MINNESOTA POLLUTION CONTROL AGENCY

Air Toxics Regulations Rule

Hearing and Post-Hearing Response to Comments

Revisor ID No. R-04807
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Introduction

This document contains the response to the public testimony provided during the public hearing held on October 5 and 6, 2026, and the public comments received during the post-hearing public notice regarding the Minnesota Pollution Control Agency's (MPCA's) Notice of Intent to Adopt Rules With a Hearing (Notice) published May 18, 2026. One commenter provided verbal testimony during the rule hearing on October 5 and 6, 2026. Following the rule hearing, only one commenter submitted comments to the Court of Administrative Hearings' eComments website during the post-hearing comment period that ended on at 4:30 pm on November 10, 2026. No comments were submitted through U.S. mail.

The MPCA appreciates the thoughtful and thorough comments that were received during the public hearing and post-hearing comment period for this rule. The agency has provided its responses to those comments below, and where possible, has grouped similar comments together to provide a single response. If there are additional comments received during the post-hearing rebuttal comment period ending on November 10, 2026 at 4:30 p.m. that are not listed in this document, the MPCA will respond to those comments in a final response to comments document.

List of interested parties

The following is a list of interested parties who submitted verbal testimony or written comments on the proposed rules during the public hearing held on October 5 and 6, 2026, or the post-hearing public comment period from October 7, 2026, through November 3, 2026 (with the post-hearing period set to close November 10).

Table 1. List of interested parties

Comment ID	Date	Commenter Name	Organization Name
001	October 6, 2026	Paul Bakken	-
002	November 3, 2026	Andrew Morley	Minnesota Chamber of Commerce

Changes to the Proposed Rules

The MPCA has made modifications to the proposed rule as a result of comments received during these comment periods. Additionally, the MPCA has identified some parts of the proposed rule that require clarification, or that the agency would consider minor, non-substantive changes to the proposed rule that are needed based upon additional review. The MPCA does not believe that these potential modifications will result in rules that are "substantially different" as defined in Minn. R. 1400.2010, subp. 10 based on the criteria set forth in Minn. Stat. § 14.05, subd. 2(b).

The issue of substantial difference is addressed in detail with regard to each modification. In general, the Notice provided fair warning that these rule changes 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 effects of the modifications are not greatly different from the rules as originally proposed. All the modifications are within the scope of "Subject of Rules," and are related in general to Minnesota's air toxics regulations, all of which were announced in the Notice. The modifications are a logical outgrowth of the Notice and the comments submitted in response to the Notice.

The MPCA included a section on the changes to the proposed rules in its Response to Pre-Hearing Comments e-filed and posted to the MPCA webpage on October 1, 2026. In addition to those changes, the MPCA includes the following addition to the changes to proposed rules.

Part 7007.0568 NOTIFICATION TO POTENTIALLY IMPACTED RESIDENTS.

Addition of clarifying language for notifications

In the prehearing response to comments document (aq-rule4-12t) under the subheading "Notification to Residents," the MPCA provided potential edits to the proposed rules and sought further feedback in paragraph 369 of that document. The MPCA did not receive further feedback during the hearing nor during the post-hearing comment period.

The MPCA proposes changes to part 7012.0568, subp. 1(A):

Subpart 1. **Notification to potentially impacted residents.** An owner or operator of an air toxics facility that conducts an air emissions risk analysis that results in risks above acceptable risk levels under part 7012.0560, subpart 3, must notify potentially impacted residents of actions that will be taken to comply with part 7012.0570, subpart 2. Notifications must be made in writing and distributed by deposit in the United States mail with postage prepaid, to every address that is:

A. a residence or business located within a circle with the air toxics facility at the center and a radius determined by the farthest point identified where risk estimates are equal to 90 percent of acceptable risk levels; or, provided that potentially impacted residents are not excluded from receiving notifications, for facilities considered a single source by the MPCA and that contiguously span a distance of 3 miles or greater, a residence or business located anywhere the risk levels are 90 percent of acceptable risk levels; and

1. During the pre-hearing comment period, the MPCA received a comment on the initial proposed rules' language from Katharine Bonneson from the University of Minnesota during the pre-hearing response to comments. MPCA's prehearing response to comments document (aq-rule4-12t) contains the following comment.

2. **Bonneson-8:** Katharine Bonneson from the University of Minnesota stated, "If an AERA indicates risk above acceptable levels, the Draft Rules require facilities to notify every residence or business within a circle, centered on the facility, with the radius extending to the farthest point where modeled risk estimates are equal to 90% of the acceptable risk level. While the University supports a modeling-based approach to ensure that all potentially impacted residents are notified, the simplified circle methodology is flawed, particularly when applied to expansive public institutions. The University's Twin Cities campus covers approximately 1,200 acres across Minneapolis and St. Paul, spanning a distance greater than three miles. Centering a notification circle on the geographic center of a sprawling campus, rather than on the emission source causing the exceedance, inflates the notification area unnecessarily. For the University, the geographic center could be located more than 1.5 miles away from the emission source causing the exceedance, resulting in a much larger notification radius than necessary. For example, if modeling demonstrates that the actual risk impacts were located in the Cedar-Riverside neighborhood of Minneapolis, applying a radius from the University's geographic center would require sending notifications to residents as far away as Roseville. This outcome directly contradicts the SONAR, which explicitly states the rules' intent is to limit mailers to areas of potential impacts. This overly broad notification methodology can also create undue alarm and stress on unimpacted residents. This approach would also create unnecessary concern and present false information to residents who are within the general radius of the facility but not located in the areas where the modeled risk estimates are equal to 90% based on the meteorological conditions and terrain. The modeling results from an AERA can be plotted on a map and used to provide a detailed significant impact area representing 90% modeled risk estimates. The current MPCA modeling practices manual uses this approach in a significant impact area (SIA) analysis to identify the extent for the National Ambient Air Quality Standard (NAAQS) receptor grid based on modeled Significant Impact Level (SIL) results. In addition, the University intends to comply with any public notice requirements, but notes that for a public facility like the University, mailed notices can be a burdensome task with the potential for minor errors. Accordingly, consistent with other requirements for public notice understate law, the University recommends that the rules be revised to add that a bona fide attempt to comply with the notice requirements. See, e.g., Minn. Stat. § 216I.05, subd. 8(d)."

3. In review of the comment received regarding this part of rule, the MPCA agrees that a revision could still reasonably require notification to potentially impacted residents while limiting notifications from being sent to hundreds of non-impacted residences or businesses when facilities span large geographic areas themselves. The MPCA is not proposing changes to Item B, to maintain inclusion of specific locations where people with more sensitivity to air pollution congregate, and to help ensure that more susceptible people that may live elsewhere as well as people experiencing housing insecurity or homelessness are also informed. Pages 133-134 of the SONAR contain more information on Item B's reasonableness.

4. The additional proposed language in Item A limits the number of residence and business addresses receiving notifications. Without adding the additional proposed language, the requirement could require notifications to hundreds of addresses that are not potentially impacted.

5. The distance of 3 miles is consistent with the distance used in subpart 1, item B of the same rule part. It is reasonable to remain consistent within the rules to reduce confusion. It is also reasonable because, in reviewing the approximate 2025 land areas for cities in the seven metropolitan counties, the approximate average and median diameters of cities were 4.1 and 2.7 miles, respectively.

6. Providing an alternative for facilities that span approximately the same area as the median sized city is reasonable to limit resources while still ensuring potentially impacted residents are not excluded

from receiving notifications. The MPCA finds this modification does not make the proposed rule substantially different because the existing requirement remains the same and the change only provides an alternative for facilities spanning large geographic areas, without changing the subject matter or the effect of the proposed rule. This modification is within the scope of the "Subject of Rules" Chapter 7012 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 because changes may be expected from new information presented during the pre-hearing comment period, as well as at the rule hearing and in the post-hearing comment period, where the MPCA is reviewing the proposed rules alongside the comments provided.

General comments

The MPCA received the following general comments that were not specific to any rule part which are summarized and responded to below.

General comments

7. **Morley-4:** Andrew Morley from the Minnesota Chamber of Commerce stated, "Reassess the rule's cost and burden assumptions to more accurately reflect MPCA's own survey data and input from commenters."

8. Morley further states, "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.

9. 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.

10. 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."

11. **MPCA Response:** These comments are similar to comments identified under the "General comments" subheading in the MPCA pre-hearing response to comments document (aq-rule4-12t). Please see the MPCA's response to comments regarding cost estimates in paragraphs 74-81 (aq-rule4-12t).

Comments specific to the Proposed Rules

The MPCA received comments regarding specific rule parts which are summarized and responded to below.

PART 7012.0055 DEFINITIONS

Environmental Justice Area Definition and Sunset Clause

12. **Bakken-1:** Paul Bakken stated during the hearing, “There we go. Good morning, Your Honor, members of the MPCA. Thank you very much for the opportunity to be heard. I did submit a couple of questions prehearing and I'd like to thank the MPCA for their thoughts and comprehensive answers. I think, for the most part, my questions about the proposed regulations were answered.

13. There were some follow-on nuances that I would like to enter into the record, however. The first one regards the definition of environmental justice areas. It's my understanding that the methodology used by the MPCA is to use census blocks to look at that data when defining areas that qualify as an environmental justice area. I would like to propose that, instead, at least for the sole purpose of defining environmental justice areas, that the MPCA use tracts instead of blocks.

14. My concern about that is that there are areas that would qualify for the additional protection and analysis that aren't being captured. I know of one in the city of Eagan that is right across the street from a point source of air toxics, but it's surrounded by affluent neighbors. So while the tract itself would qualify, the block is sufficiently diluted so it is not. And I apologize, I should back up. For the benefit of the court reporter, my name is spelled P-a-u-l B-a-k-k-e-n. I am a resident of Eagan. I am also an elected official here, but I am not here today in that capacity, I am just speaking as a private citizen.

15. So that's the first comment, and then the second is that I did not see anywhere in these proposed regulations, perhaps somewhere else in the rules, but I do feel that there ought to be a sunset clause for certain types of point source emitters, particularly for toxics such as lead since those substances do not break down in the environment over time and the deposition from air toxics into soil toxics increases over time. So even a point source emitter who is operating within the regulatory limits, over the course of a very long period of time the cumulative deposition of air toxics into the soil can become a concern.

16. Again, I'm thinking specifically about those air toxic emitters of lead, which gets into the soil; and on a three-year rolling average the air emissions may be fine, but over the course of 99 or a hundred years, the effect on the surrounding soil becomes a concern. So if it isn't already addressed in the regulations, and perhaps it's beyond the scope of the proposed regulations here today, I would encourage and ask that the MPCA look at that concern and find a way to address it.

17. That concludes my comments. Thank you very much for the opportunity, members of the MPCA and, Your Honor, thank you again so much.”

18. **MPCA Response:** The MPCA appreciates the comments provided during the hearing. The MPCA defined environmental justice areas in the proposed air toxics regulations rules based on the provided definition in the Session Law. The Session Law and the proposed rules define environmental justice areas based on census tracts. Census tracts are made up of smaller components called census block groups and census blocks. This definition is also consistent with other Minnesota statutory definitions, such as Minn. Stat. § 116.065 and § 115A.

19. The proposed air toxics regulation rules, however, are the same for facilities in and outside of rule-

defined environmental justice areas. So there are not areas that would qualify for "additional protection and analysis," as the commenter describes, based on location in these proposed rules.

20. The MPCA respectfully disagrees that a sunset clause is needed because there are other aspects of the proposed rules that address risks from both exposure to lead in soil deposited from air emissions and long-term exposures. At this time, the MPCA has not included a "sunset clause" or requirement for facilities to shut down after a certain period of time due to impacts. The MPCA agrees that lead does not break down in the environment and can accumulate in the soil from sources, including air emissions from regulated facilities. The proposed rules, however, only address air pollution and potential health risks from a facility's emissions into the air.

21. If a facility reaches the point in the rules' process where they must complete an air emissions risk analysis (AERA), the AERA includes multipathway risks from different exposure routes (i.e. dermal, oral, inhalation) and different exposure durations (i.e. one hour, 24-hour, lifetime). Multipathway risks include deposition of a facility's current air emissions on a person's skin (dermal) and ingestion of products, produce, and soil that have been affected by the air emissions (oral). There are different scenarios for multipathway risks; farmer, urban gardener, and resident. All of these different multipathway risks are defined in the proposed rule. Chronic noncancer and cancer risks are both assessed in an AERA using exposure timeframes of at least one year and up to a person's lifetime (typically assumed to be up to 70 years). These multipathway risks and risks over longer exposure durations assessed in an AERA may cover the commenter's concern with accumulation of emissions in the soil near a facility. The MPCA's response to pre-hearing comments under the subheading "Acceptable risk levels" in paragraphs 335-336 (aq-rule4-12t) contains further information about risks.

22. If the facility's risks from potential air toxics emissions impacts exceed acceptable risk levels included in the rules, they will have to make changes so that they can provide reasonable assurance of compliance. This may include permit limits, changes to operations such as materials used, adding control equipment to reduce emissions, etc.

PART 7012.0160 REPEATED AIR TOXICS SCREENING ANALYSIS

Harmonization with Cumulative Impacts Rule

23. **Morley-5:** Andrew Morley from the Minnesota Chamber of Commerce stated, "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."

24. Morley further states, "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.

25. 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.

26. 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."

27. **MPCA Response:** These comments are similar to comments identified under the "Harmonization with Cumulative Impacts Rule" subheading in the MPCA pre-hearing response to comments document (aq-rule4-12t). Please see the MPCA's response to comments regarding cost estimates in paragraphs 136-137 (aq-rule4-12t).

28. The proposed rules set parameters that must be met to use previously completed AERAs (7012.0070).

29. Information filed years prior is not necessarily applicable to the standards or information and should not be "presumptively" acceptable, as it is dependent on the situation in which an applicant has to apply or file within the respective rules and statutes.

30. The analyses with environmental review, Air Toxics Regulations, and Cumulative Impacts are different in various manners, including actionable levels and items, that would create approval or disapproval. An approval of one program does not automatically mean that the information provided by that program is transferable or approvable to others. As long as the requirements in Minn. R. 7012.0070 are met, a facility's analysis conducted through Cumulative Impacts or environmental review may be used for AERA under the Air Toxics Regulations, thus reducing potential duplication.

PART 7012.0170 ADDITIONAL SCREENING THRESHOLD ANALYSIS

De minimis criteria for increases in emissions or risk

31. **Morley-2:** Andrew Morley from the Minnesota Chamber of Commerce stated, "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."

32. Morley further stated, "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.

33. 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.

34. 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.

35. 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 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. **MPCA Response:** The MPCA provided responses in paragraphs under the subheadings “De Minimis Thresholds,” “Protocol Approval,” and “Pollutant Refinement” of the prehearing response to comments document (aq-rule4-12t). The MPCA previously provided responses in paragraphs 164, 166-167, and 327.

41. The MPCA respectfully disagrees that the rule contains no objective materiality standard for deciding which inventory changes could lead to an exceedance because the rule contains screening thresholds values. These values may be used for comparisons of changes in emissions.

42. The MPCA also respectfully disagrees that the annual emissions inventory does not limit evaluation of every change to only once per year. Under part 7012.0400, subpart 1, item A, the rules require that the screening analysis uses the most recent annual emissions inventory. If a screening analysis, in theory, would be required more than once per year, any analysis required after the first one would use the same inputs from the annual emissions inventory and therefore have the same results. Thus, requiring more than one per year would be unreasonable as the information received would be duplicative.

Clarifying timelines and deadlines

43. **Morley-6:** Andrew Morley from the Minnesota Chamber of Commerce stated, “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.”

44. **MPCA Response:** It seems the use of “toll” has created confusion. To clarify, the 60-day deadlines

are not extended due to other actions occurring, such as needing to submit further information that was initially not submitted by the regulated party when required. Timelines and deadlines are not paused for any action. The deadlines are 60 days from the date of the triggering event. If the MPCA determines that an additional screening threshold analysis is still required, after submittal of information under 7012.0170, subpart 2, item C, and the MPCA makes the determination after the 60-calendar day deadline under 7012.0170, subpart 2, item B, the owner or operator may be subject to enforcement.

PART 7012.0200 AIR TOXICS SCREENING THRESHOLD ANALYSIS; SUBMISSION DEADLINES AND CERTIFICATION

Fugitive emissions

45. **Morley-7:** Andrew Morley from the Minnesota Chamber of Commerce stated, "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.

46. 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.

47. 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."

48. **MPCA Response:** The MPCA respectfully disagrees that a change to the proposed rules is needed to clarify treatment of fugitive emissions. What the commenter describes is not fugitive emissions. The definition of fugitive emissions from Minn. R. 7005.0100, subp. 12b is, "pollutant discharges that could not reasonably pass through a stack, chimney, or other functionally equivalent opening." Emissions generated indoors but released through vents, doors, or other openings do not meet the definition of "fugitive emissions." Therefore, the indoor emissions described by the commenter would not be eligible to be characterized as fugitive emissions in the screening threshold analysis under 7012.0400, subp. 2(C).

49. The MPCA recognizes that the indoor emissions described by the commenter may not be easily attributed to one or more stacks. The MPCA will consider future program specific guidance for these types of indoor emissions. The MPCA will also consider future program specific guidance for examples about fugitive emissions sources, what meets the definition, and how to treat those sources' emissions.

PART 7012.0300 AIR TOXICS SCREENING THRESHOLD VALUES; INCORPORATION BY REFERENCE

Property Boundaries

50. **Morley-1:** Andrew Morley from the Minnesota Chamber of Commerce states, "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."

51. Morley further states, “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.

52. 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.

53. 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.

54. 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.

55. 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.

56. 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.

57. 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

58. **MPCA Response:** The MPCA provided responses in paragraphs under the subheading "Nearest Resident Receptor and Property Line Clarification" of the prehearing response to comments document (aq-rule4-12t). Please see the responses in paragraphs 195 through 199.

59. The MPCA respectfully disagrees that a definition for property line is needed. The property line is defined with local units of government, such as the counties, and MPCA expects that facilities will use the defined borders of their property as defined with the local governments.

60. The MPCA respectfully disagrees that receptor-based screening is appropriate at the initial screening threshold analysis stage. The screening threshold analysis stage is as the name states a screening step before more refined analysis is needed. Site-specific receptor determinations may be made during an air emissions risk analysis (AERA) if there is justification for receptor refinement. The examples provided from other states also appear to occur at the time of site-specific modeling, such as what would occur during an AERA in the proposed rules.

PART 7012.0400 AIR TOXICS SCREENING THRESHOLD ANALYSIS; METHOD OF CALCULATING EMISSIONS

NESHAP exemptions

61. **Morley-3:** Andrew Morley from the Minnesota Chamber of Commerce states, "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."

62. Morley further stated, "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.

63. 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.

64. 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).

65. **MPCA Response:** These comments are similar to the comments provided under the subheading, "NESHAP Exemptions" of the prehearing response to comments document (aq-rule4-12t). Please see the responses provided in paragraphs 232-233, and 238.