

Minnesota Pollution Control Agency

Environmental Analysis and Outcomes Division

REQUEST FOR COMMENTS on Planned Amendments to Rules Governing Water Quality Standards – Use Classifications 2 and 7, *Minnesota Rules* chapter 7050, Revisor’s ID Number R-04561

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) is requesting comments on planned amendments to water rules, *Minnesota Rules*, Chapter 7050 (Waters of the State). This rulemaking is referred to as the Water Quality Standards – Class 2 and 7 Use Change Rule. This rulemaking will update designated uses for some state waters to improve their restoration and protection. Assigning the appropriate beneficial use is an important first step in the process to assure the goals for each water body are attainable and can be protected. Comments should be submitted in writing according to the Public Comment section below.

Plain English Summary. This Request for Comments is the MPCA’s legal notice of its intent to begin rulemaking. This is the first of several opportunities for public comment and input. At this stage, we do not yet have a draft of new rule language. We want your feedback to inform us about the ideas described below in the Subject of Rules. This is an opportunity to provide comments on the MPCA’s planned amendments to the rules and an opportunity for you to provide comment or information on any relevant issues related to this rulemaking. For example, if you have information on costs to regulated parties related to these use classifications or data related to this rulemaking that you wish to share with us to inform our decisions, please submit that information in writing. Submitting your ideas and information at this early stage in rulemaking allows more time to address issues that may come up, and helps to ensure informed decision-making on our part.

Subject of Rules. Minnesota’s surface waters are currently assigned, or designated, a number of possible beneficial uses (e.g. drinking water, aquatic life, and recreation such as fishing and swimming) based on which beneficial uses are or should be attained in those waters. Different physical and chemical criteria apply depending on the beneficial uses that need to be protected in each water. The MPCA routinely reviews use designations to ensure that assigned beneficial uses are protective and attainable as defined by the Clean Water Act and Minnesota Rule. As the result of routine monitoring, stakeholder requests, and data generated by the Minnesota Department of Natural Resources (DNR) trout waters rulemaking, the MPCA has identified reaches where the currently designated beneficial use does not accurately reflect an attainable use. The designated beneficial use for each water body must be correct and appropriate because the designated use affects many water quality protection and restoration efforts (e.g. assessment, stressor identification, National Pollution Discharge Elimination System permitting, and Watershed Restoration and Protection Strategies).

These rule amendments will make updates and corrections to Class 2 (Aquatic Life) and Class 7 (Limited Resource Value Waters) beneficial use designations or classifications for streams and lakes. These updates fall into two groups: 1) reviewing streams and lakes for appropriate classification as cold or warm water habitats; and 2) reviewing streams under the tiered aquatic life use (TALU) framework. The TALU rules, recently approved by United States Environmental Protection Agency, are a framework for classifying streams based on the aquatic life each supports or has the potential to support, and builds upon existing water quality standards.

This rulemaking focuses on assigning appropriate beneficial use designations and does not change numeric criteria or existing designated use frameworks. Planned changes include:

- 1) Update the documents incorporated by reference in Minn. R. 7050.0470 that list the specific use designations, and update the designated uses for approximately 200 stream reaches and lakes.
- 2) Update the list of waters designated as cold water streams and lakes (Class 2A, 2Ae, and 2Ag), and revise Minn. R. 7050.0420. This will align the waters designated as Class 2A, 2Ae, and 2Ag in Minn. R. 7050.0470 to regulatory goals in Minnesota and federal regulations for the protection of cold water aquatic life and habitat.

The state rulemaking process requires agencies to consider several specific topics as it develops rules. The MPCA requests any information on:

- 1) Whether the cost of complying with the rule in the first year after the rule takes effect will exceed \$25,000 for one small city or business (*Minnesota Statutes*, section 14.127).
- 2) Whether local governments might be required to adopt or amend an ordinance or other regulation in response to the changes (*Minnesota Statutes*, section 14.128).
- 3) The cumulative effect of the rule amendments with other federal and state regulations as related to the specific purpose of the rule (*Minnesota Statutes*, section 14.131(8)). Cumulative effect means the incremental impacts that result from the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules.

Persons Affected. Amendments to these rules potentially affect all persons working with or interested in Water Quality Standards, such as persons working in planning, natural resource management, soil and water conservation, and environmental protection. Because the rule amendments will result in a more accurate classification of waters and more efficient, effective assessment and implementation of Water Quality Standards, persons with a general interest in the quality of Minnesota's waters, such as fishing and tourism, may also be affected.

Where to Get More Information. The webpage for this rulemaking at <https://www.pca.state.mn.us/wqs-designated-uses> provides information about updates to the beneficial use designations. The MPCA will post rulemaking documents on this webpage as they become available. As stated above, we do not yet have a draft of new rule language. However, a technical support document that provides information about the planned changes is available on the rule webpage.

If you are interested in being notified when the draft rules are available for review and of other activities relating to this (or other MPCA rulemakings) register for GovDelivery bulletins at <https://public.govdelivery.com/accounts/MNPCA/subscriber/new>. The checkbox for the Class 2 and 7 Use Change Rule is located under the topic heading "Public Notices and Rulemaking."

Statutory Authority. *Minnesota Statutes*, section 115.03, subdivision 1 grants the MPCA general authority to promulgate and/or revise rules relating to pollution of waters of the state, classify waters of the state, and to adopt water quality standards. *Minnesota Statutes*, section 115.44 grants the MPCA additional authority to group designated waters of the state into classes.

Public Comment. Interested persons or groups may submit written comments on these planned rule amendments and on other information related to this rulemaking until **4:30 p.m. on Thursday, November 8, 2018**. Submit written comments or information to the Office of Administrative Hearings Rulemaking e-Comments website at <https://minnesotaoah.granicusideas.com>. Any questions about

submitting comments via the Rulemaking e-Comments website should be directed to Denise Collins, Office of Administrative Hearings, telephone 651-361-7875 and denise.collins@state.mn.us. All comments received are public and will be available for review at the Office of Administrative Hearings. The MPCA will not publish a notice of intent to adopt rules until more than 60 days have elapsed from the date of this request for comments. The MPCA does not plan to appoint an advisory committee to comment on the planned rule amendments.

MPCA Contact Person. The MPCA contact person is Mary H. Lynn at the MPCA, 520 Lafayette Road North, St. Paul, MN 55155-4194; telephone 651-757-2439; and mary.lynn@state.mn.us. You may also call the MPCA at 651-296-6300 or 800-657-3864 or use your preferred relay service info.pca@state.mn.us.

Alternative Format. 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, please contact the MPCA contact person via the contact information listed above.

Note: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the Administrative Law Judge if and when the MPCA starts a proceeding to adopt rules. The MPCA is required to submit to the Administrative Law Judge only those written comments received in response to the draft rules after they are proposed. If you submit comments during the development of the rules and you want to ensure that the Administrative Law Judge reviews your comments, you must resubmit the comments after the rules are formally proposed.

Date signed: 9/10/2018

John Linc Stine, Commissioner
Minnesota Pollution Control Agency