

## Minnesota Pollution Control Agency

### REQUEST FOR COMMENTS on Possible Amendments to Rules Governing Water Quality Standards for Lake Aquatic Life and Recreation, *Minnesota Rules* chapter 7050; Revisor's ID Number R-04740

**Overview.** The Minnesota Pollution Control Agency (MPCA) is requesting comments on possible amendments to water quality standards (WQS) rules, *Minnesota Rules* (Minn. R.) chapter 7050. This rulemaking is referred to as the Lakes WQS Rule. The MPCA is considering amendments to the listed rule chapters and requests comments on the proposed amendments from affected or interested parties. See the [Comments](#) and [MPCA Contact Person](#) sections of this notice for information on how to submit comments.

This request for comments (RFC) is the MPCA's legal notice of its intent to begin rulemaking. This is the first of several opportunities for public comment and input on this rulemaking. At this stage, we do not have a draft of the rule amendments; we want your feedback to inform us about the ideas described under the [Subject of Rules](#) section. If you have other ideas related to this rulemaking that we need to consider, please submit them in writing as well. For example, we recognize that costs to regulated parties can be a concern with rulemaking, so if you have cost information or data related to this rulemaking that you wish to share with us to inform our decisions, please submit that information. Submitting your ideas and information at this early stage in rulemaking allows us more time to address issues that may come up, and helps to ensure informed decision-making on our part. If the rules under consideration affect you in any way, the MPCA encourages you to participate in the rulemaking process.

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

**Subject of Rules.** The MPCA requests comments on its possible amendment of WQS rules governing lake aquatic life and recreational uses. The revisions under consideration for this rulemaking include three main elements: 1) adoption of eutrophication standards for shallow or mixed lakes in the northern nutrient region, 2) adoption of nutrient and oxythermal standards to protect cold-water fish habitat, and 3) adoption of a tiered aquatic life use (TALU) framework.

1. **Shallow/mixed lake eutrophication standards for northern lakes:** Current standards for northern lakes do not make a distinction between lakes that stratify in the summer (dimictic) and those that mix (polymictic). Trophic conditions in stratified and mixed lakes are naturally different, which demonstrates a need for a revision to the existing standard. Refining these standards to acknowledge the differences between these lake types will improve assessment accuracy and result in more appropriate management decisions.
2. **Cold-water lake standards:** Standards currently provide additional protections for lakes managed for trout, but lakes with other cold-water fishes such as cisco or lake whitefish are protected by warm-water lake standards—a gap in protections that puts these species at risk. Undertaking this rulemaking is consistent with the MPCA's overall approach to protecting cold-water habitats, which is not solely focused on waters which support trout. For example, the MPCA recently (2020) revised the rules that protect cold-water stream habitats to include streams that support other cold-water organisms such as insects. This rule revision would adopt standards (eutrophication and oxythermal) for cold-water lakes supporting cisco and lake whitefish, including determination and designation of lakes where cold-water fish habitat is an existing use. These revisions are needed to document where these fish species occur and to assign standards that will protect these species from threats such as eutrophication. Such standards will also complement programs administered by the

MPCA and DNR to protect lake quality. Additional protection of refuge lakes for cold-water species is especially critical due to climate change.

3. **Lake TALU:** Currently, lake biological criteria are implemented as numeric translators for narrative standards using a one-size-fits-all approach. As part of this revision, TALU and the supporting biocriteria would be adopted for lakes following a similar model for streams, which was adopted into rule in 2017. Revisions will codify biological criteria and provide a framework for protecting high-quality lakes. The TALU framework for lakes will designate a subset of exceptional-use lakes and identify and provide additional protections to Minnesota's high-quality lakes. This approach has the benefit of providing a framework for protecting the highest-quality lakes more efficiently and at typically lower cost than restoration.

In addition to the three main objectives of this rule, we also intend to make several housekeeping revisions, including correcting an error in the river eutrophication standards and moving lake designations in Minn. R. 7050.0470 into documents incorporated by reference. Incorporating lake use designations by reference will permit additional use designation information to be codified into rule. Correcting the errors in the river eutrophication standards will assign the correct criteria adopted in rule and bring clarity to Minnesota's river eutrophication rules.

The MPCA has developed draft charge questions organized by topic area to guide peer reviewers' evaluation of the draft technical support documents (TSDs). We especially encourage comments and suggestions on our proposed charge questions, as follows:

- **Northern lakes.** In the draft TSD (*Development of eutrophication standards for northern lakes in Minnesota*), the MPCA has determined that it is appropriate to assign different eutrophication standards to stratified (dimictic) lakes and mixed (polymictic) lakes in the Northern Lakes and Forests and Northern Minnesota Wetlands ecoregions. MPCA staff determined this pattern to be the result of differences in mixing type, lake morphology, watershed features, and the types of beneficial uses supported by these lake types, and developed different criteria for dimictic and polymictic lakes for chlorophyll-a to protect aquatic life and recreational endpoints. Using these chlorophyll-a thresholds, we also developed criteria for total phosphorus and Secchi depth. In addition to describing the development of eutrophication standards for northern lakes, the TSD describes how lake type is determined and how the draft standards will be implemented.
  - Has the MPCA demonstrated that it is appropriate to assign different standards to dimictic and polymictic lakes in the Northern Lakes and Forests and Northern Minnesota Wetlands ecoregions? Is it appropriate to assign or expect different beneficial uses to be supported by dimictic and polymictic lakes?
  - Did the MPCA use appropriate methods to determine protective chlorophyll-a thresholds for beneficial uses? Are there other methods that the MPCA should consider?
  - Are the criteria developed for total phosphorus and Secchi depth reasonable? Are there other methods that the MPCA should consider?
  - Are the methods for determining lake type (i.e., dimictic versus polymictic) appropriate and reasonable?
- **Cold-water lakes.** The MPCA intends to propose changes to the existing standards for cold-water lake habitats and to change the list of lakes managed as cold-water habitats. This will include the adoption of oxythermal habitat standards for lake trout, lake whitefish, and

cisco lakes and the adoption of new lake eutrophication standards for lake whitefish and cisco lakes. Revisions would also be made to the eutrophication standards for lake trout and stream trout lakes. In addition, these revisions would include changes to the list of waters designated as Class 2A. Descriptions of the revisions to lake standards and use designations are provided in the TSD. In addition, the TSD describes how cold-water use designations will be reviewed and includes a statewide review of cold-water lake habitats with supporting documentation for each lake.

- Is it reasonable and appropriate to assign specific oxythermal and eutrophication standards to lakes supporting lake whitefish and/or cisco?
- Were appropriate methods used to determine protective eutrophication and oxythermal thresholds for cold-water fishes? Are there other methods that should be considered?
- Will the adoption of an oxythermal habitat criterion likely improve management and protection of cold-water fishes? Are the specific draft criteria suitable for the protection of lake trout, lake whitefish, and cisco? Are there other criteria that the MPCA should consider?
- Are the location, timing, and frequency requirements of sampling as specified in the implementation section of the TSD sufficient to make an accurate assessment using the draft criteria? Is the draft process for making an assessment determination sufficiently described?
- The MPCA intends to assign site-specific standards (SSS) to 11 lakes with atypical conditions that still attain beneficial uses despite higher nutrient levels or poorer oxythermal conditions. Are these recommended SSS reasonable, and has the MPCA sufficiently demonstrated that a SSS is appropriate? Is the guidance for evaluating whether other lakes may be candidates for SSS sufficiently described?
- As part of this rule, the MPCA is also considering changes to the list of lakes assigned Class 2A. These lakes are listed in the appendices of the TSD. Are the provided lists of lakes and associated cold-water designations for cold-water fish species appropriate? Is the draft process for making cold-water use designations sufficiently described?
- **TALU for lakes.** The MPCA intends to propose a TALU framework for Minnesota lakes. This framework is similar to the aquatic life use framework adopted for Minnesota streams. The draft lake TALU framework consists of fish biological criteria for high-quality or Exceptional Use lakes. Under this framework, lakes meeting Exceptional Use goals would be assigned more stringent biological goals, which would need to be maintained.
  - Is it reasonable to assign more protective biological goals for a subset of lakes that demonstrate this high quality is attainable?
  - Were appropriate methods used to determine protective biological goals for fish communities in lakes? Are there other methods that should be considered?
  - Is the process for identifying Exceptional Uses reasonable and sufficiently described in the TSD?

**Comments.** Interested parties may submit written comments or information on these possible rules in writing until **4:30 p.m. on Friday, November 3, 2023**. The MPCA will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this RFC.

During the public comment period associated with this RFC, submit written comments or information to:

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

2) OAH attn: William Moore, OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620 or fax 651-539-0310.

You may view frequently asked questions about the OAH Rulemaking eComments website at [https://mn.gov/oah/assets/ecomments-faq\\_tcm19-82012.pdf](https://mn.gov/oah/assets/ecomments-faq_tcm19-82012.pdf). Any questions about submitting comments via the Rulemaking eComments website should be directed to William Moore of the OAH at 651-361-7900 or by email at [William.T.Moore@state.mn.us](mailto:William.T.Moore@state.mn.us); **please note that you may not submit rulemaking comments by phone or email.**

Comments received are public and will be available for review at the OAH Rulemaking eComments website at <https://minnesotaoah.granicusideas.com/discussions> and at the OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620. NOTE: The MPCA will carefully consider all comments received in response to this RFC. However, these comments will not necessarily be included in the formal rulemaking record submitted to the Administrative Law Judge (ALJ) if and when a proceeding to adopt rules is started. The MPCA is required to submit to the ALJ only the written comments received in response to the draft rules after they are proposed with a Notice of Intent to Adopt Rules. If you submit comments during the RFC stage of rule development and want to ensure that the ALJ reviews them, you should resubmit your comments after the rules are formally proposed with a Notice of Intent.

**Parties Affected.** These amendments to the existing rules would be most likely to affect people working with or interested in WQS, such as in natural resource management, soil and water conservation, and environmental protection; the changes may also affect holders of some National Pollutant Discharge Elimination System (NPDES) permits. Because the rule amendments will result in a more accurate classification of waters and more efficient, effective assessment and implementation of WQS, parties with a general interest in the quality of Minnesota's waters, such as fishing and tourism, may also be affected.

The MPCA does not plan to appoint a specific advisory committee to comment on the rule amendments under consideration. The MPCA does not anticipate that the rule amendments will require a local government to adopt or amend an ordinance or other regulation under *Minnesota Statutes* (Minn. Stat.) §14.128; local governments may submit written information to the contrary. The MPCA requests any information pertaining to the cumulative effect of the rule amendments with other federal and state regulations related to the specific purpose of the rule. Cumulative effect means the impact that results from incremental effects of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules.

**MPCA Contact Person.** The MPCA contact person is Katie Izzo at the MPCA, 520 Lafayette Road North, St. Paul, MN 55155-4194; telephone 651-757-2595; and email [katie.izzo@state.mn.us](mailto: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. Again, please note that you may not submit rulemaking comments by phone or email.

1. During the public comment period associated with this RFC:
  - a) Submit all comments in response to this notice as described in the [Comments](#) section of this RFC.

- b) Contact the MPCA contact person with clarification questions or requests for more information.
2. After the public comment period closes, please route communications to the following staff:
- a) Technical subject-matter questions: Will Bouchard, 651-757-2333 or [will.bouchard@state.mn.us](mailto:will.bouchard@state.mn.us)
  - b) Rulemaking process questions: Katie Izzo, 651-757-2595 or [katie.izzo@state.mn.us](mailto:katie.izzo@state.mn.us)

**Rules Drafts.** The MPCA has not yet drafted the possible rule amendments. Parties interested in being notified when a draft of the rules is available and of other activities relating to this rulemaking are encouraged to register at [http://public.govdelivery.com/accounts/MNPCA/subscriber/new?topic\\_id=MNPCA\\_491](http://public.govdelivery.com/accounts/MNPCA/subscriber/new?topic_id=MNPCA_491) (MPCA GovDelivery-Rulemaking: Lakes Water Quality Standards).

**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, please contact the [MPCA contact person](#).

**Statutory Authority.** Minn. Stat. §115.03, subd. 1(b)-(c), authorizes the MPCA to establish WQS, and Minn. Stat. §115.44 grants the MPCA authority to group designated waters of the state into classes.

Katrina Kessler  
Katrina Kessler, Commissioner  
Minnesota Pollution Control Agency

September 5, 2023  
Date