39347 Minnesota Pollution Control Agency Post-Hearing Comment Period on Air Toxics Regulations Rule

Closed Nov 03, 2026 · Discussion · 1 Participants · 1 Topics · 1 Answers · 0 Replies · 0 Votes

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SUMMARY OF TOPICS

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1 Answers · 0 Replies

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Andrew Morley · Citizen · (Postal Code: unknown) · Nov 03, 2026 9:03 am

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Please find the attached post-hearing comment from the Minnesota Chamber of Commerce.

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MINNESOTA CHAMBER OF COMMERCE
GROWING MINNESOTA

November 3, 2026

Minnesota Court of Administrative Hearings
Administrative Law Judge James Mortenson
600 N. Robert Street
St. Paul, Minnesota 55101

Re: Minnesota Pollution Control Agency Proposed Air Toxics Regulations Rules, Revisor R-04807; CAH Docket No. 5-9003-39347

Dear Judge Mortenson:

I write on behalf of the Minnesota Chamber of Commerce (Chamber), a statewide organization representing more than 6,300 businesses and more than 500,000 employees throughout Minnesota providing comment on the proposed Air Toxics Regulation Rule and in response to the Minnesota Pollution Control Agency's (MPCA) October 1, 2026 Pre-hearing Response to Comments (MPCA Response).

The Chamber appreciates MPCA's consideration of the pre-hearing comments and recognizes that MPCA has proposed some clarifications and minor revisions. The MPCA, however, has not resolved significant issues raised by the Chamber and others in earlier comments. The rule should not be adopted without further, meaningful revision to address ambiguity, reduce unreasonable burdens, and further focus regulatory attention on emissions most likely to impact human life and health. The final rule should direct agency and regulated-community resources toward meaningful exposure and risk, avoid unnecessary analysis driven by ambiguous or inflexible assumptions, and provide workable procedures for complex facilities. The Chamber therefore asks MPCA to make the focused revisions described below.

Summary of Requested Revisions

- Clarify how the relevant property boundary is determined for complex, leased, shared, or transportation-related properties, and permit use of an appropriate receptor for those facilities where a nominal property line is not reasonably representative of exposure. This issue should be addressed at the rulemaking stage rather than through ad hoc case-by-case determinations.
- Clarify the treatment of fugitive emissions from enclosed buildings and permit technically supported release parameters where emissions leave through identifiable vents or other physical release points.
- Add risk-based materiality or de minimis criteria for minor operational changes, including product changes, so that annual emissions-inventory updates do not cause repeated screening or even largely duplicative/overlapping AERAs arising out of events that do not materially increase risk.

- Reassess the rule's cost and burden assumptions to more accurately reflect MPCA's own survey data and input from commenters.
- Retain the unit-based Hazardous Air Pollution (HAP) exemption in proposed part 7012.0400, subpart 6, extend it to non-HAP constituents in the same federally controlled particulate or organic emission classes, and carry the exclusion into AERA unless MPCA identifies specific regulatory gaps.
- Expressly authorize use of a recently completed or contemporaneous cumulative impacts analysis to satisfy overlapping Air Toxics requirements, and allow an AERA prepared under the Air Toxics Regulations Rule to satisfy the corresponding component of a cumulative impacts analysis when the technical scope is equivalent.

I. The Property-Boundary Provisions Remain Ambiguous and Require a Clear, Rationally Related, Rule-Based Alternative for Complex Properties

In earlier comments, the Chamber and Cordia Energy Center Minneapolis raised two related but distinct concerns about MPCA's use of the shortest distance to a property line for STRATA. First, a property line may not reasonably represent chronic or long-term residential exposure. Second, the relevant property line may be unclear because of rail easements, barge docks, shared industrial parcels, internal boundaries, or other complex property issues. MPCA Response ¶¶ 190-191, 193. Delta Air Lines described ambiguity regarding application to leased airport premises, while the American Petroleum Institute explained that roads, rail corridors, utility easements, industrial parcels, and waterways may not represent chronic residential exposure. Id. ¶¶ 192, 194. These comments involved various facility types and economic sectors.

MPCA rejected a general replacement of the property-line approach with the nearest resident or sensitive receptor, citing consistency, health protectiveness, possible future development, stability of property lines, and administrative simplicity. MPCA Response ¶¶ 195-199. The Chamber understands MPCA's response, particularly with regard to administrative ease and consistency, and accepts that property line screening may be appropriate for many properties.

MPCA did not, however, address the ambiguity identified by commenters, including the Chamber. For a limited number of properties, it is unclear what boundary to use, and long-term public exposure may be implausible for some possible boundaries. MPCA's reasons for preferring a stable and easily identified line do not address those cases in which the line is neither self-evident nor representative, and the rule does not clearly identify a standard that regulated parties and agency reviewers can consistently apply when selecting the controlling boundary for complicated facilities.

The Chamber recommends that MPCA retain property-line screening as the default for the STRATA under proposed Minn. R. 7012.0400, subpart 2, items C and D, but authorize an alternative for instances in which the owner or operator demonstrates that the controlling property line is ambiguous and/or not reasonably representative of potential exposure. In those limited cases, the rule should allow MPCA to approve an alternative such as the nearest resident, a sensitive receptor, or another technically appropriate receptor, while preserving evaluation of acute public exposure and reasonably foreseeable chronic and cancer exposure. This approach would address the ambiguity in the proposed rule and ensure that the selected modeling location remains rationally related to MPCA's objective of evaluating potential exposure.

In addition, the MPCA should include a definition in proposed part 7012.0055 of "property line" as applied in the rule to leases, easements, utilities, and similar recurring scenarios. Consistent with other

air emissions exposure scenarios, the focus should be on meaningful exposure by the general public. A definition would not eliminate all ambiguity and special applications, and therefore the availability of alternative receptor-based compliance boundaries remains valuable and necessary, but a definition would reduce the current ambiguity in the proposed rule. This is a presently known issue that is properly addressed through rulemaking rather than ad hoc determinations.

In making this recommendation regarding STRATA, the Chamber notes that some other states allow for receptor-based analyses in appropriate situations. Oregon assigns residential, child, worker, and acute exposure locations and generally assesses the property boundary, subject to specified exceptions. Georgia accepts site-specific analysis using the nearest or worst-case residential receptor for annual exposure and the nearest or worst-case business receptor for an eight-hour exposure. California's Air Toxics Hot Spots program focuses on localized facility impacts, while separate California community-assessment materials identify sensitive-receptor locations such as hospitals, schools, and day-care centers. These examples support the Chamber's proposed approach of allowing for a receptor-based approach for STRATA in some limited circumstances.[1]

II. Materiality Standards Should be Incorporated into Rescreening and AERA Provisions

Facilities across the Chamber's membership routinely experience minor changes in the products and materials used in their operations. Coatings, solvents, cleaning products, lubricants, maintenance materials, fuels, reagents, and other chemical inputs may be reformulated by suppliers, replaced by successor products, discontinued, or changed to satisfy safety, operational, customer, manufacturer, or regulatory requirements. These changes may alter the identity or quantity of air toxics reported in annual emissions inventories even when the resulting change in emissions and risk is negligible. These changes have implications for both additional screening under proposed part 7012.0170, and the limited circumstances under which a previously completed AERA can be used under proposed part 7012.0560, subpart 4.

Delta Air Lines provided one concrete example of this broader issue, explaining that it uses hundreds of products, receives frequent Safety Data Sheet updates, and may be required by an original-equipment manufacturer or the Federal Aviation Administration to use a replacement or reformulated product. MPCA Response ¶ 163. Delta therefore requested significance or de minimis thresholds and later explained that frequent product changes could leave a facility continually engaged in overlapping assessments. Id. ¶ 165. MPCA stated that requiring a facility to evaluate every change or requiring rescreening more than once per year would be unreasonable because actual emissions are reported annually. Id. ¶¶ 164, 167.

Those assurances, while welcome, do not solve the recurring-burden problem for the Chamber's members. MPCA stated that it expects to learn of changes through permit applications and notable

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[1] Oregon Department of Environmental Quality, Exposure Location Assignment, https://www.oregon.gov/deq/aq/cao/Documents/ExposureLocation.pdf; New Jersey Department of Environmental Protection, Technical Manual 1003: Guidance on Preparing a Risk Assessment for Air Contaminant Emissions (2018), https://dep.nj.gov/wp-content/uploads/boss/technical-manuals/1003.pdf; Georgia Environmental Protection Division, Guideline for Ambient Impact Assessment of Toxic Air Pollutant Emissions, at 4 (rev. May 2017), https://epd.georgia.gov/document/document/toxic-impact-assessment-guideline/download; California Office of Environmental Health Hazard Assessment, Air Toxics Hot Spots, https://oehha.ca.gov/air/air-toxics-hot-spots; California Air Resources Board, Sensitive Receptor Assessment, https://ww2.arb.ca.gov/capp/cst/rdi/sensitive-receptor-assessment.

changes in annual emissions inventories and that the commissioner would decide which changes could lead to an exceedance. MPCA Response ¶¶ 164, 167. The rule, however, contains no objective materiality standard for deciding which inventory changes could lead to an exceedance. Nor does it codify MPCA's statements that facilities should not be required to evaluate every change and that requiring rescreening more than once per year would be unreasonable. The annual reporting schedule does not create a firm limitation on the frequency of rescreening. Instead, the agency is left with considerable and unnecessary discretion, which makes the rule less predictable for owners and operators and leaves them facing the prospect of repeated screenings and even, potentially, repeated AERAs based on minor changes that do not materially change a facility's risk profile. The requested materiality standard would clarify how the existing condition in part 7012.0150, subpart 2, allows an existing facility with a screening exceedance to choose a CDP or AERA.

The consequences do not necessarily stop with STRATA. The Chamber and Cordia requested a pollutant/source winnowing step before a full AERA; MPCA responded that STRATA already performs that function at the facility level. MPCA Response ¶¶ 326-327. The University of Minnesota separately explained that a facility-wide AERA would sweep in small emergency generators, small and redundant boilers, intermittent laboratories and demonstration activities, fume hoods, and thousands of changing chemical-use and stack configurations across a large campus. Id. ¶¶ 313-314. MPCA responded that all sources must initially be included so that their risk can be demonstrated before refinement or exclusion. Id. ¶ 315. These examples show how a minor change prompting rescreening could then lead to reconsideration of a much larger and operationally diverse facility, including, potentially, an AERA. Repeated screenings based on minor changes could, for some facilities, result in the need to submit serial, largely duplicative AERAs. This would be a significant burden on both owners and operators, who would have to pay for the analyses, designate time for internal staff review, and the agency, which would have to review voluminous submissions. The provision for using a prior AERA does not adequately protect against that result. Proposed Minn. R. 7012.0560, subpart 4, item D, permits reuse only if later modifications did not result in increased risk from air-emissions impacts. The provision contains no materiality qualifier. It therefore could be read to prevent reuse of an AERA when a minor product reformulation or small change in operations produces any modeled increase, however small, even if the prior AERA remains representative and the increase will not affect compliance with an acceptable risk level. Requiring a new facility-wide AERA in those circumstances would not be rationally related to identifying meaningful changes in risk and would impose substantial work without a corresponding public benefit.

Requiring a new facility-wide AERA solely because an immaterial change triggered a rescreening would be disproportionate to the risk presented and would consume facility and agency resources without improving public health protection. A recently completed AERA should remain usable unless a subsequent change is reasonably capable of changing a material input, causing an exceedance of an applicable acceptable risk level, or otherwise altering the conclusion of the approved analysis.

The Chamber therefore requests three coordinated revisions. First, part 7012.0170, subpart 1, should establish an objective, risk-based materiality or de minimis standard for alterations, substitutions, reformulations, and inventory changes. Second, the rule should state expressly that, absent extraordinary circumstances identified in written notice, an owner or operator will not be required to complete more than one additional screening analysis in any three year period. Third, part 7012.0560, subpart 4, item D, should allow for use of a prior AERA unless later changes materially increase modeled risk, cause an acceptable-risk-level exceedance, or invalidate a material assumption. If an update is required, the prior AERA should remain the baseline and the facility should be permitted to submit a

focused supplement evaluating the changed inputs and their incremental contribution to total facility risk. MPCA should also coordinate the date restrictions in subpart 4, items A and B, and part 7012.0070, item B(1), to permit updating an otherwise representative earlier AERA. These provisions would replace uncertain discretion with ascertainable standards and align the required analysis with MPCA's objective of identifying meaningful risk.

These proposed revisions would not exempt meaningful increases. They would convert MPCA's stated intent not to require evaluation of every change into a rule-based standard, preserve review of cumulative changes, and prevent minor changes in operations or products from repeatedly reopening a costly facility-wide risk analysis.

III. MPCA Should Broaden Exemptions for Federally-Regulated Emissions Unless it Identifies Specific Regulatory Gaps

In its prior comments, the Chamber recommended that the proposed rule take better account of existing applicable Federal regulation by (a) retaining and broadening the HAP exemption in proposed part 7012.0400, subpart 6, for substances regulated by the Federal National Emission standards for Hazardous Air Pollutants (NESHAP) to also cover non-HAP constituents in the same particulate or organic emission classes controlled under 112(d) of the Clean Air Act, including through surrogate limits, capture and control requirements, or class-based work practices, are subject to standards meant to regulate entire classes of air pollutants, MPCA Response ¶¶ 231, 234, 237, and (b) extending the exemption of federally controlled emissions to also apply to AERAs under proposed parts 7012.0550, subpart 2, and 7012.0560, except when MPCA clearly identifies circumstances in which the Section 112(d) source must be included. *Id*. at ¶ 237.

In response, MPCA contended that non-HAP air toxics must remain in screening where a NESHAP applies because federal standards do not evaluate non-HAP risks and the federal surrogates do not themselves have screening-threshold values. MPCA also stated that some federally regulated emissions may be exempt at screening but must be included in an AERA because an AERA evaluates cumulative facility-wide risk and uses potential-to-emit values. MPCA Response ¶¶ 232-235, 238, 325.

The Chamber, however, notes again section 112(d) standards are primarily technology-based; technology reviews under section 112(d)(6) are distinct from residual-risk reviews under section 112(f)(2), and the Federal standards impose detailed requirements, including regarding emissions limits, work practices, monitoring, recordkeeping, and reporting. MPCA Response ¶¶ 230, 237. The requested class-based exclusion rests on shared enforceable controls and should not depend on a completed residual-risk review or a new constituent-by-constituent risk assessment.Given this existing and mature regulatory structure, it is unreasonable for the MPCA to limit the scope of its exclusion from the screening analysis and not provide any exclusion of these federally-regulated emissions from the AERA. Instead, MPCA should seriously engage with the Federal requirements, identify any gaps in how they protect the public, and impose requirements based on such gaps. With respect to screening, MPCA did not tailor its rule towards specific instances in which existing Federal limits do not adequately protect against emissions from categories of substances, and with respect to AERAs MPCA did not limit its consideration of Federally-regulated substances to only circumstances in which it believes there are regulatory gaps. MPCA's approach is not reasonable as it does not adequately account for existing regulation as required by Minn. Stat. § 14.131(7) and (8).

IV. MPCA's Cost Analysis is Not Reasonable

MPCA has stated that its cost estimates need not predict compliance costs with precision. MPCA Response ¶¶ 74-81. The Chamber understands that MPCA cannot perfectly predict compliance costs. However, MPCA should reasonably analyze foreseeable costs using the available information. As the Chamber noted previously, the SONAR estimated that a screening-threshold analysis would require 5 to 50 hours and cost approximately $421 to $4,206, while MPCA's own survey data reflected a median screening cost of approximately $7,500 and included estimates exceeding $50,000. Id. ¶ 73. The issue is not mere uncertainty; it is that the agency's analysis does not fit the data it collected and therefore does not reasonably evaluate the impacts of the chosen approach. Chamber members who have subsequently considered the costs and conferred with consultants have determined that $7,500 is a substantial underestimate. The Chamber believes screening is more likely to cost tens of thousands of dollars, with the exact amount depending on the facility.

The same need-and-reasonableness concern applies to the cost of an AERA. The Chamber identified an example in which preparation of an AERA exceeded $500,000, excluding related source testing, and took more than two years before MPCA deemed it complete. MPCA Response ¶ 73. Chamber members who have conferred with consultants regarding the proposed rule are also now estimating costs of AERAs in the hundreds of thousands of dollars.

The agency has not reasonably or adequately considered the cost of the proposed rule for owners and operators. Under Minn. Stat. § 14.131(3)-(5), an agency is required to use reasonable effort to ascertain the probabe costs of compliance and it is charged with determining whether less costly methods could be used. The MPCA efforts in this regard were not reasonable given the mismatch with data it itself collected. The Chamber requests that the Administrative Law Judge find the cost and alternative analysis insufficient and require the record to be supplemented before adoption.

V. The Air Toxics and Cumulative Impacts Rules Should Minimize Duplicative Analyses

In its earlier comments, the Chamber noted the potential for overlap with the Cumulative Impacts Rule. MPCA Response ¶ 135. It also made similar comments in the docket for that rulemaking, CAH Docket 21-9003-39398.

In response, MPCA agreed that duplicative work should be minimized, but also emphasized the differences between the two proposed rules. MPCA Response ¶¶ 135-143. MPCA did identify some opportunities to reuse existing information, notably recently completed AERAs. Id. ¶¶ 136-137. However, it did not agree to or propose any revisions to further minimize the need for duplicative work. One such improvement would be to expressly allow under proposed parts 7012.0550 and 7012.0560 for a single AERA to be submitted contemporaneously for both Cumulative Impacts and Air Toxics purposes if a facility is in the position of going through both types of MPCA review. The MPCA could further provide that underlying data, modeling, and analyses can be used across cumulative impacts and air toxics proceedings to the extent applicable to both. Such an affirmative rule would empower MPCA employees to make reasonable decisions that would limit burdens on owners and operators. Reuse should extend to technically equivalent air-risk components, not distinct non-air requirements, with any supplement limited to material differences in scope.

VI. The Sixty-Day Provisions Are Ambiguous and Should State the Governing Deadlines in the Rule Text

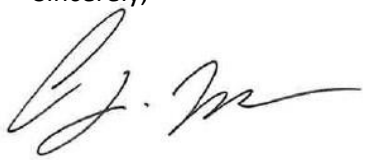
The Chamber previously asked MPCA to clarify whether a timely response under proposed Minn. R. 7012.0170, subpart 2, item C to an additional screening notice tolls or extends the 60-day deadline set forth in part 7012.0170, subpart 2, item B. MPCA Response ¶ 104. MPCA answered both that the

deadline “does not change” and that it “is tolled” while MPCA considers the response. *Id*. ¶ 105. The response from MPCA does specify when the clock pauses or how the remaining time is calculated. Given that uncertainty, and the lack of a clear provision providing for tolling, the MPCA should amend the proposed rule to expressly state that the 60-day period is tolled from receipt of a timely item C response until MPCA issues a written decision confirming or rescinding the requirement, with any remaining days and resulting due date stated in the that decision. By clarifying the rule, MPCA would remove ambiguity and provide more certainty and predictability for the regulated community.

VII. Clarify Release Parameters for Emissions Generated Within Buildings

The Chamber requests clarification of proposed part 7012.0400, subpart 2, items C and D, for emissions generated indoors but released through vents, doors, or other openings. The rule should allow documented outdoor release locations and parameters consistent with the fugitive-emissions definition in Minn. R. 7005.0100, subpart 12b, without assuming complete capture or stack-release treatment. Item D uses a known fugitive-source height; one meter applies only when that height is unknown. A worked example would help facilities apply these provisions consistently.

Sincerely,



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