

Minnesota Pollution Control Agency

Environmental Assessment and Outcomes Division

NOTICE OF HEARING

Proposed Rules Amending the Sulfate Water Quality Standard Applicable to Wild Rice and Identification of Wild Rice Waters, Minnesota Rules parts 7050.0130, 7050.0220, 7050.0224, 7050.0470, 7050.0471, 7053.0135, 7053.0205, and 7053.0406; Revisor's ID Number 4324.

Public Hearing. The Minnesota Pollution Control Agency (MPCA) intends to adopt rules after a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules* parts 1400.2200 to 1400.2240, and the Administrative Procedures Act, *Minnesota Statutes* §§ 14.131 to 14.20. The MPCA will hold public hearings on the above-named rules at the following dates, times, and locations:

- October 23, 2017: From 10:00 to 4:00 at the Harold E. Stassen Building (Skjestad Room), 600 North Robert St., St. Paul, MN 55101 http://www.revenue.state.mn.us/about_us/Pages/directions.aspx
- October 24, 2017: From 4:00 to 9:00 at Mesabi Range College (F100 Theater), 1001 West Chestnut St., Virginia, MN 55792 <http://www.mesabirange.edu/about/map.html>
- October 25, 2017: From 4:00 to 9:00 at Bemidji State University (Beaux Arts Ballroom), 1500 Birchmont Drive Northeast, Bemidji, MN 56601
<http://www.bemidjistate.edu/about/campus/directions/>
- October 30, 2017: From 4:00 to 9:00 at Central Lakes Community College (Cafeteria), 501 West College Drive, Brainerd, MN 56401 <http://www.clcmn.edu/brainerd-campus-maps/>
- November 2, 2017: From 4:00 to 9:00 at the MPCA's offices at:
 - Detroit Lakes, 714 Lake Avenue, Suite 220, Detroit Lakes, MN 56501
<https://www.pca.state.mn.us/about-mpca/detroit-lakes-office>
 - Duluth, 525 Lake Avenue South, Suite 400, Duluth MN 55802
<https://www.pca.state.mn.us/about-mpca/duluth-office>
 - Mankato, 12 Civic Center Plaza, Suite 2165, Mankato, MN 56258
<https://www.pca.state.mn.us/about-mpca/mankato-office>
 - Marshall, 504 Fairgrounds Road, Suite 200, Marshall, MN 56258
<https://www.pca.state.mn.us/about-mpca/marshall-office>
 - Rochester, 18 Wood Lake Drive Southeast, Rochester, MN 55904
<https://www.pca.state.mn.us/about-mpca/rochester-office>
 - St. Paul, 520 Lafayette Road, St. Paul, MN 55155-4194
<https://www.pca.state.mn.us/about-mpca/st-paul-office>

The November 2, 2017 hearing will be video linked and the hearing will be conducted simultaneously in the locations listed above. The administrative law judge will hear testimony from all of the video locations. Please note that access to the MPCA offices is controlled. To attend a hearing you will be asked to sign in at the security desk and provide photo identification, such as a driver's license.

Additional information regarding the hearings and the rules being proposed is provided in the rulemaking tab at <https://www.pca.state.mn.us/water/protecting-wild-rice-waters>

All interested or affected persons will have an opportunity to participate in the public hearing by submitting either oral or written statements, arguments, or data. Written statements may be submitted without appearing at the hearing. Refer to **Public Comment** section of this notice for information on submitting statements.

Subject of Rules. The MPCA is proposing to revise the existing water quality standard that protects wild rice from the impacts of sulfate. The existing water quality standard needs to be revised to clarify regulatory standards, incorporate new scientific understanding of the impacts of sulfur compounds on wild rice, and respond to a legislative mandate.

To revise the water quality standard, the MPCA is proposing to amend *Minnesota Rules* chapters 7050 (Waters of the State) and 7053 (State Waters Discharge Restrictions). The amendments:

- Revise the current sulfate standard to incorporate current scientific understanding of the impacts of sulfur compounds on wild rice. The MPCA conducted extensive research and obtained information and advice regarding the effect of sulfate on wild rice. This research has shown that sulfide in sediment, rather than sulfate in water, is the primary cause of impacts to wild rice. Sulfide levels, however, are linked to sulfate levels, as sulfate converts to sulfide based on site-specific sediment conditions. The MPCA has identified a protective level of sulfide and is proposing:
 - An equation-based standard to translate the protective porewater sulfide level to a protective level of sulfate in the surface water based on the levels of iron and carbon present in the sediment; and
 - An alternate standard based on the direct measurement of sulfide in sediment porewater.
- List waters where the water quality standard will apply to protect rice from impacts of sulfate. The MPCA is proposing to identify as wild rice waters approximately 1,300 rivers, lakes, streams and wetlands where wild rice has been harvested by humans or used by wildlife as a food source. The MPCA's identification of these waters as wild rice waters is based on review of multiple sources of information.
- Clarify how to implement the standard, including what it means to meet or exceed the standard and how permit limits may be developed to ensure discharges do not result in an exceedance of the standard. The MPCA is also proposing sampling procedures and analytical methods that must be used to calculate the sulfate standard and determine porewater sulfide concentrations.

Additional information about the proposed rules is provided at the rulemaking webpage at <https://www.pca.state.mn.us/water/protecting-wild-rice-waters>. A free copy of the proposed rules is available upon request from the MPCA contact identified below.

Specific Topic Areas of Potential Change. The proposed rules represent the MPCA's best efforts based on the information available. However, many aspects of the proposal are controversial and the MPCA expects to receive significant comment and additional information. The MPCA is providing notice that the following topics are areas of potential change to the rules as proposed:

- Based on available information, the proposed rules identify approximately 1,300 wild rice waters. Information may be presented that may identify additional waters or remove proposed wild rice waters from the list.
- The proposed rules establish a protective sulfide concentration of 120 micrograms/liter. The research and data analysis on which this standard is based has been the subject of significant interest prior to rulemaking and it is possible that new information will result in a change to the proposed protective sulfide concentration, and/or the resulting equation to convert this to a numeric sulfate standard.
- The sampling and analytical methods proposed to be incorporated by reference (*Sampling and Analytical Methods for Wild Rice Waters, MPCA 2017*) are based on the MPCA's expected needs for collection of sediment and porewater to establish the protective sulfate concentration. Comments may provide additional information that expands or changes the proposed methods needed to characterize the sediment and porewater conditions at a wild rice water.

- The proposed rules specify the duration and frequency of the standard, and implementation provisions intended to clarify how to evaluate discharges to determine if permit limits are needed, and if so, to set such limits. Comments may result in changes relating to how the standard is implemented.

Statement of Need and Reasonableness. The statement of need and reasonableness contains a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. The statement of need and reasonableness is available for review at <https://www.pca.state.mn.us/water/protecting-wild-rice-waters>, all of the MPCA's offices (<https://www.pca.state.mn.us/about-mpca/mpca-offices>), and the Office of Administrative hearings <https://mn.gov/oah/about-us/contact-us/>. You may contact the MPCA contact person identified below to obtain a copy for the cost of reproduction.

Administrative Law Judge. Administrative Law Judge LauraSue Schlatter will conduct the hearings. Judge Schlatter's Legal Assistant Katie Lin can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota, 55164-0620, telephone (651) 361-7900, and fax (651) 539-0310. The rule hearing procedure is governed by *Minnesota Statutes*, §§14.131 to 14.20, and by the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2000 to 1400.2240. You should direct questions about the rule hearings procedure to the administrative law judge.

Statutory Authority. The MPCA is proposing the rules based on two general authorities, *Minnesota Statutes*, §115.03, subdivision 1 (e) and *Minnesota Statutes*, §115.44, subdivision 2. Additional statutory authority is provided in *Minnesota Laws, 2011 First Special Session*, chapter 2, article 4, section 32, and *Minnesota Laws, 2017 Regular Session*, chapter 93, article 2, section 149.

Public Comment. All interested or affected persons, including representatives of associations and other interested groups, will have an opportunity to participate. The administrative law judge will accept your comments on the proposed amendments, either orally at the hearing, or in writing at any time from the date of this Notice until the close of the hearing record. Submit written comments **to the administrative law judge at the address above or via the Office of Administrative Hearings Rulemaking e-comments website at <https://minnesotaoah.granicusideas.com/discussions>**. All comments and evidence that you present should relate to the proposed rules.

You may also submit written material to the administrative law judge to be recorded in the hearing record for five working days after the conclusion of the public hearings. The administrative law judge may order this five-day comment period extended for a longer period but for no more than 20 calendar days. (Information about the deadline for submitting comments will be provided on the MPCA's rulemaking website at <https://www.pca.state.mn.us/water/protecting-wild-rice-waters>.)

Following the comment period, there is an additional five-working-day rebuttal period during which the MPCA and any interested person may respond in writing to any comments or information submitted. No one may submit additional evidence during the five-day rebuttal period.

The Office of Administrative Hearings must receive all comments and responses submitted to the administrative law judge no later than 4:30 p.m. on the date established for the close of comments. Comments submitted after the close of the comment period will not be accepted or considered part of the record. All comments or responses received are public and will be available for review at the Office of Administrative Hearings and at <https://minnesotaoah.granicusideas.com/discussions>.

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

Modifications. The MPCA may modify the proposed rules as a result of the rule hearing process. It must support modifications by data and views presented during the rule hearing process. The adopted rules may not be substantially

different than the proposed rules, unless the MPCA follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the MPCA encourages you to participate.

Adoption Procedure after the Hearing. After the close of the hearing record, the administrative law judge will issue a report on the proposed rules. You may ask to be notified of the date when the judge's report will become available, and can make this request at the hearing or in writing to the administrative law judge at the address above.

You may also ask to be notified of the date that the MPCA adopts the rules and files them with the Secretary of State, or ask to register with the MPCA to receive notice of future rule proceedings. You may make these requests at the hearing or in writing to the MPCA contact person identified below.

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

Note: Comments regarding the MPCA's proposal must be sent to the administrative law judge at the address above; comments sent to the MPCA alone will not be part of the rulemaking record. Comments submitted after the close of the comment period will not be accepted or considered part of the record.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You should direct questions regarding this requirement to the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

Order. I order that rulemaking hearings be held at the dates, times, and locations listed above.

Dated: 8/7/17



John Linc Stine, Commissioner
Minnesota Pollution Control Agency