

**STATE OF MINNESOTA  
MINNESOTA POLLUTION CONTROL AGENCY**

**Adoption of Amendments to Water Quality  
Standards: Minnesota Rules, Chapters 7050 and 7052,  
relating to Tiered Aquatic Life Uses (TALU) and  
Modification of Class 2 Beneficial Use Designations**

**OAH Docket No. 5-9003-33998  
Revisor's No. 4237**

**FINDINGS OF FACT AND  
ORDER ADOPTING RULES**

**FINDINGS OF FACT**

1. The Minnesota Pollution Control Agency (MPCA) published a Dual Notice of Intention to Adopt the rule amendments identified above without a public hearing, unless 25 or more people requested a hearing, in the *State Register* on December 19, 2016 (41 SR 659).
2. During the public comment period on the proposed amendments, which ended on February 2, 2017, the MPCA received more than 25 valid requests to hold a public hearing on the proposed rules.
3. Administrative Law Judge (ALJ) James Mortenson conducted a public hearing on the proposed rule amendments on February 16, 2017.
4. In response to comments received during the public comment period and the public hearing, the MPCA made modifications to the rule amendments proposed in the December 19, 2016, *State Register*. These modifications were identified in the MPCA Post-Hearing Response to Public Comments (dated March 17, 2017) and the MPCA Rebuttal Response to Public Comments (dated March 24, 2017).
5. In the MPCA Post-Hearing Response to Public Comments and the MPCA Rebuttal Response to Public Comments, the MPCA also responded to comments received that did not result in the MPCA making additional modifications to the proposed amendments.
6. Judge Mortenson issued his Report of the ALJ (Report) on this matter on April 24, 2017. In the Report, Judge Mortenson concluded that the MPCA complied with all notice and procedural requirements in Minnesota Statutes Chapter 14, Minnesota Rules Chapter 1400, and other applicable laws. Further, he recommended that the proposed rule amendments as modified be adopted. Specifically, Judge Mortenson found that the MPCA:
  - a. Demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of the facts in the record within the meaning of Minn. Stat §§ 14.14 and 14.50;
  - b. Demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3, and 14.50 (i) and (ii);
  - c. Demonstrated that the rules meet the definition of “rule” under Minn. Stat. § 14.02, subd. 4;

- d. Fulfilled the procedural requirements of Minn. Stat. § 14.14 and all other procedural requirements of law or rule, including its additional notice requirements;
  - e. Properly incorporated by reference into rules: 1) *Calibration of the Biological Condition Gradient for Streams of Minnesota*, Gerritsen et al. (2012); 2) *Fish data collection protocols for lotic waters in Minnesota*, MPCA (2017); 3) *Macroinvertebrate data collection protocols for lotic waters in Minnesota*, MPCA (2017); and 4) *Development of Biological Criteria for Tiered Aquatic Life Uses*, MPCA (2016);
  - f. Made the determinations required by Minn. Stat. § 14.127, which the ALJ approved; and
  - g. Made the determination required by Minn. Stat. § 14.128, which the ALJ approved.
7. The MPCA adopts the findings and conclusions in the Report of the ALJ, dated April 24, 2017, and incorporates the Report into this Order.
8. The Minnesota Revisor of Statutes (Revisor), when incorporating the MPCA's modifications to the rule amendments proposed in the December 19, 2016, *State Register*, which the ALJ approved, made the following minor grammatical changes as required to certify the rule for adoption:
- a. **Minn. R. part 7050.0220, Subp. 1, Item A.** The Revisor inserted a comma after the 2Ae classification (line 20.16 in the attached rule amendments);
  - b. **Minn. R. part 7050.0220, Subp. 3a.** The Revisor inserted a comma after the 2Ae classification (line 21.25 in the attached rule amendments);
  - c. **Minn. R. part 7050.0222, Subps. 2c, 2d, 3c, 3d, 4c, and 4d.** The Revisor changed the word "habitat" at the end of each of these headings (lines 40.15, 42.20, 56.21, 59.15, 76.15, 79.10 in the attached rule amendments) back to the plural form "habitats" to parallel with the plural use of the term in the text of each subpart;
  - d. **Minn. R. 7050.0222, Subp. 2c, Item A(2).** The Revisor capitalized the titles of the referenced documents (lines 40.23, and 41.3 to 41.4 in the attached rule amendments);
  - e. **Minn. R. 7050.0222, Subp. 2c, Item A(4).** The Revisor capitalized the title of the referenced documents and added the author's name (lines 41.13 to 41.15, and 41.19 to 41.20 in the attached rule amendments);
  - f. **Minn. R. 7050.0222, Subp. 2c, Item A(5).** The Revisor inserted the term "parts" before the references to 7050.0222 and 7052.0100 (line 42.4), inserted the term "part" before the reference to 7050.0222 (line 42.5), and, in the last sentence, moved the location of the word "only" to the end (line 42.6 in the attached rule amendments);
  - g. **Minn. R. 7050.0222, Subp. 2d.** The Revisor determined that the modification the MPCA made at lines 43.5 to 43.6 in the attached rule amendments does not require an item A, as proposed;

- h. **Minn. R. 7050.0222, Subp. 3c, Item A(2).** The Revisor capitalized the titles of the referenced documents (lines 57.3, and 57.7 to 57.8 in the attached rule amendments);
  - i. **Minn. R. 7050.0222, Subp. 3c, Item A(4).** The Revisor capitalized the titles of the referenced documents and added the author's name (lines 57.17 to 57.19, and 57.23 to 57.24 in the attached rule amendments);
  - j. **Minn. R. 7050.0222, Subp. 3c, Item A(5).** The Revisor inserted the term "parts" before the references to 7050.0222 and 7052.0100 (line 58.7), inserted the term "part" before the reference to 7050.0222 (line 58.9), and, in the last sentence, moved the location of the word "only" to the end (line 58.10 in the attached rule amendments);
  - k. **Minn. R. 7050.0222, Subp. 3d.** The Revisor determined that the modification the MPCA made at lines 61.7 to 61.9 in the attached rule amendments does not require an item A, as proposed;
  - l. **Minn. R. 7050.0222, Subp. 4c, Item A(2).** The Revisor capitalized the titles of the referenced documents (lines 76.23, and 77.3 to 77.4 in the attached rule amendments);
  - m. **Minn. R. 7050.0222, Subp. 4c, Item A(4).** The Revisor capitalized the title of the referenced documents and added the author's name (lines 77.13 to 77.15, and 77.19 to 77.20 in the attached rule amendments);
  - n. **Minn. R. 7050.0222, Subp. 4c, Item A(5).** The Revisor inserted the term "parts" before the references to 7050.0222 and 7052.0100 (line 78.4), inserted the term "part" before the reference to 7050.0222 (line 78.6), and, in the last sentence, moved the location of the word "only" to the end (line 78.6 in the attached rule amendments);
  - o. **Minn. R. 7050.0222, Subp. 4d.** The Revisor determined that the modification the MPCA made at lines 81.1 to 81.3 in the attached rule amendments does not require an item A, as proposed; and
  - p. The Revisor also modified the hyperlinks for documents referenced in the rule amendments. The modified hyperlinks are to the specific MPCA webpage where the documents are housed rather than the hyperlink to the general MPCA webpage (lines 41.11, 41.16, 41.21, 41.24, 57.15, 57.20, 57.25, 58.3, 77.11, 77.16, 77.21, 77.24, 85.1, 86.1, 87.5, 88.14, 89.19, 90.21, 91.18, 92.15, and 93.12 in the attached rule amendments).
9. It is reasonable to make the minor, grammatical changes to the rule amendments required by the Revisor to certify for adoption.
10. The attached rule amendments, dated July 25, 2017, in the form approved by the Revisor, incorporate the modifications the MPCA made in response to public comments received and as approved by Judge Mortenson in his Report.
11. The proposed rule amendments as modified are necessary and reasonable.

12. As required by Minn. Stat. §14.19, the MPCA intends to submit its Notice of Adoption of Rules to the *State Register* within 180 days after the issuance of the ALJ's Report.

**ORDER TO ADOPT RULES**

**IT IS ORDERED** that the above captioned rules, in the form set out in the *State Register* on December 19, 2016, with modifications as indicated in the Revisor's draft file number AR4237, dated July 25, 2017, are hereby adopted under authority granted in Minn. Stat. § 115.03 subd. 1(e).

9/21/17  
Date

  
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John Linc Stine  
Commissioner  
Minnesota Pollution Control Agency