

# Minnesota Pollution Control Agency

## Environmental Assessment and Outcomes Division

### NOTICE OF HEARING

**Proposed Rules Governing Antidegradation of Waters Minnesota Rules, parts 7001.0050, 7050.0218, 7050.0250 through 7050.0335 and 7052.0300 and the Repeal of Rules Governing Nondegradation of Waters, Minnesota Rules, parts 7050.0180 and 7050.0185; Revisor's ID Number 4030**

**Public Hearing.** The Minnesota Pollution Control Agency (MPCA) intends to adopt rules after a public hearing following the procedures in the rules of the Office of Administrative Hearings (OAH), Minn. R. 1400.2200 to 1400.2240, and the Administrative Procedure Act, Minn. Stat. §§ 14.131 to 14.20. The MPCA will hold a public hearing on the above-named rules at the MPCA's offices at the following locations:

- MPCA Saint Paul: 520 Lafayette Road North, Saint Paul, Minnesota 55155
- MPCA Duluth: 525 Lake Avenue South, Suite 400, Duluth, Minnesota 55802
- MPCA Mankato: 12 Civic Center Plaza, Suite 2165, Mankato, Minnesota 56001

Directions to these offices can be found at:

<https://www.pca.state.mn.us/about-mpca/mpca-offices>.

The MPCA will hold the hearing simultaneously in the three locations listed above. The Administrative Law Judge will conduct the hearing from the Saint Paul location. MPCA staff will be present at all three locations to facilitate the process. Attendees will be invited to participate in the hearing in-person in Saint Paul and by videoconference at the Duluth and Mankato hearing locations.

The hearing will start at 9:00 a.m. on March 31, 2016. For the convenience of the attendees at the videoconference locations, testimony from the videoconference locations will be heard first.

An additional hearing will be held at the same locations, beginning at 6:00 p.m. on March 31, 2016, at Saint Paul, Duluth and Mankato.

Additional days of hearing may be scheduled if necessary. Notice regarding additional days of hearing will be posted on the rulemaking webpage at <https://www.pca.state.mn.us/water/nondegradation-rulemaking>. All interested or affected persons will have an opportunity to participate in the public hearing by submitting either oral or written statements. Statements may be submitted without appearing at the hearing. Refer to Public Comment section of this notice for information on submitting statements.

**Subject of Rules.** The MPCA proposes amending Minn. R. ch. 7050 (Waters of the State) to protect surface water quality. The amendments repeal the existing nondegradation rules and replace them with new antidegradation rules. The MPCA is also amending Minn.R. chs. 7001 (Permits and Certifications) and 7052 (Lake Superior Basin Water Standards) in support of the antidegradation amendments.

Antidegradation is one of three components of water quality standards, the others being beneficial use classifications and the numeric and narrative criteria necessary to support beneficial uses. Federal regulations require states to adopt antidegradation policies and identify implementation procedures that, at a minimum, reflect the federal antidegradation policy established in 40 CFR, §131.12 which requires:

- Maintenance of existing uses

- Protection of high water quality
- Maintenance of water quality necessary to protect outstanding water resources

Minnesota first adopted an antidegradation policy in 1969 and has amended the policy multiple times (most recently in 2008). Throughout this history, Minnesota chose to use the term “nondegradation” instead of “antidegradation”.

The proposed rules are needed to:

- Provide additional consistency with federal antidegradation policy
- Provide procedures for the activities currently subject to antidegradation requirements
- Clarify the information needed of applicants and sequence of actions needed for the MPCA to make antidegradation determinations
- Identify the factors the MPCA considers in conducting antidegradation reviews
- Establish a process for determining the water quality baseline
- Provide a framework to protect high water quality
- Change the term “nondegradation” to “antidegradation”

The proposed rules do not expand the scope of activities currently subject to the nondegradation rules nor create new regulatory authority regarding permits or antidegradation review.

The MPCA also proposes minor changes to Minn. R. chs. 7001 and 7052 to ensure consistency with the changes proposed to Minn. R. ch. 7050.

**Administrative Law Judge.** Administrative Law Judge (ALJ) Jeffery Oxley will conduct the hearing. Judge Oxley can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone 651-361-7900, and Fax 651-361-7936. The rule hearing procedure is governed by Minn. Stat. § 14.131 to 14.20, and by the rules of the Office of Administrative Hearings, Minn. R. 1400.2000 to 1400.2240. You should direct questions about the rule hearing procedure to Judge Oxley.

**Statutory Authority.** The proposed rules are authorized by Minn. Stat. § 115.03 and 115.44.

**MPCA Contact Person.** The MPCA contact person is: Carol Nankivel at MPCA, 520 Lafayette Road North, Saint Paul, Minnesota 55155-4194, telephone: 651-757-2597, toll free 1-800-657-3864, or email: [minnrule7050.pca@state.mn.us](mailto:minnrule7050.pca@state.mn.us).

**Availability of Rules and Statement of Need and Reasonableness (SONAR).** The SONAR contains a summary and justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. The proposed rules are published with this Notice in the State Register and also available at the MPCA’s website at <https://www.pca.state.mn.us/water/nondegradation-rulemaking>.

The SONAR and a link to the Exhibits to that Statement are also available at that website. A free copy of the rules is available upon request from the MPCA contact person identified above.

**Public Comment.** You and all interested or affected persons, including representatives of associations and other interested groups, will have an opportunity to participate. The ALJ will accept your views at the hearing through oral testimony or by written comments submitted to the ALJ during the hearing.

You may also submit comments in writing at any time before the hearing and any time after the hearing before the close of the hearing record. Submit written comments to the MPCA contact person at the address above or to [minnrule7050.pca@state.mn.us](mailto:minnrule7050.pca@state.mn.us). All materials you present should relate to

the proposed rules. The close of the hearing record occurs five working days after the public hearing ends unless the ALJ orders a longer period. If the ALJ orders an extended comment period, the ALJ will announce the date on which the extended comment period ends at the public hearing. After the comment period, there is a five-working-day rebuttal period during which the agency and any interested person may respond in writing to any new information submitted. No one may submit additional evidence during the five-day rebuttal period. All written material submitted after the public hearing until the close of the hearing record will be recorded in the hearing record.

All comments and responses must be received by the MPCA contact person identified above no later than 4:30 p.m. on the due date. All comments or responses received are public and will be available for viewing at the MPCA's St. Paul office and also, to the extent possible, posted for viewing on the MPCA's rulemaking webpage at <https://www.pca.state.mn.us/water/nondegradation-rulemaking>.

**Alternative Format/Accommodation.** Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the MPCA contact person at the address or telephone number listed above.

**Modifications.** The MPCA may modify the proposed rules as a result of the rule hearing process. It must support modifications by data and views presented during the rule hearing process. The adopted rules may not be substantially different than these proposed rules, unless the MPCA follows the procedure under Minn. R. 1400.2110. If the proposed rules affect you in any way, the MPCA encourages you to participate.

**Adoption Procedure after the Hearing.** After the close of the hearing record, the ALJ will issue a report on the proposed rules. You may ask to be notified of the date when the ALJ's report will become available, and can make this request at the hearing or in writing to the ALJ. You may also ask to be notified of the date that the MPCA adopts the rules and files them with the Secretary of State, or ask to register with the MPCA to receive notice of future rule proceedings. You may make these requests at the hearing or in writing to the MPCA contact person identified above.

**Lobbyist Registration.** Minn. Stat. ch. 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You should direct questions regarding this requirement to the Campaign Finance and Public Disclosure Board at Suite #190, Centennial Building, 658 Cedar Street, Saint Paul, Minnesota 55155, telephone 651-296-5148 or 1-800-657-3889.

**Order.** I order that the rulemaking hearing be held at the date, time, and location listed above.

12/17/2015

Date



John Linc Stine, Commissioner  
Minnesota Pollution Control Agency