

Minnesota Pollution Control Agency
Addendum to the Statement of Need and Reasonableness, dated June 8, 2015,
for Proposed Amendments to the Rules Governing Water Quality Variances,
Minnesota Rules Chapters 7050, 7052, and 7053
Revisor's ID No. 4136

On June 13, 2015, the Minnesota Legislature during special session voted to disband the Minnesota Pollution Control Agency (MPCA) Citizens Board (Board), effective July 1, 2015. The signed SONAR, submitted to the Governor's Office with the proposed rule amendments, was prepared and then signed by the MPCA Commissioner on June 8, 2015, prior to the Legislative action. The signed SONAR contains several references to the Board. The MPCA proposes revisions to address these references to the Board in the SONAR, as identified below.

1. SONAR Page 20 of 48

Subp. 6. **Agency final decision; variance requirements.** As described in subpart 5 above, the Agency must public notice its' preliminary determination to grant a variance in accordance with the procedural rules in *Minn. R. 7000.7000*. This new subpart is added to establish that the Agency must then make a final decision on the variance request that conforms with these same procedural rules. Under *Minn. R. 7000.7000*, the Commissioner ~~or MPCA Citizens' Board~~ has the authority to make the final decision on variance applications pursuant to *Minn. Stat. § 116.02*, and to approve or deny each variance application. If the Agency makes the final decision to grant the variance, the variance must then be approved by USEPA. Water quality standards variances granted by the Agency under chapters 7050 and 7052 must be submitted to and approved by USEPA (see subpart 4).

Item 1 identifies that new subpart 6 establishes who makes the final decision on a variance request and that the decision conform to the procedural rules in *Minn. R. 7000.7000*. These rules provide that the MPCA Commissioner or Board has the authority to make variance decisions pursuant to *Minn. Stat. § 116.02*. Because the Board has been disbanded, the reference to the MPCA Citizens' Board in subpart 6 is deleted.

2. SONAR Page 32 of 48

What are the costs to the MPCA of implementation and enforcement?

Cost associated with the implementation and enforcement of these proposed rules includes MPCA staff time and staff resources to review a variance request. This includes guiding the requester on information needs, and reviewing information submitted, including ambient water monitoring (if applicable). MPCA document preparation includes the variance preliminary approval, draft permit, permit factsheet, public notice, and finally, ~~the required MPCA Citizens' Board Decision Item documents~~ any decision documents, as needed. Costs generally differ based on the complexity of the specific variance request.

The USEPA estimated costs associated with additional development and documentation of variance requests by states and tribal government in its 2013 proposed rules. More information is available in Section 2.B above and 'Economic Analysis for the Water Quality Standard Regulatory Clarification (Proposed Rule), June, 2013 (EPA-HQ-OW-2010-0606). If the proposed federal rules are adopted, USEPA estimates that the development and documentation of a single variance request would require, on average, approximately 165 to 195 labor hours. The

MPCA believes this value to be conservative and expects that preparing the necessary documentation and ~~MPCA Board Item~~ would add significant additional time, possibly doubling USEPA's cost estimate.

Item 2 identifies that MPCA costs associated with the implementation and enforcement of the proposed rules include preparing Board Items and Board decision documents. Because the Board has been disbanded, the need to prepare documents for the Board no longer exists, and the references to Board Item documents are deleted.

Under *Minn. R. 7000.7000*, the Commissioner has the authority to make the final decision on variance applications pursuant to *Minn. Stat. § 116.02*. With the Board disbanded, the MPCA expects that the time previously spent by staff preparing for Board meetings (e.g. Board Decision Item documents, presentations) will be replaced in part by preparing similar documentation for consideration by the Commissioner necessary to document and record the MPCA's decision making process for a variance. Therefore, there may be some savings; however, it is difficult to know how much if any.

3. SONAR Page 33 of 48

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

The MPCA's flexibility in rulemaking concerning variances is limited by USEPA's requirement that the state's program be consistent with USEPA rules and policy. The USEPA does not provide for a less intrusive or costly method of implementing variances. Therefore, the MPCA is limited in its ability to entertain different methods. The proposed rule amendments aim to increase clarity and understanding of variance reviews and submittals. A less intrusive method to achieve the purpose of the proposed rules may be to implement variances through policy; however, this would not provide for consistency in application across the state, would not carry the weight of law as compared to a variance implemented through a regulatory mechanism such as the proposed rules, and would be subject to claims of un-promulgated rulemaking. Additionally it is not clear that implementing variances through policy is consistent with existing state and federal regulations that require variances be granted by the ~~MPCA Citizen's Board~~ Commissioner and approved by USEPA.

Item 3 identifies that with the MPCA's limited flexibility in methods of implementing variances there are no less costly methods for achieving the purpose of the rule. As noted above, there may be some cost savings without the need to prepare for Board meetings; however, it is difficult to know how much if any. Again, with the Board disbanded, the reference to the MPCA Citizens' Board is deleted.