



Minnesota Pollution Control Agency

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November 23, 2016

The Honorable Mark Dayton
Governor, State of Minnesota
116 Veterans Service Building
20 W 12th St.
St. Paul, MN 55155

The Honorable Denny McNamara
Minnesota State Representative, Chair
Environment and Natural Resources Policy and
Finance Committee
365 State Office Building
St. Paul, MN 55155

The Honorable Rick Hansen
Minnesota State Representative, DFL Lead
Environment and Natural Resources Policy and
Finance Committee
247 State Office Building
St. Paul, MN 55155

The Honorable Joyce Peppin
Minnesota State Representative, Chair
Rules and Legislative Administration Committee
459 State Office Building
St. Paul, MN 55155

The Honorable Paul Thissen
Minnesota State Representative, DFL Lead
Rules and Legislative Administrative Membership
267 State Office Building
St. Paul, MN 55155

The Honorable John Marty
Minnesota State Senator, Chair
Environment and Energy Committee
3233 Minnesota Senate Bldg.
St. Paul, MN 55155

The Honorable David J. Osmek
Minnesota State Senator, Ranking Minority
Member
Environment and Energy Committee
19 State Office Building
St. Paul, MN 55155-1206

The Honorable David J. Tomassoni
Minnesota State Senator, Chair
Environment, Economic Development and
Agricultural Budget Division
3401 Minnesota Senate Bldg.
St. Paul, MN 55155

The Honorable Bill Ingebrigtsen
Minnesota State Senator, Ranking Minority
Member
Natural Resources, Economic Development
and Agriculture Budget Division
143 State Office Building
St. Paul, MN 55155

The Honorable Thomas M. Bakk
Minnesota State Senator, Chair
Rules and Administration Committee
3113 Minnesota Senate Bldg.
St. Paul, MN 55155

The Honorable David W. Hann
Minnesota State Senator, Ranking Minority
Member
Rules and Administration Committee
147 State Office Building
St. Paul, MN 5515

Mr. Paul Marinac
Office of the Revisor
700 State Office Building
St. Paul, MN 55155

Mr. Greg Hubinger, Director
Legislative Coordinating Commission
72 State Office Building
St. Paul, MN 55155

RE: Annual Report on Obsolete, Unnecessary, or Duplicative Rules, as Required by Minn. Stat. § 14.05, subd. 5¹

Minnesota Statute § 14.05, Subdivision 5, states:

"By December 1 of each year, an agency must submit to the governor, the legislative coordinating commission, the policy and funding committees and divisions with jurisdiction over the agency, and the revisor of statutes, a list of any rules or portions of rules that are obsolete, unnecessary, or duplicative of other state or federal statutes or rules. The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules. By December 1, the agency must either report a timetable for repeal of the rule or portion of the rule, or must develop a bill for submission to the appropriate policy committee to repeal the obsolete, unnecessary, or duplicative rule. Such a bill must include proposed authorization to use the expedited procedures of section 14.389 to repeal or amend the obsolete, unnecessary, or duplicative rule. A report submitted under this subdivision must be signed by the person in the agency who is responsible for identifying and initiating repeal of obsolete rules. The report also must identify the status of any rules identified in the prior year's report as obsolete, unnecessary, or duplicative. If none of an agency's rules are obsolete, unnecessary, or duplicative, an agency's December 1 report must state that conclusion."

The Minnesota Pollution Control Agency (MPCA) has conducted a review of its rules to identify rules that are obsolete, unnecessary, or duplicative.

Rules identified as obsolete, unnecessary, or duplicative.

No rules have been newly identified in 2016 as being obsolete, unnecessary, or duplicative.

Status of rules identified in previous Obsolete Rules Reports.

In previous Obsolete Rules Reports the MPCA identified obsolete rules it intends to amend or repeal. The MPCA is either completing rulemaking to address them or is evaluating options for making the necessary changes.

1. Rules identified in the 2015 Obsolete Rules Report.

A. MPCA Board Rules

The 2015 Legislative session eliminated the MPCA Citizens Board. (Minn. Stat. § 116.02, subd.6 and 8 (<https://www.revisor.mn.gov/laws/?id=4&year=2015&type=1>). Minn. R ch. 7000 (MPCA

¹ **Cost of preparing this report.** In compliance with Minn. Stat. § 3.197, the cost of preparing this report is \$700. This includes time for review of rules and the time to complete the report.

Procedural Rules), and a number of other MPCA rules include obsolete references to the MPCA Citizens' Board and MPCA Citizens' Board activities.

The MPCA planned to address these obsolete rules by working with the Office of the Revisor of Statutes to prepare proposed legislation repeal obsolete rule provisions related to the MPCA Citizen's Board according to Laws 2015, First Special Session chapter 4, article 4, section 149.

Revisor's Instruction. *The revisor of statutes shall prepare draft legislation to amend statutes to conform with structural changes to the Minnesota Pollution Control Agency under sections 114 to 117 and 150. The revisor shall submit the proposed legislation to the chairs of the house of representatives and senate committees with jurisdiction over environment and policy by January 1, 2016.*

The MPCA expected that the necessary legislation would also grant editorial authority to the Office of the Revisor of Statutes to eliminate references to the MPCA Board in rules. This legislation was not introduced, nor has the MPCA conducted administrative rulemaking to eliminate the now obsolete references to the MPCA Board. The MPCA will continue to investigate legislative and administrative rulemaking options for eliminating the obsolete references.

B. Air Quality Rules

The following rules relating to aspects of the MPCA's air quality programs have been identified as being obsolete, unnecessary or duplicative:

- **Minn. R. pt. 7007.0325 Biogenic carbon dioxide exclusion from applicability thresholds.** This part is obsolete because the federal deferral of these emissions expired July 21, 2014, and is no longer applicable.
- **Minn. R. pt. 7009.0070 Time of compliance.** This part is obsolete because the compliance date for the ozone and sulfur dioxide standards ended December 31, 1984.
- **Minn. R. pt. 7011.1280, subpart 8 List of courses.** This subpart is obsolete because it is no longer necessary to maintain a list of training courses that qualify for earned credit under the provisions of the operators' certification program. Sufficient training capacity directly related to waste combustor operations has developed in the waste combustor industry so the Commissioner is not required to prepare a list of approved courses.
- **Minn. R. pt. 7011.1400, subpart 12 Process upset gas.** This definition is obsolete because the term "process upset gas" is no longer referenced in rule.
- **Minn. R. pt. 7011.1415 Exemptions.** A portion of this part providing an exemption for certain emissions is obsolete because those exemptions are no longer provided in current federal Clean Air Act requirements.
- **Minn. R. pt. 7017.1080, subpart 3 Microfiche submittal deadline.** This subpart is obsolete because it requires test information to be submitted in a form (microfiche) that is obsolete.
- **Minn. R. part 7017.1120, subpart 2 Alternate format.** This subpart is unnecessary because a different rule allows the submittal of information in an alternate format.
- **Minn. R. pt. 7017.1170, subparts 1, 4, and 5 Quality assurance and control requirements for CEMS.** These subparts are obsolete because the MPCA is adopting a new rule that incorporates updated federal requirements.

- ***Minn. R. pt. 7017.1210 Quality assurance and control requirements for COMS.*** This part is obsolete because the MPCA is adopting a new rule incorporating federal standards of performance for new stationary sources.
- ***Minn. R. pt. 7017.2001, subpart 2 Transition to new rule.*** This subpart is obsolete because the November 1, 1993 deadline for rule transition has passed.
- ***Minn. R. pt. 7017.2018 Submittals.*** This part is obsolete because the mailing address for submittals and the format for these submittals are outdated.

The obsolete rules relating to the MPCA's air quality program are currently being addressed through rulemaking that will make a number of minor revisions to several chapters of Minnesota rules. This rulemaking, referred to as the Air Omnibus Rule (Revisor's # 4097), has been adopted and the final administrative steps are expected to be completed in December 2016.

C. Hazardous Waste Rules

The following rules relating to the MPCA's hazardous waste manifest tracking system have been identified as being obsolete:

- ***Minn. R. pt. 7045.0261 subpart 1a, item B Exemptions***
- ***Minn. R. pt. 7045.0294, subpart 1a Alternate manifests***
- ***Minn. R. pt. 7045.0381, subpart 5 Use of an alternate manifest***

These subparts are obsolete because they provide the option of using an alternate manifest which is no longer allowed under the federal hazardous waste manifest program.

The following rules relating to the MPCA's hazardous waste management program have been identified as being obsolete or duplicative:

- ***Minn. R. pt. 7045.0206, subpart 6, item B.*** This part establishes generator size determination requirements. Obsolete requirements related to PCB requirements are being deleted.
- ***Minn. R. pt. 7045.0230, subpart 1a.*** This part establishes very small quantity generator license application requirements. The requirements are duplicative because of proposed language revisions.
- ***Minn. R. pt. 7045.0243, subpart 3, item G.*** This part establishes the terms and conditions of a hazardous waste generator license. Subpart 3, item G is obsolete because this part of the MPCA's process for issuing licenses has changed.
- ***Minn. R. pt. 7045.0371.*** This part requires that hazardous wastes must be transported in accordance with applicable state statutes and federal requirements. The reference to repealed Minnesota Statute § 221.0355 is obsolete.
- ***Minn. R. pt. 7045.0875, subpart 8, item B.*** This part establishes standards for used oil processors and refiners. Item B establishes that used oil processor/refiner must submit biennial reports. This item is obsolete because the MPCA no longer requires submittal of biennial reports from used oil processors.

Rulemaking has been started to address the obsolete rules relating to the MPCA's hazardous waste program. Addressing these obsolete requirements will involve a number of changes to several chapters of Minnesota rules. The MPCA expects to complete this rulemaking, referred to as the Land-Related Housekeeping Rule (Revisor's #4155), in 2017.

2. **Rules identified in the 2014 Obsolete Rules Report.** The 2014 Obsolete Rules Report identified one set of rules as potentially obsolete; the Green House Gas Emissions rules, portions of which were

vacated by Supreme Court decision. The MPCA is waiting to initiate rulemaking to repeal the obsolete rules until the U.S. Environmental Protection Agency finalizes its proposed rule amendments to address the vacated portions of the rule.

3. Rules identified in the 2013 Obsolete Rules Report. The following obsolete rules identified in the 2013 Obsolete Rules Report are being addressed through current rulemaking activities.

Air Omnibus Rule (Revisor's # 4097) The MPCA has repealed *Minn. R. pt. 7011.0725* (Performance Test Procedures), as part of the Air Omnibus rule that was adopted in 2016.

Land Housekeeping Rule (Revisor's # 4155) The MPCA is repealing or amending the following obsolete parts subparts, or portions of rules as part of the Land Housekeeping rule expected to be adopted in 2017.

- ***Minn. R. pt. 9210.0120, subpart 5 (Grant application procedures), and Minn. R. pt. 9210.0810, subpart 1 (Request for proposals).*** These rules relate to the administration of solid waste grants and contracts.
- ***Minn. R. pt. 7035.9120, subparts 4 and 5.*** These subparts regulate the transportation of infectious waste.
- ***Minn. R. pt. 7045.0075, subpart 5.*** This subpart provides a mechanism to petition for the use of an alternate manifest for hazardous waste transportation.
- ***Minn. R. pt. 7045.0125, subparts 4, 5 and 6.*** These subparts relate to the transportation of hazardous waste being recycled.
- ***Minn. R. pt. 7045.0325, subpart 2.*** This subpart provides exceptions to the federal uniform hazardous waste manifest.
- ***Minn. R. pt. 7045.0365, subpart 3.*** Item I in this subpart establishes requirements applicable to hazardous waste transfer facilities.
- ***Minn. R. pt. 7045.0395, subpart 5.*** Items B and C of this subpart requires specific actions in response to a spill of hazardous waste.
- ***Minn. R. pt. 7045.0686.*** This part establishes the requirements for the management of spent or waste household batteries.

If you have any questions regarding this report, please feel free to contact me at 651-757-2031.

Sincerely,



Greta Gauthier
Legislative Director
Commissioners Office

GG/CK:cp