

Minnesota Pollution Control Agency

Request for Comments on Planned Amendments to Water Quality Sulfate Standard to Protect Wild Rice and Identification of Wild Rice Waters. Minnesota Rules Chapters 7001, 7050, 7052, and 7053.

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) requests comments on planned changes to rules governing water quality standards, *Minnesota Rules* chapter 7050 (Waters of the State). The MPCA is considering amendments to the water quality standards to:

- 1) revise and update the sulfate standard for the protection of wild rice
- 2) specifically identify wild rice waters where the sulfate standard applies
- 3) replace the existing wild rice sulfate standard for Class 4 waters with a new wild rice water use classification that includes the above changes
- 4) make conforming changes to *Minnesota Rules* chapters 7001 (Permits and Certifications), 7052 (Lake Superior Basin), and 7053 (State Waters Discharge Restrictions)

Comments should be submitted according to the **Public Comment** section below.

Subject of Rules: The MPCA is considering significant changes to the existing rules that apply to surface waters of the state identified as wild rice waters. Minnesota's surface waters are currently classified according to a number of possible beneficial uses (e.g., Class 1-drinking water or Class 2-aquatic life) and physical and chemical criteria apply according to those uses. The rules currently:

- contain a sulfate standard for Class 4 waters (agriculture and wildlife) that applies to water used for production of wild rice
- specifically identify certain surface waters as "wild rice waters"

The changes the MPCA is considering are discussed in the **Draft Proposal** section below and are based on information obtained or developed through legislatively mandated research and consultation with entities associated with wild rice issues. With this notice the MPCA is seeking comment about and information relevant to the draft proposal from a wider community of interested parties. Additional details about the MPCA's draft proposal can be viewed at <http://www.pca.state.mn.us/r6wxf9> (Draft proposal for protecting wild rice from excess sulfate).

The MPCA is seeking specific comments on:

- 1) the draft proposal and the technical basis and methodology used to develop an equation to calculate water body-specific sulfate standards
- 2) other ways to address the negative effects of elevated sulfate concentrations on wild rice
- 3) the draft list of surface waters to be identified as wild rice waters where a sulfate standard will be applied
- 4) additional information and data relevant to the changes being considered

The state rulemaking process requires agencies to consider several specific topics as rules are developed. In addition to seeking general or technical comments on the draft proposal and supportive information, the MPCA is specifically asking for comment on the expected economic effect and cumulative effect¹ of the changes being considered (*Minnesota Statutes* §14.131), and on whether a local government may be required to adopt or amend an ordinance or other regulation in response to the changes (*Minnesota Statutes* § 14.128).

¹ Cumulative effect means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules.

The MPCA may also change *Minnesota Rules* chapters 7001, 7052 or 7053 as needed for internal consistency with the changes that will be proposed to *Minnesota Rules* chapter 7050 or to make minor conforming changes or corrections determined to be needed in the course of the rulemaking process.

Draft Proposal. The MPCA is considering changing the existing rules to establish a new wild rice beneficial use classification and supporting sulfate standard. The changes being considered will:

- 1) include an equation developed to calculate a water body-specific sulfate standard necessary to protect the wild rice resource based on the site-specific data
- 2) establish criteria that will be used to determine which surface waters of the state will be designated as wild rice waters
- 3) provide a list of wild rice waters where a sulfate standard is to be applied

The first element of the new wild rice use class is the sulfate standard to protect wild rice. *Minnesota Rules* pt. 7050.0224 currently establishes a sulfate standard of 10 mg/L “applicable to water used for production of wild rice during periods when the rice may be susceptible to damage by high sulfate levels.” The MPCA has determined that sulfate is not directly toxic to wild rice, but sulfate in surface water can be converted into potentially toxic levels of sulfide in the sediment in which wild rice is rooted. The MPCA proposes to establish water body-specific sulfate standards using an equation that incorporates factors that affect the conversion of surface water sulfate into sulfide in sediment. This equation calculates a protective sulfate concentration in the water based on concentrations of sulfide in the sediment, sediment iron, and sediment organic carbon. More detailed information about this equation and the supporting documentation, including the research and data used to develop the equation, can be found at <http://www.pca.state.mn.us/index.php/view-document.html?gid=22595> (March 2015 proposed approach for Minnesota’s sulfate standard to protect wild rice).

The second element of the new wild rice use class will be the criteria used to determine how waters will be identified as “wild rice waters” (formerly referred to as “water used for production of wild rice”). The draft proposal establishes a minimum threshold based on the number of wild rice stems on a given water body in order for it to be considered a wild rice water where the equation-based sulfate standard will apply. The MPCA is considering a minimum wild rice stem count threshold for lakes and wetlands of 8,000 stems per water body, and 800 stems per river mile for streams and rivers.

The third element of the new wild rice use class will be the list of the waters proposed for identification as “wild rice waters” where the equation-based sulfate standard will apply. Currently, *Minnesota Rules* pt. 7050.0470, subp. 1 lists a limited number of wild rice waters within the Lake Superior drainage basin. The draft proposal significantly expands the number of wild rice waters on a statewide basis. As of March 2015, the MPCA has compiled a draft list of approximately 1,300 lakes, wetlands, streams, and rivers that appear to meet the minimum stem count thresholds being considered. The Minnesota Department of Natural Resources’ February 15, 2008 report to the Minnesota Legislature titled *Natural Wild Rice in Minnesota* was a primary source of information from which the draft list of MPCA wild rice waters was compiled. The MPCA has compiled a second list of water bodies where additional information is needed in order to determine whether wild rice is present at or above the minimum stem count thresholds. Both lists of waters, and the references to the information sources used to compile these lists, are provided at <http://www.pca.state.mn.us/r6wxpf9> (Draft proposal for protecting wild rice from excess sulfate). The MPCA is seeking comment on and wild rice information related to the waters identified on both these lists, particularly regarding wild rice populations in these waters since November 28, 1975, the date the U.S. Environmental Protection Agency promulgated the first Federal water quality standards relating to existing uses.

Plain English Summary: This Request for Comments is the MPCA's legal notice of its intent to begin rulemaking. The MPCA has developed a draft proposal as a result of several years of information gathering, research, and consideration of input about sulfate's effect on wild rice. This is an opportunity to provide comments on a draft proposal and also an opportunity to provide information or comment on any relevant issues that you feel have not been addressed in the draft proposal. We want your comments on the **Subject of Rules** and the **Draft Proposal** sections above and also the additional information provided on the rulemaking webpage at <http://www.pca.state.mn.us/r6wxpf9> (Draft proposal for protecting wild rice from excess sulfate). If you have relevant ideas or information related to this topic that we need to consider, please provide them. Submitting your ideas and information at this stage in the rule development process allows the MPCA to consider your ideas, information and issues you may raise before the MPCA proposes rule language and holds hearings.

Where to Get More Information: In addition to the webpage that provides information about the draft proposal <http://www.pca.state.mn.us/r6wxpf9> (Draft proposal for protecting wild rice from excess sulfate), a webpage with more general information has been established for this rulemaking at <http://www.pca.state.mn.us/ktqh1083> (Minnesota's sulfate standard to protect wild rice). Rulemaking information will be posted in the **Rulemaking documents** tab. Draft rule language is not available at this time.

If you are interested in being notified of activities related to this rulemaking, including when rules are proposed and the dates of hearings, please register at: https://public.govdelivery.com/accounts/MNPCA/subscriber/new?topic_id=MNPCA_56 (MPCA GovDelivery-Rulemaking: Sulfate Standard for Wild Rice).

Persons Affected: This rulemaking potentially affects a wide range of persons and entities. Wild rice, and maintaining the level of water quality that supports wild rice, is important to many persons. Wild rice is economically important to persons who either harvest it directly or who benefit by the maintenance of ecosystems that contain wild rice when they pursue activities such as fishing, tourism, or hunting. Wild rice is important to all persons with an interest in the quality of Minnesota's waters and the wildlife they support, and is particularly important to Native Americans from a spiritual and cultural perspective. Persons associated with businesses and municipalities that discharge wastewater may be affected by the standard for sulfate and the waters designated as wild rice waters to the extent the changes being considered may affect the operation of those facilities.

The draft proposal designating specific wild rice waters may affect persons differently depending on whether they: are a discharger to, or upstream of, a wild rice water; are a property owner on or near a wild rice water; or have a specific interest in the quality of water and wild rice in a particular water body. Additionally, persons may also be affected if their interest is in waters that are not included in the draft proposed list of wild rice waters or if they believe the draft criteria that identify wild rice waters are not valid.

The MPCA is also interested in hearing from persons on whether the repeal of the current sulfate standard for Class 4 agricultural use will affect persons who grow wild rice commercially.

Statutory Authority: *Minnesota Statute* § 115.03, subd. 1 grants the MPCA general authority to promulgate and/or revise the rules relating to the pollution of any of the waters of the state; and *Minnesota Statute* § 115.44 grants the MPCA authority to group designated waters of the state into classes.

Public Comment: Interested persons or groups may submit written comments or information on these planned rule amendments until 4:30 p.m. on December 18, 2015. Comments or information should be submitted to Carol Nankivel at the address below.

The comments received during this comment period will be considered by the MPCA in the development of proposed rules but will not be part of the MPCA's rulemaking record submitted to the administrative law judge at the time of hearing. If you want the administrative law judge to review your comments, you must resubmit them when the MPCA publishes proposed rules for comment.

Note: The MPCA will, to the extent possible, either post the comments received in response to this notice on its rulemaking webpage, <http://www.pca.state.mn.us/ktqh1083> (Minnesota's sulfate standard to protect wild rice) or provide notice on the webpage of how comments will be available for public viewing.


MPCA Contact Person: Written comments and requests for more information on these planned rule amendments should be directed to:

Carol Nankivel
Minnesota Pollution Control Agency
520 Lafayette Road North, St. Paul MN 55155-4194

Telephone: 651-757-2597 or **Toll-free:** 1-800-657-3864 **email:** minnrule7050.pca@state.mn.us

Alternative Format: This information is available in an alternative format, such as large print, Braille, or audio through the contact person identified above.

10/12/15
October 12, 2015


John Linc Stine, Commissioner
Minnesota Pollution Control Agency