

Minnesota Pollution Control Agency

Watershed Division

Statement of Need and Reasonableness

Proposed Amendments to
Minnesota Rules, Chapter 7020, Governing Animal Feedlots,
Chapter 7001, Governing Permits and Certifications, and Chapter 7002,
Governing Permit Fees

May 20, 2013



Minnesota Pollution
Control Agency

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ACRONYMS

American Society for Testing Materials	ASTM
Clean Water Act	CWA
Code of Federal Regulations	CFR
Concentrated animal feeding operation	CAFO
Construction Short-Form permit	CSF
Construction Stormwater	CSW
County Feedlot Pollution Control Officer or County Feedlot Officer	CFO
Changes made to Minnesota Statute § 116.07, subdivision 7c, during the 87th Legislature, 2011, First Special Session (Refer to first page of SONAR)	Statutory Permitting Changes
High-Density Polyethylene	HDPE
Liquid Manure Storage Area	LMSA
Manure Storage Area	MSA
Minnesota Department of Health	MDH
Minnesota Management and Budget	MMB
Minnesota Pollution Control Agency	MPCA or Agency
National Pollutant Discharge Elimination System	NPDES
Natural Resources Conservation Service	NRCS
Request for Comments	RFC
Soil Conservation Service	SCS
State Disposal System	SDS
Statement of Need and Reasonableness	SONAR
United States Environmental Protection Agency	EPA or US EPA

Minnesota Pollution Control Agency

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendments to Minnesota Rules, Chapter 7020, Governing Animal Feedlots, Chapter 7001, Governing Permits and Certifications, and Chapter 7002, Governing Permit Fees

Introduction and Statement of General Need

The Minnesota Pollution Control Agency (MPCA or Agency) proposes to amend Minnesota Rules Chapter 7020 (hereinafter referred to as Minn. R. ch. 7020), rules governing animal feedlots. The amendments are necessary to address statutory changes made to Minnesota Statute § 116.07, subdivision 7c, during the 87th Legislature, 2011, First Special Session (hereinafter referred to as Statutory Permitting Changes). The Agency is also taking this opportunity to remove obsolete rule requirements, address other statutory changes adopted since Minn. R. ch. 7020 was adopted, and provide clarification to certain existing rules, including Minn. R. 7001 and 7002.

The Statutory Permitting Changes require the Agency to issue National Pollutant Discharge Elimination System (NPDES) permits “only as required by federal law,” unless a facility owner requests that an NPDES permit be issued. The permitting provision in Minn. R. ch. 7020 must be amended to reflect this change in the law because it currently assumes that all facilities that meet the federal rule definition of “Concentrated Animal Feeding Operation” or “CAFO” require NPDES permits, which is no longer the case due to federal court rulings interpreting the Clean Water Act (CWA) (see discussion below in the Background, part D.1. at [page 3](#)). Minn. R. ch. 7020 continues to require State Disposal System (SDS) permits for feedlots capable of holding 1,000 or more animal units (see discussion of this term below), regardless of federal permit requirements, so feedlots that formerly would have been permitted using a joint NPDES/SDS permit will now only be required to be permitted under an SDS permit. An SDS permit cannot authorize discharges to “waters of the United States,” however, so a feedlot facility that discharges to waters of the United States will be in violation of federal law, unless it has obtained an NPDES permit prior to such a discharge. A copy of the revised statute can be found in Exhibit 1.

This Statement of Need and Reasonableness (SONAR) contains the Agency’s affirmative presentation of facts on the need for and reasonableness of the proposed rule amendments. It also addresses all the statutory requirements associated with proposed administrative rules. Exhibits that are pertinent to the proposed amendments are cited throughout the SONAR and are summarized in the List of Exhibits found on page [75](#) of the SONAR. Copies of the Exhibits are attached to the SONAR and are available to all readers.

Alternative Format

Upon request, this SONAR can be made available in an alternative format, such as large print, Braille, or compact disc. To make a request, contact:

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TTY: 651-282-5332 or 800-657-3864

Background

A. Environmental issues associated with feedlots.

Although certain feedlots have the potential to affect air quality, the principal environmental concern associated with feedlots is water quality. When managed correctly, manure is a valuable resource. However, if it is not managed correctly, manure can result in pollution, and it can be a threat to human health. The constituents in manure that pose the greatest threat to surface and ground water quality generally include phosphorus, nitrogen, biochemical oxygen demand, and disease causing organisms (pathogens). The goal of feedlot regulation is to ensure that: (a) manure generated at a feedlot or in manure storage areas (and process wastewater, if any), does not discharge into surface or ground water; and (b) manure is applied to cropland at an appropriate rate and time so that nutrients and other possible contaminants do not enter streams, lakes and groundwater at application sites.

B. Numbers and types of feedlots.

There are federal and state definitions of what constitutes a “feedlot” or “animal feeding operation” for purposes of regulation (See [Code of Federal Regulations, Title 40 \(40 CFR\), Part 122.23\(b\)](#) (“animal feeding operation”); Minn. R. 7020.0300, subp. 3 (“animal feedlot”). However, in general, a “feedlot” is a fenced lot or building, or a combination of lots and buildings, used to confine livestock or poultry, where manure accumulates and the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. Many feedlots use some form of storage area for liquid or solid manure. The most common types of manure storage areas include earthen-lined basins, concrete pits, above-ground tanks, and stockpiles. The manure is removed from the storage areas or directly from the barns and open lots on a regular basis and land-applied to cropland as fertilizer.

For administrative purposes, the MPCA uses a multiplication factor (called an “animal unit”) for different types and sizes of livestock to calculate the number of animals located at a feedlot. The number of animal units at a facility is then used to administer the requirements of Minn. R. ch. 7020. The animal unit values for different types and sizes of livestock can be found in Minn. R. 7020.0300, subp. 5, and is also included in Exhibit 2.

Feedlots over a certain size are required to register with the MPCA (see Minn. R. 7020.0350). Currently, there are approximately 27,000 feedlots registered with the MPCA, ranging in size from small farms containing 50 animal units or more (i.e., those with 36 dairy cows, or 167 finishing hogs, or 2800 turkeys) up to large-scale livestock operations containing over 1,000 animal units or more (i.e., those with more than 714 dairy cows, or 3400 finishing hogs, or 56,000 turkeys).

C. Federal, State and County feedlot regulation

The potential for problems related to management of animal manure generally increases as the amount of manure generated increases. As a result, both federal and state rules require permits to be obtained on the basis of size. In general, feedlots that are “small” do not require operating permits (such as NPDES or SDS permits) but may require permits to construct an expansion or construct a structure needed to eliminate a pollution hazard. Feedlots that are larger require permits governing construction *and* operation, and may require environmental review before the permit can be issued. As detailed below, recent court decisions affecting the United States (US) Environmental Protection Agency’s (EPA) rules governing NPDES permits have changed this general rule with regard to the facilities that require federal permits.

There are two regulatory authorities that issue permits to feedlots in Minnesota: the MPCA (which issues federal NPDES permits on behalf of the US EPA and state permits) and counties that have chosen to operate certain aspects of the state feedlot programs under a delegation from the MPCA.

The MPCA acts for the US EPA with regard to implementing the federal CWA permitting program in the State of Minnesota. The MPCA was first delegated the authority to operate the NPDES program in lieu of the federal government in 1974. See 39 Fed. Reg. 2606 (July 16, 1974). Minn. Stat. § 115.03, subd. 5 (2012), requires the MPCA to perform any and all acts minimally necessary to maintain the State of Minnesota's NPDES delegation. MPCA's water quality rules, Minn. R. 7053.0205, subp. 6 (2011), require implementation of federal regulations adopted to enforce the CWA. As a result, NPDES permits issued by the MPCA contain conditions required by 40 CFR pts. 122 and 412.

The MPCA implements state statutes and rules through its state permitting program, which is independent of the federal NPDES permitting program. When an animal feedlot is required to have coverage under both an NPDES and a SDS permit, the MPCA uses a combination NPDES/SDS permit, which incorporates conditions necessary for the feedlot owner to comply with both federal and state rules, rather than issuing two separate permits (see Minn. R. 7001.1010).

The MPCA has the authority to delegate certain aspects of the state permitting program to counties that wish to regulate feedlots. The authority that is delegated is to issue certain permits to smaller feedlots that do not trigger federal or state "operating permit" criteria. Currently, a total of 54 counties are delegated by the MPCA to conduct these activities, which include, in part, issuing or denying permits that authorize construction of smaller feedlots expansions ("construction short-form" or "CSF") or which authorize construction related to fixing pollution issues on smaller feedlots ("interim permits"). The MPCA exercises some oversight of these activities (see Minn. Stat. § 116.07, subd. 7 (2012)). In counties that are not delegated to issue these permits, the MPCA administers the permitting process for feedlots.

D. Federal and State Animal Feedlot Regulatory History

1. Federal CAFO Regulation

1972

The federal Water Pollution Control Act (also referred to as the Clean Water Act or CWA), enacted in 1972, provides that the discharge of pollutants to "waters of the United States" from any "point source" is unlawful unless the discharge is in compliance with an NPDES permit. Pursuant to Section 502(14) of the CWA, "Concentrated Animal Feeding Operations" or "CAFOs" were defined as "point sources." As such, CAFOs needed to acquire NPDES permit coverage and be in compliance with effluent guidelines established in 40 CFR pt. 412. In 1974 and 1976, the EPA issued regulations defining the term CAFO for purposes of permit requirements (see 40 C.F.R. §122.23) and effluent limitation guidelines, specifying limits on pollutant discharges from regulated feedlots (see 40 C.F.R. Part 412). These regulations covered CAFOs that confined beef and dairy cattle, swine, poultry (chickens and turkeys), ducks, sheep, or horses.

2003

In 2003, the US EPA revised the federal regulations pertaining to CAFOs in 40 CFR pts. 122, 123, and 412. The revised regulations included:

The requirement for all the owners of all large CAFOs to apply for an NPDES permit; and
Modifications to the definition of a CAFO in 40 CFR § 122.23.

In addition, the term “animal unit” was eliminated, and three CAFO categories were established -- large, medium and small. A large CAFO was defined as any animal feeding operation that confines as many as or more than the number of animals provided in Exhibit 2 under the “EPA CAFO Threshold” column. This definition is still in effect. For comparison, the equivalent Animal Unit value as defined in Minn. R. 7020.0300, subp. 5, is also listed in Exhibit 2 for each large CAFO threshold value.

The revisions also established a process for determining if a feedlot is considered a medium or small CAFO, which involves evaluating whether feedlots with a lower number of animals discharge to waters of the United States. A feedlot that has been determined to be a medium or small CAFO is not eligible for coverage under an NPDES General Permit. The 2003 version of 40 CFR pts. 122, 123, and 412 can be found at: <http://cfpub.epa.gov/npdes/afo/cafofinalrule.cfm>.

2005

In February 2005, the Second Circuit Court of Appeals issued a decision in *Waterkeeper Alliance et al. v. EPA* regarding legal challenges to the 2003 rule. Among other things, the court directed the EPA to remove the requirement for the owners of *all* CAFOs to apply for NPDES permits, reasoning that CAFOs that *did not discharge* were not subject to regulation under the CWA and could not be compelled to get an NPDES permit.

2008

In response to the Second Circuit Court of Appeals decision in 2005 (see above), the EPA revised the NPDES permitting requirements (40 CFR pt. 122) and Effluent Limitations Guidelines and Standards for CAFOs (40 CFR pt. 412). The final rule was promulgated on November 20, 2008 (see *Revised National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines for Concentrated Animal Feeding Operations in Response to Waterkeeper Decision; Final Rule*, 73 Fed. Reg. 70418 (2008)). The final rule, in part, removed the requirement for owners of all CAFOs to apply for NPDES permits. Instead, the final rule required only owners of CAFOs that discharge or propose to discharge to waters of the United States to apply for permits. Also, the final rule provided clarification regarding how operators should evaluate whether they discharge. This evaluation called for a case-by-case determination by the CAFO owner as to whether the CAFO has a discharge from its production area or land application area based on an objective assessment of the CAFO’s design, construction, operation, and maintenance. The 2008 version of 40 CFR pts. 122, 123, and 412 can be found at: <http://cfpub.epa.gov/npdes/afo/cafofinalrule.cfm>.

2011

On March 15, 2011, the United States Court of Appeals for the Fifth Circuit issued an opinion that, among other things, vacated those portions of the 2008 CAFO Rule requiring CAFOs that “propose to discharge”

to apply for an NPDES permit. *National Pork Producers Council v. EPA*, 635 F.3d 738, 756 (5th Cir. 2011). The Court reasoned that until a CAFO had in fact discharged pollutants to a water of the United States, the US EPA did not have jurisdiction under the CWA to require the owner to obtain a permit.

2012

In response to this decision, the EPA amended its regulations on July 30, 2012, to eliminate the requirement that an owner or operator of a CAFO that “proposes to discharge” apply for an NPDES permit. The revision clarifies that all CAFOs must have a permit at the time that they discharge, but are not required to apply for that permit on the basis of size or other criteria prior to the discharge.

A more detailed history of the federal regulatory history may be reviewed at <http://cfpub.epa.gov/npdes/afo/cafofinalrule.cfm>.

2. State Animal Feedlot Regulation

1970s to 1998

The MPCA has issued NPDES/SDS permits for livestock and poultry operations since the early 1970s. In the 1970s, approximately 40 permits were issued to feedlots with over 1,000 or more animal units, which primarily included beef cattle, laying hen and turkey operations. During the 1980s and most of the 1990s, the MPCA issued NPDES/SDS permits only to feedlots with 1,000 or more animal units that had an uncontrolled discharge to surface or ground waters.

In the mid-1980s and into the 1990s, Minnesota experienced significant growth in the livestock and poultry industries. Many of these facilities were being constructed on tracts of land that did not include the owner’s residence, had a capacity of well over 1,000 animal units, and needed to spread manure on cropland that was owned or controlled by others. Manure storage consisted largely of open-air earthen-lined basins with a capacity to store 20 million gallons or more of liquid manure, and large stockpiles of solid manure along the side of the fields where it would be land applied once the crops had been removed.

During this time, Minn. R. ch. 7020 required an owner proposing to construct a large feedlot to apply for a “Certificate of Compliance” for the construction of the facility, but not for any type of operating permit, such as an NPDES/SDS or SDS permit, unless the facility was proposing to have a discharge. The Certificate of Compliance was a letter, not a permit, issued by the commissioner stating that if the facility was constructed and operated as described in the permit application, the owner would be in compliance with the rules. The lack of regulation of the large facilities was a source of concern for the public, particularly people who lived in the areas where the large feedlots were being constructed. The concerns included potential discharges to surface water, seepage of pollutants to groundwater, and air emissions.

1998

In 1998, in response to the concerns of the public over the growth of the feedlot industry, the Minnesota legislature adopted Minn. Stat. § 116.07, subd. 7c. This statute provided that:

The Agency must issue National Pollutant Discharge Elimination System permits for feedlots with 1,000 animal units or more and that meet the definition of a ‘concentrated animal feeding operation’ in Code of Federal Regulations, title 40, section 122.23...

2000

In 2000, the MPCA revised Minn. R. ch. 7020. The 1998 statutory changes to Minn. Stat. § 116.07, subd. 7c, were incorporated at part 7020.0405, which stated the following:

*Subpart 1. **Permit required.** Four types of permits are issued under this chapter and chapter 7001: interim permits, construction short-form permits, SDS permits, and NPDES permits. The owner shall apply for a permit as follows:*

A. an NPDES permit for the construction and operation of a CAFO...

Under Minn. R. 7020.0300, subp. 5(A), “CAFO” means an animal feedlot that meets the federal definition of a CAFO in 40 CFR § 122.23. Based on Minn. Stat. § 116.07, subd. 7c, and Minn. R. 7020.0405, owners of *all* animal feedlots that met the definition of CAFO in 40 CFR § 122.23 were required to apply to the MPCA for an NPDES/SDS permit for the construction and operation of the CAFO. Minn. R. 7020.0405 also required a state permit for any feedlot that exceeded 1,000 “animal units,” which is not a term used in the current federal rules and which enabled the MPCA to require an SDS permit for a feedlot facility which combined various animal types to exceed the 1,000 animal unit threshold. A copy of the SONAR for the chapter 7020 rules as revised in 2000 is available on the MPCA’s Feedlot Program webpage at: <http://www.pca.state.mn.us/hqzq69f>.

2011

On July 20, 2011, the Minnesota Legislature amended Minn. Stat. § 116.07, subd. 7c, to change the conditions pertaining to which animal feedlots are required to apply for an NPDES permit (see Exhibit 1). The statute was changed to:

The Agency must issue national pollutant discharge elimination system permits for feedlots only as required by federal law.

Because Minn. R. 7020.0405 continues to require a permit based on the status of a facility as a “CAFO” and the current federal rule (40 CFR Part 122.23(f)) does not require a permit for a CAFO but only “at the time that it discharges,” the MPCA has determined that an amendment is necessary to conform the rule to the statute. This statutory change also means that NPDES permits are required only for facilities that discharge to waters of the United States, not waters of the state.

The MPCA finds that it would be reasonable to continue to require permits for facilities that are of a certain size, regardless of whether that feedlot has had a discharge in the past. The MPCA also finds that it would be reasonable to require permits for facilities that discharge to waters of the state. In the SONAR for the chapter 7020 rules as revised in 2000, the MPCA concluded:

Large animal feedlots and manure storage areas with more than 1,000 animal units individually present the greatest potential for significant water quality impact in the event of a significant failure such as failure of a liquid manure storage area. For this reason alone, it is necessary to closely monitor these facilities.

The MPCA continues to believe that the proper function of the permitting program is to prevent discharges that are not in compliance with effluent limits, not to require permits after an uncontrolled

discharge has occurred. Both state (Minn. Stat. § 115.07) and federal (40 CFR 122.23(d)) law prohibit discharges except in accordance with a permit. It is therefore reasonable to require facilities of a certain size to apply for a permit that is designed to prevent discharges, except as allowed in the permit, and to obtain this permit prior to the incident of discharge. A feedlot facility that is permitted is allowed to discharge to waters of the state or waters of the United States in conformity with the permit. Discharges are allowed under both state and federal law in Minn. R. 7053.0305, subp. 2, and 40 CFR 412.13, respectively (see Exhibits 3 and 4), if those discharges occur when precipitation exceeds a design storm equal to a 25-year, 24-hour rainfall event for the facility's location, as long as the affected facility was in compliance with the permit.

Procedural History

The MPCA took the following steps to notify interested parties of the rule revision and to solicit feedback on the draft rule amendments:

On November 23, 2011, the MPCA held a meeting in St. Paul with potentially affected stakeholders to discuss the changes made during the 2011 legislative special session to the NPDES/SDS permitting requirements for feedlots and the Agency's intention to commence formal rulemaking to modify Minn. R. ch. 7020, based on the statutory changes. The following individuals attended the meeting:

Bobby King, Land Stewardship Project
Bruce Kleven, Kleven Law
Chris Radatz, Minnesota Farm Bureau Federation
Bob Lefebvre, Minnesota Milk Producers Association
Dave Preisler, Minnesota Pork Producers
Joe Martin, Minnesota State Cattlemen's Association
Jerry Schoenfeld, Greater State 2002
Thom Petersen, Minnesota Farmers' Union

A notice of solicitation for public comment was published in the December 19, 2011, *State Register* (36 SR 685) with the *Request for Comments (RFC) on Possible Amendments to Rules Governing Animal Feedlots*, Minnesota Rules 7020 (Exhibit 5). The RFC was also posted on the MPCA's Public Notice webpage at: <http://www.pca.state.mn.us/iryp3c9>, and on the Feedlot Rulemaking webpage at: <http://www.pca.state.mn.us/tchyffd>. The Agency received five comment letters during the formal comment period. Agency staff reviewed these comments; they are maintained on file and are also available on the Feedlot Rulemaking webpage.

After a preliminary draft of the rules was prepared, the MPCA held two additional public meetings, the purpose of which was to: (1) explain why changes to Minn. R. ch. 7020 are necessary; (2) identify the scope of the rulemaking; (3) provide an overview of the rulemaking process and the present status of the rulemaking; and (4) review the draft rule revisions and answer any associated questions. These meetings were held on Tuesday, September 4, 2012, at the Mankato Public Library, and on Friday, September 7, 2012, at the Stearns County Service Center in Waite Park. A copy of the draft rules were distributed and discussed with stakeholders, together with the overall rulemaking process and targeted timeline for rule completion. The MPCA notified potentially affected parties of the meetings in a lead article in the Feedlot Update newsletter (Exhibit 6) sent electronically to 1,214 subscribers. The article was also picked up in the Minnesota Milk Minute and the Minnesota Farm Bureau newsletters. In addition, on August 27, 2012, Agency staff sent an e-mail reminder of the meeting to the same persons who attended the November 2011 meeting identified above, and also to the following:

Steve Olson, Minnesota Turkey Growers Association
State Senate:

Senator Doug Magnus
Senator Gary Dahms
Senator Rod Skoe

Environment and Natural Resources Committee members:

Senator Bill Ingebrigtsen
Senator Linda Higgins

Agriculture and Rural Development Policy and Finance Committee members:

Representative Rod Hamilton
Representative Kent Eken
Representative Paul Torkelson

Environment, Energy and Natural Resources Policy and Finance Committee members:

Representative Denny McNamara
Representative Jean Wagenius

The meetings were attended by representatives from various agricultural associations and also many county feedlot staff. A list of the attendees is attached as (Exhibit 7)

Statutory Authority

The Agency's authority to adopt these proposed rule amendments is found in Minn. Stat. § 115.03. Specifically, Minn. Stat. § 115.03, subd. 1(e), states, in part, that the Agency is authorized:

to adopt, issue, reissue, modify, deny, or revoke, enter into or enforce reasonable orders, permits, variances, standards, rules, schedules of compliance, and stipulation agreements, under such conditions as it may prescribe, in order to prevent, control or abate water pollution, or for the installation or operation of disposal systems or parts thereof, or for other equipment and facilities...

In addition, Minn. Stat. § 115.03, subd. 5, authorizes the Agency to perform any and all acts minimally necessary, including the establishment and application of standards and rules, for the Agency's ongoing participation in the NPDES permitting program.

Regulatory Analysis

Minnesota statutes contain several requirements relating to administrative rulemaking. These requirements are addressed below as they relate to the proposed rule amendments.

Minn. Stat. § 14.131 Statement of Need and Reasonableness.

Minn. Stat. § 14.131 requires, in part, that eight factors must be included in the SONAR, to the extent the Agency, through reasonable effort, can ascertain the information. Paragraphs (1) through (8) below cite these factors and then provide the MPCA's response. In addition, paragraphs (9) and (10) address the remaining items that Minn. Stat. § 14.131 requires to be described in the SONAR, including a discussion of how the rules address the legislative policy for performance-based standards and a description of how the MPCA provided additional notification of the rulemaking to potentially affected parties.

(1) A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The classes of persons who probably will be affected by the proposed modification of Minn. R. ch. 7020, including classes that will bear the costs of the proposed amendments (which, as explained below, are not considered significant) and classes that will benefit from the proposed amendments, include:

- A. Owners of facilities that meet the criteria for a large CAFO and/or that do not meet the large CAFO criteria, but will house 1,000 animal unit or more or store the manure generated by 1,000 animal unit or more.

Under the existing rules, if an animal feedlot is required to have coverage under both an NPDES permit and an SDS permit, the MPCA issues a combination NPDES/SDS permit, which incorporates conditions necessary for the feedlot owner to comply with both federal and state rules, rather than issuing two separate permits (see Minn. R. 7001.1010). The proposed rule revisions will enable certain owners to choose to operate their animal feedlot without an NPDES permit, if the owners do not discharge to waters of the United States. However, owners who choose this option will, alternatively, have to acquire an SDS permit to operate their feedlot, to be in compliance with existing Minn. R. 7020.0405, which the MPCA is not revising.

- B. Feedlot owners who choose to acquire an SDS permit instead of a combination NPDES/SDS permit for the construction and/or operation of their feedlot as identified above (Item A), and who will be constructing or expanding a facility that will disturb one acre or more of land.

To be compliant with the federal and state regulations governing stormwater discharges, feedlot owners in this category must also obtain and comply with a separate MPCA NPDES/SDS General Stormwater Permit (Construction Stormwater (CSW) permit) for discharging stormwater during construction activity, prior to commencing construction activities. This is because the requirements of the CSW Permit, which are already incorporated into the MPCA's combination NPDES/SDS permit for the construction and/or operation of a feedlot, cannot be incorporated into the SDS Permit because, by definition, it is not an NPDES permit. The CSW NPDES permit fee will only have a minor impact to the owner because it is a one-time fee of \$400.00 for the construction activity and not for the operation and maintenance of the completed project.

- C. Feedlot owners who are proposing to construct a liquid manure storage area.

The technical requirements for the design, construction and operation of Liquid Manure Storage Areas (LMSAs) found in Minn. R. 7020.2100 have been modified to add clarity and to reflect permitting practices that are not presently reflected in rule. Since the amendments to this part are a clarification of existing technical requirements and reflect current Agency permitting practice, the impact to these owners will be minimal.

- D. County Feedlot Pollution Control Officers and, in counties not delegated by the MPCA to administer the applicable parts of Minn. R. ch. 7020, environmental services and/or planning and zoning office staff.

Since 1978, county feedlot programs have had the option to be responsible for the implementation of feedlot rules and regulations. To date, 55 Minnesota counties, including most of the counties with significant numbers of feedlots, have become delegated counties. Persons assigned by each respective county to perform this task are referred to as the County Feedlot Pollution Control Officer or County Feedlot Officer (CFO). In delegated counties, a feedlot owner will commonly contact the CFO in their county for information regarding permit requirements. In non-delegated counties, feedlot owners typically contact their respective

county environmental services or planning and zoning staff for information regarding permit requirements. The impact of the proposed rule amendments on the county staff will largely be the additional time spent responding to feedlot owners' requests for information on the rule amendments and its effect on their facility.

(2) The probable costs to the Agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

As a result of the 2011 Statutory Permitting Changes, the MPCA hired three additional full-time staff to, in large part, implement the legislative changes. Prior to the passage of the legislation, when the associated bills were being considered, the MPCA formally expressed, in a fiscal note submitted to the legislature, that the proposed statutory changes would result in a fiscal impact to the MPCA, and that three additional full-time staff would be necessary.

As a direct result of implementing and enforcing the proposed rule amendments, however, there are no anticipated probable costs to the Agency or to any other agency. As noted previously, the primary purpose of the proposed rule amendments is to align existing Minn. R. ch. 7020 with the 2011 Statutory Permitting Changes, remove obsolete rule requirements, address other statutory changes adopted since Minn. R. ch. 7020 was adopted, and provide clarification to certain existing rule provisions without changing the intent of the rules. Also, the proposed rule amendments will have no anticipated effect upon state revenues because they do not exist to collect revenue.

(3) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

The purpose of the proposed rule amendments is to align existing Minn. R. ch. 7020 with the 2011 Statutory Permitting Changes, remove obsolete rule requirements, address other statutory changes adopted since Minn. R. ch. 7020 was adopted, and provide clarification to certain existing rule provisions. The Agency is not aware of any less costly or less intrusive methods available to achieve this purpose.

(4) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.

The Agency did not consider using alternative methods for achieving the purpose of the proposed rule. The Agency is unaware of any viable alternatives that would achieve the stated purpose and scope of this rulemaking.

(5) The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

Although there are no significant new costs associated with complying with the proposed rule amendments, the Agency anticipates there will be some minor additional costs to the following parties:

- A. Large feedlot owners of facilities that will house 1,000 animal unit or more or store the manure generated by 1,000 animal unit or more:

The proposed revision to Minn. R. 7020.0505, subp. 4(B)(2), requires that the permit application for an NPDES or SDS permitted facility address the disposal of carcasses resulting from a catastrophic event by

including this element in the emergency response plan. This additional component is anticipated to increase the cost associated with developing an emergency response plan by approximately \$100.00 (a one-time occurrence, since the plan is developed for the life of the feedlot). However, the MPCA anticipates that, by preparing a plan, a feedlot owner who experiences a catastrophic event will likely save substantial money as a result of planning ahead and identifying the most efficient option for carcass disposal before any emergency event occurs. The rule-by-rule analysis section of the SONAR provides more detail on the items that must be included in this addition to the emergency response plan.

- B. Feedlot owners who choose to acquire an SDS permit as discussed in factor (1) above, instead of a combination NPDES/SDS permit, for the construction and/or operation of their feedlot, and who will be constructing or expanding a facility that will disturb one acre or more of land.

As discussed in factor (1) above, an animal feedlot owner who is proposing to create a new facility or modify an existing facility where the construction activity will disturb one or more acres of soil is required to obtain a CSW NPDES/SDS permit. The SDS general permit will not include the CSW NPDES/SDS permit requirements. The owner will be required to submit a separate permit for the CSW NPDES/SDS permit along with the \$400 permit fee. This is a one-time fee to cover the administrative cost associated with the permit.

- C. County Feedlot Pollution Control Officers and, in counties not delegated by the MPCA to administer the applicable parts of Minn. R. ch. 7020, environmental services and/or planning and zoning office staff

Factor (1), above, includes a discussion of the potential impact to counties resulting from the proposed amendments to Minn. R. ch. 7020. It is difficult to determine the cost associated with the increase in work created for each county. The costs will be dependent on the number of feedlot owners in the county, how many of these owners will approach their county staff for assistance, and how much time the county staff spend with each owner. One of the ways that the MPCA will assist the counties is to provide clear information for feedlot owners regarding the changes to the rule and the actions the owner needs to take to comply with the rules. The MPCA also holds regular training events for county staff and has an electronic feedlot program newsletter that is distributed monthly.

An additional cost that delegated counties will incur is the responsibility for issuing construction permits to those owners with feedlots that have fewer than 1,000 animal units, but still meet the criteria for a large CAFO. It is important to note that this cost to the county is a result of the modification of Minn. Stat. § 116.07, subd. 7c. In the past, if a facility met the qualifications for designation as a CAFO, the MPCA would have issued a NPDES/SDS permit if construction was requested.

(6) The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

It is unlikely that there would be significant costs to the affected parties if the proposed rule amendments are not adopted. However, it is likely there will be additional confusion over whether an NPDES or SDS permit is required for a feedlot or manure storage area. This confusion would be due to the fact that the existing rule language does not align with the 2011 Statutory Permitting Changes.

(7) An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

The intent of the 2011 Statutory Permitting Changes was to align the state NPDES permit requirements for animal feedlots with the federal NPDES permit requirements. The proposed rule amendments are a part of this action. Upon adoption of the proposed rule amendments, there will not be any differences between the federal and state requirements regarding the duty to apply for an NPDES permit for CAFOs.

(8) 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, clarifies that:

For purposes of clause (8): ‘cumulative effect’ means 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.

In considering how to evaluate the cumulative effect of the proposed amendments, the MPCA has made the following assumptions.

- A. The required assessment is relative to the cumulative effect in terms of cost or regulatory burden of the proposed amendments, not to the cumulative effect in terms of effectiveness of environmental and biological protection.
- B. The required assessment is only applicable to those elements of the proposed amendments for which there is a counterpart in either state or federal law (i.e. cumulative effects must be described in terms of “apples to apples”). The MPCA assumes that the assessment should be focused on where the proposed amendments can be compared to clearly identifiable, overlapping levels of regulation.

Based on the above assumptions and considerations below, the proposed rule amendments will not result in any cumulative effect in association with any other state or federal regulations. No other state rules establish requirements and standards for the control of discharges of pollutants from animal feedlots, manure storage areas, and land application sites to the environment. Under the federal CWA, which regulates water quality, CAFOs are defined as point sources and, as such, these operations are required to be regulated under the NPDES permit system and comply with effluent guidelines established in federal rule. The proposed rule amendments are intended to align state feedlot requirements for CAFOs with state statute and federal regulations and do not establish overlapping or cumulative requirements or standards that would apply in addition to federal regulations.

(9) The statement must also describe how the Agency, in developing the rules, considered and implemented the legislative policy supporting performance-based regulatory systems set forth in Minn. Stat. § 14.002, which requires state agencies, whenever feasible, to develop rules and regulatory programs that emphasize superior achievement in meeting the Agency’s regulatory objectives and maximum flexibility for the regulated party and the Agency in meeting those goals.

The existing feedlot rules are already a “performance-based” regulatory system. This is because the rules are not overly-prescriptive, but instead allow the permittees flexibility with regard to how they will meet the standards established in the rules through the applicable permit and each permittee’s respective manure management plan. The proposed rule amendments will not change this.

(10) The statement must also describe the Agency's efforts to provide additional notification under section 14.14, subdivision 1a, to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made.

Minn. Stat. § 14.14, subd. 1a. Notice of rule hearing, item (a), states the following:

(a) Each agency shall maintain a list of all persons who have registered with the Agency for the purpose of receiving notice of rule proceedings. Persons may register to receive notice of rule proceedings by submitting to the Agency:

- (1) their electronic mail address; or*
- (2) their name and United States mail address*

The agency may inquire as to whether those persons on the list wish to maintain their names on it and may remove names for which there is a negative reply or no reply within 60 days. The agency shall, at least 30 days before the date set for the hearing, give notice of its intention to adopt rules by United States mail to all persons on its list, and by publication in the State Register. The mailed notice must include either a copy of the proposed rule or an easily readable and understandable description of its nature and effect and an announcement that a free copy of the proposed rule is available on request from the agency. In addition, each agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication. The notice in the State Register must include the proposed rule or an amended rule in the form required by the revisor under section [14.07](#), together with an easily readable and understandable summary of the overall nature and effect of the proposed rule, a citation to the most specific statutory authority for the proposed rule, a statement of the place, date, and time of the public hearing, a statement that persons may register with the agency for the purpose of receiving notice of rule proceedings and notice that the agency intends to adopt a rule and other information required by law or rule. When an entire rule is proposed to be repealed, the agency need only publish that fact, along with an easily readable and understandable summary of the overall nature of the rules proposed for repeal, and a citation to the rule to be repealed.

The MPCA considered these statutory requirements governing additional notification and, as detailed in the Additional Notice Plan below, plans to ensure full compliance with them. In addition, as detailed in Procedural History section of this SONAR, on [page 7](#), the Agency has made reasonable efforts, thus far, to notify and involve the public and stakeholders in the rule amendment process, including holding various meetings and publishing the Request for Comments on the planned amendments to Minn. R. ch. 7020 in the *State Register* on December 19, 2011

Additional Notice Plan

The Agency intends to request that the Office of Administrative Hearings review and approve this Additional Notice Plan, pursuant to Minn. R. 1400.2060.

The MPCA's Additional Notice Plan includes giving notice required by statute.

- A. The MPCA plans to send an electronic notice with a hyperlink to electronic copies of the Dual Notice, SONAR, and the proposed rule amendments to all parties who have registered electronically (i.e., GovDelivery) with the MPCA for the purpose of receiving notice of rule proceedings, as required by Minn. Stat. § 14.14, subd. 1a, on the date the Dual Notice is published in the *State Register*, which shall be at least 33 days before the end of the public comment period.
- B. The MPCA plans to send a cover letter with a hyperlink to electronic copies of the Dual Notice, SONAR, and the proposed rule amendments to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule amendments, and also to the Legislative Coordinating Commission, as required by Minn. Stat § 14.116. The timing of this notice will occur at least 33 days before the end of the comment period.
- C. The MPCA will provide the notice and SONAR to all sitting legislators who were chief House of Representatives and Senate authors of Chapter 2, S.F. No. 3, 2011, First Special Session legislation. The timing of this notice will occur at least 33 days before the end of the comment period.
- D. The MPCA will send a copy of the SONAR to the Legislative Reference Library in accordance with Minn. Stat. § 14.131 when the notice of hearing is mailed under Minn. Stat. § 14.14, subd. 1a. The timing of this notice will occur at least 33 days before the end of the comment period.
- E. The MPCA shall send, via United States Mail, a copy of the Dual Notice and the draft rule language to individuals and representatives of associations who are registered with the MPCA as interested and affected parties who do not wish to receive an electronic notice. The Dual Notice and the draft rule language shall be sent at least 33 days before the end of the comment period.
- F. At least 33 days before the end of the comment period, the MPCA plans to send an electronic notice with a hyperlink to electronic copies of the Dual Notice, SONAR, and the proposed rule amendments to the following agricultural associations:
 - Minnesota Farm Bureau Federation
 - Minnesota Farmers' Union
 - Minnesota Milk Producers Association
 - Minnesota Pork Producers
 - Minnesota State Cattlemen's Association
 - Greater State 2002
 - Minnesota Turkey Growers Association
 - Broiler & Egg Association of Minnesota
- G. At least 33 days before the end of the comment period, the MPCA plans to send notice of the availability of the Dual Notice, SONAR, and the proposed rule amendments through the Feedlot Update newsletter, which is sent electronically to approximately 1,214 subscribers, including County Feedlot Pollution Control Officers, livestock commodity groups, state and federal agencies, environmental groups, and individual livestock producers with NPDES/SDS permit coverage.

In addition, a copy of the Dual Notice, proposed rule amendments and SONAR will be posted on the MPCA's Public Notice Webpage: <http://www.pca.state.mn.us/iryp3c9>.

The MPCA believes that by following the steps of this Additional Notice Plan, the Agency will adequately provide notice of this rulemaking to persons potentially interested in, or regulated by, these rules, pursuant to Minn. Stat. § 14.14, subd. 1a.

Impact on Farming Operations (Minn. Stat. § 14.111)

Minn. Stat. § 14.111 requires an agency to provide a copy of the proposed rule change to the Commissioner of Agriculture, no later than 30 days prior to publication of the proposed rule in the *State Register*. The MPCA intends to provide a copy of the proposed rule amendments to the Commissioner of Agriculture, no later than 30 days prior to the publication of the proposed amendments in the *State Register*, as required.

Impact on Chicano/Latino People

Minn. Stat. Sec. 3.9223, subd. 4, requires agencies to give notice to the State Council on Affairs of Chicano/Latino People for review and recommendation at least five days before initial publication in the *State Register*, if the proposed rules have their primary effect on Chicano/Latino people.

The rule is not expected to have a primary effect on Chicano/Latino people, thus, the State Council on Affairs of Chicano/Latino People will not be notified.

Notification to Commissioner of Transportation

Minn. Stat. § 174.05 requires the MPCA to inform the Commissioner of Transportation of all rulemakings that concern transportation, and requires the Commissioner of Transportation to prepare a written review of the rules.

This rule is not expected to impact or concern transportation, thus, the Commissioner of Transportation will not be notified.

Consultation with Commissioner of Management and Budget

Minn. Stat. § 14.131 requires the Agency to consult with the Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and benefits of proposed rules on local governments. As required by Minnesota Statutes, section 14.131, the MPCA will consult with MMB. This will be accomplished by sending the MMB copies of the same documents that will be sent to the Governor's Office for review and approval on the day they are submitted to the Governor's office. This will occur before the MPCA's publishing of the Dual Notice. The documents will include: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The MPCA will submit a copy of the cover correspondence and any response received from MMB to the Office of Administrative Hearing at the hearing or with the documents it submits for Administrative Law Judge review.

Determination of whether the Proposed Rule Would Require Local Government to Adopt or Amend Ordinances to Comply with the Rule

Minn. Stat. § 14.128, subd. 1, requires an agency to determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with a proposed agency rule. The MPCA has determined that the proposed rule amendments will not require local governments to amend their ordinances or other regulation to comply with the proposed rule amendments. This is because none of the proposed revisions to Minn. R. ch.

7020 require localities to adopt or amend their ordinances or regulations. However, local governments with existing ordinances that already regulate animal feedlots may decide to modify their ordinances after the rule amendments are enacted. Some counties have regulations that are more restrictive than the requirements in Minn. R. ch. 7020, and this will also be the case after the proposed amendments are adopted. Although the proposed rule amendments do not require any existing local ordinances to be amended, the MPCA intends to communicate that, after the rulemaking is complete, it may be an appropriate time for county staff to review their respective ordinances to ensure they wish to remain more restrictive than Minn. R. ch. 7020, if applicable, and to see if any additional updates may be beneficial.

Cost of Compliance with Proposed Rules in First Year for Small Business or City

Minn. Stat. § 14.127 establishes specific conditions for evaluation of the cost of compliance for small businesses or local governments. For reference, subdivision 1 of this statute is provided below:

Subdivision 1. Cost thresholds.

An agency must determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees. For purposes of this section, "business" means a business entity organized for profit or as a nonprofit, and includes an individual, partnership, corporation, joint venture, association, or cooperative.

In considering the applicability of this statute to the proposed modification of Minn. R. ch. 7020, the small businesses that would be impacted include all Minnesota feedlots. The impacted local government includes those counties that have been delegated to administer this rule.

The MPCA has considered whether the cost of complying with the proposed rules in the first year after the rule amendments take effect will exceed \$25,000 for any small business or local government and has determined that it will not. There should be no significant increased costs to these entities. Additional discussion pertaining to cost associated with complying with the proposed rule can be found in the *Regulatory Analysis*, above, factor (5).

Assessment of Proposed Rule with Other State and Federal Standards:

Minn. Stat. § 116.07, subd. 2, item f, requires the following:

(f) In any rulemaking proceeding under chapter 14 to adopt standards for air quality, solid waste, or hazardous waste under this chapter, or standards for water quality under chapter 115, the statement of need and reasonableness must include:

(1) an assessment of any differences between the proposed rule and:

- (i) existing federal standards adopted under the Clean Air Act, United States Code, title 42, section 7412(b)(2); the Clean Water Act, United States Code, title 33, sections 1312(a) and 1313(c)(4); and the Resource Conservation and Recovery Act, United States Code, title 42, section 6921(b)(1);
- (ii) similar standards in states bordering Minnesota; and
- (iii) similar standards in states within the Environmental Protection Agency Region 5; and

(2) a specific analysis of the need and reasonableness of each difference.

The amendments the MPCA is proposing to Minn. R. ch. 7020 do not establish new standards for air quality, solid waste, or hazardous waste under Minn. Stat. ch. 116, nor do they propose any new standards for water quality under Minn. Stat. ch. 115. As stated in the earlier portions of this SONAR, the proposed amendments are necessary to address the Statutory Permitting Changes made to Minn. Stat. § 116.07, subd. 7c, in 2011. The Agency is also taking this opportunity to make needed updates to remove outdated rule provisions, address other statutory changes adopted since the rules were last amended, and provide clarification to certain existing rules, without changing the intent of the existing rules. Consequently, Minn. Stat. § 116.07, subd. 2f, does not apply to this rulemaking.

However, since the NPDES permit program for animal feedlots is a national requirement, the MPCA has evaluated the way in which the other EPA Region 5 states (Illinois, Indiana, Michigan, Ohio and Wisconsin) and the non-Region V states bordering Minnesota (Iowa, North Dakota and South Dakota) administer their respective NPDES feedlot program. Similar to Minnesota, all eight of these states are delegated by the EPA to administer NPDES permits and all of these states (except Ohio, Iowa and North Dakota) use a general NPDES permit for facilities that meet the federal definition of Large CAFO. All of the states (except Illinois and Michigan) have some type of permit requirements for animal feeding operations that are not small, medium or large CAFOs as defined by federal rule. A summary of this information is provided in Exhibit 8.

Reasonableness of Each Proposed Rule Amendment (Rule-by-Rule Analysis), Minnesota Rules Part 7001.1030, Permit Requirements and Exemptions and Chapter 7020, Animal Feedlots

This section addresses the reasonableness of each rule part and provides information about the MPCA's intent for each proposed rule revision.

The changes will be presented for each rule chapter, starting with Minn. R. ch. 7001. The rule language appears in *italics*. New language is underlined and deleted language is shown by strikeout. The justification for each proposed rule revision appears immediately below the rule language.

Minnesota Rules Ch. 7001

1. Proposed Change – part 7001.0210, Subpart 4

*Subp. 4. **Notice of intent.** The applicant and the agency shall follow the same procedures to issue a general permit as are required for the issuance of an individual permit. However, to comply with*

part 7001.0100, subpart 3-5, item C, the agency shall publish notice of intent to issue a general permit in the State Register.

Justification

This is a housekeeping item to fix a referencing error in the existing rule. Part 7001.0210 applies to the administration of general permits, including publishing a notice of intent in the *State Register* when a new general permit has been developed to allow for public comment. Subpart 4 of this part requires the Agency to follow the process outlined in part 7001.0100, subp. 3. In the recent past, changes were made to part 7001.0100 without updating the reference in part 7001.0210, subp. 4. Due to these changes, the process for publishing the notice of intent for a general permit is now located in part 7001.0100, subp. 5.

The MPCA Feedlot Program uses a general NPDES/SDS permit, and will be developing a general SDS permit, both of which are required to follow these notification requirements. It is necessary to change the reference in part 7001.0210, subp. 4, from 7001.0100, subp. 3 to subp. 5, to provide the correct process requirements.

2. Proposed Change – part 7001.1030, Subpart 2

Subp. 2. Exemptions. The following persons are not required to obtain a National Pollutant Discharge Elimination System permit:

- H. persons injecting water, gas, or other material into a well to facilitate the production of oil or gas; ~~and~~*
- I. persons disposing of water in a well if this water is associated with oil and gas production; and*
- J. persons operating a feedlot who are not required to obtain an NPDES permit under federal law. This item does not release such persons from the requirement to obtain an NPDES to discharge a pollutant when required by federal law or from the requirement to obtain a state disposal system permit to discharge a pollutant into the waters of the state.*

Justification

The change is needed to align the rule part with the 2011 change to Minn. Stat. § 116.07, subd. 7c. Part 7001.1030, subp. 1, states:

“no person may discharge a pollutant from a point source into waters of the state without obtaining a National Pollutant Discharge Elimination System permit from the agency.”

The definition of “point source” under state and federal law includes CAFOs. Under the previous codification of Minn. Stat. § 116.07, subd. 7c, the Agency was required to issue NPDES permits to all feedlots that met the definition of a CAFO, which was consistent with federal law. However, in 2012, in response to cases finding that the US EPA lacked the authority to require permits for CAFOs that met certain criteria or that “proposed to discharge,” the US EPA revised the Code of Federal Regulations, title 40, section 122.23, to provide only that an owner of a CAFO is required to have an NPDES permit coverage at the time it discharges. No permit is required simply because the facility meets the definition of “Large CAFO,” despite the fact that a CAFO is a defined “point source.”

Under the 2011 revisions to Minn. Stat. § 116.07, subd. 7c, the MPCA may issue NPDES permits to feedlots “only as required by federal law.” The amendment to Minn. R. 7001.1030 is reasonable because it clarifies that, under federal law, an NPDES permit is not required simply because a facility is a CAFO. An NPDES permit would still be required under federal law for a Large CAFO at the time it discharges. It is reasonable to make clear in establishing this exemption that state permits are still required for CAFOs before those facilities discharge, so that feedlot owners do not assume that the absence of a federal permitting requirement means that no state permit is required.

3. Proposed Change – part 7001.1050, Subpart 2

M. If the applicant proposes to construct or operate a new or existing concentrated animal feeding operation or aquatic animal production facility, the information required in Code of Federal Regulations, title 40, section 122.21~~(h)~~(i).

Justification

The reference to the Code of Federal Regulations, title 40, section 122.21(h) in part 7001.1050, subp. 2, item M is incorrect. The proposed change from (h) to (i) is necessary to provide the correct reference.

Minnesota Rules 7002.0253

4. Proposed Change – part 7002.0253, Subpart. 2, item D

*Subp. 2. **Additional points.** The points assessed for activities designated in this subpart shall be multiplied by the dollar per point value as determined in part 7002.0252 to calculate the additional fee.*

D. If a permit applicant requests a variance under ~~parts~~ part 7000.7000 ~~or 7020.1900~~, the applicant shall pay a fee equivalent to 35 points.

Justification

As explained in [#48](#), the Agency is proposing to delete part 7020.1900 from the rule. Minn. R. 7000.7000 contains the requirements for a regulated party to request a variance from any agency rule; therefore, it is unnecessary to specifically identify a rule that applies only to feedlots.

Minnesota Rules Ch. 7020

7020.0205 Incorporation by Reference.

5. Proposed Change – part 7020.0205

For the purposes of parts 7001.0020 and 7020.0200 to 7020.2225, the documents in items A to L K are incorporated by reference. These documents are not subject to frequent change.

Justification

The alphabetical listing of items contained in this part has been revised to contain items A to J. This change is needed because items J and L are proposed to be deleted from this part, which makes it necessary to change the alphabetical listing of the remaining items.

6. Proposed Change – part 7020.0205, item E

E. Code of Federal Regulations, title 40, part 412, Feedlots Point Source Category. This publication is available ~~through the Minitex interlibrary loan system~~ on the Internet at <http://www.epa.gov>.

Justification

This part identifies for the reader that this specific document is used within the above-stated parts and that the document is available on the United States Environmental Protection Agency or EPA website.

7. Proposed Change – part 7020.0205, item F

F. Code of Federal Regulations, title 40, ~~section 122.23, Concentrated Animal Feeding Operations part 122, EPA Administered Programs: The National Pollutant Discharge Elimination System. This publication is available through the Minitex interlibrary loan system~~ on the Internet at <http://www.epa.gov>.

Justification

In item F, the reference to section 122.23 was deleted and the reference to part 122 was added. The incorporation by reference of the entire part 122 of the Code of Federal Regulations is necessary because 40 CFR part 122.23 does not contain all federal requirements applicable to CAFOs. Minn. Stat. § 14.07, subd. 4, requires that references to documents be incorporated into a rule, and the availability of the document identified for the reader. This part identifies for the reader that this specific document is used within the above-stated parts and that the document is available on the US EPA website.

8. Proposed Change – part 7020.0205, item I

I. ~~Minnesota Natural Resources Conservation Service Practice Standard, Waste Storage Pond (Code No. 425), November 1991, or Waste Storage Facility, Conservation Practice Standard Code No. 313), January 1998, United States Department of Agriculture, Natural Resources Conservation Service, October 2003, and as subsequently amended. This publication is available through the Minitex system~~ on the Internet at <http://www.nrcs.usda.gov>.

Justification

The Natural Resources Conservation Service (NRCS) is a federal agency that provides technical assistance to owners of animal feedlots that have an existing pollution problem. This assistance includes the design and construction of a manure storage area (MSA). The NRCS has developed practice standards that contain the design criteria for MSAs, which at the time the existing rule was adopted, included Code No. 425 for earthen lined LMSAs and Code No. 313 for non-earthen lined LMSAs.

In October 2003, the NRCS revised these practice standards by merging Code No. 425 with Code No. 313. The Agency was asked to comment on the revised practice standard Code No. 313 and found there were no conflicts between the revised code and the rules pertaining to the design, construction, and operation of LMSAs.

The reference to Code No. 425 is being deleted and a link to the NRCS website has also been provided as a reference. The issuance date of the revised Code No. 313 has been inserted with the phrase “*and as subsequently amended*” to allow any future modifications of this document to be incorporated into chapter 7020. These changes are needed to provide the current technical requirements for construction of MSA.

9. Proposed Change – part 7020.0205, item J

~~*J. Feedlot Inventory Guidebook, Minnesota Board of Water and Soil Resources, June 1991. This publication is available through the Minitex interlibrary loan system.*~~

Justification

In the mid-1990s, Minnesota counties were required to develop water plans, which included identifying potential sources of pollutants. Many counties proposed to inventory the livestock and poultry operations within their boundaries. The Feedlot Inventory Guidebook was developed to assist counties in the implementation of their water plans and provided information for performing a Level I, II or III inventory at a feedlot. Counties are no longer using this inventory system to collect feedlot information. As a result, it is reasonable to delete reference to the Feedlot Inventory Guidebook in the rule. Further discussion on the reason for deleting the Feedlot Inventory Guidebook can be found in [#26](#) below. Deleting item J is necessary and reasonable to prevent confusion regarding the continued use of Level I, II, and III inventories.

10. Proposed Change – part 7020.0205, item K

~~*K. Annual Book of American Society for Testing Materials (ASTM), part 4, ASTM D 2922, Test Method for Density of Soil and Soil-Aggregate in Place by Nuclear Methods (Shallow Depth). 1996 Edition. This publication is available through the Minitex interlibrary loan system.*~~

Justification

As discussed in #9 above, item J is proposed to be deleted from this part, which makes it necessary to change the alphabetical listing of item K.

11. Proposed Change – part 7020.0205, item L

~~*L. An Evaluation System to Rate Feedlot Pollution Potential, United States Department of Agriculture, Agricultural Research Service, April 1982. This publication is available through the Minitex interlibrary loan system.*~~

Justification

The document titled “An Evaluation System to Rate Feedlot Pollution Potential” is referenced in the existing Minn. R. 7020.2003, subp. 5, item B, subitem (2) (Open Lot Agreements). This document explains how to use a computer model to evaluate the runoff potential from an open lot used to confine livestock. As discussed in [#62](#), below, the requirements of subpart 5 are proposed to be deleted from the rule because they are outdated and

no longer apply. Since the document titled "An Evaluation System to Rate Feedlot Pollution Potential" will no longer be referenced in the rule, it is reasonable to delete item L. Deleting item L is also necessary and reasonable to prevent confusion regarding the continued use of the Open Lot Agreement.

12. Proposed Change – part 7020.0205, item K

K. Published Soil Surveys for Minnesota, United States Department of Agriculture, Natural Resources Conservation Service (NRCS). The surveys are available on the Internet at http://soils.usda.gov/survey/printed_surveys/state.asp?state=Minnesota&abbr=MN or at the local NRCS office.

Justification

The rule references the United States Department of Agriculture, Natural Resources Conservation Service Published Soil Survey, at the following locations in the existing rule: Minn. R. 7020.0505, subp. 4; Minn. R. 7020.2125, subp. 2(D and E); and Minn. R. 7020.2125, subp. 4(F), but this item was not incorporated by reference in the existing rule. Item K has been added to resolve this oversight and to provide clarity to the rule.

7020.0300 Definitions.

13. Proposed Change – part 7020.0300, subpart 5a

*~~Subp. 5a. **Concentrated animal feeding operation or CAFO.** "Concentrated animal feeding operation" or "CAFO" means animal feedlots meeting the definition of a CAFO in Code of Federal Regulations, title 40, section 122.23.~~*

Justification

In the existing rule, the definition of Concentrated Animal Feeding Operation (CAFO) was mistakenly placed in the wrong alphabetical order. It is reasonable to correct this error by placing it in alphabetical order (see [#15](#) below).

14. Proposed Change – part 7020.0300, subpart 6

Subp. 6. Certificate of compliance. "Certificate of compliance" means a letter ~~from~~ sent before October 23, 2000, by the commissioner or the county feedlot pollution control officer to the owner of an animal feedlot or manure storage area stating that the feedlot or manure storage area meets agency requirements.

Justification

The Certificate of Compliance was a letter used by the Agency from 1978 to 2000 to notify animal feedlot owners that their plans for construction or expansion of an animal feedlot met the requirements of the state rules and statutes. This document is no longer used by the Agency. It is reasonable to clarify the definition to reflect that this document is no longer used. It is reasonable to maintain the definition, however, because under Minn. R. 7020.0355, subp. 2 owners of operations authorized under the certificate of compliance are required to maintain and operate their animal feedlot in accordance with the certificate of compliance.

15. Proposed Change – part 7020.0300, subpart 7d

Subp. 7d. Concentrated animal feeding operation or CAFO. "Concentrated animal feeding operation" or "CAFO" means an animal feedlot meeting the definition of a large, medium, or small CAFO as under Code of Federal Regulations, title 40, section 122.23.

Justification

As discussed in #13 above, the definition of CAFO has been moved from subpart 5a to subpart 7d so that it is in the correct alphabetical order in the definition section. The definition has also been revised, as shown above, to include "large, medium or small" CAFOs to conform the definition with the 2003 changes to 40 CFR § 122.23. The addition of "large, medium or small" to the CAFO definition is needed and reasonable to align the state and federal requirements.

16. Proposed Change – part 7020.0300, subpart 11b

Subp. 11b. Facility. "Facility" means an animal feedlot, a manure storage area, or an animal feedlot with a manure storage area.

Justification

The MPCA is proposing to add a definition of "facility" to improve the readability of the rule, and because the existing rule made reference in some parts to "facility" but provided no definition. The proposed definition of "facility" provides a convenient term to reference any of the feedlot elements that may require a permit and is reasonable to avoid unnecessary wordiness in the rule.

17. Proposed Change – part 7020.0300, subpart 13c

Subp. 13c. Liquid manure storage area. "Liquid manure storage area" means an area where liquid animal manure and process wastewaters are stored or processed. For purposes of this subpart, "liquid animal manure" is manure that does not meet the stockpile standard under part 7020.2125, subp. 1, item B.

Justification

The existing rule (part 7020.2100) provided requirements applicable to a "liquid manure storage area" but did not define what constituted a liquid manure storage area and how it is different from other "manure storage areas." (See Minn. R. 7020.0300, subp. 14.) As a result, it is reasonable for the MPCA to add the definition of a "liquid manure storage area" to clarify which structures need to be designed, constructed, and operated in accordance with the existing rule at part 7020.2100. To distinguish liquid manure from other manure, the proposed definition makes reference to an existing standard for stockpiled manure. Animal manure that does not meet the requirements within 7020.2125 subp.1(B) will be considered liquid manure. This definition is reasonable because it makes reference to an existing standard for manure that can be stockpiled, i.e., can maintain a three-to-one horizontal-to-vertical ratio and that has, at least, a 15 percent solids content.

18. Proposed Change – part 7020.0300, subpart 14a

*Subp. 14a. **Modification.** "Modification" means a change to a facility component or operational practice described, required, or authorized by a permit issued under this chapter, including an expansion. Major and minor modifications are as defined in part 7001.0190.*

Justification

The existing rule requires the owner to apply for a permit modification when they expand their facility, but does not identify other types of changes to the facility that would require the owner to apply for a permit modification. This definition is intended to make it clear that changes to facility components or operational practices governed by a permit may require a modification of a permit prior to implementation of the desired change. A reference to the definitions for "major" and "minor" modifications in part 7001.0190 has also been included for further clarity.

The inclusion of this definition is necessary and reasonable to provide support to the addition of modification to the type of activities that may require a permitting action. Further discussion pertaining to the modification of a feedlot can be found in [#37](#) below.

19. Proposed Change – part 7020.0300, subpart 17

*Subp. 17. **Owner.** "Owner" means all persons having or proposing to have possession, control, or title to an animal feedlot or manure storage area.*

Justification

Many of the pre-operational requirements under chapter 7020, such as those for permit applications, are applicable to persons proposing to own a feedlot or MSA, but do not yet own a facility. The existing definition of "owner" applied only to persons who already owned a facility. As a result, it is reasonable to clarify the definition of owner to include persons who propose to be owners.

20. Proposed Change – part 7020.0300, subpart 18

***Pastures.** "Pastures" means:*

A. areas, including winter feeding areas as part of a grazing area, where grass or other growing plants are used for grazing and where the concentration of animals is such that a vegetation allows a vegetative cover is to be maintained during the growing season, except in the immediate vicinity of temporary supplemental feeding or watering devices. that vegetative cover is not required:

(1) in the immediate vicinity of supplemental feeding or water devices;

(2) in associated corrals and chutes where livestock are gathered for the purpose of sorting, providing veterinary services, loading and unloading trucks and trailers, and other necessary activities related to good animal husbandry practices; or

(3) in associated livestock access lanes used to convey livestock to and from areas of the pasture; or

B. agricultural land:

- (1) where livestock are allowed to forage during the winter;
- (2) that is used for cropping purposes in the growing season; and
- (3) where the concentration of animals is such that a vegetative cover of crops is maintained during the growing season without the need for manure removal to avoid exceeding nutrient application rate standards as provided in part 7020.2225, except in the immediate vicinity of temporary supplemental feeding or watering devices.

Justification

There are currently two different definitions of “pasture” in state statute: Minn. Stat. § 116.07, subd. 7(q) and Minn. Stat. § 116.07, subd. 7(d). The proposed amendment is necessary to conform the chapter 7020 rule definition to include all elements from both statutory definitions. The proposed definition also clarifies the phrase, “concentration of animals is such that a vegetative cover of crops is maintained during the growing season” to make it consistent with legislative intent, which was to avoid creating an exception for crop residue feeding that would turn a recently harvested grain field into a feedlot.

Traditional low-density foraging maintains vegetative cover as cattle move through the field to find standing forage, and poses no danger of excess manure deposition in excess of agronomic needs such that intensive management practices, such as scraping and removal of manure, would be required to avoid buildup of soil nutrient. Scraping and removal of manure is typical of traditional high-density open-lot feedlots – not pastures – and is best managed under a permit requiring a manure management plan that includes soil and manure testing. So long as the livestock are not being sustained on feed brought to the site throughout the winter season, occasional supplemental feeding should have a minimal environmental impact and should not result in the development of “feedlot conditions” such as lack of vegetative cover or excessive manure deposition beyond the immediate vicinity of the temporary supplemental feeding or watering devices.

21. Proposed Change – part 7020.0300, subpart 19

*Subp. 19. **Permit.** "Permit" means a ~~document~~ written authorization issued by the agency or county animal feedlot pollution control officer, which may contain requirements, conditions, or schedules for:*

- A. achieving compliance with ~~the~~ discharge standards and requirements ~~for~~;*
- B. management of animal manure; or*
- C. construction or operation of animal holding areas or manure storage areas.*

Permits issued under this chapter are NPDES, state disposal system, interim, and construction short-form permits.

Justification

Two changes are needed in subpart 19 to provide clarity. The first change to subpart 19 explains that a permit is an authorization provided to the owner of an animal feedlot or manure storage area (MSA) informing the owner of the criteria under which the animal feedlot or MSA is to be constructed, operated and/or maintained. It is reasonable to clarify that permit means an authorization because a permit is a legally binding document that requires authorization by the Agency for issuance. The second change to subpart 19(B) is the addition of the word “or” to identify all the activities for which the permit provides authorization.

22. Proposed Change – part 7020.0300, subpart 24

*Subp. 24. **State disposal system permit or SDS permit.** "State disposal system permit" or "SDS permit" means a state permit that ~~may be~~ is processed in accordance with parts 7001.0040; 7001.0050; 7001.0100, subparts 4 and 5; and 7001.0110 chapter 7001.*

Justification

The proposed amendment clarifies that SDS permits are processed using the procedures in ch. 7001, and condenses the numerous references to different parts of chapter 7001 to a single reference to chapter 7001. This change will insure that any future potential revisions to any part of chapter 7001 will not create conflicts with this rule. This modification is necessary and reasonable to simplify the SDS permit definition, and to prevent conflict with any future potential revisions to chapter 7001.

23. Proposed Change – part 7020.0300, subpart 25

*Subp. 25. **Unpermitted or noncertified liquid manure storage area.** "Unpermitted or noncertified liquid manure storage area" means a liquid manure storage area that ~~is in operation and~~ has never been permitted or approved as meeting the standards in part 7020.2100 and that did not obtain approval or certification pursuant to the process established in Minnesota Rules 2011, part 7020.2110.*

- A. ~~the owner does not have an agency or delegated county permit or certificate of compliance for the manure storage area and was required to apply for and obtain a permit or certificate of compliance prior to the construction or operation of the manure storage area; or~~*
- B. ~~the owner has not complied with the preoperational requirements of part 7020.2100 or permit requirements, if applicable.~~*

Justification

Modification of the definition of an “unpermitted and noncertified liquid manure storage area” is necessary and reasonable to ensure there is no ambiguity in the term’s meaning and usage at part 7020.2110 (Unpermitted or Noncertified Liquid Manure Storage Areas), which, as described in [#75](#) and [#76](#) below, the Agency is proposing to modify. An unpermitted or noncertified LMSA that “has never been permitted or approved as meeting the standards in part 7020.2100” is an LMSA that has not been identified on a previous feedlot permit or has not had plans approved in a permit or (if too small to require a permit) did not get plans for the LMSA approved under Minn. R. 7020.2100, subp. 4. This description is reasonable because it continues to recognize that existing structures that were permitted at some point in the past are not considered unpermitted or non-certified. Additionally, since the 2000 feedlot rules were adopted, LMSAs are either permitted or built in accordance with approved plans (if no permit is necessary).

The second half of the definition refers to facilities that were approved under the process in part 7020.2110 of the 2000 feedlot rules. Under the 2000 rules, certain LMSAs that were constructed before the rules were in place could be approved to be allowed to operate through a variety of means described in the rules depending on their capacity. This is discussed in more detail in this document at [#75](#) and [#76](#), below.

It is necessary and reasonable for this definition to provide a reference to Minn. R. 7020.2110 as it is currently written so that, after the currently-proposed rule amendments are adopted and enacted, which will repeal Minn.

R. 7020.2110, subp. 1-3, a person who wants to view the repealed language can readily find it. The Revisor's Office advised the Agency to use the reference to "Minnesota Rules 2011, part 7020.2110" for this purpose.

24. Proposed Change – part 7020.0300, subpart 27

*Subp. 27. **Waters of the United States.** "Waters of the United States" has the meaning given under the federal Clean Water Act.*

Justification

The addition to the rule of the definition for "waters of the United States" is needed to address the revisions made to the rule at part 7020.2003, which prohibit certain discharges and establish effluent limitations applicable to animal feedlots. Although a feedlot is not required to get an NPDES permit simply because it meets the definition of a "CAFO," federal law still prohibits discharges from CAFOs to waters of the United States without an NPDES permit. Although the MPCA may authorize discharges to waters of the state under its permits, the MPCA may not use a state permit to authorize a discharge from a CAFO to waters of the United States. For this reason, it is reasonable to define "waters of the United States." This definition references the federal CWA with regard to what is meant by "waters of the United States." Although 40 CFR part 122.2 provides a definition of "waters of the United States," this definition has been subject to judicial scrutiny, and may be modified in the future. As a result, it is reasonable to refer to the CWA itself as the source for what is meant by "waters of the United States."

7020.0350 Registration Requirements for Animal Feedlots and Manure Storage Areas.

25. Proposed Change – part 7020.0350, subpart 1

*Subp.1. **Registration data.** ~~After January 1, 2002,~~The agency and all delegated counties shall maintain registration data for animal feedlots and manure storage areas. The registration data must include the information required in a Level II feedlot inventory as described in the Feedlot Inventory Guidebook and must contain the following:*

- A. date the registration form was completed;*
- B. name and address of all owners of the animal feedlot, or manure storage area, ~~or~~ pasture;*

Justification

Subpart 1 establishes the requirement for the Agency, or the County Feedlot Pollution Control Officer in those counties that are delegated to administer Minn. R. ch. 7020, to maintain registration data for animal feedlots and MSAs. This subpart has been revised in two ways; first to delete the date the registration requirement was to start, and second to delete the reference to using a Level II feedlot inventory.

When the existing chapter 7020 rules were promulgated in the year 2000, the date of January 1, 2002, was established for the start of the animal feedlot registration process. It is reasonable to delete this date because this date has passed and is no longer a necessary part of the registration requirements.

The existing rule at part 7020.0350 (Registration Requirements for Animal Feedlots and Manure Storage Areas) requires feedlot owners to update their registration information on a four-year cycle by taking part in an updated Level II or Level III inventory as described in the Feedlot Inventory Guidebook, and submitting an agency-approved registration form or an animal feedlot permit application. In practice, counties have chosen not to

update their inventories and have instead been relying on the animal feedlot information collected for submittal of the registration form or animal feedlot permit application. Because the information collected for the registration form or permit application is similar to the information required in the Level II and Level III inventory, this practice has made the use of the inventories and the Feedlot Inventory Guidebook unnecessary. Therefore, it is reasonable to delete the reference to use of the Level II inventory in this rule part.

Subpart 1, item B, requires that the registration data include the name and address of all owners of the animal feedlot or MSA. Subpart 1 requires that registration data be maintained for animal feedlots and MSA only. It is reasonable to add the word “or” and delete the language “or pasture” in item B because the subpart 1 requirements for registration data do not apply to pastures.

26. Proposed Change – part 7020.0350, subpart 3

~~*Subp. 3. **Initial registration schedule and requirements.** Owners required to register under subpart 2 shall comply with at least one of the following by January 1, 2002:*~~

- ~~*A. the owner shall submit the information in subpart 1, on a form provided by the commissioner, to the commissioner or delegated county feedlot pollution control officer;*~~
- ~~*B. the owner shall submit a permit application to the commissioner or delegated county after October 23, 2000; or*~~
- ~~*C. the owner shall be listed on a feedlot inventory that:*~~

- ~~*(1) is a Level II or Level III inventory as described in the Feedlot Inventory Guidebook that contains the information under subpart 1, items A and E to J;*~~
- ~~*(2) is current as of October 1, 1997;*~~
- ~~*(3) contains the information required under subpart 1, items B to D; and*~~
- ~~*(4) has been submitted to the commissioner.*~~

Justification

Subpart 3 establishes the requirement for an owner to comply with the initial registration schedule and requirements by a specific date, January 1, 2002. It is reasonable to delete subpart 3 because the January 1, 2002, date has passed and is no longer a necessary part of the registration requirements.

Items A through C establish the specific requirements the owner must comply with. Because the subpart 3 requirement to comply with the initial registration schedule and requirements has been deleted, the requirements in items A through C which identify the requirements to be complied with by January 1, 2002, are no longer needed. Therefore, it is reasonable to delete items A through C.

27. Proposed Change – part 7020.0350, subpart 4

~~*Subp. 4. **Registration requirements after January 1, 2002.** Owners of animal feedlots and manure storage areas who are required to register under subpart 2 shall comply with items A and B, as applicable.*~~

- ~~*A. Owners of facilities not in operation prior to January 1, 2002, shall register with the commissioner or delegated county prior to or upon commencement of operation. Owners shall comply with at least one of the following:*~~

- (1) the owner shall submit the information in subpart 1, on a form provided by the commissioner; or
 - (2) the owner shall submit a permit application to the commissioner or delegated county.
- B. Owners shall update their registrations prior to the registration update deadlines, which shall be established by adding four-year increments to the initial registration deadline of January 1, 2002. Owners shall register at least once during each of the four-year registration update intervals by meeting ~~one of the following~~:
- ~~(1) the owner shall comply with requirements of item A, subitem (1) or (2); or~~
 - ~~(2) the owner shall be listed on a feedlot inventory that:~~
 - ~~(a) is a Level II or Level III inventory as described in the Feedlot Inventory Guidebook that contains the information under subpart 1, items A and E to J;~~
 - ~~(b) has been updated within the applicable four-year registration interval;~~
 - ~~(c) contains the information required under subpart 1, items B to D and K; and~~
 - ~~(d) in its updated form has been submitted to the commissioner, including the information in unit (c).~~

Justification

Subpart 4 establishes the registration requirement for owners of animal feedlots and MSAs after the initial registration deadline of January 1, 2002. As discussed in [#25](#) and [#26](#) above, the reference to January 1, 2002, is no longer needed and is deleted.

Subpart 4(A) establishes the registration requirements for owners of facilities that were not in operation prior to January 1, 2002. As noted above, this date has passed and therefore, the rule language “in operation prior to January 1, 2002” is no longer needed and is deleted.

Subpart 4(B)(2) of the existing rule allows for owners to use an updated Level II or Level III inventory that meets the requirements of item B(2)(a)-(d) in order to meet registration requirements of subpart 4. However, as discussed in [#25](#), above, the inventories are no longer used to gather registration data. Accordingly, item B(2)(a)-(d) is deleted and the remaining requirement contained in item B(1) has been merged with item B for clarity and ease of understanding.

7020.0355 Permits and Certificates Issued Prior to October 23, 2000.

28. Proposed Change – part 7020.0355, subpart 3

~~Subp. 3. **Interim A and interim B permits.** An owner with an Interim A or Interim B permit that has not expired on October 23, 2000, shall comply with items A and B.~~

- ~~A. If the requirements for which an Interim A permit was issued are not complete on October 23, 2000, the owner shall apply, prior to the expiration date of the Interim A permit, for a construction short form, SDS, or NPDES permit as required under part 7020.0405.~~
- ~~B. If the requirements for which an Interim B permit was issued are not complete on the expiration date of the Interim B permit, the owner shall comply with part 7020.0535,~~

~~subpart 5, except that the owner shall complete the notification requirement prior to the expiration date of the Interim B permit.~~

Justification

Subpart 3, items A and B, contain requirements that are out of date and no longer apply. Interim A and B permits have not been used since the existing rule became effective on October 22, 2000. Prior to this time, these permits were issued for a 10-month period. Any Interim A and B permits issued prior to October 22, 2000 have expired and are no longer valid. The deletion of subpart 3 is reasonable and necessary to provide clarity.

29. Proposed Change – part 7020.0355, subpart 4

~~Subp. 4. **NPDES and SDS permits.** NPDES and SDS permits issued prior to October 23, 2000, remain in effect to the extent provided by the issued permit terms and conditions.~~

Justification

Subpart 4 contains requirements that are out of date and no longer apply. When the existing rule was adopted there were several feedlots with coverage under an NPDES/SDS or SDS permit. The purpose of subpart 4 was to prevent the owners of these feedlots from being required to resubmit an application for another NPDES/SDS or SDS permit. These permits were issued for a five-year term and have since expired. The compliance schedule and requirements of these permits have since either been met prior to the expiration of the permit, incorporated into a new permit that also contains the requirements of the existing rule, or included in an enforcement document. Regardless of the current compliance of any of these feedlots, the requirements of subpart 4 are no longer needed. The deletion of subpart 4 is reasonable and necessary to provide clarity.

7020.0405 Permit Requirements.

30. Proposed Change – part 7020.0405, subpart 1, Item A

*Subpart 1. **Permit required.** Four types of permits are issued under this chapter and chapter 7001: interim permits, construction short-form permits, SDS permits, and NPDES permits. The owner shall apply for a permit as follows:*

- A. *an ~~NPDES~~ NPDES/SDS permit for the construction and, expansion, modification, or operation of an animal feedlot that meets the criteria for a CAFO as required by federal law;*

Justification

Subpart 1 identifies the types of permits issued by the Agency under Minn. R. chs. 7001 and 7020. Several changes are needed in subpart 1(A), regarding NPDES permits as follows.

The term “NPDES” was replaced with the term “NPDES/SDS” to indicate that all permits issued by the Agency that provide coverage under the federal NPDES permit program are issued as joint NPDES and SDS permits (see Minn. R. 7001.1010). This provides a single permit document that includes both the applicable federal NPDES and state SDS permit requirements.

The terms “expansion” and “modification” were added to the list of activities that trigger when an owner of an animal feedlot or MSA is required to apply for an NPDES permit as required under Minn. R. ch. 7001. These terms are defined in Minn. R. 7020.0300, subps. 11a and 14a, respectively. The word “or” was added to establish that any of the named activities-- construction, expansion, modification, or operation-- can trigger when an NPDES/SDS permit is required.

The phrase “as required by federal law” has been added to item A to reflect the 2011 revision of Minn. Stat. § 116.07, subd. 7c (Exhibit 1). The definition of “CAFO” has been amended to conform to federal rule, which includes “large, medium or small” CAFO as defined by 40 CFR § 122.23, which was revised in 2003. Small and medium CAFOs, by definition, are feedlots that discharge to waters of the United States, so would be required to apply for an NPDES permit under federal regulation. Large CAFOs, as identified in “EPA Large CAFO Thresholds and MPCA Animal Unit Equivalents by Animal Type & Size” (Exhibit 2), include feedlots that exceed 1,000 animal units.

31. Proposed Change – part 7020.0405, subpart 1, Item B

B. ~~unless required to apply for a permit under item A, an SDS permit under the following conditions: for the construction, expansion, modification, or operation of an animal feedlot or manure storage area:~~

- ~~(1) the construction and operation of an animal feedlot or manure storage area that has been demonstrated not to meet the criteria for CAFO and is capable of holding 1,000 or more animal units or the manure produced by 1,000 or more animal units; that is capable of holding, or will be capable of holding, 1,000 or more animal units or the manure produced by 1,000 or more animal units;~~
- ~~(2) the facility that does not comply with all applicable requirements of parts 7020.2000 to 7020.2225 and for which the pollution hazard cannot be, or has not been, corrected under the conditions in part 7020.0535 applicable to interim permits;~~
- ~~(3) for which the owner is proposing to construct or operate with a new technology. An SDS permit is required for new technology operational methods while these operational methods are employed; or~~
- ~~(4) the facility is one for which conditions or requirements other than those in parts 7020.2000 to 7020.2225 were assumed:
 - ~~(a) as a mitigation measure in an environmental impact statement; or~~
 - ~~(b) in obtaining a negative declaration in an environmental assessment worksheet;~~~~

Justification

Changes to item B have been made to clearly indicate when an animal feedlot owner is required to apply for an SDS permit. The terms “expansion” and “modification” have been added as one of the actions which require the owner of an animal feedlot or MSA to apply for an SDS permit, as discussed above regarding NPDES/SDS permits.

The existing language in subitem (1) has been deleted because it was confusing and is better stated simply as a requirement for an SDS permit for facilities that have the capacity for 1,000 animal units or more. As the MPCA made clear in its testimony to the legislature concerning the proposed Statutory Permit Changes in 2011, the MPCA believes that a permit governing the operation of animal feedlot facilities with 1,000 animal units is needed to protect the environment from avoidable discharges of pollutants. Therefore, the MPCA does not propose to change the requirement to obtain an SDS permit for facilities with a 1,000 animal units or more. This

is reasonable for a variety of reasons, including that it is an administrative requirement of longstanding and one that is generally consistent with historic state and federal permitting practices. The permitting requirement is consistent with Minn. Stat. § 116D.04 with regard to which facilities need environmental review, and it is consistent with statements made to the legislature by the MPCA when the statutory permitting changes were adopted in 2011. The MPCA believes that having a “clear line” results in administrative clarity for both the MPCA and the regulated community.

As noted, the requirement to obtain an SDS permit is in the current rule and is a longstanding requirement that is not being changed in this rulemaking. The jurisdictional challenges with regard to NPDES permits were known at the time the 2000 feedlot rule was adopted. The 1999 SONAR specifically identified (on pages 50 and 94) that the State would require the SDS permit even if the NPDES permit was found not to be necessary. The MPCA sees no need to change this longstanding position.

The 1999 SONAR noted (page 38) that, although small open lot facilities can present a significant threat of pollution, “[l]arge animal feedlots and manure storage areas with more than 1,000 animal units individual present the greatest potential for significant failure such as failure of a liquid manure storage area. For this reason alone, it is necessary to closely monitor these facilities.” The 1999 SONAR also stated (page 49) that “[o]ne of the underlying foundation policies for the proposed permit system is that animal facilities with 1,000 or more animal units pose a significant potential environmental concerns because of the very large amounts of manure and/or process generated wastes that are produced or managed at these facilities.” The 1999 SONAR also noted the following concerns as not being addressed by federal regulations, which focus solely on surface water. These concerns support the need for a state permit for larger facilities:

- Potential impacts to ground water;
- Air quality issues such as odor and air emissions;
- Need to provide an opportunity for public notice and feedback on facilities having a comparable animal unit size and potential to impact neighbors (beyond surface water impacts); and
- Need for incorporation of site or facility-specific provisions into the permit to address mitigation measures in an environmental impact statement or to obtain a negative declaration on an EAW.

The SONAR also noted (page 95) the potential administrative costs that would be associated with a system in which facility operators do not have a “clear line” as to when permits are necessary are not. The “clear line” provides certainty for both regulators and the regulated community.

For these reasons, the MPCA does not agree with any proposals to remove the requirement for large facilities (1,000 animal units) to obtain an SDS permit.

In addition, subitems (2)-(4) have been reformatted without changing the intent of the rule. These changes are necessary and reasonable to align the rule with statutory requirements and to provide clarity.

32. Proposed Change – part 7020.0405, subpart 1, Item C

- C. *unless required to obtain a permit under ~~items A and B~~ item A or B, an interim permit for:*
- (1) *~~facilities~~ a facility identified as a pollution hazard; or*
 - (2) *a facility where the owner is proposing to expand to a capacity of 300 animal units or more, or the manure produced by 300 animal units or more, and that has been identified as a pollution hazard; or*

~~(2)~~ (3) *an animal feedlot or a manure storage area with a capacity of 300 or more animal units prior to applying manure or process wastewater:*

- (a) on land where the soil phosphorus test levels exceed the levels in part 7020.2225, subpart 3, item C;*
- (b) on land in special protection areas with slopes exceeding six percent; or*
- (c) in a drinking water supply management area where the aquifer is designated vulnerable under chapter 4720; or*

Justification

A new subitem (2) has been added to item C to include the requirements found in item D for facilities where the owner wants to expand or modify the operation, but is also required to apply for an interim permit to correct an existing pollution hazard. This addition makes it clear that interim permits can also authorize an expansion and are required for expansion of facilities that are also identified as a pollution hazard. This addition reflects the relocation of existing language currently contained in Minn. R. 7020.0405, subp. 1(D) and is further discussed below. These changes are necessary and reasonable to provide clarity.

33. Proposed Change – part 7020.0405, subpart 1, Item D

- D. unless required to obtain a permit under ~~items A to~~ item A, B, or C, a construction short-form permit for an animal feedlot or manure storage area proposing to construct or expand to a capacity of 300 animal units or more, or the manure produced by 300 animal units or more. ~~However, if a facility is determined to be a pollution hazard and the owner is proposing to expand to a capacity of 300 animal units or more, or the manure produced by 300 animal units or more, the owner shall apply for an interim permit under item C.~~*

Justification

The change to include references to items A, B, and C are necessary to provide clarity as to which items apply in this case. The deletion of the language pertaining to the need for interim permits reflects this language relocation to the part of this rule that discusses the requirements for when an interim permit is required, where it is more appropriately located. These changes are necessary to provide clarity.

34. Proposed Change – part 7020.0405, subpart 2

Subp. 2. Expansion and stocking ~~limitations~~ requirements.

- A. Prior to expansion or modification, an owner required to apply for a construction or operating permit under subpart 1, item A or B, shall have obtained the permit, or permit modification, as applicable.*
- B. Prior to expansion, an owner required to apply for a construction permit under subpart 1, item C or D, shall have obtained the permit, or permit modification, as applicable.*
- C. An owner issued an interim permit that authorizes construction for an expansion shall not stock the expansion prior to the fulfillment of all permit conditions related to the correction of the pollution hazard for which the interim permit was issued.*

Justification

Subpart 2 establishes the expansion and stocking requirements for animal feedlots and MSAs. The word “limitations” in the subpart 2 title “Expansion and stocking limitations” has been deleted and replaced with the word “requirements.” This change was needed to reflect items A to C, which are not permit limitations, but requirements to obtain permit coverage for planned expansion and modification activities. Subpart 2 was reformatted to better clarify the expansion and stocking requirements by identifying each requirement as a separate item according to the type of permit issued. The separation of the requirements is further discussed below.

In item A, the term “modification,” defined at #18 above, has been added as one of the actions that require the owner of an animal feedlot to obtain a permit before beginning the planned expansion or modification of the animal feedlot or MSA. Also in item A, the addition of “items A or B” is necessary to identify the specific rule language in subpart 1 to which the reader must refer when determining if an application for a construction or operating permit is required.

Item B has been added to outline the requirements applicable to interim and CSF permits issued under the specified rule language. Minn. R. 7020.0405, subp. 1, items C and D, require an interim or CSF permit for an expansion, but not for a change to a facility component that is not considered an expansion. The addition of subpart B is consistent with Minn. R. 7020.0405. If an owner is not required to apply for an interim or CSF permit, they are not required to obtain the permit. Interim and CSF permits are temporary permits issued for a term of up to two years, which authorize activities that are limited in duration such as the correction of a pollution hazard or the construction of a barn. They are different than NPDES/SDS or SDS permits, because they do not authorize and regulate the operation of facility components such as LMSAs. Even though the definition of modification includes an expansion, this part and Minn. R. 7020.0405, subp. 1, items C and D, are not intended to require an owner to obtain an interim or CSF permit for a change in a facility component that is not an expansion.

Item C is part of the existing language of this part and indicates that if an interim permit has been issued for an expansion or modification, as well as the correction of a pollution hazard, the expanded or modified portion of the animal feedlot cannot be stocked until the pollution hazard has been corrected. There is no clarification necessary to this part and it simply a reorganization of the existing text of the existing part.

35. Proposed Change – part 7020.0405, subpart 3

*Subp. 3. **No permit required.** ~~The An owner of an animal feedlot or manure storage area~~ is not required to apply for a permit for:*

~~A. a feedlot or manure storage area that meets the requirements of part 7020.2003, subparts 4 to 6;~~

~~B. A. a short-term stockpile or compost site if the owner is not an owner of an animal feedlot or manure storage area other than a short-term stockpile or composting site;~~

~~C. B. a livestock facility located on county fairgrounds; or~~

~~D. C. a change in an existing facility that consists solely of a change in ownership of the building, grounds, or feedlot; or~~

~~E. D. an animal feedlot with more than ten but less than 50 animal units that is not in a shoreland area.~~

Justification

The following changes are needed to delete outdated rule language, address recent statutory amendments, and to provide more specificity to the rule.

Subpart 3 establishes the conditions under which a permit is not required. The language “of an animal feedlot or manure storage area” has been deleted from subpart 3; it is not needed because the term “owner” is defined at Minn. R. 7020.0300, subp. 17, and means owner of an animal feedlot or MSA. Items A-D under subpart 3 have been reformatted to account for the deletion of item A and addition of a new item D, as discussed below.

Item A has been deleted from the rules because it refers to the Open Lot Agreement requirements under Minn. R. part 7020.2003, subps. 4 to 6. The rule subparts are outdated and, as discussed in [#62](#), are proposed to be deleted.

Item D has been added to address the requirement of Minn. Stat. § 116.07, subd. 7(g). This statute exempts facilities that are more than 10 but less than 50 animal units and not in shoreland from the requirement to obtain a permit. These facilities are not required to obtain a CSF permit or interim permit but are still required to notify the permitting authority (state or delegated county) of proposed construction or expansion in accordance with Minn. R. 7020.2000, subp. 5. This addition incorporates the requirements of the statute into the rule.

36. Proposed Change – part 7020.0405, subpart 4

*Subp. 4. **New name; change of ownership.** ~~Prior to the change in ownership or control of an animal feedlot or manure storage area issued~~*

- A. ~~Before changing the name of a facility operating under a permit issued a permit under this chapter, the new owner shall submit to the permitting authority, either the commissioner or county feedlot pollution control officer the information required in item A or B, as applicable. If the commissioner or county feedlot pollution control officer determines that the new owner meets the requirements for obtaining the permit, then the commissioner or the county feedlot pollution control officer shall issue the permit to the new owner. The new owner shall submit: who issued the permit, documentation of the new name and the permitting authority shall issue a permit modification reflecting the new name.~~*
- B. ~~Before changing ownership or control of an animal feedlot or manure storage area issued a permit under this chapter, the new owner shall submit to the permitting authority the information required under part 7001.0190. If the permitting authority determines that the new owner meets the requirements for obtaining the permit, then the permitting authority shall issue the modified permit to the new owner. All other modifications must comply with subpart 5.~~*
- ~~A. a request for permit modification according to part 7001.0190 for facilities covered under an SDS or NPDES permit; or~~*
- ~~B. a change of ownership form provided by the commissioner.~~*

Justification

The proposed revisions to item A pertain to a change in name of the permittee of the feedlot without any changes to the feedlot ownership, structures, operation, maintenance practices, or anything else that may allow an actual or potential increase in the discharge of pollutants. Under these conditions, a feedlot owner is only required to notify the Agency or County Feedlot Pollution Control Officer (permitting authority) so that the permitting authority is able to issue a permit modification reflecting the new name and to update its database with the current contact information for the feedlot. There are no notice requirements or further actions needed. This is typically only applicable when an individual or company is simply changing their name.

Subpart 4, item B, addresses a change in facility ownership which generally involves the sale from one party to another of a facility that has an NPDES/SDS, SDS, CSF, or interim permit that is still in effect. When the facility ownership is changed, the owner should submit a permit application as required by part 7001.0190 for NPDES/SDS or SDS permittees. Permit applications would not be required for CFS or interim permit permittees, but the owner should submit certain information about the ownership change (on a form provided by the commissioner) to request a permit modification as required by part 7001.0190.

If an owner (new or existing) wants to make changes to the operation described in the permit, such as changes to the manure management plan, the owner should submit an application for a permit modification that describes the desired changes, as provided in subpart 5. This is not a change to the existing rule. Subpart 5 also references the existing procedures in Minn. R. ch. 7001 for major and minor modifications to permits.

The permittee should also include with the permit application the updated documents that required changes. Typically, when ownership of a facility is changed, new/alternate land application acres/methods are part of the change, and often animal mortality practices or management techniques in an air emissions plan or operation and maintenance plan change as a result of the new ownership assuming control of the day to day operations. The MPCA will review these documents for compliance with applicable state and federal regulations and the permit conditions to determine if the operational changes to the feedlot are considered to be a minor or major modification under Minn. R. ch. 7001. Major modification will need to comply with public noticing requirements under Minn. R. ch. 7001 as applicable. Upon review of the submitted information and completion of the applicable public noticing requirements, the Agency will provide the new owner with the modified permit or permit coverage letter (in the case of general permits.)

37. Proposed Change – part 7020.0405, subpart 5

Subp. 5. Modification of Permit.

- A. If an owner of a facility that has coverage under an NPDES/SDS or SDS permit plans to make a modification, the owner must follow the procedures in chapter 7001. Modifications that do not meet the criteria in part 7001.0190 are considered major modifications and must follow the procedures in parts 7001.0100 to 7001.0130.
- B. If an owner of a facility with coverage under an interim or construction short-form permit plans to make a modification, the owner must seek approval from the permitting authority on a form provided by the commissioner. The form must be submitted to the permitting authority at least 30 days before making the modification.

Justification

Item A deals with modifications to facilities that are required to maintain NPDES/SDS or SDS permit coverage. This subpart is needed to provide clarification that a proposed modification to a facility that has an operating permit such as the NPDES/SDS or SDS permit requires modification to the permit. As the current 7020 rule does not contain the terms “major permit modification” and “minor permit modification,” the Agency has relied and will continue to rely on Minn. R. 7001.0190, subp. 3, for identifying those changes that are considered minor modifications.

If a proposed modification is not considered a minor modification, then it must be considered a major modification. In general, major modifications occur when animal numbers/units increase, changes are made to increase animal holding capacity, or new/additional/different manure storage is added, as these activities generally increase emissions/potential discharges from the facility.

Item B deals with modifications to facilities undertaking construction pursuant to interim and CSF permits. This rule amendment is proposed to address a gap in the existing rule as to how modifications of these types of permits should be managed. As these permits do not require formal public noticing, it is reasonable that the procedural requirements for changes to these permits are less than for NPDES/SDS or SDS permits. Therefore, the MPCA proposed that the permittee needs to only provide the Agency or delegated county with the specifics of the desired change so that the records of the permittee, Agency or delegated county are accurate, and so that the proposed change can be evaluated for compliance with all applicable location restrictions and design requirements.

7020.0505 Permit Applications and Processing Procedures.

38. Proposed Change – part 7020.0505, subpart 1

*Subpart 1. **Submittals.** Permit applications must be submitted according to items A and B. An application is complete when all applicable information in subpart 4 and application fees under parts 7002.0250 and 7002.0310 have been received by the commissioner or the county feedlot pollution control officer, as appropriate. Incomplete permit applications must not be processed by the commissioner or delegated county feedlot pollution control officer.*

- A. NPDES and SDS permit applications must be submitted to the agency in accordance with this part and chapter 7001, with a copy submitted to the delegated county.*
- B. Interim permit and construction short-form permit applications must be submitted to the agency or delegated county in accordance with this part ~~and part 7020.0535~~.*

Justification

This part of the rule establishes the minimum requirements for all permit applications for animal feedlots and MSAs and identifies the processing requirements for those permit applications. The reference to Minn. R. 7020.0535 has been deleted from subpart 1(B). Subpart 2 is the only portion of Minn. R. 7020.0535 that applies to Minn. R. 7020.0505, subp. 1. This revision is needed because Minn. R. 7020.0535, subp. 2 contains outdated requirements regarding permit applications submitted prior to October 23, 2000, and is proposed to be deleted, as discussed in [#44](#). Therefore, it is reasonable to delete the reference to Minn. R. 7020.0535 as noted.

39. Proposed Change – part 7020.0505, subpart 2

*Subp. 2. **Permit application submittal schedule.** An owner of an animal feedlot or a manure storage area who is required to apply for a permit under part 7020.0405, subpart 1, shall apply in accordance with the following according to the schedule: provided in items A to D.*

~~A. the following facilities that are in existence on or before October 23, 2000, must submit a permit application by June 1, 2001:~~

~~(1) a CAFO; and~~

~~(2) an animal feedlot capable of holding 1,000 animal units or more or a manure storage area capable of holding the manure produced by 1,000 animal units or more for which the owner has demonstrated that the facility does not meet the CAFO criteria;~~

~~B. a CAFO as determined through the case-by-case determination process under Code of Federal Regulations, title 40, section 122.23(c), shall submit a permit application by the submittal deadline established by the commissioner's written request. The owner has at least 30 days to submit the permit application;~~

~~C. an animal feedlot or a manure storage area that is new or expands after October 23, 2000, and required to apply for an SDS or NPDES permit, shall submit a permit application at least 180 days prior to the planned date of commencement of construction or expansion;~~

~~D. an animal feedlot or a manure storage area that is new or expanding after October 23, 2000, and is required to apply for a construction short form permit, shall submit a permit application at least 90 days prior to the planned date of commencement of construction or expansion; and~~

~~E. a facility determined to be a pollution hazard shall submit a permit application by the submittal deadline established by the commissioner or the county feedlot pollution control officer's written request. The owner has at least 15 days to submit the permit application.~~

A. For NPDES/SDS permit coverage for an animal feedlot that:

(1) is new or expanding or will undergo a major modification, the owner must submit a permit application to the agency at least 180 days before the planned date of commencement of construction, expansion, or major modification; or

(2) has been determined to be a medium or small CAFO as determined through the case-by-case determination process under Code of Federal Regulations, title 40, section 122.23(c), the owner must submit a permit application by the submittal deadline established by the commissioner's written request. The owner has at least 30 days to submit the permit application.

B. For SDS permit coverage for an animal feedlot or manure storage area:

- (1) that is new or expanding or will undergo a major modification, the owner must submit a permit application to the agency at least 150 days before the planned date of commencement of construction, expansion, or major modification;
- (2) when the owner is proposing to construct or operate with a new technology, the owner must submit a permit application to the agency at least 180 days before the planned date of commencement of construction or expansion; or
- (3) that is required to complete environmental review, pursuant to Minnesota Rules, Chapter 4410, and the owner formally proposes, during the environmental review process, to implement mitigation measures that are more protective of the environment than the standards identified in parts 7020.2000 to 7020.2225, the owner must submit an amended permit application containing the additional site-specific mitigation measures, if requested by the commissioner. The amended permit application must be submitted to the agency or delegated county within 30 days of receiving written notification from the commissioner.

C. For a construction short-form permit, the owner must submit a permit application to the agency or delegated county at least 90 days before the planned date of commencement of construction or expansion.

D. For an interim permit for a facility:

- (1) that has been determined to be a pollution hazard by the commissioner or a county feedlot pollution control officer, the owner must submit a permit application to the agency or delegated county by the submittal deadline established by the commissioner or the county feedlot pollution control officer's written request. The owner has at least 15 days to submit the permit application;
- (2) that has been determined to be a pollution hazard by the commissioner or a county feedlot pollution control officer and is expanding to a capacity of 300 or more animal units, or increasing the manure storage area to hold the manure produced by 300 or more animal units, the owner must submit a permit application to the agency or delegated county at least 90 days before the planned date of commencement of construction, expansion, or major modification; or
- (3) with a capacity of 300 or more animal units or a manure storage area that holds or is capable of holding the manure produced by 300 or more animal units, the owner must submit a permit application at least 30 days before the planned date of land application of manure or process wastewater on any of the following areas:
 - (a) on land where the soil phosphorus test levels exceed the levels in part 7020.2225, subpart 3, item C;
 - (b) on land in special protection areas with slopes exceeding six percent; or
 - (c) in a drinking water supply management area where the aquifer is designated vulnerable under chapter 4720.

Justification

Subpart 2(A to E) in the existing rule established the schedules and timelines for submitting a permit application. The format of this subpart has been changed so that it is similar to the format used in Minn. R. 7020.0405, subp. 1, permit required. The content of subpart 2 is substantially the same except for the items discussed below.

Subpart 2(A to D), provide the schedule for submittal of a permit application for each of the four permit types: NPDES/SDS, SDS, CSF, and interim permit. The language “of an animal feedlot or manure storage area” has been deleted from subpart 2. The MPCA has deleted this language because it is not needed if defined term “owner” (Minn. R. 7020.0300, subp. 17) is referenced, because “owner” means owner of an animal feedlot or MSA. Subpart 2 is further revised to clarify the application schedule for various types of permits.

Item A provides the schedule that an owner is required to follow for submittal of NPDES/SDS permit applications. For large CAFOs, an owner is required to submit the application 180 days prior to the planned date of commencement of construction or modification. This is reasonable because it is consistent with the requirement contained in federal rule. Under federal and state rule, certain smaller facilities that are not large CAFOs can be required to apply for an NPDES/SDS permit if they meet certain criteria (i.e., are “designated,” or are of a certain size and have an existing discharge). Under the proposed rule, a permit application for a small or medium CAFO is to be submitted according to the schedule established by the commissioner, but not less than 30 days after the request for an application was made. This is faster than required under federal rule. However, given that these facilities are discharging or pose a threat of pollution, it is reasonable to require a permit application to be submitted under a faster time frame. In order to fall into the “designated” category, the MPCA will have conducted an inspection of the facility which will provide notice to the facility that a permit may be required.

The permit application schedule for an SDS permit in item B contains three different submittal requirements. Item B(1) requires a permit application to be submitted at least 150 days prior to the planned date of commencement of construction of a feedlot with a capacity of 1,000 animal unit or more, or capable of storing the manure generated by 1,000 animal unit or more. Pursuant to legislative changes adopted in 2011 and 2012, it is the goal of the state that environmental permits be issued or denied within 150 days of the submission of an application. Item B(2) requires the owner of a feedlot that is proposing to use a new technology that is not provided for in parts 7020.2000 to 7020.2225 to submit the application at least 180 days before the start of construction. This extended time frame is necessary to allow Agency staff sufficient time to review the proposed technology and evaluate the environmental impact. Item B(3) addresses those situations where a proposed feedlot project is subject to environmental review and the owner proposes to take additional actions to address concerns raised during the environmental review process. In these instances, the commissioner will notify the owner if the proposed actions require amending the permit application or any of the attached plans and the owner will be required to submit the requested information within 30 days of being notified. The owner is usually in close contact with Agency environmental review and permitting staff during this process and is aware of the need for an amended permit application.

Item D provides the permit application submittal schedule for an interim permit. When a feedlot has been identified as creating a pollution hazard to waters of the state, the owner is required to submit an application for an interim permit within 15 days (item D(1)), which is the requirement contained in item E of the existing rule. Item D(2) applies when an owner of a facility that is a pollution hazard is also expanding to a capacity of 300 or more animal units. In this case, the permit application must be submitted at least 90 days before the planned start of construction. This submittal requirement is the same as the schedule for the submittal of an application for a CSF permit and allows for the additional review time needed for both the correction of the pollution hazard and expansion of the facility.

Item D(3) has been added because a timeline to submit an interim permit application for this situation does not currently exist. This addition provides clarity and a process similar to other timelines that already exist for other application submittals.

The term “modification” has been added to items A(1), B(1), C, and D(2). The justification for adding this term is discussed in [#37](#). These changes are necessary and reasonable to simplify the process for determining permit application submittal dates and to provide clarity to the requirements pertaining to when an owner is required to submit a permit application to the Agency.

40. Proposed Change – part 7020.0505, subpart 4, Item A

Subp. 4. Content of permit application.

A. An application for a permit must contain the following:

- (7) the soil type or texture and depth to saturated soils at the facility as identified in the USDA most recent published soil survey Manual for the applicable county or a site-specific soils investigation. Soil surveys are incorporated by reference under part 7020.0205. If applicable, submittal of the soils investigation information required in parts 7020.2100 to 7020.2225 meets this requirement;*
- (10) if applying for an SDS or NPDES permit or interim permit under part 7020.0405, subpart 1, item C, subitem (2), a manure management plan that meets the requirements under part 7020.2225, subpart 4; and*
- (11) if applicable, a description of all conditions that make the facility a pollution hazard and a description of the corrective and protective measures proposed to correct the pollution hazard;*
- ~~(12) if applying for an NPDES permit, a supplemental federal application form.~~*

Justification

The changes in item A, subitem (7), are being made to clarify that it is the United States Department of Agriculture, Natural Resources Conservation Service “published” Soil Survey, not a “manual”, that is to be used for this purpose. The document listed in item A, subitem (12) is no longer required due the incorporation of the contents of the supplemental federal application into the Agency’s NPDES/SDS permit application for animal feedlots. Therefore, subitem (12) is no longer needed and has been deleted. Because subitem (12) is deleted, format and punctuation changes were necessary and made to subitems (10) and (11), respectively.

41. Proposed Change – part 7020.0505, subpart 4, Item B

B. In addition to the requirements of item A, a permit application for an animal feedlot capable of holding 1,000 animal units or more or a manure storage area capable of holding the manure produced by 1,000 animal units or more must contain:

- (2) an emergency response plan that includes a description of the procedures that will:
(a) contain, minimize, and manage an unauthorized discharge;*

- (b) provide notification to the proper authorities; ~~and~~*
- (c) mitigate any adverse effects of an unauthorized discharge; and*
- (d) provide for the disposal of carcasses resulting from a catastrophic event such as extreme weather conditions, fire, unexpected power failures, or disease.*

Justification

In recent years, there have been several catastrophic events, such as fires, severe storms, and flooding, that have caused a significant loss of animals at one time presenting an imminent threat to human health, public drinking water, and the environment. During these emergency situations, the owner is usually also dealing with other issues including damage to the barn and other farm structures, and management of the surviving animals. The proposed addition of item B, subitem (2)(d), to the emergency response plan consists of an additional component regarding the disposal of carcasses resulting from a catastrophic event. This change requires an owner to develop a plan for the disposal of a large number of carcasses in short period of time in order to minimize the impacts of an emergency situation. Having a plan ready in advance will enable the owner to immediately start taking the measures needed to dispose of the carcasses in a manner that is protective of human health and drinking water, and that is environmentally sound. The emergency response plan is required to be included with any permit application for an animal feedlot capable of holding 1,000 or more animal units or an MSA that will store the manure generated by 1,000 or more.

The contents of this plan would include:

- Identifying potential burial sites, creating an animal composting area, determining the availability of a rendering plant, or an alternative method that meets the requirements of the Board of Animal Health and has a low environmental impact;
- Identifying the name and contact information for the Board of Animal Health representative in the area;
- Checking a United States Department of Agriculture, Natural Resources Conservation Service published soil survey for the surrounding area to locate an area that has adequate soils and separation to the seasonal high water table for burial or composting;
- Locating a local source of material to use for composting the carcasses, such as turkey litter or cow manure mixed with bedding;
- Contacting a rendering plant to find out what their requirements are for the disposal of a large number of carcasses; and
- Identifying the name and contact information for a contractor with the heavy equipment needed to complete the activity.

Having a plan in advance will also help the owner minimize costs that might be associated with carcass disposal, because the planning can be done on a non-emergency basis and economical alternatives identified. For these reasons, the addition of this requirement to the emergency response plan is reasonable.

42. Proposed Change – part 7020.0505, subpart 4, Item F

F. A permit application for a minor modification need only contain the information requested on a form provided by the commissioner and, as applicable, the information in items C to E.

Justification

The addition of item F is necessary to identify the information an owner is to submit to the commissioner or delegated County Feedlot Pollution Control Officer when making a minor modification to the animal feedlot or MSA. Since a minor modification is an activity that will not increase the emission potential of the operation, the owner will only be required to submit the information pertaining to the modification, rather than the entire permit application. Subpart 4, items C and D, clearly indicate that the owner is to perform the notices required under Minn. R. 7020.2000, subp. 4 and 5, if needed. Item F requires the owner to provide additional information as needed, to assist the commissioner or delegated County Feedlot Pollution Control Officer in evaluating the compliance with state and federal rules. For example, if the change requested is only to the approved manure management plan then only the revised manure management plan and the permit modification request form is required to be submitted.

43. Proposed Change – part 7020.0505, subpart 5

*Subp. 5. **Application processing.** Permit applications must be processed according to items A to C and any requirements specified under a permit.*

- A. *~~NPDES and SDS~~ NPDES/SDS permit applications and permits must be processed according to the procedures under this part and ~~part 7001.0020, item F~~ parts 7001.0010 to 7001.0210 and 7001.1000 to 7001.1150. The term of an NPDES/SDS permit is five years. NPDES/SDS permits must include all applicable requirements of Code of Federal Regulations, title 40, part 122, and all requirements necessary to comply with this chapter and chapters 7001 and 7053.*
- B. *~~The agency and delegated county shall issue, reissue, revoke and reissue, or modify a permit according to part 7001.0140 and other applicable agency rules.~~ SDS permit applications and permits must be processed according to the procedures under this part and parts 7001.0010 to 7001.0210. The term of an SDS permit is ten years. SDS permits must include all requirements necessary to comply with this chapter and chapters 7001 and 7053.*
- C. *~~Construction short-form and interim permit applications must be processed in accordance with parts 7020.0505 and, 7020.0535, and chapter 7001, except that according to part 7001.0020, item F, parts 7001.0040; 7001.0050; 7001.0100, subparts 4 and 5; and 7001.0110, do not apply.~~ County feedlot pollution control officers shall also process permit applications according to part 7020.1600, subpart 4a.*

Justification

Subpart 5 has been revised to clarify which rules apply to the processing of the permit application, the term of the permit, and which rules govern the content of the permit.

Item A has been changed in a number of ways. First, “NPDES and SDS” was modified to “NPDES/SDS” to correctly identify that the requirements of this item refer to a permit that is both a state and federal permit; an NPDES/SDS permit is one type of permit issued under chapter 7020 ([see #30 above](#)). Accordingly, “and SDS” has been deleted from item A and the process requirements that apply to the issuance of SDS permits are addressed in a new item B. Separating out the application processing requirements by permit type in this subpart provides more clarity. Next, the term “permit applications” was added to be consistent with the subpart 5 and Minn. R. 7020.0505 headings, and to more accurately identify what the requirements of this item apply to.

The rule language “part 7001.0020, item F” was deleted from this item and moved to item C; the rule parts applicable to NPDES/SDS permits have been added. The reference to “part 7001.0020, item F” does not provide permit application processing procedures as the subpart heading implies. Rather, the referenced rule part defines the scope for Minn. R. ch. 7001 (that includes Agency permit requirements for the construction or operation of an animal feedlot or MSA), and specifically, through item F, excludes CSF and interim permits from Minn. R. 7001.0040, 7001.0050, 7001.0100, subps. 4 and 5, and 7001.0110. For this reason, the reference to “part 7001.0020, item F” was deleted from item A and was not included in item B because it does not apply to NPDES/SDS or SDS permits. Since permit processing procedures for NPDES/SDS and SDS permits are provided in the entire chapter 7001 and not just certain parts, the entire chapter needs to be referenced. The correct parts of chapter 7001 have been added to items A and B.

Next, language has been added that identifies an NPDES/SDS permit term is five years. It is reasonable to identify the permit term, as federal rule allows for NPDES permits to be issued for a term not to exceed five years. Last, the addition of the incorporation by reference of 40 CFR § 122, and reference to the chapter 7020, 7001, and 7053 requirements is needed to ensure that state rule supports the Agency’s authority to carry out the federal regulations in all of its detail. Further, this change is needed to clarify: (1) the NPDES permit conditions necessary for the Agency to issue NPDES permits that will ensure compliance with federal law; and (2) the SDS permit conditions that are necessary for the Agency to issue SDS permits that will ensure compliance with state law.

The existing rule language in item B has been deleted because it does not specify the type of permit involved or provide any explanation of the Agency and delegated county roles if a county-issued CSF or interim permit needs to be reissued, revoked and reissued, or modified. The process for these potential actions is now clearly included in item C, Minn. R. 7020.0535, subp. 3 ([see #45](#)) and Minn. R. 7020.1600, subp. 4a, items E and F ([see #54](#)), as appropriate.

As discussed above, in the explanation for item A, the reference to SDS permits has been deleted from item A and moved to the new item B which contains the application processing requirements that apply specifically to SDS permits. New language has been added that identifies the term of an SDS permit. This language was needed to address the 2012 amendment to Minn. Stat. § 115.03, subd. 8b, which requires SDS permits that are issued without an NPDES permit to be issued for a term of ten years. The addition of the reference to the chapter 7020, 7001, and 7053 requirements is needed in this item to clarify the SDS permit conditions that are necessary for the Agency to issue SDS permits that will ensure compliance with state law.

Item C contains the requirements that the Agency and County Feedlot Pollution Control Officers are to follow when processing permit applications for CSF and interim permits. The existing reference to “part 7001.0020, item F” that was deleted from item A was added to item C, as discussed above. The “scope” of chapter 7001 (part 7001.0020, item F) specifically excludes CSF and interim permits from parts 7001.0040, 7001.0050, 7001.0100, subps. 4 and 5, and 7001.0110; therefore, this exclusion was included in item C to help ensure it is not ignored.

The changes made to subpart 5 are necessary and reasonable to correctly reference the applicable portions of chapter 7001 and align the rule with the state statutes.

7020.0535 Construction Short-Form and Interim Permits.

44. Proposed Change – part 7020.0535, subpart 2

~~**Subp. 2. Permit applications submitted prior to October 23, 2000.**~~

~~*If an owner has submitted a complete permit application for construction of an animal feedlot or*~~

~~a manure storage area prior to October 23, 2000, and is eligible for a construction short form permit, the owner may request to have the original application voided, returned, or, upon receipt of a construction short form permit application by the commissioner or county feedlot pollution control officer, to have the original application submittals incorporated into the construction short form permit application. Complete construction short form permit applications submitted under this subpart must be considered received by the commissioner or county feedlot pollution control officer on the date the original completed permit application for an agency permit was received.~~

Justification

The requirements contained in subpart 2 apply to permit applications that were received prior to the adoption of the existing rule. These applications have all been reviewed and permits issued. There are no permit applications that were received prior to October 23, 2000 that require action to be taken by the Agency or delegated county, therefore subitem 2 is out of date and no longer applies. The deletion of this subpart is reasonable and needed to provide clarity of this part.

45. Proposed Change – part 7020.0535, subpart 3

Subp. 3. ~~Delegated county p~~Procedures for denial and revocation.

A. ~~In the case of a denial of a permit application by the county feedlot pollution control officer, Denial of construction short-form and interim permit applications must be administered according to this item:~~

~~(1) the applicant must be informed in writing by the county of the reasons for denial and must be informed of appeal procedures all rights of review afforded under chapter chapters 7000 and 7001. The applicant shall retain all rights of fundamental fairness afforded by law and the applicant may make an appeal to the agency to review the county's action. The denial by a county shall be without prejudice to the applicant's right to an appearance before the agency to request a public hearing or to file a further application after revisions are made to meet objections specified as reasons for denial. In the case of denial of a permit application by a county feedlot pollution control officer, the county is responsible for administering the review procedures unless the applicant has requested agency review; and~~

~~(2) at the time a county feedlot pollution control officer notifies the applicant of the reasons for denial, the applicant must be informed in writing of the applicant's right to make a request to the agency to review a denial of a permit application by a county feedlot pollution control officer. To be timely, the request must be filed within 30 days of receipt of notice of the denial by the county. The agency shall not review untimely requests. If the agency denies the application, the applicant may request review under chapters 7000 and 7001. The commissioner is responsible for administering the review procedures under this part and the commissioner or the agency shall make the final decision on the denial.~~

B. ~~In order for a delegated county to revoke a permit, a copy of the permit together with a written justification for revocation must be submitted to the commissioner for review. The commissioner shall, after receipt of the justification for revocation from the county, review the~~

~~matter within 60 days to determine compliance with applicable agency rules. The county must receive written approval of the permit revocation from the commissioner before taking action. If a revocation has been approved by the commissioner, the applicant must be informed in writing by the county of the reasons for revocation and the applicant shall retain all rights of appeal afforded under chapter 7001. Revocation without reissuance of the permit must follow the requirements under part 7001.0180. Revocation of construction short-form and interim permits must be administered according to this item:~~

(1) the permittee must be informed in writing of the reasons for revocation and must be informed of all rights of review afforded under chapters 7000 and 7001. In the case of revocation of a permit by a county feedlot pollution control officer, the county is responsible for administering the review procedures;

(2) before notifying the permittee of the reasons for revocation, the county must follow the procedures under part 7020.1600, subpart 4a, item F, and receive written approval from the commissioner; and

(3) revocation without reissuance must be administered according to parts 7001.0180, 7001.0190, and 7020.0505 and other applicable parts of chapter 7001.

Justification

The changes to this part clarify the due process rights of persons who are denied permits or who hold permits that are subject to revocation. The existing language was nonspecific as to what procedures and timelines would be applied, and which entity (agency or county) would be required to manage the procedures. It is reasonable to clarify this rule to ensure that due process rights are clear and protected. It is reasonable to reference chapters 7000 and 7001 in this part because these chapters contain the procedures and standards for requesting contested case hearings on permits. The proposed amendment is consistent with existing part 7020.1700 (which appears in the section of the Feedlot Rules addressing delegated counties) because part 7020.1700 indicates that all requests for hearing “shall be governed by the agency rules of procedure.”

First, item A, which addresses denial of permits, is amended by adding two subitems to establish what notice must be given to applicants by the entity dealing with the application (which may be the Agency or a County) concerning their due process rights, in particular their right to request that the Agency review the proposed denial if the County is the entity proposing the denial. Item A clarifies that if the Agency is requested to review the denial, then the Agency will manage any further procedures concerning the permit. The second subitem addresses when Agency review must be requested if desired. It is reasonable to establish a timeline for this request, to ensure the applicants promptly request review so that the permit question can be administratively concluded and not left open.

Item B addresses revocation of existing permits. The existing language in item B, which identifies the procedures a delegated county must follow prior to informing an applicant or permittee of an intent to revoke a permit, is deleted in this part but has been added to part 7020.1600, Authorities and Requirements for Delegated Counties ([see #54](#)). This is reasonable because the item did not address the due process rights of applicants, but instead incorporated authorities applicable to delegated counties. Item B then references the procedures and the rules that will govern revocation. As noted above, it is reasonable to address these procedures and rules to ensure that the due process rights of applicants are clear.

46. Proposed Change – part 7020.0535, subpart 5

*Subp. 5. ~~Duration~~ **Term of construction short-form and interim permits.** All construction short-form and interim permits expire within 24 months of the date of issuance. If the work for which a construction short-form permit was issued is not complete upon expiration of the permit, the expiration date of the permit may be extended by no more than 24 months if the owner complies with items A and B. If the pollution hazard for which an interim permit was issued is not corrected upon expiration of the permit, the expiration date may be extended by no more than 90 days if:*

Justification

The word “duration” is replaced with the word “term” to more accurately align the terminology used within the permit issued by the Agency.

47. Proposed Change – Minn. R. 7020.1500, Scope

7020.1500 Scope.

Any Minnesota county board may, by resolution, assume responsibility for processing applications for animal feedlot permits as authorized by Minnesota Statutes, section 116.07, subdivision 7. The provisions of parts 7020.1500 to ~~7020.1900~~ 7020.1800 shall govern the exercise of approval and supervising authority by the agency with respect to the processing of animal feedlot permit applications by a county.

Justification

As discussed in [#56](#), part 7020.1900 is being removed from the rule, so this part has been changed to reflect this action.

7020.1600 Authorities and Requirements for Delegated Counties.

48. Proposed Change – part 7020.1600, subpart 2, Item J

*Subp. 2. **County feedlot pollution control officer requirements.** A delegated county animal feedlot program shall require the county feedlot pollution control officer to:*

- J. submit an annual report to the commissioner by April 1 of each year, in a format requested by the commissioner, that includes the following:*
 - (1) all newly acquired and updated registration information required under part 7020.0350;*
 - (2) inspection summary information from the previous year;*
 - (3) permitting summary information from the previous year, including information regarding permits for facilities with fewer than 1,000 animal units that are CAFOs under Code of Federal Regulations, title 40, part 122, ~~appendix B(b)~~;*

Justification

The 2003 revision to 40 CFR pt. 122, added the animal number threshold values to the CAFO definition and eliminated appendix B from the code. Therefore, the reference to Appendix B has been deleted from subitem (3).

49. Proposed Change – part 7020.1600, subpart 2, Item L

- L. *forward to the commissioner all permit applications, inspection reports, and all other applicable documents for the facilities identified in subpart 4 4a, item B.*

Justification

Subpart 4 was repealed; therefore, the reference to this subpart has been deleted and changed to correctly reference subpart 4a in the existing rule.

50. Proposed Change – part 7020.1600, subpart 3a

*Subp. 3a. **Resolutions and delegation agreements.** To assume responsibility for administering the delegated county feedlot program under this part, a Minnesota county board shall complete the requirements in items A to D. ~~Counties that have received delegation authorization from the commissioner prior to October 23, 2000, may administer the delegated county feedlot program provided that the requirements of item B are completed by June 1, 2001.~~ Delegation agreements must be reviewed and revised by the commissioner and the county annually to determine if the requirements of item B are being fulfilled and to establish new goals.*

Justification

Subpart 3a contains the requirement for a county board that was delegated the county feedlot program prior to October 23, 2000, to provide information to the Agency by June 1, 2000. The Agency has received the requested information from each county that was delegated to administer the feedlot program prior to the adoption of the existing rule, therefore this requirement has been met and is no longer needed and has been deleted.

51. Proposed Change – part 7020.1600, subpart 3a, Item B(1)

- B. *Submit to the commissioner, for review and approval, a delegation agreement that contains:*
 - (1) *inspection goals for facilities capable of holding fewer than 300 animal units or the manure produced by fewer than 300 animal units:*
 - (c) *for determining compliance with discharge standards ~~and schedules for existing open lots eligible under part 7020.2003, subparts 3 to 6~~ subpart 3;*

Justification

The reference to schedules for existing open lot facilities has been deleted. This change is needed because the open lot eligibility requirements of Minn. R. 7020.2003, subs. 4-6, are out of date and no longer apply and have been deleted ([see #62](#)).

52. Proposed Change – part 7020.1600, subpart 3a, Item B(5)

(5) scheduled compliance goals, coordinated with county local water plans, for bringing feedlot operations into compliance with the applicable standards under parts 7020.2000 to 7020.2225, including the compliance dates of part 7020.2003, subparts 5, item B, and 6, item A, considering the following:

Justification

As discussed above, the open lot eligibility requirements of Minn. R. 7020.2003, subp. 4-6 have been deleted because they are outdated. Therefore, the reference to these subparts in subitem B(5) is no longer needed and has been deleted.

These modifications are reasonable and necessary to add clarity and specificity to this part.

53. Proposed Change – part 7020.1600, subpart 4a

*Subp. 4a. **Permit application processing procedures.** The processing of permit applications by a delegated county shall be conducted according to the procedures in items A to ~~D~~F.*

A. The county feedlot pollution control officer shall process permit applications and issue construction short-form and interim permits according to this part and ~~part parts~~ 7020.0505 and 7020.0535, except as directed in item B.

Justification

Subpart 4a has been revised to clarify that the procedures for processing permit applications by a county are contained in items A to F of this subpart. This change is needed because items E and F have been added to this rule subpart as discussed below.

Part 7020.0505 outlines when a CSF or interim permit is required, which is critical to administering each of these permits. Adding a reference to part 7020.0505 in item A is necessary and reasonable because this rule part contains the requirements for permit applications and processing procedures that County Feedlot Officers must follow.

54. Proposed Change – part 7020.1600, subpart 4a, Items E-F

E. Upon issuance of a permit according to this part, a delegated county shall provide the commissioner written notice of its action. Pursuant to Minnesota Statutes, section 116.07, subdivision 7, the commissioner shall, after receipt of written notification of the issuance of a permit by a delegated county, have 15 days to review, suspend, modify, or reverse the issuance of the permit. If the agency takes no action, the action of the county is final, subject to appeal as provided in Minnesota Statutes, chapter 14. If the agency suspends, modifies, or reverses the issuance of the permit, the applicant must be informed in writing by the agency of the reasons for suspension, modification, or reversal and must be informed of review procedures under chapters 7000 and 7001. If no person requests a contested case hearing within 30 days, the agency decision with regard to the permit becomes final, subject to appeal as provided in Minnesota Statutes, chapter 14.

F. For a delegated county to revoke a permit, a copy of the permit together with a written justification for revocation must be submitted to the commissioner for review. The commissioner shall, after receipt of the justification for revocation from the county, review the matter within 60 days to determine compliance with applicable agency rules. The county must receive written approval of the permit revocation from the commissioner before taking action.

Justification

The proposed language in the new item E is needed to meet the statutory requirements of Minn. Stat. § 116.07, subd. 7, for counties and the Agency regarding processing applications for feedlot permits. Under the statute, the MPCA, after written notification, has 15 days to review, suspend, modify, or reverse the issuance of the permit. If the MPCA reverses a county decision, the applicant must be informed of the reasons and the review procedures available under the Agency's administrative rules. It makes sense for appeal of an Agency decision on a permit issuance to be administered under MPCA procedures, not county procedures, because the MPCA is the entity which has taken the action on the permit. Item E reflects the due process that is afforded to permit applicants under MPCA rules, and the requirement that applicants be informed of the process.

Minn. R. 7020.0535, subp. 3, item B, was deleted and added under subpart 4a to create a new item F. The part 7020.0535 requirements are more appropriately located in part 7020.1600, because this part establishes the authorities and requirements for delegated counties regarding the issuance of CSF and interim permits. It is reasonable to add these requirements under subpart 4a, permit application processing procedures, because they identify specific procedures a delegated county must follow prior to informing an applicant or permittee of an intent to revoke a permit.

Items E and F are reasonable and necessary to provide clarity to the roles of both the delegated counties and the Agency pertaining to the issuance or revocation of a CSF or interim permit.

55. Proposed Change – Minn. R. 7020.1800, Severability

If any provision of parts 7020.1500 to ~~7020.1900~~ 7020.1800 or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions of parts 7020.1500 to ~~7020.1900~~ 7020.1800 or application of any other part which can be given effect without application of the invalid provision. To this end the provisions of all parts and subparts herein and the various applications thereof are declared to be severable.

Justification

As discussed in [#56](#) below, part 7020.1900 is being removed from the rule. Therefore, part 7020.1800 is revised to correctly reflect the deletion of part 7020.1900.

56. Proposed Change – Minn. R. 7020.1900, Variances

7020.1900 Variances.

Any person may apply for a variance from any requirements of parts 7020.1500 to 7020.1900. Such variances shall be applied for and acted upon by the agency in accordance with Minnesota Statutes, section 116.07, subdivision 5, and other applicable statutes and rules.

Justification

The existing rule provides a variance procedure from the portion of the rule that outlines the procedures for a delegated county to administer the feedlot program under a delegation agreement. Because no individual subject to this rule would have any reason to seek a variance from portions of the rule that are applicable only to delegated counties, the Agency is proposing to delete this variance provision. Counties have an opportunity to negotiate with the Agency when delegation agreements are signed if there are issues with how the rules are being applied, and any county that does not agree with the various duties required for delegation has the option of not applying for the delegation. The existing rule provides a variance provision in Minn. R. 7020.0505, subp. 6, that would be applicable to technical standards imposed on owners and operators under the rule.

7020.2000 Overview.

57. Proposed Change – part 7020.2000, subpart 4

*Subp. 4. **Neighbor notification of proposed construction or expansion of 500 animal units or more.***

A. An owner of an animal feedlot or manure storage area proposing to construct or expand an animal feedlot capable of holding 500 or more animal units, or a manure storage area capable of holding the manure produced by 500 or more animal units, shall ~~no later than ten business days after the application is submitted to the agency or delegated county~~ not less than 20 business days before the date on which a permit is issued, provide notice to:

(1) each resident and each owner of real property within 5,000 feet of the perimeter of the proposed feedlot by:

A. ~~(a)~~ publishing in a newspaper of general circulation within the affected area a notification containing the following information:

~~(1) i.~~ the names of the owners or the legal name of the facility;

~~(2) ii.~~ the location of the facility by county, township, section, and quarter section;

~~(3) iii.~~ species of livestock and total animal units;

~~(4) iv.~~ types of confinement buildings, lots, and areas at the animal feedlot; and

~~(5) v.~~ the types of manure storage areas;

B. ~~(b)~~ sending a written notice to ~~them~~ each resident and owner of real property containing the information in ~~item A, subitems (1) to (5)~~, unit (a) delivered by first class mail or in person; or

C. ~~(c)~~ providing equal or greater notification required as part of ~~obtaining~~ a county conditional-use permit or township permitting process; and

(2) the clerk of the town in which the animal feedlot or manure storage area is proposed, by sending a copy of the notice to the clerk via first class mail.

B. The owner shall provide documentation to the commissioner or county feedlot pollution control officer that the required notifications have been completed as required under part

7020.0505, subpart 4, item D. The agency or a county board must verify that notice was provided as required under item A before issuing a permit.

Justification

Subpart 4 has been revised, requiring reformatting of item A and B, and subsequent subitems, as discussed below.

Two revisions have been made to the subpart 4 heading to address changes to Minn. Stat. § 116.07, subd. 7a, since the existing rule was promulgated in 2000. First, the term “neighbor” has been added to the subpart 4 heading to identify who is to be notified of the proposed construction or expansion. For this rule part, the Agency is using the term “neighbor” to reflect who the statute intended to receive notification of proposed construction or expansion, which is “each resident and each owner of real property within 5,000 feet of the perimeter of the proposed feedlot,” as identified under the new subpart 4, item A, subitem (1). Adding the term “neighbor” is necessary as the purpose is similar to the use of the term “government” in subpart 5, which is to identify who is to be notified. Second, the subpart 4 heading adds the language “of 500 animal units or more.” This revision is needed to also address the statutory changes, and to identify what animal feedlot expansion threshold triggers the neighbor notification requirements. Next, the existing language in subpart 4 was revised to meet the statutory requirement of when notification must be provided which is “not less than 20 business days before the date on which a permit is issued.” Last, the content of subpart 4 has been separated out into a new item A in order to more clearly identify and separate, the requirements for notification (item A), and the requirements for documentation of notification (item B).

Subpart 4, item A, subitem (2), is new rule language that establishes the requirement for notifying the town clerk of the proposed construction or expansion. This revision is needed to address the changes to Minn. Stat. § 116.07, subd. 7a, which require this notification.

The new item B includes the Minn. R. 7020.0505, subp. 4, item D, permit application requirement that an owner certify and document that notification requirements have been met. The addition of this requirement to item B is reasonable because it provides a link between the related requirements of these two rule parts, and in doing so, helps to ensure that the notification requirements are met. In addition, item B also requires that the Agency or county must verify that proper notification was provided before issuing a permit. Such verification of notification is needed and reasonable to help ensure that neighbors, interested persons, and the office of the town clerk are aware of the proposed construction or expansion.

These modifications are reasonable and necessary to conform the rule to current statutory requirements and to provide additional clarity regarding proposed construction or expansion notices.

58. Proposed Change – part 7020.2000, subpart 5

*Subp. 5. **Government notifications of proposed construction or expansion.** An owner proposing to construct or expand an animal feedlot or manure storage area shall notify the government authorities listed in items A and B. Notification must be on a form provided by the commissioner and include the information in subpart 4, item A, ~~subitems (1) to (5)~~, subitem (1), unit (a), subunits i to v. The owner shall provide documentation to the commissioner or county feedlot pollution control officer that the required notifications have been completed as required under part 7020.0505, subpart 4, item C.*

Justification

Two revisions have been made to subpart 5. The first is to revise the reference to subpart 4, item A, to reflect the formatting changes made resulting from revisions to this subpart. The next revision adds the requirement for an owner to provide documentation to the Agency or county that the notification required under part 7020.0505, subp. 4, item C, has been completed. The addition of this requirement to subpart 5 is reasonable because it provides a link between the related requirements of these two rule parts, and in doing so, helps to ensure that the notification requirements are met. It is also reasonable for the Agency or county to be provided this documentation because these are the entities with the authority to issue the CSF and interim permits.

7020.2003 Water Quality Discharge Standards.

59. Proposed Change – part 7020.2003, subpart 1

*Subpart 1. **Subsurface discharges from animal feedlots and manure storage areas.** No person shall discharge animal manure, manure-contaminated runoff, or process wastewater from any animal feedlot, including CAFOs a CAFO, or manure storage area is prohibited from flowing into a sinkhole, fractured bedrock, well, surface tile intake, mine, or quarry, or other direct conduits to groundwater.*

Justification

Subpart 1 has been revised by adding “subsurface discharges from” to the heading “animal feedlots and manure storage areas” to make clear what the requirements of this subpart apply to. Addition of the language “no person shall discharge” clearly establishes who has the responsibility (i.e., person) and identifies the specific action which is prohibited (i.e., discharge). The existing rule used the passive voice phrase “prohibited from flowing” which did not clearly assign the duty or identify the activity that was intended to be prohibited. Last, reference to “other direct conduits to groundwater” has been added in order to not limit the types of areas where discharges are prohibited to only those specifically identified in this subpart. These revisions are needed and reasonable to correctly identify that this subpart prohibits a discharge from an animal feedlot or MSA to groundwaters via a direct conduit.

60. Proposed Change – part 7020.2003, subpart 2

*Subp. 2. **CAFOs and facilities animal feedlots with 1,000 animal units or more.***

- A. An owner of an animal feedlot that is a CAFO or is capable of holding 1,000 animal units or more, or a manure storage area capable of holding the manure produced by 1,000 animal units or more, shall comply with the effluent limitation requirements of Code of Federal Regulations, title 40, part 412, and discharge only as authorized by an NPDES/SDS, SDS, or other applicable permit.*
- B. No discharge, as defined by Code of Federal Regulations, title 40, section 122.2, shall be allowed from a CAFO into waters of the United States, unless the animal feedlot or manure storage area has an NPDES/SDS permit authorizing such discharge.*
- C. No discharge shall be allowed from a CAFO or an animal feedlot capable of holding 1,000 animal units or more or a manure storage area capable of holding the manure produced*

by 1,000 animal units or more into waters of the state unless the animal feedlot or manure storage area has an SDS permit authorizing the discharge.

Justification

The term “facility” in the heading for subpart 2 has been deleted and replaced with the term “animal feedlot” to more accurately identify the content of this subpart.

Revisions have been made to subpart 2 to align the rule with the Statutory Permitting Changes. The existing rule language in subpart 2 is now item A; language has been added to this item to clarify that any large animal feedlot or MSA (whether a CAFO or a facility subject to a state permit) must be covered under an NPDES or SDS permit in order to discharge. New items B and C have been added to clarify which discharges require federal permits and which discharges require state permits.

Item B clarifies that, although a permit is not required under federal law for facilities that meet the size requirements for large CAFOs, neither federal nor state law authorize a discharge to “waters of the United States” without an NPDES/SDS permit.

Item C clarifies that all large animal feedlot facilities – CAFOs or facilities with the capacity of more than 1,000 animal units – require state disposal system permits prior to discharge to “waters of the state.”

In most cases in Minnesota, waters of the United States and waters of the state will be co-extensive. Any “water of the United States” would be a “water of the state.” However, in rare instances, there may be a water that would be a “water of the state” that is not a “water of the United States” because it lacks hydraulic connection or “significant nexus” with “navigable waters.” This rule clarifies that no discharge can occur to these waters without a state disposal system permit, even if no federal permit would be required.

61. Proposed Change – part 7020.2003, subpart 3

*Subp. 3. **Other facilities.** An owner of an animal feedlot or a manure storage area shall comply with the effluent limitations in part ~~7050.0215~~ 7053.0305 unless the animal feedlot or the manure storage area is subject to the effluent limitation requirements in subpart 2 or ~~if the owner of the animal feedlot is subject to~~ and meets all of the requirements in subpart 4 an effluent limitation established in a permit issued under this chapter.*

Justification

Subpart 3 was revised for three reasons. First, part 7050.0215 was repealed and the effluent standards for animal feedlots are now in part 7053.0305 of chapter 7053, State Waters Discharge Restrictions. Therefore, reference to 7050.0215 was deleted and the correct rule citation of 7053.0305 was added.

Second, the reference to “meets all of the requirements in subpart 4” has been deleted because subpart 4 pertains to open lot feedlots and these requirements no longer apply ([see #62 below](#)). Third, the rule language “an effluent limitation established in a permit issued under this chapter” has been added to provide for the exception of when an interim permit or other permit allows a discharge that is not in compliance with part 7053.0305.

62. Proposed Change – part 7020.2003, subparts 4 to 6

~~Subp. 4. **Eligible open lot feedlots capable of holding fewer than 300 animal units.** Owners of animal feedlots capable of holding fewer than 300 animal units and having open lots meeting the eligibility requirements in items A to D shall comply with subparts 5 and 6. If the facility expands to a capacity of 300 or more animal units, the facility is not eligible under this subpart. This subpart applies only to open lots that existed on October 23, 2000; discharges from other parts of the animal feedlot, including manure storage areas, must comply with the effluent limitations in part 7050.0215 and other applicable federal and state requirements.~~

~~A. The animal feedlot is not a new animal feedlot.~~

~~B. The animal feedlot has manure-contaminated runoff from one or more open lots that discharge to waters of the state and:~~

~~(1) the manure-contaminated runoff does not create or maintain an immediate threat to human health or the environment; and~~

~~(2) the facility has not been designated a CAFO.~~

~~C. The owner has registered the animal feedlot in accordance with part 7020.0350.~~

~~D. The owner has submitted a certification, on a form provided by the commissioner, agreeing to comply with subparts 5 and 6. The certification form shall contain a provision for a conditional waiver of civil penalties for past violations of part 7050.0215 caused solely by passive manure-contaminated runoff from open lots and for failure to apply for a permit provided the owner maintains compliance with subparts 5 and 6.~~

~~Subp. 5. **Interim corrective measures for eligible open lots.** An owner meeting the eligibility requirements of subpart 4 shall:~~

~~A. operate and manage the animal feedlot to minimize discharges from eligible open lots at all times; and~~

~~B. comply with the following by October 1, 2005:~~

~~(1) install and have operational:~~

~~(a) diversions that prevent precipitation and snowmelt from building roofs and upslope land from flowing onto or through the animal feedlot or manure storage area; and~~

~~(b) vegetated buffer areas or filter strips that have 100 feet or more of nonchannelized flow through perennial grasses or forages for all runoff from the open lots; or~~

~~(2) install and have operational interim corrective and protective measures that have been demonstrated, through completion of "An Evaluation System To Rate Feedlot Pollution Potential" (the model) by a person who has completed training in use of the model, to achieve a 50 percent or greater reduction in discharges of phosphorus and biochemical oxygen demand loading. The percent reduction in discharges must be based on a comparison of the corrective and protective measures in operation at the facility on October 23, 2000, and the proposed interim corrective and protective measures and practices. The owner shall maintain records of the model results until completing the requirements of subpart 6, and make the model results available to the commissioner or county feedlot pollution control officer upon request.~~

~~Subp. 6. **Final corrective measures for eligible open lots.** An owner meeting the requirements of subpart 4 shall:~~

~~A. except as required in item B, comply with part 7050.0215 for all eligible open lots by October 1, 2010; and~~

~~B. if the owner is proposing an expansion, comply with subpart 2 or 3, as applicable, prior to an increase in the number of animal units at the animal feedlot.~~

Justification

The existing rule requirements in subparts 4 to 6 pertained to owners of animal feedlots capable of holding fewer than 300 animal units and having open lots meeting the eligibility requirements identified in these subparts. The requirements, commonly referred to as the “Open Lot Agreement” or “OLA” part of the existing rules, were applicable from 2000 – 2010. Since the OLA requirements are outdated and no longer necessary, subparts 4, 5, and 6 have been deleted.

Before the OLA deadline expired, specifically in March 2009, the MPCA, Department of Agriculture, and Board of Water and Soil Resources executed a Memorandum of Understanding (MOU), which established that owners of a feedlot who executed an OLA with the MPCA prior to October 1, 2010, *and* who have applied and maintain eligibility for cost-share funding, will continue to receive a conditional waiver from enforcement penalties beyond October 1, 2010, until cost-share funding is available for corrective measures. The conditional waiver from enforcement penalties does not apply to owners of a feedlot who fail to maintain eligibility for, or continue to seek, cost share funding. Owners of a feedlot who did not execute an OLA with the MPCA before October 1, 2010, are not eligible for the conditional waiver from enforcement penalties and must follow the applicable requirements of Minnesota Rules Chapter 7020. More information on this topic can be found on the Agency website at: <http://www.pca.state.mn.us/index.php/view-document.html?gid=3566>.

7020.2005 Location Restrictions and Expansion Limitations.

63. Proposed Change – part 7020.2005, subpart 1

*Subpart 1. **Location restrictions.** A new animal feedlot or a manure storage area must not be constructed within a floodplain or within 300 feet of a sinkhole. A new animal feedlot or a manure storage area must not be constructed within the applicable isolation distance required by part 4725.4450 or 100 feet of a water supply well, whichever is greater. Except as provided in items A and B, a new animal feedlot or a manure storage area must not be constructed within shoreland; a floodplain, 300 feet of a sinkhole, 100 feet of a private well, or within 1,000 feet of a community water supply well or other wells serving a public school as defined under Minnesota Statutes, section 120A.05, a private school excluding home school sites, or a licensed child care center where the well is vulnerable according to part 4720.5550, subpart 2.*

A. *An animal feedlot or a manure storage area located in shoreland meeting the requirements of part 7020.0300, subpart 15, item B:*

~~(1) that has been unused for less than ten years is a pollution hazard and may resume operation after applying for and obtaining an interim permit under part 7020.0405, subpart 1, item C; or.~~ *The requirements of part 7020.2100, subpart 1, item C, shall be followed for any liquid manure storage areas that have not been used for three years or more.*

~~(2) that has been unused for ten years or more must not resume operation.~~

Justification

The Minnesota Department of Health's (MDH) administrative rules, Minn. R. ch. 4700, contain minimal set-back distances governing the location of new wells near areas where animals are housed or manure is stored. The MDH's last revision to Minn. R. ch. 4700, in August 2008, resulted in well location restrictions that, in some instances, are more restrictive than the current location restrictions in existing Minn. R. 7020.2005, subp. 1. Therefore, subpart 1 has been modified to include a reference to these MDH requirements, to inform anyone that additional setback requirements may apply. This part has also been modified to specify that where the MDH setbacks differ from the separation distances required in subpart 1, the distance that is greater is required to be followed. In addition, the text of subpart 1 has been reordered and separated into multiple sentences for readability purposes. The MPCA routinely verifies the proper setback distance to wells has been met when reviewing proposals for new animal feedlots or manure storage areas. This modification is necessary and reasonable because it informs the reader that other state rules clearly apply to this particular issue, and it also reflects the current practices of the MPCA's review process for new animal feedlots or manure storage areas. When the MPCA becomes aware of a violation of the MDH setbacks, the information is referred to the MDH. Compliance with this rule does not relieve any party from the duty to comply with another applicable rule.

Subpart 1, item A, has been revised to address changes made to Minn. Stat. § 116.0711, subd. 1(c), which states that "An animal feedlot in shoreland that has been unused may resume operation after obtaining a permit from the Agency or county, regardless of the number of years that the feedlot was unused." Accordingly, the rule language in subpart 1, item A, subitems (1) and (2), which ended "grandfathering" of such facilities after ten years of disuse, has been deleted. A permit, however, is still required before operation can resume. In subpart 1, item A, subitem (1), the Agency proposes to amend the existing language to clarify that a person seeking to permit such a facility must obtain whichever permit Minn. R. 7020.0405 requires, not just an interim permit. Lastly, the Agency proposes to reference to the engineering evaluation requirements of Minn. R. 7020.2100, subp. 1, item C, that are applicable to LMSA facilities that have not operated for more than three years.

7020.2015 Livestock Access to Waters Restriction.

64. Proposed Change – part 7020.2015, subpart 2

*Subp. 2. **Non-CAFO animal feedlots.** Except as required in subpart 1, ~~by October 1, 2001,~~ animals of a non-CAFO animal feedlot must be fenced to prohibit entry to, and must not be allowed to enter, a lake classified by the Minnesota Department of Natural Resources as a natural environment lake, recreational development lake, or a general development lake, as defined in part 6120.3000.*

Justification

Subpart 2 requires that any non-CAFO animal feedlot must fence the identified lakes by October 1, 2001, to prohibit livestock at animal feedlots entry to the identified lakes. This requirement was necessary because manure and manure-contaminated runoff can lead to significant water quality and health problems. This requirement applies only to those animal confinement or MSAs that meet the definition for "animal feedlot" in Minn. R. 7020.0300, subp. 3. The compliance date of October 1, 2001, was established because facilities were not subject to this requirement prior to the effective date of the existing rule and owners needed sufficient time to

comply with the requirement. The October 1, 2001, date has been deleted because it is outdated and no longer applies. This change is necessary and reasonable to update the rule.

7020.2100 Liquid Manure Storage Areas.

65. Proposed Change – part 7020.2100, subpart 1

*Subpart 1. **General requirements; exemption.***

- A. This part describes site restrictions and requirements for design, construction, maintenance, and operation of liquid manure storage areas. ~~An owner shall submit a permit application, as applicable, under part 7020.0405, subparts 1 and 2.~~*
- B. ~~Except as required in subpart 2,~~ All liquid manure storage areas must be designed, constructed, and operated in accordance with subparts ~~3~~ 2 to 7.*
- C. An owner of a liquid manure storage area that has been unused for a period of three years or more shall, prior to using the structure for storing manure or process wastewaters, have a design engineer evaluate and prepare a report on the condition of the liner and include this report with a permit application submitted according to part 7020.0405.*
- D. A liquid manure storage area that provides temporary storage or temporary processing of manure, manure contaminated runoff, or process wastewater is not subject to this part if the commissioner determines that the liquid manure storage area is a limited risk liquid manure storage area. In making this determination, the commissioner shall consider the:*
 - (1) location of the proposed liquid manure storage area in relation to waters of the state;*
 - (2) geologic sensitivity of the proposed location;*
 - (3) length of time the manure, manure contaminated runoff, or process wastewater is stored or processed in the liquid manure storage area;*
 - (4) likelihood of a discharge to waters of the state given the design standards that are proposed, including the volume that will be stored; and*
 - (5) type of material proposed to be stored and the material's expected pollutant concentration.*

An exemption granted under this item does not prevent the agency from imposing permit conditions, if appropriate to protect human health and the environment, to govern construction and operation of the limited risk liquid manure storage area.

Justification

This part was revised in order to provide clarity as to what types of structures are considered LMSAs and what requirements apply to the various types of LMSAs. The existing text in subpart 1 was reorganized to distinguish the three distinct parts that are currently in this subpart.

First, the text that is proposed to be located in item A is simply identical text that now exists in subpart 1 and was relocated here to provide context as to the type of requirements contained within this part of the rule. The text that indicates a permit application is necessary has been removed since it is redundant as the requirement to obtain a permit is addressed in part 7020.0405.

The proposed item B will address the design requirements for an LMSA. The language proposed here is identical to existing language within the rule with two exceptions. The first difference, “except as required in subpart 2”, was intended to highlight the exemption that currently exists in item C of subpart 2, which allows for construction of LMSAs that do not meet the location restrictions of subpart 2 for certain facilities. This is adequately addressed within the language of subpart 2, so it has been removed from subpart 1. The second difference alters the reference at the end of item B to include a reference to subpart 2 through subpart 7. This has been changed to make it clear that all new or expanded LMSAs must be designed, operated, constructed and maintained in compliance with the existing site restrictions of subpart 2.

The proposed item C contains identical language to the existing rule pertaining to unused LMSAs and is simply separated out from the existing text for clarity purposes.

The proposed item D is necessary and reasonable because it clarifies that, in establishing the proposed definition for LMSA at Minn. R. 7020.0300, subp. 13c, which includes all areas where liquid animal manure and process wastewaters are stored or processed, it is not the Agency’s intention to require certain temporary manure and/or process wastewater holding structures to be designed according to all portions of 7020.2100. Examples of these include settling basins used in conjunction with grass treatment systems, small open lot runoff collection areas used to collect and pump waste to a larger storage structure, and other small structures that essentially provide no appreciable storage volume for the facility. Since the potential for harm to the environment from these temporary structures is, in most cases, limited, it is both necessary and reasonable to provide the exemption at item D. Further, item D is consistent with the MPCA Feedlot Permitting Unit’s current practice when reviewing these types of structures during the permitting process.

This does not imply that there will be no location and design restrictions on such structures but rather an evaluation will be undertaken of the potential for impacts to the environment based on the five criteria provided. Guidance is currently being developed to outline common types of such limited risk LMSAs and provide some minimum location and design suggestions based on the five criteria provided.

For instance, a facility proposes to install an NRCS designed filter strip and settling basin for treatment of open lot runoff. The settling basin would be designed as an un-lined containment area with a controlled outlet such as a “picket fence” dam prior to release of the contaminated runoff to the grassed filter strip in order to remove solids from the runoff. The settling basin is considered an LMSA as it provides for storage and processing of the runoff. If the settling basin provided adequate separation distance to bedrock and the seasonal water table, and there is adequate setback from surface waters and conduits to groundwater such as wells and sinkholes, such a settling basin may be proposed as a limited risk LMSA and designed with less stringent criteria. In this case, the MPCA would likely apply the design standards and operation procedures based on the NRCS standards for such structures, which the Agency would generally view as adequate for construction and operation of the runoff control system.

Another example of a facility component that might qualify as a limited risk LMSA would be the installation of a poured concrete tank that collects runoff from a feed storage area and utilizes a pump to transfer the runoff to a long term storage structure. This structure would be considered an LMSA as it provides for short term storage of the runoff prior to transfer to long term storage. In order for this to be considered a limited risk storage area, the

owner would be expected to provide to the Agency details on the proposed concrete construction which would include items such as, floor and wall thickness, placement of reinforcement, and use of water stop. Again, adequate separation distance to bedrock and the seasonal water table and adequate setback from surface waters and conduits to groundwater such as wells and sinkholes would be required. The owner would also need to provide details on how the proposed system will be operated and managed to avoid accidental overflow and to provide timely transfer of accumulated runoff to long term storage.

66. Proposed Change – part 7020.2100, subpart 2, Item B

*Subp. 2. **Site restrictions.** Except as provided in item C, the construction or expansion of a liquid manure storage area is prohibited in the areas identified under part 7020.2005 and items A and B.*

B. In areas which are susceptible to soil collapse or sinkhole formation, the minimum separation distance to bedrock and the manure storage area liner design standards under subpart 3, item B, and prohibitions must be in accordance with subitems (1) to (3).

(2) Animal feedlots capable of holding 300 or more and fewer than 1,000 animal units and manure storage areas capable of holding the manure produced by 300 or more and fewer than 1,000 animal units that contribute to liquid manure storage areas at the facility shall comply with the following:

- (c) where the separation distance to bedrock is five feet or more and less than ten feet, the manure storage area must be:*
- i. an aboveground manure storage area;*
 - ii. concrete-lined with a secondary liner consisting of a synthetic liner, HDPE liner, or ~~one~~ two foot or greater cohesive soil liner; or*
 - iii. composite-lined with at least a three-foot compacted cohesive soil liner under the synthetic liner.*

Justification

The provisions in part 7020.2100 relate to the hazards to groundwater posed by storing liquid manure. Subpart 2 identifies the main geographical situations where construction or expansion of LMSA is prohibited. Subpart 2, item B, establishes the minimum separation distances to bedrock in the karst region. These restrictions are needed to reduce potential water quality risks associated with constructing liquid manure storage systems in those areas, which are the highest risk for failure.

Item B, subitem (2)(c,) establishes the separation distance from manure to bedrock at feedlots with 300 to 999 animal units to be five feet or more when using either: an above-ground MSA; concrete underlain by a secondary liner, High-Density Polyethylene (HDPE) liner, or one foot or greater cohesive soil liner; or composite liner with three feet of compacted cohesive soil below the synthetic liner.

The proposed revision in subitem (2)(c) to require a two-foot or greater cohesive soil liner is needed because this is the minimum thickness for a soil liner within the NRCS 313 standard which is incorporated into this rule by reference. The Agency practice has been to require the two-foot thick cohesive soil liner as the NRCS incorporated standard requires. Therefore, this change is necessary to adequately reflect the incorporated standard.

67. Proposed Change – part 7020.2100, subpart 2, Item D

D. Removal of bedrock in order to comply with the applicable separation distances under item B is prohibited unless specifically authorized by the commissioner. In making the determination to allow the removal of bedrock, the commissioner shall consider:

- (1) geologic sensitivity of the proposed location;
- (2) type and extent of bedrock to be removed;
- (3) length of time the manure, manure contaminated runoff, or process wastewater is stored or processed in the liquid manure storage area;
- (4) likelihood of a discharge to waters of the state given the design standards that are proposed, including the volume that will be stored;
- (5) type of material proposed to be stored and the material's expected pollutant concentration; and
- (6) analysis of other options that would allow for compliance with the separation distances.

Authorization to remove bedrock under this item does not prevent the agency from imposing permit conditions, if appropriate to protect human health and the environment, to govern construction and operation of the liquid manure storage area.

Justification

The addition of this language is necessary to clarify that the intent of the current feedlot rules is to provide protection to the underlying sensitive geology in a karst setting. The SONAR for the October 23, 2000, Minn. R. ch. 7020 revisions provides a lengthy discussion on the sensitivity and risks associated with locating an LMSA in a karst susceptible area (pages 153-155). Therefore, separation distances to bedrock were established to help minimize the risks with locating LMSA over karst susceptible bedrock. The intent of the current rule was to locate the bedrock in the area and construct LMSAs to avoid impacting the bedrock and maintain the natural soil profile and separation distance that was deemed adequate when the rules were enacted. However, in practice some owners/consultants have proposed removal of bedrock to establish the required separation distance. The proposed amendment allows this only if approved by the commissioner based on the factors identified in the rule. This is reasonable for the reasons given below.

Uncontrolled removal of bedrock can cause alteration of subsurface drainage patterns which are not readily predicted in a karst susceptible setting. The alteration of subsurface flow patterns can cause unintended consequences directly below the area that has been excavated or at other areas near to the excavation. For instance, such removal of bedrock can cause subsurface drainage to accumulate or be rerouted to areas that previously were not subject to accumulation of water or rapid movement of water. This may lead to the accelerated development of sinkholes directly under or near the LMSA. As the SONAR for the October 23, 2000, Minn. R. ch. 7020 revisions indicates, municipal ponds have experienced catastrophic failures related to the development of sinkholes within the storage structures. Because feedlot waste generally has more concentrated pollutants than municipal wastewater, extra precautions need to be undertaken to limit the potential for such a failure. Any activity that may accelerate or cause sinkholes to form under or near an LMSA needs to be closely regulated and monitored, hence the need to prohibit the removal of bedrock unless adequate design and consideration of alternatives have been undertaken according to the criteria presented within the proposed language.

The Agency does realize that in some instances removal of bedrock may be necessary to allow installation of an LMSA to correct pollution hazards or may be necessary in other limited situations. The establishment of the six criteria to consider alternatives allows the Agency to allow the removal of bedrock in very limited situations. The Agency is currently developing guidance pertaining to situations when bedrock removal may be necessary with details on how to minimize the extent of removal necessary and limit the potential impacts from the bedrock removal.

68. Proposed Change – part 7020.2100, subpart 3

Subp 3. Design standards.

- A. Except as provided in item B, a new or modified liquid manure storage area at ~~an animal feedlot~~ a facility capable of holding 1,000 animal units or more or ~~the manure storage area capable of holding~~ the manure produced by 1,000 animal units or more must be designed to provide a minimum ~~of~~ storage volume necessary so that the facility has at least nine months of storage capacity.
- B. Liquid manure storage areas designed and operated to provide storage for only manure-contaminated runoff or process wastewater shall be designed to provide a minimum storage volume necessary to accommodate the volume generated from a 25-year, 24-hour storm event and any additional volume needed to be consistent with the proposed manure management plan application frequency.
- ~~B.C.~~ *Liquid manure storage area liners must comply with the following: ...*
- ~~C.D.~~ *Water supply systems, fuel lines, electrical conduit, or other equipment not solely functioning as part of the manure handling or transfer system must not be designed or constructed to penetrate the liner of a liquid manure storage area. Piping and equipment functioning as part of the manure handling or transfer system which penetrates the liner of a liquid manure storage area must be identified in the design plans and specifications. The design plans and specifications must include details on the location and purpose of the penetrations, dimensions of the penetrations, and the methods and materials used to provide a seal between each penetration and the liner.*

Justification

Item A has been modified to clarify the language of the design standard for LMSAs. Item A requires that a feedlot facility with more than 1,000 animal units must have a storage capacity equal to or greater than nine months.

There has been confusion regarding whether a new or modified LMSA at feedlots with 1,000 animal unit or more is supposed to be large enough to provide nine months of storage or if the new or modified LMSA can be connected to an existing LMSA(s) to provide the required storage capacity. The SONAR for the October 23, 2000, Minn. R. ch. 7020 revisions explains the intent (page 156) as follows: “This provision is not intended to require all new liquid storage areas to have nine months storage capacity, provided the storage capacity at the facility as a whole is at least nine months.” For example, a dairy facility of 1200 animal units could build a one-month storage capacity LMSA from which the manure could be transferred to the main LMSA that has at least eight months storage capacity, thereby creating a combined total capacity of nine months storage. The changes to item A are necessary to clarify the intent of the current rule language that requires nine-month storage at facilities with

1,000 or more animal units, and not that each LMSA must provide that storage. Additionally, once an expansion or major change to the facility occurs, the entire facility (not just the expanded portion) must have a total of nine months of storage. As discussed above, each individual LMSA is not required to have nine months storage provided the total storage capacity of all LMSAs on site is equal to nine months. The nine months storage capacity needs to be calculated for the animal holding capacity of the facility.

Item B is proposed to clarify that producers have more flexibility with regard to storage of wastewaters at a feedlot (i.e., not liquid manure), which typically contain lower, but still significant, levels of pollutants. In adopting the 2000 Feedlot Rule, the MPCA did not intend that wastewaters other than manure be subject to the nine month storage requirements. Typically, manure-contaminated runoff and/or process wastewater, when not comingled with animal excreta, has a low nutrient content. Also, manure-contaminated runoff or process wastewater is typically a result of precipitation coming into contact with manure or other products and is commonly not generated during the winter months. For these reasons, the Agency believes that it is reasonable to establish a different storage volume requirement for LMSAs that store only manure-contaminated runoff or process wastewater, as set forth in proposed item B. This storage volume requirement will allow the more economic construction of storage structures that are limited to lower strength wastewater. It must be noted that the proposed text for item B clearly states that item B is only applicable for structures that store manure contaminated runoff or process wastewater. If animal excreta is pumped, scraped, gravity flowed, or otherwise comingled with the manure contaminated runoff or process wastewater in the LMSA, then item B is not applicable and item A would apply to the storage volume requirements.

An LMSA that meets the proposed requirements of item B will be required to provide enough capacity to store manure contaminated runoff or process wastewater resulting from a 25-year, 24-hour storm event plus any additional volume necessary to store the manure contaminated runoff or process wastewater between land application events. The amount of time between land application events is dependent on the type of land application equipment available, crop type, access to land application sites, and other factors. These factors are part of the manure management plan that is required to be developed for the specific facility and submitted with the permit application for the construction of the LMSA. By making the capacity requirements of item B dependent upon the site specific manure management plan, rather than a set time period, the owner of the facility has more flexibility and can develop a plan that best meets the facility.

The addition of item B makes it necessary to change the alphabetical listing of the existing items B and C to C and D.

69. Proposed Change – part 7020.2100, subpart 4

*Subp. 4. **Design plans and specifications.** The owner shall prepare and submit to the commissioner or county feedlot pollution control officer, for review and approval, design plans and specifications, including all assumptions and calculations, meeting the requirements of items A to N with a permit application or at least 90 days prior to the commencement of construction. Design plans and specifications, except plans and specifications for concrete-lined manure storage areas having a capacity of 20,000 gallons or less, must be prepared and signed by a design engineer.*

Justification

Subpart 4 has been modified in two ways. The first is the addition of the phrase “for review and approval” and the second is the adding the phrase “including all assumptions and calculations.” The first phrase has been

included to make it clear that when a feedlot owner submits plans and specification for an LMSA to the commissioner or county feedlot pollution control officer, that the plans and specifications are not automatically approved. These documents are reviewed for compliance with the requirements of this part, prior to approval.

The second phrase has been added to clarify that the design engineer who develops plans and specifications for an LMSA needs to include the information that the LMSA design is based on.

These changes are necessary to provide clarity in regard to the content and submittal of LMSA plans and specifications and to keep the rule consistent with the practice of the MPCA permitting staff.

70. Proposed Change – part 7020.2100, subpart 4, Item C

- C. *The estimated storage capacity by volume and time period based on the volume of manure, manure-contaminated runoff, and process wastewaters generated, which includes all assumptions and calculations and meets the criteria of subpart 3, item A or B, if applicable or as necessary to ensure adequate storage of manure, manure-contaminated runoff, and process wastewaters consistent with the proposed manure management plan.*

Justification

The addition of subpart 3, item B, ([see #58](#)) makes it necessary to modify item C to include in the design the requirements for the capacity of LMSAs that will only store manure contaminated runoff or process wastewater in accordance with the criteria provided in subpart 3, item B. Further, the added text clarifies that this information must be submitted even if there is no established requirement for a minimum storage volume as outlined in subpart 3, item A or B. An LMSA constructed at a smaller feedlot site is not required to meet a certain minimum storage capacity; however, this information is routinely gathered and considered as part of any LMSA design. It is reasonable to request that this information be included with the design plans and specifications, as it will be then be readily available if a question arises regarding the designed storage capacity of the structure or if a facility choose to expand or use the structure for an alternative/additional purpose.

71. Proposed Change – part 7020.2100, subpart 4, Item D

- D. *In addition to the designed storage volume in item C, ~~allowance for the greater capacity of the following for manure storage areas open to precipitation or subject to discharge of runoff into the manure storage area: a freeboard depth of not less than one foot. Liquid manure storage areas that store animal manure and that receive precipitation runoff must provide a freeboard depth of not less than one foot or the volume generated by a 25-year, 24-hour storm event, whichever is greater.~~*

- ~~(1) a volume capacity for precipitation and runoff without overflow for a 25-year, 24-hour or greater precipitation or rainfall event; or
(2) a freeboard depth of not less than one foot.~~

Justification

Item D was revised to provide clarity on the design requirements for the freeboard depth needed on an LMSA to limit the occurrences of accidental overflow due to unforeseen conditions and to address the freeboard requirement for an LMSA that meets the criteria of subpart 3, item B. This volume requirement is in addition to any volume requirements required at item C, above.

All LMSAs must provide for a minimum of one foot of freeboard, which provides additional capacity above the designed maximum liquid level. If the structure collects runoff, then the freeboard must be equal to the capacity necessary to store the runoff generated from the 25-year, 24-hour storm. In the case where this capacity is less than one foot of depth from the top of the structure, this part still requires that at least one foot of freeboard be maintained. For example, an LMSA stores manure and collects runoff. It is determined that the volume necessary to store the runoff from the 25-year, 24-hour storm can be contained within the top six inches of the storage structure. Even though six inches would be sufficient to satisfy storage of the runoff, a minimum of one foot of freeboard would still be required. Conversely, if it is determined that the volume necessary to store the runoff from the 25-year, 24-hour storm requires the volume capacity provided by the top two feet of the storage structure, the minimum freeboard would then be two feet.

For those LMSAs that meet the subpart 3, item B criteria, only one foot of freeboard is necessary because these LMSAs collect only manure contaminated runoff or process wastewater. The consideration of the increased freeboard volume resulting from the runoff from the 25-year 24-hour storm is only required for structures that store animal manure *and* runoff. The distinction is reasonable because, typically, these structures collect waste that results from precipitation, the volume necessary for storage of the 25-year, 24-hour storm event is accounted for within the design of the structure and must be maintained at all times.

72. Proposed Change – part 7020.2100, subpart 5, Item A

Subp. 5. Construction and notification requirements.

- A. *The owner shall construct the manure storage area according to the design plans and specifications submitted to the commissioner or the county feedlot pollution control officer and as approved by the commissioner or the county feedlot pollution control officer. Proposed engineering changes or modifications to the design plans and specifications, ~~related to the liner specifications, location, depth, or separation distance to bedrock,~~ must be submitted to the commissioner or county feedlot pollution control officer ~~prior to~~ for review and approval before commencement of construction related to the proposed change.*

Justification

As noted in [#69](#), above, in practice, the MPCA permit staff and the county feedlot pollution control officer review and approve plans. If deficiencies with the requirements are discovered with the plans as submitted, the MPCA permit staff and the county feedlot officer will identify the deficiencies to the engineer who designed the LMSA and specify the information needed to correct the deficiencies. This change is to clarify that it is the plans as approved — not as submitted — that should control the construction. Similarly, changes to the approved plans should be reviewed and approved before construction. There being no apparent reason why the rule required only changes to liner specifications to require re-approval, language related to the particular type of changes is deleted. In practice, the MPCA reviews all changes. A change to the size of the LMSA, for example, would be equally as important and permanent as a change to the liner design and should be reviewed for conformity to the standards in the rule.

73. Proposed Change – part 7020.2100, subpart 5, Item B

- B. An owner shall notify the commissioner or county feedlot pollution control officer and the design engineer of intent to construct a minimum of three business days prior to commencement of construction. Notification must be completed by letter, telephone, ~~or~~ facsimile, or electronic mail and include:*

Justification

Subpart 5, item B, establishes the notification requirements an owner must meet prior to commencement of construction of an LMSA. Item B has been revised to include “electronic mail” as a means of notification. This revision is needed because electronic mail (or e-mail) is a widely used and accepted form of communication. It is reasonable to use electronic mail as a means of notification because the transfer of electronic mail (i.e. mail sent and received) can be documented and verified.

74. Proposed Change – part 7020.2100, subpart 7

- Subp. 7. **Operation and maintenance.** The owner of a manure storage area shall operate and maintain the manure storage area according to ~~the operation and maintenance plan submitted in accordance with subpart 4, item N.~~ plans and specifications approved by the commissioner or county feedlot pollution control officer.*

Justification

The design plans and specifications developed by an engineer for the construction of an LMSA often include essential information on how the structure was built and how it should be maintained. Some elements of plans are related both to design and operation (i.e., freeboard). Also, as discussed in [#69](#), the original plans and specifications are not always approved as submitted, and it is not uncommon for design changes to be requested after initial approval but before the commencement of construction, as well as after construction has started. These requests are required to be submitted for review and approval and are then incorporated as part of the approved design plans and specifications.

Not all approvals for construction of an LMSA are part of a permitting process. Subpart 4 ([#68](#)) requires an owner to submit plans and specifications for the construction of any LMSA to the commissioner or county feedlot pollution control officer for review and approval. If the facility where the LMSA will be constructed houses fewer than 300 animal unit, the owner is not required to include a permit application with the plans and specifications submittal.

Therefore, it is reasonable to amend the rule to 1) specify the requirement for an owner to operate and maintain the LMSA according to approved plans and specifications, rather than those originally submitted and 2) to remove the reference to submittal of a permit application.

7020.2110 Unpermitted or Noncertified Liquid Manure Storage Areas.

75. Proposed Change – part 7020.2110, subparts 1 to 3

Subpart 1. ~~Schedule for facilities capable of holding 1,000 animal units or more or construction after June 3, 1991.~~ An owner who has an facility animal feedlot capable of holding 1,000 or more animal units and who uses an unpermitted or noncertified liquid manure storage area, or who uses an unpermitted or noncertified liquid manure storage area for which construction commenced after June 3, 1991, shall, by October 1, 2001:

- A. ~~reconstruct the liquid manure storage area has been reconstructed according to part 7020.2100;~~*
- B. ~~complete closure of the manure storage area according to part 7020.2025 and notify the commissioner or county feedlot pollution control officer at least three days prior to the date when the manure storage area will be closed. Notification must be completed by letter, telephone, or facsimile and include:~~*
 - (1) ~~the permit number, if applicable;~~*
 - (2) ~~the owner's name, and the name of the facility if different than the owner;~~*
 - (3) ~~the site location by county, township, section, and quarter section; and~~*
 - (4) ~~the dates when closure will take place;~~*
- C. ~~except as provided in item D, submit the liquid manure storage area was constructed before October 23, 2000, and there is a copy of the original design plans and specifications for the liquid manure storage area that were prepared by a design engineer prior to the actual time of construction and a construction certification report signed by a design engineer that certifies that the liquid manure storage area was designed and constructed according to applicable rules and regulations and standard engineering principles and practices at the time of construction;~~*
- D. ~~if the original plans and specifications for a Natural Resources Conservation Service (NRCS) or Soil Conservation Service (SCS) designed liquid manure storage area are no longer available, the owner must submit a certification by the manager of the NRCS office which was responsible for the design and oversight of the project, that the project was constructed according to the NRCS or SCS design plans and specifications and construction oversight; or~~*
- E. ~~conduct and submit the results of a water balance test that demonstrate the manure storage area is properly sealed to achieve a seepage rate of 1/56 inch per day or less.~~*

Subp. 2. ~~Schedule for facilities with capacity to hold fewer than 1,000 animal units.~~ Except as required in subpart 1 or as provided in subpart 3, an owner who uses an unpermitted or noncertified liquid manure storage area with the capacity to hold fewer than 1,000 animal units or the manure produced by fewer than 1,000 animal units shall, by October 1, 2005:

- A. ~~complete one of the provisions under subpart 1, items A to C; or~~*

~~B. have a design engineer or professional soil scientist licensed in the state of Minnesota conduct a soils investigation and submit a soils investigation report to the commissioner or county feedlot pollution control officer that complies with the following:~~

~~(1) the soils report must demonstrate that the liquid manure storage area meets Minnesota Natural Resources Conservation Service Practice Standard, Code No. 425, November 1991, or Code No. 313, January 1998, design and construction criteria for:~~

- ~~(a) sealing and lining waste storage ponds;~~
- ~~(b) vertical separation to groundwater; and~~
- ~~(c) vertical separation to bedrock;~~

~~(2) the soil profile information in subitem (5) must be obtained and recorded for at least two equally spaced locations around the perimeter of the liquid manure storage area for each quarter acre of manure storage surface area or portion thereof, and be within a horizontal distance of not more than 50 feet outside the top of the manure storage area sidewall;~~

~~(1) except as required in subitem (4), the information in subitem (5) must be recorded to a depth of at least five feet below the bottom of the liquid manure storage area;~~

~~(2) in areas that are susceptible to soil collapse or sinkhole formation, the information in subitem (5) must be recorded to a depth of at least ten feet below the bottom of the liquid manure storage area, or until bedrock is encountered;~~

~~(3) each soils record must identify the soil texture, depth to the regional water table, and depth to the seasonal high water table; and~~

~~(6) the soil profile information must be obtained by a method that can identify abrupt changes in soil texture and sand lenses of one half inch or greater throughout the soil profile.~~

~~Subp. 3. **Schedule for open lot feedlots with fewer than 300 animal units.** Owners meeting the eligibility requirements under part 7020.2003, subpart 4, that must complete closure or reconstruction of the manure storage area according to subpart 1, item A or B, shall comply with items A and B.~~

~~A. By October 1, 2005, the owner shall notify the commissioner or county feedlot pollution control officer that the manure storage area will be closed or reconstructed by October 1, 2010. Notification must be completed by letter, telephone, or facsimile and also include:~~

- ~~(1) the owner's name, and the name of the facility animal feedlot if different than the owner; and~~
- ~~(2) the site location by county, township, section, and quarter section.~~

~~B. By October 1, 2010, the owner shall complete closure or reconstruction.~~

Justification

In general, the requirements contained in subparts 1 to 3 were established to provide facilities of varied sizes of animal units with unpermitted or noncertified LMSAs options to address the noncompliance and resolve potential negative environmental impacts created or maintained by the structure. Each of these three subparts identified specific dates by which the owner must complete the requirements of the subpart to address the unpermitted or noncertified LMSA (i.e., October 1, 2001; October 1, 2005; and October 1, 2010). The compliance dates for these LMSAs are outdated and no longer apply. Therefore, the requirements contained in part Minn. R. 7020.2110, subparts 1, 2, and 3 have been deleted. The deletion of these subparts is reasonable and necessary to update the rule.

76. Proposed Change – part 7020.2110, subparts 4 and 5

*Subpart 4. **Operation Prohibition.** No person shall operate an unpermitted or noncertified liquid manure storage area except as provided in subpart 5.*

*Subp. 5. **Approval to Operate.** An owner of an unpermitted or noncertified liquid manure storage area that was installed and operated prior to October 23, 2000, and that serves a facility that has the capacity for less than 1,000 animal units must obtain approval from the commissioner or a county feedlot pollution control officer to continue to operate the liquid manure storage area. To be approved, the owner must submit the information in item A or B within the time frame requested by the commissioner or a county feedlot pollution control officer. This option is not available if the commissioner or a county feedlot pollution control officer has determined that the liquid manure storage area is a pollution hazard.*

- A. a report prepared by an engineer licensed in Minnesota that demonstrates that the liquid manure storage area was constructed according to standard engineering principles and practices at the time of construction and remains in good operating condition at the time the report is submitted. The commissioner or county feedlot pollution control officer must approve the report; or*
- B. evidence that the liquid manure storage area has a capacity of 20,000 gallons or less and meets the following criteria:*
 - (1) was constructed of man-made and noncorrosive materials,*
 - (2) was designed and constructed with standard engineering principles and practices at the time of construction; and*
 - (3) remains in good operating condition.*

Justification

The Agency proposes to prohibit operation of an unpermitted or noncertified LMSA (subpart 4) because the dates to get these LMSAs certified are well past, and it is reasonable to remove the option. However, the Agency has created two exceptions allowing a small facility to continue to use an unpermitted or noncertified LMSA (subpart 5), provided that LMSA is not a pollution hazard. A discussion on the proposed revision to the “unpermitted or noncertified LMSA” definition can be found in [#23](#), above.

Subpart 5, Item A, allows the owner of an unpermitted or noncertified LMSA who wishes to continue to operate it, the option of submitting a report prepared by a registered professional engineer to the commissioner or county feedlot pollution control officer for approval. The report must contain information that demonstrates that the LMSA was constructed according to the technical criteria that was applicable at the time of construction, and that at the time the report is developed the LMSA remains in good operating condition. It is reasonable to require a professional engineer to prepare this report because a professional evaluation is needed to determine whether an older facility is still in good operating condition, i.e., the liner is still sound and there are no obvious engineering failures visible.

Item B allows the owner of a very small LMSA constructed of man-made (i.e., not clay) and non-corrosive materials (i.e., not metal) to certify the LMSA without an engineer's report. This is reasonable because these facilities are low-risk and can generally be assessed without a professional's opinion based on the visible appearance of the structure, i.e., cracks in the concrete. This exemption is consistent with the design requirements for LMSAs in Minn. R. 7020.2100, subp. 4. These types of manure storage structures pose little risk to the environment because they were designed and constructed for the intended use by industry professionals, similar to prefabricated septic tanks, therefore the proposed requirement of item B is necessary and reasonable.

No exemption is provided for LMSAs that were constructed after the effective date of the prior rules. These facilities were required to submit design plans and specifications prepared by a design engineer and apply for a construction permit if the feedlot has 300 or more animal units, or to notify the agency or delegated county of the construction if the feedlot has less than 300 animal units. The MPCA assumes that these facilities were constructed in compliance with the rules. If they were not, the facility is considered to be in violation.

Any feedlot with 1,000 or more animal units is required to apply to the commissioner for an NPDES/SDS or SDS permit in accordance with part 7020.0405. The agency has identified approximately 1300 feedlots that meet this criterion and has completed an on-site inspection at each of these feedlots. Where an unpermitted or noncertified LMSA that was constructed prior to October 23, 2000 and has been found to be in use at one of these feedlots, the agency has included requirements for evaluating the structure in the permit to determine if it was constructed according to the design criteria in effect at the time it was constructed. As a result, these facilities should not need an opportunity to come into compliance.

7020.2120 Poultry Barn Floors.

77. Proposed Change – part 7020.2120, subpart 6

*Subp. 6. **Notifications of construction.** An owner shall notify the commissioner or county feedlot pollution control officer of intent to construct a minimum of three business days prior to commencement of construction and within three business days following completion of construction. Notification must be completed by letter, telephone, ~~or~~ facsimile, or electronic mail and include:*

Justification

Subpart 6 establishes the notification requirements an owner must meet prior to commencement of construction of a poultry barn floor. This subpart has been revised to include "electronic mail" as a means of notification. This revision is needed because electronic mail (or e-mail) is a widely used and accepted form of communication. It is reasonable to use electronic mail as a means of notification because the transfer of electronic mail (i.e. mail sent and received) can be documented and verified.

7020.2125 Manure Stockpiling Sites.

78. Proposed Change – part 7020.2125, subpart 1

*Subpart 1. **General.** This part describes requirements for permitting, design, construction, location, operation, and maintenance of short-term and permanent stockpiling sites. An owner of a stockpiling site must comply with part 7020.2005 and items A to D.*

Justification

The term “owner” has been added to subpart 1, to correctly identify that the stockpile owner is responsible for compliance with the part 7020.2125 rules, rather than the vague “stockpiling sites must comply,” as the existing rule language reads. This change is necessary and reasonable so that it is clear that the stockpile site owner is the person responsible for complying with the part 7020.2125 requirements for manure stockpiling sites.

79. Proposed Change – part 7020.2125, subpart 1, Item B

B. Manure must not be placed on a stockpiling site unless a three-to-one horizontal-to-vertical ratio can be maintained ~~or~~ and the manure has, at least, a 15 percent solids content.

Justification

The change of the word “or” to “and” is necessary to more closely align this item with what was originally intended, as identified in the SONAR for the October 23, 2000, Minn. R. Ch. 7020 revisions. That SONAR states, on page 179, “since the manure on a stockpile will require at least two moves; placement for storage and retrieval for land applying the manure, it must be in a condition to permit easy movement.” At that time, manure stockpiles largely consisted of animal excreta that had a solids content in excess of 15 percent or that was combined with an organic absorbent bedding material that would allow for liquid to be absorbed so that the stockpile slopes could be maintained at a 3:1 angle of repose. The animal excreta with 15 percent solids, or the animal excreta mixed with absorbent organic bedding, provided stockpile conditions that were conducive to, as stated in the SONAR, “at least two moves.” The intent of this language was to minimize surface area of the stockpile and prevent the stockpile from flowing/oozing away from its intended location.

Since the existing rules were enacted, however, other types of animal bedding have been utilized and mixed with animal excreta. Some of these bedding materials do not assist with establishing and maintaining an angle of repose of 3:1, but can meet the 15 percent solids content. For instance, sand laden dairy manure typically will test over 15 percent solids but the inorganic sand will not provide any assistance with absorption of liquids, nor will it help establish a manure stockpile that can maintain a 3:1 side slope ratio. It is reasonable to retain the solid content as part of the standard because frozen liquid manure is capable of being stacked in frozen blocks such that a 3:1 slope can be maintained, but it will flow away from the stockpile when it melts.

It is expected that the traditional manure stockpiles that utilize absorbent organic bedding will be able to continue as they have in the past as the manure will be able to maintain a 3:1 vertical to horizontal ratio and the mixture of animal excreta and absorbent organic bedding will be in excess of 15 percent solids. Therefore it is reasonable to change the word “or” to “and” in this instance to account for current manure management and handling practices that were not prevalent when the original SONAR was developed.

80. Proposed Change – part 7020.2125, subpart 2.

*Subp. 2. **Additional requirements for short-term stockpiling.** ~~By October 1, 2001, all~~ An owner of a short-term stockpile ~~sites~~ site must operate and maintain the stockpile such that:*

Justification

The existing rule requires compliance with the requirements of this subpart by October 1, 2001, which was approximately one year after the effective date of this rule part, and allowed feedlot owners time to plan for any operational changes the rule requires. The compliance date is outdated and is no longer needed for the administration of subpart 2. Also, the term “owner” has been included for reasons similar to the revised subpart 1 of this rule part. These changes are necessary and reasonable in order to update and provide clarity to the rule.

81. Proposed Change – part 7020.2125, subpart 2, Items A-E

- A. ~~have the manure is~~ removed from the site and land applied in accordance with part 7020.2225, within one year of the date when the stockpile was initially established;
- B. ~~have a vegetative cover is~~ established on the site for at least one full growing season prior to reuse as a short-term stockpiling site except for the following:
 - (1) sites located within the confines of a hoofed-animal open lot at a facility having the capacity to hold fewer than 100 animal units; and
 - (2) sites where manure is stockpiled for fewer than ten consecutive days and no more than six times per calendar year;
- C. it is not ~~be~~-located within:
 - (1) 300 feet of flow distance and at least 50 feet horizontal distance, to waters of the state, sinkholes, rock outcroppings, open tile intakes, and any uncultivated wetlands which are not seeded to annual farm crops or crop rotations involving perennial grasses or forages;
 - (2) 300 feet of flow distance to any road ditch that flows to the features identified in subitem (1) or 50 feet of any road ditch where subitem (1) does not apply;
 - (3) 100 feet of any private water supply or unused and unsealed well and 200 feet from any private well with less than 50 feet of watertight casing and that is not cased through a confining layer at least ten feet thick; and
 - (4) 100 feet from field drain tile that is three feet or less from the soil surface;
- D. ~~maintain a minimum distance of two feet is~~ maintained between the base of the stockpile and the seasonal high water table or saturated soils, as identified in the most recent USDA/NRCS published soil survey manual for the applicable county or based on a site-specific soils investigation; and
- E. ~~be prohibited~~ the stockpile is not placed on:
 - (1) ~~on~~-land with greater than six percent slope;
 - (2) ~~on~~-land with slopes between two and six percent, except where clean water diversions and erosion control practices are installed; and

- (3) ~~on~~ soils where the soil texture of the entire soil profile to a depth of five feet is coarser than a sandy loam as identified in the most recent ~~USDA/NRCS~~ published Soil Survey Manual or based on a site-specific soils investigation.

Justification

The full name of the United States Department of Agriculture and Natural Resources Conservation Service is included in both items D and E, to replace the existing acronyms, USDA/NRCS. This is being done to avoid any ambiguity. Further, the term “published” is added, and the word “Manual” deleted, to more accurately identify the document. The words “of the entire soil profile” have been added to provide clarity to the intent of the original rule. The current SONAR states: “[t]he agency expects this provision to impact only specialized incidents where a field may sit on a potential gravel resources or an old river bed.” It is reasonable to infer that this requirement would only apply to stockpiles that are to be located on extensive coarse textured soil deposits. Therefore, if the entire profile of the soil within the top five below the stockpile (excluding the plow layer/topsoil) is coarser than a sandy loam the stockpile is prohibited. If a soil that is finer than a sandy loam is encountered at any point within that same five feet below the base of the stockpile, the stockpile would be allowed.

82. Proposed Change – part 7020.2125, subpart 4

*Subp. 4. **Additional requirements for permanent stockpile sites.** ~~By October 1, 2001, all~~ An owner of a permanent stockpile sites site must comply with this part. The owner shall also install a liquid manure storage area according to part 7020.2100 to collect and contain manure-contaminated runoff, if necessary to comply with the requirements of part 7020.2003. An owner shall submit a permit application, as applicable, under part 7020.0405, subpart 1.*

Justification

The existing rule requires compliance with the permanent stockpile requirements of this subpart by October 1, 2001. The compliance date is outdated and is no longer needed for the administration of subpart 4. Also, the term “owner” has been included for reasons similar to the revised subpart 1 of this rule part. These changes are necessary and reasonable in order to update and provide clarity to the rule.

83. Proposed Change – part 7020.2125, subpart 4, Item E

- E. An owner shall notify the commissioner or county feedlot pollution control officer of intent to construct a minimum of three days prior to commencement of construction and within three days following completion of construction. Notification must be completed by letter, telephone, ~~or facsimile~~, or electronic mail and include:*

Justification

Item E establishes the notification requirements an owner must meet prior to commencement of construction of a permanent manure stockpile site. This subpart has been revised to include “electronic mail” as a means of notification. This revision is needed because electronic mail (or e-mail) is a widely used and accepted form of communication. It is reasonable to use electronic mail as a means of notification because the transfer of electronic mail (i.e. mail sent and received) can be documented and verified.

84. Proposed Change – part 7020.2125, subpart 4, Item F

- F. The owner shall ~~comply with subpart 2, item D.~~ ensure that the liner is installed and maintained above the seasonal high water table or saturated soils, as identified in the most recent soil survey for the applicable county or based on a site-specific soils investigation. Soil surveys are incorporated by reference under part 7020.0205.*

Justification

Experience in implementing these rules has shown that in the past, owners of permanent manure stockpiles have overlooked the requirement of item F to comply with subpart 2, item D, which is “maintain a minimum distance of two feet between the base of the stockpile and the seasonal high water table or saturated soils, as identified in the most recent published USDA/NRCS soil survey or based on a site-specific soils investigation.” To make it more clear for owners what item F requires, the rule language from subpart 2, item D, has also been placed into item F. The re-statement of the subpart 2, item D, requirement in item F does not include any change to the rule requirement. This change is necessary to better ensure that owners of permanent stockpiles comply with item F. It is anticipated that, since these areas will have a permanent stockpile pad installed, a tile system, similar to those commonly utilized in liquid manure storage area design, could be utilized to maintain the water table below the constructed pad.

85. Proposed Change – part 7020.2225, subpart 4

*Subp. 4. **Manure management plan requirements.** Item A indicates who must prepare a manure management plan and when the plan must be prepared. Item B lists when manure management plans must be submitted to the agency or delegated county for review. Item C describes when the manure management plan must be reviewed and revised. Item D lists the required elements of a manure management plan. Item E describes exceptions to manure management plans when manure ownership is transferred.*

- B. A manure management plan that complies with the requirements of item D must be submitted to the commissioner or delegated county when any one of the following conditions applies:*
- (1) when an owner submits a permit application to the commissioner for an NPDES, SDS, or ~~an~~ interim permit under part 7020.0405, subpart 1, item C, subitem ~~(2)~~ (3); or*

Justification

The change to Minn. R. 7020.2225, subp. 4, item B(1), is necessary to provide the correct reference to Minn. R. 7020.0405, subp. 1, item C, where an additional subitem has been added and the existing requirement moved from subitem (2) to subitem (3).

List of Witnesses

The MPCA anticipates that a public hearing may be necessary and is therefore planning to issue a Dual Notice of Intent to Adopt Rules without a Public Hearing, Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received. If the proposed rule amendments go to a public hearing, the MPCA anticipates having the following witnesses available to testify in support of the need and reasonableness of the rules:

1. Kim Brynildson, P.E., Watershed Division, MPCA. Ms. Brynildson is the lead author of the SONAR for the proposed rule amendments. She will be available to testify on the general reasonableness of the proposed rules.
2. George Schwint, P.E., Watershed Division, MPCA. Mr. Schwint, contributing author of the SONAR, will be available to testify on the technical requirements within the proposed rule amendments and the implementation of the unpermitted liquid manure storage area provisions.
3. Lisa Scheirer, Watershed Division, MPCA. Ms. Scheirer, contributing author of the SONAR, will be available to testify on the proposed amendments in general, NPDES/SDS permitting requirements and procedures, and water quality discharge standards.
4. Samantha Adams, Watershed Division, MPCA. Ms. Adams, contributing author of the SONAR, will be available to testify on the proposed amendments in general, and also on the practical aspects of implementing the rules while conducting feedlot inspections.
5. Kevin Molloy, Resource Management and Assistance Division, MPCA. Mr. Molloy is a contributing author of the SONAR and will be available to testify on issues related to this rulemaking's compliance with the procedural requirements of the Administrative Procedures Act and the rules of the Office of Administrative Hearings.
6. Wayne Cords, Supervisor, Watershed Division, MPCA. Mr. Cords will be available to testify on the proposed amendments in general, history of the feedlot program, the permitting program/process and efforts in the delegated county feedlot program.
7. Mark Jacobs, Supervisor, Watershed Division, MPCA. Mr. Jacobs will be available to testify on the proposed amendments in general, history of the feedlot program, the permitting program/process and efforts in the delegated county feedlot program.
8. Randy Hukriede, Manager, Watershed Division, MPCA. Mr. Hukriede will be available to testify on the proposed amendments in general, history of the feedlot program, the permitting program/process and efforts in the delegated county feedlot program.

List of Exhibits

Exhibit 1 – 2011 Revision to Minnesota Statute § 116.07, subdivision 7c. NPDES feedlot permitting requirements.

Exhibit 2 – EPA Large CAFO Thresholds and MPCA Animal Unit Equivalents by Animal Type and Size

Exhibit 3 – Minn. R. part 7053.0305, Subp. 2(B)

Exhibit 4 – *Code of Federal Regulations*, title 40, Part 412.13 Effluent limitations attainable by the application of the best available technology economically achievable (BAT)

Exhibit 5 – Request for Comments on Possible Amendments to Rules Governing Animal Feedlots, Minnesota Rules 7020)

Exhibit 6 – Feedlot Update Newsletter (Notice of Informational Meetings).

Exhibit 7 – List of Attendees at MPCA Public Meetings on Draft Rule Amendments

Exhibit 8 – Comparison of AFO Permits for Region V States and Neighboring States

Conclusion

Based on the foregoing, the proposed rules are both needed and reasonable.

Dated: May 20, 2013

John Linc Stine
Commissioner

EXHIBITS