

Minnesota Pollution Control Agency

Proposed Amendments to Rules Governing Subsurface Sewage Treatment Systems (SSTS) Inspections and Permit Requirements, *Minnesota Rules* chapters 7081 and 7082

DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More People Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number R-04478

Overview. This notice is the Minnesota Pollution Control Agency's (MPCA) legal notice of its intent to adopt amendments to rules governing SSTS inspections and permit requirements. The purpose of these rule amendments, known as the "SSTS Inspections and Permit Requirements rulemaking," is to clarify when a State Disposal System (SDS) permit is required rather than a local permit, and when tank pumping is required for completion of a compliance inspection on an existing SSTS.

This notice provides an opportunity for public comment and input on the proposed rules. Anyone who would like to comment on the proposed rule language must submit written comment or a written request for a hearing on the proposed rules by the deadline identified below. The [Subject of Rules](#) section provides further description of these proposed rules. If the proposed rules affect you in any way, the MPCA encourages you to participate in the rulemaking process.

View the [Alternative Format/Accommodation](#) and [MPCA Contact Person](#) sections of this notice for information on requesting this document in an alternative format.

Introduction. The MPCA intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings (OAH), *Minnesota Rules* parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. However, if 25 or more parties submit a written request for a hearing on the rules using the process described in the [Request for a Hearing](#) section, the MPCA will hold a public hearing at the MPCA office locations listed below starting at 3:30 PM on January 8, 2020.

- MPCA-Brainerd: 7678 College Road, Suite 105, Baxter, MN 56425
- MPCA-Detroit Lakes: 714 Lake Avenue, Suite 220, Detroit Lakes, MN 56501
- MPCA-Duluth: 525 Lake Avenue South, Suite 400, Duluth, MN 55802
- MPCA-Mankato: 12 Civic Center Plaza, Suite 2165, Mankato, MN 56001
- MPCA-Marshall: 504 Fairgrounds Road, Suite 200, Marshall, MN 56258
- MPCA-Rochester: 18 Wood Lake Drive SE, Rochester, MN 55904
- MPCA-St. Paul: 520 Lafayette Road North, St. Paul, MN 55155

Hearings will be held and continue until all parties are heard or until the Administrative Law Judge (ALJ) adjourns the hearing. To find out whether the MPCA will hold the hearing or adopt the rules without a hearing, you should contact the MPCA contact person after December 23, 2019, and before January 8, 2020.

The MPCA will hold the hearing simultaneously at the locations listed above. The ALJ will conduct the hearing from the St. Paul location. MPCA staff will be present at all hearing locations to facilitate the process and to ensure that all parties attending will be able to see, hear, and speak during the hearing.

Directions to the hearing locations may be found on the MPCA's website at <https://www.pca.state.mn.us/about-mpca/mpca-offices> or by contacting the MPCA contact person identified in this Notice. Please note access to the MPCA offices is controlled. To attend a hearing you will be asked to sign in at the security desk.

Subject of Rules. The proposed rules are about permit and inspection requirements governing SSTs. Under existing rules, a facility can measure its actual wastewater flows or use “table values”—values stated in rule for various types and sizes of facilities—to design a new SST. However, in circumstances where the measurements taken show a flow less than the 10,000-gallon-per-day (gpd) permit threshold but table values indicate a flow greater than 10,000 gpd, an SDS permit would still be required. The revisions the MPCA is considering would modify the rules to allow an existing facility to use measured values to determine permit requirements, as well as a few other modifications that capture the actual wastewater flows introduced to the environment more accurately.

The MPCA is also considering changes to wording in the SSTs rules to require that a septic tank be pumped empty before an official inspection determining its integrity. The revisions under consideration will require the tank to be inspected through a maintenance hole while empty, with the following exceptions:

1. If an inspector knows ahead of time that a particular septic tank is not going to pass inspection for any reason, then pumping the tank is not required. However, a tank can only pass an inspection if it was inspected while empty; or
2. A tank may pass inspection without first being pumped if there is a tank integrity inspection report available that shows the tank has passed inspection (with the tank empty) within the past 3 years.

Comments. You have until **4:30 p.m. on December 23, 2019**, to submit written comments in support of or in opposition to the proposed rules or any part or subpart of the rules.

Submit written comments to:

1) The Office of Administrative Hearings (OAH) Rulemaking eComments website at <https://minnesotaoah.granicusideas.com>; or

2) OAH Legal Assistant Lisa Armstrong, OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620, telephone 651-361-7888, fax 651-539-0310, and lisa.armstrong@state.mn.us.

You may view frequently asked questions about the OAH Rulemaking eComments website at https://mn.gov/oah/assets/ecomments-faq_tcm19-82012.pdf. Any questions about submitting comments via the Rulemaking eComments website should be directed to the OAH at 651-361-7900. Comments received are public and will be available for review at the OAH Rulemaking eComments website at <https://minnesotaoah.granicusideas.com> and at the OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620.

Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change that you desire. Any comments that you have about the legality of the proposed rules must also be made during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that the MPCA hold a hearing on the rules. You have until **4:30 p.m. on December 23, 2019**, to submit your written request for a hearing to:

1) The Office of Administrative Hearings (OAH) Rulemaking eComments website at <https://minnesotaoah.granicusideas.com>; or

2) OAH Legal Assistant Lisa Armstrong, OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620, telephone 651-361-7888, fax 651-539-0310, and lisa.armstrong@state.mn.us.

You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the MPCA cannot count it when determining whether to hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

You may direct questions on the use of the OAH's Rulemaking eComments website to the Judge's Legal Assistant identified in the [Notice of Hearing](#) section of this notice.

Withdrawal of Requests. If 25 or more parties submit a valid written request for a hearing, the MPCA will hold a public hearing unless a sufficient number of parties withdraw their requests in writing. If a public hearing is required, the MPCA will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The MPCA reserves the option to remove any section of the rule that may be controversial and to proceed without a hearing on the noncontroversial parts of the proposed rules.

Modifications. The MPCA might modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted to the MPCA or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the MPCA follows the procedure under *Minnesota Rules*, part 1400.2110. The public is also advised that depending upon the comments received the MPCA may withdraw the proposed changes.

Cancellation of Hearing. The MPCA will cancel the hearing scheduled for January 8, 2020, if the MPCA does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the MPCA will notify you before the scheduled hearing whether it will be held. You may also call the MPCA contact person at 651-757-2595 after December 23, 2019, to find out whether the hearing will be held.

Notice of Hearing. If 25 or more parties submit valid written requests for a public hearing on the rules, the MPCA will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The MPCA will hold the hearing on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge Middendorf is assigned to conduct the hearing. Judge Middendorf can be reached at OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620, telephone 651-361-7900, and fax 651-539-0310.

Hearing Procedure. If the MPCA holds a hearing, you and all interested or affected people, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the ALJ to be recorded in the hearing record for five working days after the public hearing ends. At the hearing, the ALJ may order that this five-day comment period be extended for a longer period but not more than 20 calendar days. After the comment period, there is a five-working-day rebuttal period when the MPCA and any interested person may respond in writing to any new information submitted. No one may submit additional evidence during the five-day rebuttal period. The OAH must receive all comments and responses submitted to the ALJ via the OAH Rulemaking eComments website at <https://minnesotaoah.granicusideas.com> no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the OAH Rulemaking eComments website at <https://minnesotaoah.granicusideas.com> and at the OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, section 14.131 to 14.20. You may direct questions about the procedure to the ALJ.

The MPCA requests that any person submitting written views or data to the ALJ before the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the MPCA contact person at the address below.

MPCA Contact Person. The contact person is Katie Izzo at the MPCA, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194; telephone 651-757-2595; and katie.izzo@state.mn.us. You may also call the MPCA at 651-296-6300 or 1-800-657-3864; use your preferred relay service.

Availability of Rules. A copy of the proposed rules is published in the *State Register* after this notice, or they can be viewed on the MPCA public notice webpage at <https://www.pca.state.mn.us/public-notice>, and the webpage for this rulemaking at <https://www.pca.state.mn.us/water/amendments-subsurface-sewage-treatment-systems-inspection-and-permit-requirements>. A free copy of the proposed rules is also available upon request by contacting the MPCA contact person. One copy per request will be sent.

Availability of Statement of Need and Reasonableness. The statement of need and reasonableness (SONAR) summarizes 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. It is now available from the MPCA contact person. You may review or obtain copies for the cost of reproduction by contacting the MPCA contact person. A copy of the SONAR is available during the public comment period at the following webpage: <https://www.pca.state.mn.us/public-notice>, and at <https://www.pca.state.mn.us/water/amendments-subsurface-sewage-treatment-systems-inspection-and-permit-requirements>.

Adoption Procedure if No Hearing. If no hearing is required, the MPCA may adopt the rules after the end of the comment period. The MPCA will submit the rules and supporting documents to the OAH for a legal review. If you want to receive notice of the date the rules are submitted to the OAH, to receive a copy of the adopted rules, or to register with the MPCA to receive notice of future rule proceedings, submit your request to the MPCA contact person.

Adoption Procedure After a Hearing. If a hearing is held, the ALJ will issue a report on the proposed rules. You may ask to be notified of the date that the ALJ's report will become available, and can make this request at the hearing or in writing to the ALJ. You may also ask to be notified of the date that the MPCA adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by writing to the MPCA contact person.

Statutory Authority. The statutory authority to adopt the rules is *Minnesota Statutes*, section 115.55, subd. 3, which authorizes the MPCA to adopt rules "containing minimum standards and criteria for the design, location, installation, use, maintenance, and closure of subsurface sewage treatment systems."

Alternative Format/Accommodation. Upon request, the information in this notice 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 this hearing accessible, please contact the MPCA contact person.

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 190 Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone 651-539-1180 or 1-800-657-3889.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.



Laura Bishop, Commissioner
Minnesota Pollution Control Agency

11/1/2019 _____
Date