

Minnesota Pollution Control Agency

Environmental Analysis and Outcomes Division

NOTICE OF HEARING

Proposed Amendments to Rules Governing Water Quality Standards – Use Classification 2, *Minnesota Rules*, chapter 7050; Revisor’s ID Number R-04692, OAH docket number 23-9003-37415

Overview. This notice is the Minnesota Pollution Control Agency’s (MPCA) legal notice of its intent to adopt amended water rules following a hearing. The purpose of these rules, known as the 2021-2022 Class 2 Use Designation Rule, is to 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.

This notice provides you the opportunity to submit your comments on this rule to the Administrative Law Judge (ALJ) **during the public comment period for this notice which ends at 4:30 p.m. on Friday, February 3, 2023**, orally at the hearing, and in writing after the hearing before the close of the hearing record. 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.

Public Hearing. The MPCA intends to adopt rules after a public hearing following the procedures in the rules of the Office of Administrative Hearings (OAH), *Minnesota Rules* parts 1400.2200 to 1400.2240, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.131 to 14.20. The MPCA will hold a virtual public hearing on the above-named rules, with the login and call-in information listed below. The hearing will be held on **Thursday, February 16, 2023, starting at 2:00 p.m.** The hearing continues until all parties present are heard. At the beginning of the hearing, the ALJ will give a presentation on the rulemaking process and the MPCA will give a presentation on the proposed rule amendments. Combined, these presentations are expected to take up to one hour, before the ALJ begins taking oral comment at the hearing.

For video and audio connection to the virtual hearing, join through an internet connection, such as with a computer or tablet:

Enter:

<https://minnesota.webex.com/minnesota/j.php?MTID=m42ed0870cd466caba99867815d340d66>

Meeting number: 2496 793 9480

Meeting password: XGmgAYFJ522

For audio connection, join the hearing by phone:

Call: 1-415-655-0003 (US Toll)

Access code: 2496 793 9480

Additional information regarding the hearings and the rules being proposed is provided at <https://www.pca.state.mn.us/get-engaged/use-designations-for-some-stream-reaches>. Hearing exhibits will also be posted to this website before the hearing.

All interested or affected persons will have an opportunity to participate by submitting either oral or written data, statements, or arguments. You may submit a statement without appearing at the hearing. Refer to the [Comments](#) section for information on submitting statements.

Administrative Law Judge. ALJ Suzanne Todnem will conduct the hearing. Judge Todnem’s Legal Assistant, Michelle Severson, can be reached at the OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620, telephone 651-361-7874, and fax 651-539-0310. The rule hearing

procedure is governed by *Minnesota Statutes*, sections 14.131 to 14.20, and by the rules of the OAH, *Minnesota Rules*, parts 1400.2000 to 1400.2240. You should direct questions about the rule hearing procedure to the ALJ.

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 and data generated by the Minnesota Department of Natural Resources trout waters rulemaking, the MPCA has identified waterbodies 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 Pollutant Discharge Elimination System permitting, and Watershed Restoration and Protection Strategies). The proposed rules 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.

The proposed rules do not change numeric or narrative water quality standards. The proposed rules make updates and corrections to Class 2 (Aquatic Life) beneficial use designations or classifications for streams. These updates fall into two groups: 1) reviewing streams for appropriate classification as cold or warm water habitats; and 2) reviewing streams under the tiered aquatic life use (TALU) framework. The TALU rules are a framework for classifying streams based on the aquatic life each supports or has the potential to support; it assigns streams to one of three tiers: Exceptional Use, General Use, and Modified Use; and builds upon existing water quality standards. Described below are the main parts of the rule amendments the MPCA is proposing. For more information about the proposed rules, please refer to the statement of need and reasonableness (SONAR) which is available as stated below.

1. Minn. R. 7050.0470. The proposed rules update the use designations for 232 stream reaches. The MPCA is updating the use designation tables incorporated by reference in Minn. R. 7050.0470 that list the specific use designations. The proposed changes to update these use designation tables, and a summary table of the Class 2 proposed use designations is available on the MPCA website for this rulemaking at <https://www.pca.state.mn.us/get-engaged/use-designations-for-some-stream-reaches>.
2. Minn. R. 7050.0470. The proposed rules will result in minor revisions to rule language in Minn. R. 7050.0470 and identify the estimated date for adoption of these proposed rules.

Public Comments. You and all interested or affected persons, including representatives of associations and other interested groups, will have multiple opportunities to submit comments. **Under this notice, you have until 4:30 p.m. on Friday, February 3, 2023**, to submit written comment in support of or in opposition to the proposed rules. The ALJ will then also accept your comments orally at the hearing on Thursday, February 16, 2023, and in writing after the hearing before the hearing record closes.

Please submit written comments **to the ALJ via the OAH Rulemaking eComments website at <https://minnesotaoah.granicusideas.com/discussions>**. If it is not possible for you to use the eComments website, you may submit your written comments in person, by U.S. mail, or by fax to the ALJ using the

contact information provided in the ALJ section of this notice. Any comments or materials that you present or submit must relate to the proposed rules.

Post-hearing Comments. After the hearing, you may submit written comments to the ALJ using the eComments website (the preferred method) or by U.S. mail, fax, or personal delivery. These comments must be submitted within five working days after the hearing date. At the hearing, the ALJ may order this five-day comment period extended for no more than 20 calendar days.

After the comment period, there is an additional five-working-day rebuttal period during which 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.

All comments and responses must be submitted to the ALJ no later than 4:30 p.m. on the due date. All comments or responses received are public and will be available for review at <https://minnesotaoah.granicusideas.com/discussions>.

You may learn more about the OAH Rulemaking eComments website, including step-by-step instructions and frequently asked questions at <https://mn.gov/oah/forms-and-filing/eComments/>. Questions about submitting comments via the OAH Rulemaking eComments website should be directed to the OAH at 651-361-7900.

Please note that comments regarding the MPCA's proposal must be sent to the ALJ. Comments sent to the MPCA alone will not be part of the rulemaking record. Comments submitted after the close of the comment period will not be accepted or considered part of the record.

Modifications. The MPCA may modify the proposed rules as a result of the rule hearing process. It must support modifications by data and views presented during the rule hearing process. 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.

MPCA Contact Person. The MPCA contact person is: Mary H. Lynn at the MPCA, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194; telephone 651-757-2439, and mary.lynn@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 website for this rulemaking at <https://www.pca.state.mn.us/get-engaged/use-designations-for-some-stream-reaches>. 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. The SONAR can be viewed at the MPCA's website for this rulemaking at <https://www.pca.state.mn.us/get-engaged/use-designations-for-some-stream-reaches>. A print copy is available for the cost of reproduction by contacting the MPCA contact person.

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

Statutory Authority. The proposed rules are authorized by *Minnesota Statutes, sections 115.03 and 115.44.*

Adoption Procedure after the Hearing. After the close of the hearing record, the ALJ will issue a report on the proposed rules. You may ask to be notified of the date when 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 files them with the Secretary of State, or ask to register with the MPCA to receive notice of future rule proceedings. You may make these requests at the hearing or in writing to the [MPCA contact person](#).

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



Katrina Kessler, Commissioner
Minnesota Pollution Control Agency

November 29, 2022

Date