

**STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY**

**Adoption of Rules Governing Water Quality
Standards, Minnesota Rules, Chapter 7050
and 7053; relating to Class 3 and Class 4
Beneficial Use Designations**

ORDER ADOPTING RULES

**OAH Docket No. 8-9003-37102
Revisor's ID: RD4335**

WHEREAS:

1. The Minnesota Pollution Control Agency (MPCA) has complied with all notice and procedural requirements in Minnesota Statutes, chapter 14, Minnesota Rules, chapter 1400, and other applicable law.
2. The MPCA published a Notice of Hearing in the *Minnesota State Register* on December 14, 2020 (45 SR 577).
3. Administrative Law Judge (ALJ) Eric Lipman conducted a public hearing on the proposed rule amendments on February 4, 2021.
4. In response to comments received during the public comment period (December 14, 2020 – February 24, 2021) and the public hearing, the MPCA made four modifications to the rule amendments proposed in the December 14, 2020, *State Register*. These modifications are identified in the MPCA Preliminary Response to Comments Memorandum dated February 24, 2021, and the MPCA Post-Hearing Rebuttal Response to Public Comments Memorandum dated March 3, 2021.
5. In the MPCA Preliminary Response to Comments and Post-Hearing 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 Lipman issued his Report of the ALJ on this matter on April 9, 2021. As detailed in the report, Judge Lipman determined that the MPCA has complied with all procedural requirements of rule and law; the MPCA has the legal authority to adopt the proposed rules; and the MPCA has established that the proposed rules are needed, reasonable, and not substantially different from those published in the *State Register* on December 14, 2020.
7. Judge Lipman approved the proposed rules, as modified by the MPCA in response to public comments, and recommended that the proposed rules, as modified, be adopted.
8. Specifically, Judge Lipman found that:
 - a. The MPCA gave notice to interested persons in this matter.
 - b. The MPCA has fulfilled the procedural requirements of Minn. Stat. § 14.14 (2020) and all other procedural requirements of law or rule.

- c. The MPCA has fulfilled its additional notice requirements.
 - d. The MPCA has 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; .15, subd.3; .50 (i), (ii) (2020).
 - e. The Notice of Hearing, the proposed rules, and SONAR complied with Minn. R. 1400.2080, subp. 5 (2019).
 - f. The MPCA has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, .50 (2020).
 - g. The modifications to the proposed rules suggested by the MPCA after publication of the proposed rules in the *State Register* are not substantially different from the proposed rules as published in the *State Register* within the meaning of Minn. Stat. §§ 14.05, subd. 2; .15, subd. 3.
 - h. The modifications to the proposed rules suggested by the ALJ after publication of the proposed rules in the *State Register* are not substantially different from the proposed rules as published in the *State Register* within the meaning of Minn. Stat. §§ 14.05, subd. 2; .15, subd. 3.
 - i. As part of the public comment process, a number of stakeholders urged the MPCA to adopt other revisions to Chapters 7050 and 7053. In each instance, MPCA’s rationale in declining to make the requested revisions to its rules was well grounded in this record and reasonable.
 - j. A finding or conclusion of need and reasonableness with regard to any particular rule does not preclude, and should not discourage, the MPCA from further modification of the proposed rules – provided that the rule finally adopted is not “substantially different” (under Minn. Stat. § 14.05, subd. 2) and is based upon facts in the rulemaking record.
9. Item 125 on page 23 of the Report of the ALJ identifies “MPCA Research Scientist Peter Keyser,” and the MPCA notes that it should read “MPCA Research Scientist Scott Kyser.”
 10. The MPCA adopts the findings and conclusions in the Report of the ALJ, dated April 9, 2021, from Judge Lipman, with the above note; and the corresponding letter dated April 9, 2021, from the Office of Administrative Hearings Legal Assistant Michelle Severson.
 11. The Revisor noted that Minn. Stat. § 14.07, subd. 4 requires a statement of whether incorporated material is subject to frequent change, therefore this language remains despite MPCA’s proposed changes at 7053.0260, subpart 3, item D and 7053.0263, subpart 3, item D.
 12. The attached rule amendments, dated May 13, 2021, in the form approved by the Revisor, incorporate the modification the MPCA made in response to public comments received, the Revisor’s note, and the revision recommended by Judge Lipman.
 13. The proposed rule amendments as modified are needed and reasonable.

14. 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 Report of the ALJ.

ORDER TO ADOPT RULES

IT IS ORDERED that the above captioned rules, in the form published in the *State Register* on December 14, 2020, with the modifications as indicated in the Revisor of Statutes draft, file number RD 4335, dated May 13, 2021, are hereby adopted under authority granted in Minn. Stat. § 115.03 subd. 1(e).

____ June 4, 2021 _____
Date



Laura Bishop, Commissioner
Minnesota Pollution Control Agency