

**STATE OF MINNESOTA  
MINNESOTA POLLUTION CONTROL AGENCY**

**Adoption of Amendments to Water Quality  
Standards: Minnesota Rules, Chapter 7050,  
relating to Modification of Class 2 and Class 7  
Beneficial Use Designations**

**FINDINGS OF FACT AND  
ORDER ADOPTING RULES**

**OAH Docket No. 65-9003-35561  
Revisor's ID Number: R-4561**

**WHEREAS:**

1. The Minnesota Pollution Control Agency (MPCA) published a Dual Notice of Intent to Adopt the rule amendments identified above without a public hearing, unless 25 or more persons submit a written request for a hearing, in the *Minnesota State Register* on September 23, 2019 (44 SR 405).
2. During the public comment period on the proposed rule amendments, which ended on November 7, 2019, the MPCA received more than 25 requests to hold a public hearing on the proposed rule amendments.
3. Administrative Law Judge (ALJ) Ann C. O'Reilly conducted a public hearing on the proposed rule amendments on December 11, 2019.
4. In response to comments received during the pre-hearing public comment period (September 23 - November 7, 2019), the public hearing, and post-hearing comment periods, the MPCA made one modification to the rule amendments proposed in the September 23, 2019, *State Register*. The modification is identified in the MPCA Post-Hearing Response to Public Comments dated December 31, 2019, and MPCA Rebuttal Response to Public Comments dated January 8, 2020.
5. In the MPCA Post-Hearing Response to Public Comments and the MPCA 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 O'Reilly issued her Report of the ALJ on this matter on February 1, 2020. As detailed in the Report, Judge O'Reilly 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 September 23, 2019.
7. Judge O'Reilly approved the proposed rules, as modified by the MPCA in response to public comments and recommended the proposed rules, as modified, be adopted. Judge O'Reilly also recommended the MPCA consider one revision to the proposed rule at Minn. R. 7050.0420, item B clarifying the term "existing use," and the MPCA has revised the rule based on the ALJ's recommendation.

8. Specifically, Judge O'Reilly found that:
- i. The MPCA gave all required notice to interested persons in this matter pursuant to Minn. Stat. §§ 14.101, .111, .116, .131, .14, .22, .23, .25, .37, 115.44 (2018) and Minn. R. 1400.2060, .2070, .2080, .2230 (2019), including all additional notice requirements of rule and law.
  - ii. The MPCA has fulfilled the procedural requirements of Minn. Stat. §§ 14.101, .111, .116, .131, .14, .20, .22, .23, .25, 115.44, and Minn. R. 1400.2060, .2070, .2080, .2090, .2210, .2220, .2230, and all other applicable rules and laws.
  - iii. The MPCA has demonstrated its statutory authority to adopt the proposed rules pursuant to Minn. Stat. §§ 14.05, subd. 1 (2018).
  - iv. The MPCA has fulfilled all substantive requirements of Minn. Stat. §§ 14.002, .127, .128, .131, .14, .23, .24 and Minn. R. 1400.2070, .2080, .2100, and all other applicable rules and laws.
  - v. The Additional Notice Plan, Notice of Hearing, proposed rules, and the SONAR complied with Minn. Stat. §§ 14.131, .22, .23 and Minn. R. 1400.2060, .2070, .2080.
  - vi. 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 and 14.50.
  - vii. The modification to Minn. R. 7050.0420 (B) proposed by the MPCA after publication of the proposed rules in the *State Register* is not substantially different from the proposed rules as published in the *State Register* within the meaning of Minn. Stat. §§ 14.05, subd. 2. Such modification is needed and reasonable, and should be adopted by the MPCA.
  - viii. The modification to Minn. R. 7050.0420 (B) recommended by the ALJ in this Report does not render the proposed rule changes substantially different from the proposed rules as published in the *State Register* within the meaning of Minn. Stat. §§ 14.05, subd. 2. Accordingly, should the MPCA adopt the ALJ's recommended change, it will not require compliance with the procedures set forth in Minn. R. 1400.2110.
9. The MPCA adopts the findings and conclusions in the Report of the ALJ, dated February 1, 2020, from Judge O'Reilly; and the corresponding letter dated February 3, 2020, from Office of Administrative Hearings Legal Assistant Lisa Armstrong.

#### **7050.0420 COLD WATER HABITAT WATERS**

10. The MPCA modified the rule amendments proposed in the September 23, 2019, *State Register*, to add the language "feasibly attainable" at Minn. R. 7050.0420, item B, as proposed at the rulemaking hearing.
11. Judge O'Reilly determined that "The modification to Rule 7050.0420(B) by the Agency after publication of the proposed rules in the *State Register* is not substantially different from the proposed rules as published in the *State Register* within the meaning of Minn. Stat. §§ 14.05,

subd. 2. Such a modification is needed and reasonable, and should be adopted by the Agency.” (Report Conclusion No. 8, page 39.)

12. The Revisor of Statutes recommended modifying Minn. R. 7050.0420, item B to clarify the term “feasibly attainable” by adding “according to Code of Federal Regulations, title 40, section 131.10,” after “feasibly attainable beneficial use.” The MPCA agreed with the Revisor’s recommendation and modified Minn. R. 7050.0420, item B accordingly. It is reasonable to make this clarifying change to Minn. R. 7050.0420, item B, as recommended by the Revisor to certify the rule for adoption. This modification does not make the proposed rules substantially different, and the modification does not change the applicability or stringency of the proposed rule.
13. In the Report of the ALJ, Judge O’Reilly recommended the MPCA consider one revision to Minn. R. 7050.0420, item B to clarify the term “existing use” and suggested rule language “For the purpose of this subpart, an existing use is one that was attained in the water body on or after November 28, 1975.” (Report of the ALJ, Finding No. 19, page 7). The MPCA agreed with Judge O’Reilly’s recommendation.
14. The Revisor proposed a minor change to the ALJ’s recommended language to clarify the term “existing beneficial use” and suggested rule language “For purposes of this subpart, “existing beneficial use” means a beneficial use that was attained in a water body on or after November 28, 1975.” The MPCA agreed with the Revisor’s proposed change and modified Minn. R. 7050.0420, item B accordingly.
15. Judge O’Reilly determined that “The modification to Rule 7050.0420(B) recommended by the Administrative Law Judge in this Report does not render the proposed rule changes substantially different from the proposed rules as published in the *State Register* within the meaning of Minn. Stat. §§ 14.05, subd. 2. Accordingly, should the Agency adopt the Judge’s recommended change, it will not require compliance with the procedures in Minn. R. 1400.2110 (2019).” (Report Conclusion No. 9, page 39.)

*Change to Part 7050.0420 (B)*

*B. Cold water habitat waters identified as class 2A, 2Ae, or 2Ag in part 7050.0470 must reflect an existing beneficial use or a feasibly attainable beneficial use, according to Code of Federal Regulations, title 40, section 131.10, that permits propagating and maintaining a healthy community of cold water aquatic biota and their habitats. For purposes of this subpart, “existing beneficial use” means a beneficial use that was attained in a water body on or after November 28, 1975.*

16. The attached rule amendments, dated February 19, 2020, in the form approved by the Revisor, incorporate the modification the MPCA made in response to public comments received, the revision recommended by the Revisor, and the revision recommended by Judge O’Reilly.
17. The proposed rule amendments as modified are needed and reasonable.
18. 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.

Adoption of Amendments to Water Quality Standards: Minnesota Rules, Chapter 7050, relating to Modification of Class 2 and Class 7 Beneficial Use Designations

Findings of Fact and Order Adopting Rules

**ORDER TO ADOPT RULES**

**IT IS ORDERED** that the above captioned rules, in the form published in the *State Register* on September 23, 2019, with the modifications as indicated in the Revisor's draft file number R-4561, dated February 19, 2020, are hereby adopted under authority granted in Minn. Stat. § 115.03 subd. 1(e).

\_\_April 29, 2020\_\_

Date



Laura Bishop  
Commissioner  
Minnesota Pollution Control Agency