches that work. The review should include direct engagement with those government entities to understand lessons learned from real life implementation. MPCA should also request input on the state of the art and science of odor management from firms that provide odor measurement and abatement services.

2. Identify the types of facilities that are exempt from the odor management requirements

The legislation directing MPCA to initiate odor management rulemaking includes a list of sources that will be exempt from the eventual rule. The Chamber requests that MPCA describe its process for determining whether entities fall under those exemptions. Our members are also interested in understanding whether the exemption list is static or if additional source types may be added and, if so, the process for adding new source types. We believe there are likely additional source or event types that should be exempt from the eventual rule. For example, emergency or disaster incidents that may create short term and/or isolated odors appear to fall outside the spirit of the legislation.

3. Establish an odor standard or standards for air pollution that may qualify as an objectionable odor under Minnesota Statutes, section 116.064

As noted above, the Chamber recommends an objective and science-based approach to standard setting. Any odor standard should be clear on any numeric thresholds as well as the approach to applying those thresholds in real situations. Terms included in enabling legislation require definitions or explanations of how they will be applied in the context of the rule. Examples include, “reasonably expected to be,” “unreasonably interferes with the enjoyment of life,” and “objectionable.”

MPCA should also specify how an Odor Management Rule will interact with other state and federal rules or compliance requirements. For example, will pollutants that are regulated and limited by existing environmental rules and permits be subject to additional regulation under this rule if those pollutants may also create potential odors?

The Chamber requests that MPCA describe how any eventual standards will be applied. Will a standard be an “action level” that triggers an investigation, a “red line” that must not be exceeded, or some other form of standard?

- 4. Define the process for determining if an odor is objectionable; and**
- 5. Define the process for investigating and addressing odor complaints**

An effective process for determining whether an odor is objectionable will require objective criteria and clear procedures. Procedures should address requirements in the legislation prescribing aspects of an investigation. An example is the law’s requirement for an investigation if there are ten or more odor complaints within 48 hours. Any eventual rule should be clear on qualifying complaints. Must they be distinct complaints from ten different people? May the complaints be anonymous? Must all complaints be submitted to the same agency? How will MPCA verify the complaints?

Similarly, the law allows the MPCA Commissioner to consult a “random sample of persons” to determine whether an odor is objectionable, based on a collected odor sample. What does this allowance mean in practice and how will MPCA decide who may provide input on odor samples?

For determinations on objectionable odors, the Chamber suggests MPCA utilize a set of criteria over one or two factors. Some odor management practitioners use a “FIDOL” criteria to characterize an odor: frequency, intensity, duration, offensiveness, and location. The enabling legislation includes some of these factors. A composite set of criteria coupled with a clear procedure, will allow entities to take proactive action when there may be objectionable odors and allow MPCA to focus on important odor challenges over transient issues.

6. Provide guidance for what must be included when developing odor management plans; and
7. Determine procedures and criteria for determining the success or failure of an odor management plan

The enabling legislation for an Odor Management Rule includes items to be included in an odor management plan:

- (1) a description of plant operations and materials that generate odors;
- (2) proposed changes in equipment, operations, or materials that are designed to mitigate odor emissions;
- (3) the estimated effectiveness of the plan in reducing odor emissions;
- (4) the estimated cost of implementing the plan; and
- (5) a schedule of plan implementation activities.

The legislation further provides authority for MPCA to issue penalties or revoke permits if odor management plans do not sufficiently mitigate odors.

Any Odor Management Rule must go further than the legislation in describing the details of odor management plans. Specific guidance on required plan elements and MPCA's procedures for reviewing and approving odor management plans will be necessary for any entity that may be required to submit one. Addressing odors may be an iterative process for many operations. It is important that the rule anticipates improvements over time and is clear on the compliance status of entities that are following their odor management plan, meeting permit and regulatory requirements, and seeking improvements. MPCA should include guidance on analyzing cost effectiveness and potential allowances for situations where technology does not exist to control specific odors or control may be cost prohibitive.

Thank you for the opportunity to provide comment and participate in this rulemaking. The Chamber and its members are available for further consultation as the rulemaking process proceeds.

Sincerely,



Tony Kwilas
Director, Environmental Policy
Minnesota Chamber of Commerce
tkwilas@mnchamber.com
651-292-4668



1000 Westgate Drive, Suite 252, St. Paul, MN 55114
Phone: 651-636-4666
Email: info@mnapa.org
Website: www.asphaltisbest.com

2023 Board of Directors

Chris Benson President	Mark Magnuson Kim Tolzmann Phil Laumann Randy Holladay Kristopher Duinick Matt Oman Max Jacoby
Dave Clement Vice President	
Dusty Ordorff Secretary	
Anthony Koop Treasurer	
Brent Carron Past President	

MAPA Staff

Abbey Bryduck
Executive Director
Brandon Brever, P.E.
Associate Director

September 8, 2023

Administrative Law Judge James Mortenson
Minnesota Office of Administrative Hearings

Comments submitted electronically through OAH's website

The Minnesota Pollution Control Agency (MPCA) is planning new rules governing air quality. The main purpose of this rulemaking is to establish new rules for odor management plan requirements as directed by Minnesota Session Law – 2023, Chapter 60, H.F. No. 2310.

Rulemaking is necessary to identify the types of facilities that are exempt from the odor management requirements. **Specifically, the Minnesota Asphalt Pavement Association (MAPA) seeks clarification on whether exemptions for refineries contained within Minnesota Session Law – 2023, Chapter 60, HF 2310 apply to asphalt production plants.**

Asphalt mix plants are classified under NAICS 324 which includes refineries and are heavily regulated by the MPCA as well as the USEPA. It is our belief that asphalt plants should be considered exempt from the rule.

In 2002, the EPA officially delisted asphalt plants as a major source of air pollution. Therefore, it has been determined that asphalt plant emissions are very low and getting lower due to innovative control systems and manufacturing technology. Asphalt is composed of only 5% petroleum products. It is mostly made of stone, sand, and gravel.

For the odors that can be detected, the asphalt industry has made significant strides in minimizing odors. Modern asphalt plants use advanced technology and processes to effectively control and reduce odors. There are also odor-capture systems available for tanks, as well as natural odor neutralizing agents that do not rely on harsh chemicals or masking fragrances.

Even in the absence of specific odor regulations, asphalt plants are often subject to general air quality regulations which can help to control odors. These include requirements for emissions controls, operating permits, and regular inspections.

MAPA supports the Minnesota Pollution Control Agency's goal to develop an odor management rule for ambient air, but it is the position of the Minnesota Asphalt Pavement Association that pursuant to established policy of both state and federal government agencies, asphalt production plants are covered under the "refineries" exemption contained within Chapter 60.

MAPA will be happy to continue to work with MPCA staff to clarify this point in the Rule.

Sincerely,

A handwritten signature in black ink that reads "Abigail C Bryduck". The signature is written in a cursive style with a large initial 'A'.

Abigail C Bryduck
MAPA Executive Director

Resources:

https://www.asphaltisbest.com/page/asphalt_plants

<https://www.asphaltpavement.org/uploads/documents/SR206-EnviromentalImpact-web.pdf>

VIA OAH RULEMAKING E-COMMENTS WEBSITE

September 8, 2023

Mary H. Lynn
Principal State Planner
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194
Submitted via email to:
Mary.lynn@state.mn.us

**Re: Comments to MPCA Request for Comment on Rules Related to Odor Management Rule; Revisor's ID Number R-4808
OAH Docket No. 5-9003-39353**

Dear Ms. Lynn:

We submit this letter on behalf of Sanimax USA, LLC ("Sanimax") in response to the Minnesota Pollution Control Agency's ("MPCA") request for comments on the Odor Management Rule rulemaking proceeding.

For over fifty years, Sanimax or its predecessors have operated a rendering facility in South St. Paul. Sanimax's rendering operations reclaim and transform agricultural wastes and food by-products into renewable products that are returned to the market and used in countless agricultural, industrial, and household applications. In doing so, Sanimax recycles by-products that would otherwise quickly fill up area landfills, turning those by-products into essential ingredients in products such as pet food, animal feed, pharmaceuticals, biofuels, cosmetics, leathers, and numerous other useful products. By performing these services, Sanimax and other renderers help keep consumer food costs low and prevent greases and oils from entering into municipal wastewater systems. It is not a stretch to say that businesses like Sanimax are the original recyclers and composters. During its fifty years of operation in South St. Paul, Sanimax has employed local residents, invested in improving its facility, and performed a critical role in the supply chain.

The rendering process involves intake of decaying organic material that is by nature inherently odorous. Additional factors, such as temperature and time in transit, can further impact the amount of odor associated with the rendering process. As such, as a renderer with locations in urban environments, Sanimax is familiar with odor management rules and enforcement, such as those in South St. Paul, Minnesota. This

50 South Sixth Street, Suite 2600, Minneapolis, MN 55402

experience with odor regulations makes Sanimax uniquely qualified to comment on MPCA's proposed rules and to assist MPCA in developing a clear, sensible, and fair regulatory framework for odor management.

1. Prior Minnesota Odor Regulations and Regulations from Other Jurisdictions Provide Valuable Insight.

Odor has always presented a complex problem for regulators, posing challenges such as unreliable detection, the subjectivity of odor perception, and difficulties in attributing odors to a particular source. The fact that odor is not a substance per se, but rather a sensory perception, makes odor regulation uniquely challenging. As MPCA formulates the rules for odor management it has the opportunity to anticipate and account for such issues, including issues that arose in its own prior efforts to regulate odor, and to incorporate information and practices from other jurisdictions.

1.1. Prior Minnesota Odor Regulations Demonstrate the Need for Practical Rules.

For two decades, Minnesota had state-level regulations for odorous emissions and animal matter processing. In 1995, MPCA proposed amending those regulations before ultimately repealing them. The amendment process provides an important window into the practical problems MPCA faced in administering odor regulations, including issues with reliability, consistency, and verifiability. MPCA will surely encounter these same issues in its impending odor regulations, and must account for such issues if its new odor regulation framework is to be successful.

One of the main issues driving the amendment process was concern about reliability. MPCA noted "the difficulty [it] had experienced in enforcing the existing odor rule," largely because "techniques used to measure odors [were] considered generally inadequate for regulatory purposes" and "reliable procedures for relating ambient odor levels to the extent of community annoyance [did] not exist." *In the Matter of the Repeal of Minn. R. Ch. 7011, Concerning Odorous Emissions, and the Adoption of Minn. R. Ch. 7029 in its Place*, Statement of Need and Reasonableness 2630 at 2-3 ("SONAR"). Even the American Society for Testing Materials ("ASTM") stopped recognizing the methodology that was used to test odor due to reliability issues. SONAR at 6. In Sanimax's experience, the desire to quantify odor through such techniques oversimplifies the complex process of odor detection and attribution, and can result in failure.

The amendment process also highlighted the need for oversight from the state. In the 1990s, EPA published a report indicating that local nuisance law was likely sufficient to control odor. SONAR at 2. MPCA considered repealing all of the rules, but that option was "roundly rejected by all interests" represented in the rulemaking taskforce. SONAR at 3. For local governments, the state stepping away from odor regulation would "place too much of a burden on local authorities." SONAR at 3. Industry groups similarly did not want the rules repealed because state-level regulation provided consistency. SONAR at 3.

Finally, the amendments underscored the need for a framework to elevate credible, verifiable odor complaints. The proposed amendments discussed the need to distinguish isolated complaints from those that represented a credible, community-wide concern. SONAR at 14. Even where the complaints were credible, the discussion of the amendments demonstrated the hurdles with verifying the source of the odor due to the transient nature of odor and changes in wind direction. SONAR 19-20.

1.2. Other Jurisdictions Have Odor Regulations that Could Serve as Guidance.

Other jurisdictions have had long-term regulations of odor that can provide practical guidance as Minnesota develops its rules.

For example, the Texas Commission on Environmental Quality (“TCEQ”) uses the FIDO(L) method to determine and assess qualitative odor characteristics of frequency, intensity, duration, odor character, and location, to determine where an odor falls on a spectrum, from not unpleasant, to unpleasant, offensive, or highly offensive. TCEQ deploys trained investigators to gather information from the initial complainant and other individuals near the alleged source. TCEQ’s qualitative approach allows for the consideration of meteorological effects, the use of complainant logs to track changes in the odor, and investigative interviews before any action is taken against the alleged odorous facility.

2. The New Rules Should Provide Consistency and Clarity.

Minnesota’s prior odor regulatory efforts demonstrate the need for clarity and consistency in the oversight of odors. Both local governments and industry value consistent state regulation of odors. Leaving the regulation of odor to local governments “would place too much of a burden on local authorities” while leaving industry with an inconsistent patchwork of rules. SONAR at 3. While there may be a limited opportunity for local governments to play a role in the enforcement process—for example, through representation on an odor panel, SONAR at 11-12—the standards should be set at the state level to provide consistency for the regulated community, SONAR at 3.

Sanimax respectfully requests that MPCA ensure that whatever rules are ultimately promulgated, those rules should be the same across the seven counties and applied and enforced in the same manner.

3. Rulemaking Categories Articulated in the Request for Comment.

The Request for Comment identifies seven subjects for odor management rulemaking. These subjects are discussed in more detail below.

- 3.1. Establish that “no person may cause or allow emission into the ambient air of any substance or combination of substances in quantities that produce an objectionable odor beyond the property line of the facility that is the source of the odor.”

The reference to a geographic boundary “beyond the property line” is vague. For example, the “property line” of any given facility will not necessarily be obvious to a layperson who is verifying or testing for odors. Without a property survey in hand, a more realistic boundary would encompass some perimeter around the facility in question. Sanimax requests that MPCA’s rule consider a specified boundary beyond the property line for the regulation of objectionable odors “beyond” the facility.

Additionally, the strict prohibition (“no person may”) on objectionable odors is unrealistic and sets up the regulatory framework to fail. Certain businesses, especially those such as Sanimax that deal in inherently odorous inputs, are unlikely to completely eliminate all odors, even when using the best available odor mitigation technology and best practices to control odors. A more realistic and achievable standard should be tied to the criteria for success of an odor management plan (*see* Section 3.7 below).

- 3.2. Identify the types of facilities that are exempt from the odor management requirements.

Sanimax notes that most if not all of the exempted facilities produce and contribute to odors in the seven-county metropolitan area. Non-exempted facilities such as Sanimax should not bear responsibility for such odors merely because it did not receive a legislative exemption. This is a matter of fundamental fairness and underscores the need for clear procedures for odor source attribution.

- 3.3. Establish an odor standard or standards for air pollution that may qualify as an objectionable odor under *Minnesota Statutes, section 116.064*.

Subdivision 1(b)(2) defines an “objectionable odor” as “pollution of the ambient air beyond the property line of a facility consisting of an odor that, considering its characteristics, intensity, frequency, and duration” “unreasonably interferes with the enjoyment of life or the use of property of persons exposed to the odor.” The determination of whether an odor is objectionable is ultimately a subjective decision, but the factors considered should be as objective as possible to ensure consistent and effective regulation.

“Objectionable” cannot be a single value. MPCA should consider using the FIDOL method to determine objectionable odors. The FIDOL method is a standardized approach for detecting offensive odors which can be used by different people in different settings, making it a valuable tool for environmental regulators, businesses, and the public. MPCA could also consider the TCEQ’s parameters around FIDOL as an example of a state agency implementing the FIDOL method.

If the agency chooses to use a numerical standard, it should rely on people, and not exclusively analytical tools such as the nasal ranger, to assess the results. Further, those people should have adequate training and sensitivity testing. While analytical tools can be useful, trained investigators in the field provide a necessary check and help ensure consistent results by considering factors such as frequency and duration.

3.4. Define the process for determining if an odor is objectionable.

The language of subdivision 1(b) requires testing of ambient air beyond the property line of the facility. Testing and sampling ambient air presents unique challenges because the perceived offensiveness of an odor is highly subjective and can vary depending on the individual, the environment, and the testing process, among other factors. Assessing odor based only on numerical strength or concentration is insufficient to determine whether an odor is objectionable. For example, odors downwind from a bakery could easily exceed 7 dilution-to-threshold (D/T) values, but few would find the odor objectionable notwithstanding its concentration. While there are numerous devices that, when paired with adequate training, attempt to provide objective data, they each have significant limitations in assessing whether an odor is objectionable.

MPCA should consider the FIDOL factors and use of trained investigators to determine if the odor is objectionable. Odor is a complex mix of compounds and assessing whether any given odor is objectionable depends upon the “characteristics, intensity, frequency, and duration.” Minn. Stat. § 116.064, subs. 1(b), 4(b). Trained investigators are significantly better equipped to assess the FIDOL factors and to determine if an odor is objectionable than analytical equipment, which is largely limited to identifying chemical compounds.

3.5. Define the process for investigating and addressing odor complaints.

Subdivision 4(a) requires “ten or more verifiable odor complaints” to be submitted to the agency or local government officials to initiate an investigation within 48 hours. The language of the rules should be drafted to establish complaint procedures that assist in prioritizing odors that are genuine community complaints, identifying the source of the odor, and producing accurate testing results.

First, the rules should provide requirements associated with “verifiable odor complaints” to establish that a complaint is genuine and assist in identifying the source. For example, the rule should have factors to differentiate between ten complaints from one individual or ten complaints from one community, such as an apartment building or business. Complaints that are deemed implausible (due to plant closure, wind direction, etc.) should be appropriately discarded or discounted. The repealed Minnesota odor regulations faced a similar issue and provided guidance to prioritize genuine community-level concern over frivolous or limited complaints.

Second, the rule should establish a procedure for identifying the source of the odor. Due to the nature of odors and the effects of the ambient environment—including temperature, humidity, atmospheric pressure, wind, and other factors—identifying the source of an odor

on any particular day can be extraordinarily complex. The rule should require that complaints include information necessary to complete a follow up investigation including the date, time, location, description of the odor, and any physical effects experienced. It should also describe the steps MPCA will take to verify the source, such as investigators conducting site visits of an alleged source within a certain amount of time.

Finally, Subdivision 4(b) authorizes the commissioner to “consider the opinions of a random sample of persons exposed to samples of the odor taken from ambient air beyond the property line of the facility that is the source of the odor” as part of the investigation process. Sanimax believes that the agency should establish qualitative criteria for selecting a “random sample of persons” to ensure reliable results. One recommendation is to train a sufficient number of people who can be randomly called upon to test samples. Training can include olfactory training, which would repeatedly expose a person to different odors to improve their ability to detect those odors, attending workshops, and working with professionals. If there were no criteria, the results of the odor investigations could substantively vary and would lead to inconsistent enforcement and results.

Sanimax also requests that MPCA clarify the language in subdivision 4(b), which seems to suggest that a Tedlar bag of ambient air would be collected and then tested. Sanimax cautions against collecting and testing ambient air in this way because the process is not likely to produce useful results as ambient air is influenced and affected by numerous factors. While Tedlar bags may be useful at the source, they are not useful in the field.

Sanimax requests that the agency incorporate clearly defined procedures that will maintain consistent and accurate results to ensure that testing and enforcement are as objective and uniform as possible.

3.6. Provide guidance for what must be included when developing odor-management plans.

The new legislation establishes that the odor management plan should identify control equipment or alternative methods that could reduce the odor. The legislation also lists five specific types of information to be included in the plan: the potential sources of the odor, the proposed changes, the estimated effectiveness of those changes, the cost of the changes, and a schedule of changes.

Sanimax requests that the language of the rule include operational changes as a means of reducing odor. Operational changes have the potential to significantly reduce odors even without adding new, potentially ineffective, equipment. As an example, operational changes that speed up the processing of organic materials may have a more substantial impact on odor emissions than the addition of a new scrubber.

The new legislation grants MPCA a substantive role in developing the odor management plan by requiring MPCA provide technical guidance. The technical guidance provides a vital opportunity for the facility and MPCA to communicate about the viability of various methods for reducing odor. As part of the process, it can be very useful for MPCA to visit

facilities that are developing odor management plans. A site visit can provide MPCA and the facility with valuable information about site operations and provide insight into what is happening at the facility to potentially cause an objectionable odor.

3.7. Determine procedures and criteria for determining the success or failure of an odor-management plan.

To be successful under the new legislation, the odor management plan must reduce the odor below objectionable levels. As it stands, the new legislation has a narrow view of the success of an odor management plan: no more emissions that qualify as objectionable odors. But odor emissions are complex. Businesses like Sanimax deal in inherently odorous waste streams and inputs, which would cause as much, if not substantially more odor if they were disposed of in area landfills (or not disposed of at all). In other words, Sanimax and other renderers do not create odors, so much as address organic material inputs that are themselves odorous. Further, the facilities that generate odors and are subject to the impending odor regulations play a critical societal and economic role in their communities. Achieving “zero” odors is simply not realistic, and it should not be the standard by which successful odor management is determined. The evaluation of an odor-management plan should take into consideration factors such as seasonality and temperature, which vary based on the time of year and can significantly affect a facility’s “success” in reducing objectionable odors.

Sanimax respectfully requests that MPCA consider multiple measures for demonstrating the success of the odor management plan, including when the management plan reduces the number of complaints below the standard that triggers a facility inspection; when the local government decides, through its own processes, not to forward complaints; when nonagency action might resolve the issue; or when a facility utilizes best management practices.

Thank you for considering these comments as MPCA develops its new regulatory framework for odor management. We look forward to reviewing and commenting on MPCA’s proposed odor rules.

Sincerely,

Stinson LLP



Andrew Davis

cc: Donn Johnson
Brent Muir
Claire Williams
Desiree McDowell