MINNESOTA POLLUTION CONTROL AGENCY

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October 27, 2025

VIA EFILING

The Honorable Interim Chief Judge O'Malley
Chief Administrative Law Judge
Court of Administrative Hearings

In the Matter of the Proposed Permanent Rules Governing Reporting and Fees by Manufacturers Upon Submission of Required Information about Products Containing Per-and polyfluoroalkyl substances (PFAS), Minnesota Rules, part 7026; Revisor's ID Number R-4828, CAH Docket Number 5-9003-40410

Dear Interim Chief Judge O'Malley:

On August 28, 2025, Judge Mortenson issued a Report of the Administrative Law Judge (Report), to which Chief Administrative Law Judge O'Malley concurred and adopted via order; in the Report, Judge Mortenson found a procedural defect in that the Minnesota Pollution Control Agency (Agency) failed to include an assessment of the cumulative effect of the proposed rules with other federal and state regulations on per- and polyfluoroalkyl substances (PFAS) reporting as required by Minn. Stat. § 14.131(8). The Agency has corrected this defect with the cumulative effect analysis detailed below.

An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

> Minn. Stat. § 14.131(8) defines "cumulative effect" as "the impact that results from incremental impact of the proposed rule in addition to the other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time."
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> The Agency expects that there will be additional effort needed to report Minnesota-specific requirements, but also some reduced burden for reporting under other jurisdictions and other provisions in Amara's Law. Some manufacturers subject to this rule may also be required to report to other jurisdictions such as the U.S. Environmental Protection Agency (EPA) under Toxic Substances Control Act (TSCA) Section 8(a)(7), or other states; however, the Agency anticipates that this will result in limited cumulative effects because of differences in the specific information required under those other regulations.

<u>Federal regulations:</u>

> Because of the lack of directly comparable federal regulations, it is difficult to determine the relevant regulatory universe to compare to Minnesota's rule. Some manufacturers may also report PFAS under other federal regulations, such as TSCA Section 8(a)(7) for PFAS chemical manufacturing or PFAS-containing article importation, or the Toxics Release Inventory (TRI) for air emissions that may occur during the manufacturing of a product or component containing intentionally added PFAS. There are fees associated with TRI reporting; however, this program is

used for the reporting of many different chemicals, not just PFAS, and the associated fees are required to be paid regardless of whether a manufacturer or facility is reporting PFAS. Compliance burdens are not measured by fees alone. Much of the expense for manufacturers comes from locating, verifying, and organizing information across complex supply chains. While TRI imposes fees unrelated to PFAS specifically, and TSCA Section 8(a)(7) imposes no fees at all, both require significant effort to compile accurate data. Minnesota's proposed rule similarly places emphasis on the information-gathering process, with its fee serving only as a program support mechanism rather than the primary driver of cost.

While federal regulations such as TSCA Section 8(a)(7) and TRI also require some form of PFAS reporting, they have different parameters for reporting as compared to Minnesota's proposed rule. Although TSCA Section 8(a)(7) is the closest comparable federal regulation to the proposed rule, it falls short of Minnesota's rule because it is a onetime retrospective report that does not require ongoing reporting of significant changes in information. The Minnesota Legislature defined PFAS more broadly than EPA's definition under TSCA Section 8(a)(7), meaning that Minnesota's rule applies to a larger class of chemicals. Minnesota's proposed rule also requires more distinct reporting of PFAS concentration ranges as compared to TSCA Section 8(a)(7) reporting. The Agency maintains that any cumulative effect as a result of this reporting and fees rule will be minimal. Some instances of overlap that may occur include requirements to identify PFAS by name or Chemical Abstracts Service (CAS) number (if available), provide product or use category information, describe the functional purpose of PFAS, and report as a manufacturer or importer under both frameworks. In addition, companies may rely on the same internal compliance data such as supplier disclosures, inventories, and analytical testing to satisfy both rules. While EPA's TSCA reporting and the Agency's proposed rule differ, the overlap of basic information gathering efforts required for both regulations may aid manufacturers required to report under both. Manufacturers reporting under both TSCA Section 8(a)(7) and Minnesota's Reporting and Fees rule may still experience an increase in staff time needed to complete reporting under both rules, as the specific information reported under each will differ.

As stated in the Regulatory Analysis of the Statement of Need and Reasonableness (SONAR) under letter G in regard to federal regulations, "The TSCA PFAS reporting requirements will provide a lot of new chemical manufacturing data but will be historical information from a limited time frame and does not cover the detail of use of those chemicals in the wide breadth of products the Minnesota reporting rule is aiming to capture." While TSCA Section 8(a)(7) is not directly comparable to the Agency's proposed PFAS reporting and fees rule, some of the same manufacturers may report under both TSCA Section 8(a)(7) and Minnesota's rule. In the SONAR on page 40, the Agency states, "In the EPA's report, "Initial Regulatory Flexibility Analysis and Updated Economic Analysis for TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances," they estimated that there are 131,157 importers of articles potentially containing PFAS, and using their best professional judgement, estimated that around 10% or 13,116 of those importers would be reporting under TSCA. The Agency does not expect that all parties that report under TSCA will have to report under this proposed rule due to differences in the respective requirements." The Agency further estimates in the SONAR that around 5,000 to 10,000 manufacturers of products that contain intentionally added PFAS are expected to report under the proposed rule, though it is unknown whether those manufacturers will also be required to report under TSCA Section 8(a)(7).

State regulations:

Because Minnesota is one of the first states to introduce a rule requiring manufacturers to report PFAS in products, the cumulative effect as a result of this reporting and fees rule will be minimal. Manufacturers that only sell products containing intentionally added PFAS in Minnesota should experience no cumulative effect of reporting under other states' PFAS reporting regulations. Manufacturers that sell products containing intentionally added PFAS in Minnesota as well as other states with PFAS reporting requirements may experience an increase in staff time needed to complete reporting under differing rules, and different reporting requirements among state rules may result in some level of duplicative reporting.

At the time the SONAR was written for the PFAS in Products Reporting and Fees rule, the states of Massachusetts, Virginia, Illinois, and Maine had enacted regulations related to PFAS use and reporting. The regulations enacted in each of these states differed from Minnesota's proposed rule for various reasons such as thresholds for reporting, frequency of reporting, content of reporting, etc. Since the SONAR was finalized, New Mexico and Connecticut also enacted laws that establish PFAS reporting requirements. These state approaches vary widely in scope and parameters. Connecticut, Massachusetts and Illinois focus primarily on targeted product bans and disclosures rather than broad reporting of PFAS across product categories. Virginia emphasizes source identification and drinking water protection, not product concentration reporting. New Mexico has enacted broader manufacturer reporting obligations for intentionally added PFAS in products, closer in concept to Minnesota's approach, but the content and frequency of their requirements remain in development. Maine has enacted the most comprehensive program with phased bans and manufacturer reporting, though it has since narrowed and adjusted its reporting elements. Compared to these states, Minnesota's proposed rule is distinct for its combination of ongoing, product-level reporting with concentration ranges and a one-time PFAS-specific reporting fee. Other states may also have PFAS-related laws and regulations that are not specific to reporting PFAS in products.

Minnesota's reporting and fees rule will require reporting by July 1, 2026, before any other states, including those with similar reporting requirements such as New Mexico and Maine. Manufacturers that complete their research for reporting on products that contain intentionally added PFAS sold in Minnesota will be able to use that information to report to other states in the future, thus reducing the cumulative effects of reporting under other state laws. If Minnesota's Amara's Law was not in place, many manufacturers would still be required to report to other states as PFAS reporting bills continue to be enacted at the state level.

As more states propose rules to require PFAS reporting, manufacturers subject to Minnesota's reporting and fees rule may experience an increase in the future cumulative effects based on other states enacted PFAS reporting rules over a period of time; however, the Agency cannot speculate what those future cumulative effects may be without knowing the final content of such regulations. Many of these proposed rules may also be amended, repealed, or experience delays in promulgation that makes it difficult to predict their cumulative effects. There are opportunities to curb the future cumulative effects of PFAS reporting if other states align with Minnesota's reporting and fees rule, or if states participate in information sharing of data that has been reported under their rules. Minnesota's PFAS data will be available to the public so other states will have access to the information reported in Minnesota and be able to use it to develop their policy, including possible reporting requirements.

Other Minnesota regulations:

Some of the other requirements under Minn. Stat. § 116.943 actually reduce the cumulative effects of the PFAS reporting and fees rule. For example, under subdivision 5 (a), the January 1, 2025, prohibition of intentionally added PFAS in the 11 product categories identified reduces the burden of reporting, because those products may no longer be sold, offered for sale, or distributed for sale in the state if they contain intentionally added PFAS.

This reporting and fees rule will also support compliance under Minn. Stat. § 116.943 subd. 5 (c) to ensure that, "Beginning January 1, 2032, a person may not sell, offer for sale, or distribute for sale in this state any product that contains intentionally added PFAS, unless the commissioner has determined by rule that the use of PFAS in the product is a currently unavoidable use." A manufacturer must know if PFAS is present in their products, including which PFAS, the amount, and function to be able to determine how to replace it to comply with the 2032 prohibition. The reporting and fee rule will not add a burden on manufacturers with PFAS in their products, since they would need to collect this data to comply with the 2032 prohibition.

In addition, this reporting and fees rule will reduce the cumulative burden on manufacturers that choose to submit a request for a Currently Unavoidable Use (CUU) determination under the anticipated PFAS in products CUU rule. At least some of the information required under this reporting and fees rule will likely be needed for a complete application for a CUU determination. If manufacturers comply with this reporting and fees rule, they will experience less of a burden acquiring the information needed under the CUU rule.

The Report also cited defects in the proposed rules for violating Minn. R. 1400.2100. The Agency respectfully submits proposed modifications to correct the cited defects. The findings of fact for these modifications are included in 3-A through 3-O of the enclosed Order Adopting Rules. The Agency finds that the modifications do not make the rule substantially different and are needed and reasonable. The Agency also wants to make changes in the rules other than those approved by Judge Mortenson, and the Agency requests that you determine whether these changes are substantial changes under Minnesota Statutes, section 14.05, subdivision 2. The findings of fact for these modifications are included in 4-A through 4-E of the enclosed Order Adopting Rules. Attached to this letter are the following documents in accordance with Minnesota Rules, part 1400.2240, subpart 5.

1. The rule as initially proposed;

2. The rule with our proposed changes;

3. Email correspondence with the revisor to satisfy the requirement that the modifications to the rule be "approved as to form by the revisor" under Minnesota Statutes, section 14.16 subdivision 1; and,

4. The amended Order Adopting Rules, including an explanation of the changes, why they correct the defects, and why they do not result in a substantially different rule.

If you have any questions or concerns, please contact me at emily.mcmillan@state.mn.us or 651-757-2499. Thank you for your time.

Sincerely,

Emily McMillan

This document has been electronically signed.

Emily McMillan
MPCA Associate General Counsel