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October 18, 2021

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RE: Minnesota Pollution Control Agency's Proposed Amendments to Rules Governing Air Quality – Minnesota Rules Chapters 7002, 7005, 7007, 7009, 7011, 7017, and 7019; Revisor's ID No. 4678

Dear Librarian:

The Minnesota Pollution Control Agency (MPCA) intends to adopt amendments to the state rules governing air quality. The overall purpose of this “housekeeping” rulemaking is to keep the air quality rules current, ensure consistency with applicable federal and state regulations, clarify ambiguous rule language, and correct gaps or errors identified while administering the existing rules. In general, this included updating definitions, limited changes to permitting and performance testing rules, and incorporating by reference new federal rules. A new rule to enact the 2020 Minnesota Session Law ban on the use of trichloroethylene (or TCE) is also part of this rulemaking. The MPCA plans to publish a Notice of Intent to Adopt Rules in the October 18, 2021, *State Register*.

The MPCA has prepared a Statement of Need and Reasonableness (SONAR). As required by Minn. Stat. §§ 14.131 and 14.23, the MPCA is sending the Legislative Reference Library an electronic copy of the SONAR at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have any questions, please contact me at 651-757-2439 or [mary.lynn@state.mn.us](mailto:mary.lynn@state.mn.us).

Sincerely,

A handwritten signature in black ink that reads 'Mary H. Lynn'.

*This document has been electronically signed.*

Mary H. Lynn  
Rule Coordinator  
Agency Rules Unit  
Resource Management & Assistance Division

Attachment: SONAR



## **STATEMENT OF NEED AND REASONABLENESS**

In the Matter of Proposed Revisions of  
Minnesota Rule chapters  
7002, 7005, 7007, 7009, 7011, 7017, and 7019;  
Revisor ID No. RD4678

Environmental Analysis and Outcomes Division

August 2021

General information:

1. Availability: The *State Register* notice will be available during the public comment period on the Agency's Public Notices website: <https://www.pca.state.mn.us/public-notice>. The proposed rule and this Statement of Need and Reasonableness will be posted on the Air Quality Housekeeping Rule website: <https://www.pca.state.mn.us/air/rulemaking-air-quality-housekeeping>
2. View older rule records at: <https://www.revisor.mn.gov/rules/status/>
3. Agency contact for information, documents, or alternative formats: Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Mary Lynn, Rule Coordinator, Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, MN 55155-4194; telephone 651-757-2439; 1-800-657-3864; email [mary.lynn@state.mn.us](mailto:mary.lynn@state.mn.us); or use your preferred telecommunications relay service.
4. How to read a sample Minnesota Statutes citation: Minn. Stat. § 116.07, subd. 2(f)(2)(ii)(A) is read as Minnesota Statutes section 116.07, subdivision 2, paragraph (f), clause (2), item (ii), subitem (A).
5. How to read a sample Minnesota Rules citation: Minn. R. 7150.0205, subp. 3(B)(3)(b)(i) is read as Minnesota Rules, chapter 7150, part 0205, subpart 3, item B, subitem (3), unit (b), subunit (i).

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# Acronyms, definitions or abbreviations

**40 CFR Part 52:** Code of Federal Regulations, title 40, Part 52  
**40 CFR Part 60:** Code of Federal Regulations, title 40, Part 60  
**40 CFR Part 62:** Code of Federal Regulations, title 40, Part 62  
**40 CFR Part 70:** Code of Federal Regulations, title 40, Part 70  
**CAA:** Clean Air Act  
**CEM:** Continuous Emission Monitor  
**CFR:** Code of Federal Regulations  
**chapter 7002:** Minnesota Rules chapter 7002  
**chapter 7005:** Minnesota Rules chapter 7005  
**chapter 7007:** Minnesota Rules chapter 7007  
**chapter 7009:** Minnesota Rules chapter 7009  
**chapter 7011:** Minnesota Rules chapter 7011  
**chapter 7017:** Minnesota Rules chapter 7017  
**chapter 7019:** Minnesota Rules chapter 7019  
**EAW:** Environmental Assessment Worksheet  
**EMS:** Environmental Management System  
**EPA:** United States Environmental Protection Agency  
**HAP:** Hazardous Air Pollutant  
**Minn. R.:** Minnesota Rules  
**Minn. R. ch.:** Minnesota Rules chapter  
**Minn. Stat. ch. or §:** Minnesota Statutes chapter or section  
**MPCA or Agency:** Minnesota Pollution Control Agency  
**MWC:** Municipal Waste Combustor  
**NESHAP:** National Emission Standards for Hazardous Air Pollutants  
**NSPS:** New Source Performance Standards  
**PM:** Particulate Matter  
**PM10:** Particulate Matter with an aerodynamic diameter less than or equal to 10 micrometers  
**PM2.5:** Particulate Matter with an aerodynamic diameter less than or equal to 2.5 micrometers  
**PTE:** Potential to Emit  
**PSD:** Prevention of Significant Deterioration: PSD  
**RGU:** Responsible Governmental Unit  
**SIP:** State Implementation Plan: SIP  
**SO2:** Sulfur Dioxide  
**SONAR:** Statement of Need and Reasonableness  
**TCE:** Trichloroethylene  
**VOC:** Volatile Organic Compound

## **1. Introduction and statement of general need**

This rulemaking continues the Minnesota Pollution Control Agency's (MPCA) ongoing air quality "housekeeping" rulemaking with the overall purpose of keeping the air quality rules current, ensuring consistency with applicable federal and state regulations, clarifying ambiguous rule language, and correcting gaps or errors identified while administering the existing rules. The informal name given to this rulemaking is the "air quality housekeeping rule."

A Request for Comments on planned amendments to the rules governing air quality was published in the *State Register* on December 14, 2020. MPCA considered comments received during this comment period and all comments received during this rulemaking in developing the rule amendments.

### **A. Need for the proposed rule amendments as a whole**

Minnesota's rulemaking process requires the MPCA to explain the facts establishing the need for and reasonableness of the rules as proposed, and to address specific procedural requirements (Minn. Stat. ch. 14). In general terms, this means that the MPCA must not be arbitrary or capricious in proposing rules. However, to the extent that need and reasonableness are separate, "need" has come to mean that a problem exists that requires administrative attention, and "reasonableness" means that the solution proposed by the MPCA is appropriate.

#### **Updating and clarifying air quality program administration rules**

This rulemaking will amend several existing rules that incorporate federal rules. The United States Environmental Protection Agency (EPA) has updated several standards of performance. Revisions are needed to maintain consistency with applicable federal programs. These actions maintain the MPCA's delegation by the EPA to administer the federal air protection program in Minnesota.

Where applicable, the new and revised rules will be submitted to the EPA for inclusion in the Minnesota State Implementation Plan (SIP). The SIP is the vehicle for states to demonstrate compliance with the air quality standards of the Clean Air Act (CAA). The SIP contains state rules and statutes, as well as site- and area-specific plans, permits, and orders that ensure that Minnesota will maintain its attainment with the National Ambient Air Quality Standards (NAAQS) as required in the CAA. Any revisions to these rules or statutes must be submitted to the EPA to be approved and incorporated into the SIP. All the contents of Minnesota's SIP can be found in 40 CFR Part 52, Subpart Y, and are federally enforceable.

Other proposed amendments relate to ongoing administration of the air quality permitting program or general edits to update or clarify rules.

#### **The ban on the use of trichloroethylene (TCE)**

A new rule is needed to implement the Minnesota Legislature's ban on the use of TCE. On May 16, 2020, Governor Walz signed the "White Bear Area Neighborhood Concerned Citizen Group Ban TCE" Act, named for the residents that worked to get legislation passed to ban trichloroethylene (TCE). The law bans the use of TCE on or after June 1, 2022, in any facility that is required to have a state air permit, including manufacturing, processing, and cleaning processes.

TCE is widely used in industrial and commercial processes and has some limited uses in consumer and commercial products. It is used as a solvent for degreasing metal parts during the manufacture of a variety of products and can be found in consumer products, including some wood finishes, adhesives, paint removers, and stain removers. TCE can also be used in the manufacture of other chemicals. TCE is categorized as a “hazardous air pollutant (HAP)” by the federal CAA and a “volatile organic compound (VOC)” by federal regulations.

The Act requires that “cessation of use must be made enforceable in the air emissions permit for the facility...” by June 1, 2022. TCE use is ubiquitous; to meet legislative intent of banning TCE, the MPCA needs to modify every air emissions permit to explicitly prohibit it. (The Act also allows exceptions to be administered through the MPCA’s variance processes.) In order to incorporate the ban on TCE into existing permits by the statutory deadline, the MPCA must revise the rules for issuing and holding permits. Thus, this rulemaking is being undertaken to include a ban on TCE use unless otherwise provided for by statute.

### **Accounting for recovery and reuse of materials in permits and rules**

The ban on TCE was the result of serious violations of air emission rules and permit requirements by Water Gremlin in White Bear Township. The company self-reported that it under-reported VOC and HAP emissions included in the company’s emissions inventories because they did not include in their calculations the recovered and re-used TCE from the air pollution control equipment. While Water Gremlin included the solvent re-use process in its air emissions application, the MPCA issued a permit that tracked TCE emissions based on purchasing records, and did not include conditions that limited use, including re-use of TCE.

The MPCA has acknowledged that the permit issued to Water Gremlin in 2002 and subsequent oversight was inadequate, and has instituted a number of steps for improvements, particularly to address concerns highlighted by the Legislative Auditor<sup>1</sup>. In addition to these steps, the MPCA undertook a review of permitting rules and air emission inventory rules to ensure that compliance demonstration calculations contained in the rules properly account for recycling and re-use of materials. Air emission control rules have been written and modified over time, which has resulted in inconsistent use of terms or insufficient requirements; revisions are being undertaken in this rule to ensure use or alignment of common terms and rule structure to aid in use and understanding.

## **2. Public participation and stakeholder involvement**

The MPCA conducted several outreach activities while developing these rule amendments. This was done in part to comply with the requirements of Minnesota’s rulemaking process, but also to notify, engage, and inform potentially interested parties about this rulemaking and solicit their input on the MPCAs preliminary concepts for amending the rules. This section describes the MPCA’s public outreach efforts and the steps it took to develop and solicit input on the rule amendments.

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<sup>1</sup> Office of the Legislative Auditor. *Minnesota Pollution Control Agency Regulation and Oversight of Water Gremlin. Special Review. February 2021* <https://www.auditor.leg.state.mn.us/sreview/watergremlin.pdf>

## **Webpages**

The MPCA maintains the following webpages that are publicly accessible and relevant to this rulemaking:

- Air Quality Housekeeping Rule at <https://www.pca.state.mn.us/air/rulemaking-air-quality-housekeeping>. The MPCA created this rule-specific webpage early November 2020, in order to provide the public with background and other information relevant to this rulemaking, including rulemaking documents and a target schedule for rule adoption. The Air Quality Housekeeping Rule webpage has been updated routinely to inform the public of developments related to this rulemaking. The MPCA will continue to update the rule webpage to include information about the proposed rule amendments and rulemaking documents, including the proposed rule language, a final version of this SONAR, and other supporting documents. This will ensure that potentially interested parties can continue to participate in the rulemaking process after the MPCA publishes its Notice of Intent to Adopt Rules in the *State Register*.
- Public Notices at <https://www.pca.state.mn.us/public-notices>. The MPCA's public notice webpage hosts all of the MPCA's public notices. The MPCA posted its notice of Request for Comments for this rulemaking on the public notice webpage on December 14, 2020, the same day the notice was published in the *State Register*. The Request for Comments specifically requested comment on the MPCAs preliminary concepts to amend the rules. Public notices remain posted for the entire term of the comment period. As discussed in Section 8, Notice plan, the MPCA will continue to post official public notices for this rulemaking on the public notice webpage.
- Minnesota Rulemaking at <https://www.pca.state.mn.us/regulations/minnesota-rulemaking>. The MPCA's rulemaking webpage provides the public with centralized information about current rulemaking projects and the rulemaking process. It also explains how the public can receive notice of rule changes. The MPCA's "Public Rulemaking Docket," updated monthly, is located on this webpage and includes information about current rulemaking projects such as the rule webpage, rule timeline, and contact person.

## **GovDelivery**

The MPCA uses a self-subscription service called "GovDelivery" to provide notice electronically (via email) to interested and affected persons of various updates and public notices issued on a wide range of topics, including administrative rulemakings. Any person may visit the GovDelivery subscription page at <http://public.govdelivery.com/accounts/MNP/CA/subscriber/new> to subscribe and choose the notifications they want to receive.

The MPCA lists rule projects on the "Public Rulemaking Docket" (see above). Once a rule project becomes active (i.e., it is no longer listed as a future project), a GovDelivery self-subscription list for that specific rulemaking is established. GovDelivery alerts individuals who have signed up to receive notice for all rulemakings to notify them of new rule projects.

On November 3, 2020, the MPCA sent a GovDelivery notice to 2,754 subscribers of the list for "New Rulemaking Announcements." This notice encouraged interested parties to visit the GovDelivery subscription page and sign up for the Air Quality Housekeeping Rule list to receive information about this rulemaking. Subscribers were added to a rule-specific list that the MPCA used to disseminate rule-related information to interested and affected parties. Also on the same date, the MPCA provided specific notice of the new rulemaking to the 11 federally recognized tribes in Minnesota. The MPCA



maintains a list of the federally recognized tribes and updates the list quarterly. Notification sent to the designated tribal contact persons for air quality contained the information in the November 3, 2020, GovDelivery notice about the new rulemaking.

The MPCA also promoted the GovDelivery list for this rulemaking and encouraged interested persons to subscribe by posting a related announcement on the Air Quality Housekeeping Rule webpage. There are 1,768 persons subscribed to the GovDelivery list specific to this rulemaking as of May 19, 2021.

The MPCA will continue to send GovDelivery notice of public notices and other relevant information for this rulemaking as discussed in Section 8, Notice plan.

### **Newsletters**

The MPCA also uses GovDelivery to send interested parties electronic newsletters that include updates on rulemaking. Any person may visit the GovDelivery subscription page and sign up for MPCA newsletters that they would like to receive. For this rulemaking, the MPCA included articles in the following newsletters: Air Mail, which provides updates on air quality issues, and Small Business Enterprise, which covers compliance issues, pollution prevention, and training. Air Mail is a quarterly newsletter that goes out to 2,586 subscribers as of May 27, 2021. Small Business Enterprise is a newsletter that goes out to approximately 1,732 subscribers as of January 14, 2021. Subscribers to these newsletters include a wide range of stakeholders, including private citizens, regulated parties, consultants, small business owners, government entities of all levels, nonprofits, and media organizations.

The MPCA published articles about this rulemaking in the following newsletters:

- November 2020, Air Mail – information about the MPCA’s plan to amend the air quality rules. Air Mail is available at <https://www.pca.state.mn.us/air/air-mail-newsletter-and-bulletins>.
- January 2021, Small Business Enterprise – information about the MPCA’s plan to amend the air quality rules. Small Business Enterprise is available at: <https://www.pca.state.mn.us/regulations/get-help-your-small-business#newsletter>.
- August 2021, Air Mail – information about MPCA’s plan to publish the proposed rules.

The MPCA will continue to publish updates for this rulemaking in Air Mail and the Small Business Enterprise newsletters, as discussed in Section 8, Notice plan.

### **Meetings**

The MPCA staff met with interested parties, as listed below, to discuss the rulemaking and solicit input on the anticipated effects. In addition to these meetings, staff participated in phone and email conversations to keep stakeholders informed of the rulemaking, and answer related questions.

- November 4, 2020, presentation at the Air and Waste Management Association Conference on the Environment.
- December 2, 2020, presentation at the annual meeting of the Minnesota Resource Recovery Association, which included stakeholders representing municipal solid waste combustors.

Additionally, because some of the proposed changes involve federal requirements, staff communicated with EPA Region V during development of the draft rule amendments. Specifically, staff requested input

on amending Minnesota's waste combustor rules to allow for approval of alternative continuous monitoring techniques to measure emissions.

### **3. Statutory authority**

The MPCA has a general statutory authority to adopt these rules under Minn. Stat. § 116.07, as follows:

*Subd. 4. Rules and standards. (a) Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the Pollution Control Agency may adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1967, chapter 882, for the prevention, abatement, or control of air pollution. Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to sources or emissions of air contamination or air pollution, to the quality or composition of such emissions, or to the quality of or composition of the ambient air or outdoor atmosphere or to any other matter relevant to the prevention, abatement, or control of air pollution.*

Under the state statutory provision, the MPCA has the necessary statutory authority to adopt the proposed amendments into Minnesota Rules.

### **4. Reasonableness of the rule amendments as a whole**

Minn. Stat. ch. 14 requires the MPCA to explain the facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the MPCA must not be arbitrary or capricious in proposing rules. However, to the extent that need and reasonableness are separate, "need" has come to mean that a problem exists that requires administrative attention, and "reasonableness" means that there is a rational basis for the MPCA's proposed action.

The MPCA is proposing to make miscellaneous changes and corrections to its air quality rules in chapters 7002, 7005, 7007, 7009, 7011, 7017, and 7019. This rulemaking is referred to as a "housekeeping" rule, and its purpose is to make amendments to the rules used to administer the air quality protection program in Minnesota. These rule amendments correct or delete outdated rules, update and improve references, and make changes to align state rules with federal rules and state statutes. Amendments to these rule chapters will provide consistency and clarity, and make the rules easier for regulated parties to understand.

#### **Reasonableness of using incorporation by reference**

In this rulemaking the MPCA continues its use of incorporation by reference to adopt federal requirements. An incorporation by reference is a method of including other publications or documents as part of a rule. Incorporating material by reference makes these publications or documents enforceable parts of the rule while sparing the Agency the time and expense of having to reproduce it as part of the rule.<sup>2</sup> The MPCA believes that incorporation by reference is the most effective way to meet the requirements of its CAA delegation by ensuring that the federal requirements are accurately and legally adopted into state rules. The use of incorporation by reference in this rulemaking to adopt the

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<sup>2</sup> *Minnesota Rules Drafting Manual with Styles and Forms, 1997 Office of Revisor of Statutes*  
[https://www.revisor.mn.gov/static/office/1997\\_RuleDraftManual.a285c37112da.pdf](https://www.revisor.mn.gov/static/office/1997_RuleDraftManual.a285c37112da.pdf)

federal regulations is a reasonable mechanism to protect Minnesota’s air quality, effectively implement the federal standards, and maintain the state’s delegation status. The MPCA relies on the federal justification of the federal standards, as presented in the Federal Register, as the state’s discussion of the reasonableness of the adoption of those requirements into state rules.

## **5. Rule-by-rule analysis: proposed changes and specific reasonableness**

Minn. Stat. ch. 14 requires the MPCA to explain the facts establishing the reasonableness of the proposed rules. “Reasonableness” means that there is a rational basis for the MPCA’s proposed action. Explained in this section is the specific reasonableness of the proposed rules, together with an explanation of the need for each change. Since this rulemaking affects multiple chapters of existing air quality rules, the rule changes are grouped by rule chapter to aid the reader in reviewing this document. The proposed rule amendments include the following:

- A. Amendments to chapter 7002 to correct several rule references in the air quality fee rules.
- B. Amendments to chapter 7005 to update definitions.
- C. Amendments to chapter 7007 that affect definitions; permit application content, public notice, and issuance; registration permits; capped permits; and requirements for preventing significant deterioration of air quality.
- D. Amendments to chapter 7009 to update definitions.
- E. Amendments to chapter 7011 that affect definitions, requirements for small municipal waste combustor (MWC) units, and incorporation by reference of federal performance standards.
- F. Amendments to chapter 7017 that affect emission facility certification test requirements.
- G. Amendments to chapter 7019 that affect emission facility notification requirements, continuous emission monitoring data, and emission calculations.

### **Revisions recommended by the Revisor**

As recommended by the Office of the Revisor of Statutes, a number of existing language changes have been made as a stylistic matter to modernize the rule language where possible, for example, changing “shall” to “must.” The Revisor of Statutes, “Minnesota Rules Drafting Manual,” recommends using “must” not “shall” to impose duties. The Revisor of Statutes also recommends changing “shall” to “is/are” where appropriate – since no duty is being imposed, “is/are,” rather than “must” is grammatically correct. The existing rules are also updated to change “which” to “that” where appropriate.

The revisions to the rule parts listed below, revised by deleting “shall” and adding “must” or “is/are” are made without changing the applicability of the rules. These revisions are reasonable because they provide consistency and clarity to the proposed rules.

- Part 7002.0019 – subpart 1; subpart 1, items A and G; subpart 2; subpart 2, items A, B, C, D, F, G, H, I, J, K, and O
- Part 7002.0025 – subpart 1, items A, B, and C; item C, subitems (1) and (2)
- Part 7002.0045
- Part 7007.0250 – subpart 6, item B

- Part 7007.0500 – subpart 1, item A
- Part 7007.0850 – subparts 1 and 4
- Part 7007.0950 – subpart 2, items A and B; subpart 3, item A, subitem (4); item B; subpart 4
- Part 7007.1110 – subpart 21
- Part 7007.1120 – subpart 3
- Part 7007.1125 – subpart 3; subpart 3, items F and J; subpart 4; subpart 4, items B, D, and E
- Part 7007.1130 – subpart 3; subpart 3a; subpart 4; subpart 4, item D; subpart 6, item B; item B, subitems (1) and (5)
- Part 7007.1144 – subpart 1
- Part 7007.1146 – subpart 2
- Part 7007.1147 – subpart 5
- Part 7007.3000 – item C
- Part 7011.0010 – subpart 2
- Part 7011.0120 – subpart 2
- Part 7011.1255 – subpart 3
- Part 7011.1270 – subpart 1; subpart 2, item A; subpart 3, item A; subpart 4, item A; subpart 5; subpart 6, items A, B, and C
- Part 7017.1060 – subparts 1 and 3
- Part 7019.1000 – subpart 1; subpart 2; subpart 2, item C; subpart 3; subpart 3, item C; subpart 4
- Part 7019.3040 – items A; item B; item B, subitems (2) and (3)
- Part 7019.3060
- Part 7019.3070
- Part 7019.3080 – items A and B
- Part 7019.3090
- Part 7019.3100 – items B, C, and D

The revisions to the rule parts listed below, revised by deleting “which” and adding “that” are made without changing the applicability of the rules.

- Part 7007.0850 – subpart 4
- Part 7007.0950 – subpart 4
- Part 7007.1125 – subpart 3, item J; subpart 4, item E
- Part 7007.1130 – subpart 6, item B, subitem (7)
- Part 7017.1060 – subpart 1
- Part 7019.1000 – subpart 1
- Part 7019.1000 – subpart 5, item A

## **A. CHAPTER 7002 PERMIT FEES**

Chapter 7002, parts 7002.0005 to 7002.0085 apply to all persons required to obtain an air emission permit from the MPCA under chapter 7007.

## **PART 7002.0019 AIR QUALITY PERMIT APPLICATION FEES AND ADDITIONAL FEES.**

Subpart 1. **Application points.** Subpart 1, item A establishes the points assessed for an application for an administrative amendment or administrative change of name, ownership, or control. item A is revised to add “7007.1110, subpart 15a” which applies to a stationary source that has been issued a registration permit and is relocating. The MPCA collects fees to cover the costs of administering the MPCA’s air program. The amendment to 7007.1110, subpart 15a proposed in this rulemaking requires the MPCA to issue an amended permit. Because these permits are registration permits and the associated review and processing of the permit action is minor, the MPCA is proposing that 1 point be assigned to this activity.

Subpart 1, item F is revised to add “permit” to clarify what “capped” is referring to.

Subpart 1, item G is revised to make the rule less wordy and more clear; “determination of” is deleted and replaced with “determining” and “receipt of” is deleted and replaced with “receiving.”

Subp. 2. **Additional points.** Subpart 2 establishes the additional points assessed for activities identified in this subpart and include various types of review and analysis activities.

Subpart 2, item O is revised as follows indicated by strikeout and underline text:

- Part 4410.4300, subparts 18, ~~item~~ items A and B; and 29
- Part 4410.4300, subparts 8, items A and B; 10, items A, B, ~~and E~~ C, and D; 16, items A and D; 17, items A to C and E to G; and 18, items C, D, ~~and E~~, and F
- Part 4410.4300, subparts 4; 5, item A, subitems (1) and (2); 13; subpart 15; 16, items B and C; and 17, item D

The revisions identified above are needed because some of the environmental assessment worksheet (EAW) mandatory rule categories no longer correspond to Minn. R. 4410.4300. In 2019, the Environmental Quality Board, the entity responsible for environmental review rules, amended Minn. R. 4410.4300 (44 SR 691). These changes were necessary because the majority of the EAW categories were established in the 1980’s and 1990’s and did not reflect the modern regulatory system or project types. The Environmental Quality Board used its experience in applying the environmental review process to make technical and housekeeping changes so the environmental review rules are more easily understood by project proposers, responsible governmental units (RGUs), and citizens. The amendments resulted in the creation of new subparts and thus the subpart and item references within Minn. R. 7002.0025 must be updated.

In 2019, the mandatory EAW category in Minn. R. 4410.4300, subpart 18 was revised for clarity. Items A, B, and C were revised as follows: the requirements in former item A are now addressed in items A and B; the requirements in former item B are now addressed in items C and D; and the requirements in former item C are now addressed in items E and F.

Because the former item A was revised to items A and B, it is reasonable to add item B to the mandatory EAW categories that assign 15 points. In addition, because former item B was revised to items C and D, and former item C was revised to items E and F, it is reasonable these mandatory EAW categories assign 35 points.

In 2019, the mandatory EAW category in Minn. R. 4410.4300, subpart 10 was revised for clarity. While item A remained unchanged, item B was revised to items, B, C, and D, and the former item C was revised

to items E, F, and G. The RGU assignments for items E, F, and G were reassigned from the MPCA to the Public Utilities Commission, Minnesota Department of Agriculture, and Public Utilities Commission, respectively.

Because the former item B was revised to items B, C, and D, it is reasonable to add items C and D to the mandatory EAW categories that assign 35 points. Items E, F, and G should not be included in Minn. R. 7002.0025 since the MPCA is no longer the assigned RGU.

#### **PART 7002.0045 COMPUTATION OF THE DOLLAR PER TON FIGURE.**

Part 7002.0045 specifies the formula that must be used to compute dollars per ton. The MPCA proposes to delete the variable “P” from the formula in this rule, because the rule that defined and determined the value for “P”, Minn. R. 7002.0025, subpart 2a, was repealed in 2012. It is reasonable to ensure clarity and delete obsolete rule language.

## **B. CHAPTER 7005 DEFINITIONS AND ABBREVIATIONS**

Chapter 7005 provides the definitions and abbreviations used in the state air pollution control rules and the MPCA’s air program. Definitions in existing Minn. R. 7005.0100 apply to all rules related to air pollution control or air quality.

#### **PART 7005.0100 DEFINITIONS.**

Subp. 9b. **Efficiency factor.** The existing subpart 9b definition of “efficiency factor” is revised to be consistent with federal guidance. Item B, subitem (1) is revised to delete “July 1993” because the year cited for the Compilation of Air Pollutant Emission Factors (AP-42) cited in this definition is obsolete. This change is needed because the MPCA determined that an updated version of this document was available. It is reasonable to delete the reference to July 1993, add “January 1995” and the phrase “as amended” to clarify that the most recent version is the version being referenced. Incorporation “as amended” means that any future amendments to the incorporated federal regulations automatically become part of Minnesota rules. The use of “as amended,” is a reasonable and administratively efficient mechanism for maintaining consistency with the federal regulations. It is reasonable to delete the outdated information about how to obtain the document from the Minnesota State Law Library because it is available at no cost at the Website address being added to this subpart.

Subp. 10a. **Emission factor.** The existing subpart 10a definition of “emission factor” is revised for clarity. Item A is revised to delete reference to the EPA “Technical Support Division” because this division no longer exists under EPA’s current organizational structure. The rule language “the EPA Internet site” is also deleted because the terminology is outdated and not needed. The phrase “this document” is added to clarify that the document being referred to is the “Compilation of Air Pollutant Emission Factors (AP-42).” It is reasonable to delete obsolete rule language and to add clarifying rule language.

Item B is also revised to delete reference to the EPA “Technical Support Division” as explained in item A above. The rule language “the EPA Internet site” is also deleted because the terminology is outdated and not needed. The phrase “this data system” is added to clarify that the data system being referred to is the “Factor Information Retrieval (FIRE) Data System.” It is reasonable to delete obsolete rule language and to add clarifying rule language.

Subp. 31a. **Performance specification.** The existing subpart 31a definition of “performance specification” is revised to delete “1982” because the year cited for the specifications for continuous monitoring systems in the Code of Federal Regulations (CFR) cited in this definition is obsolete. 40 CFR Part 60, Appendix B has been frequently amended since it was first promulgated in 1982. It is reasonable to delete the reference to 1982 and add the phrase “as amended” to clarify that the most recent version is the version being referenced. This document is not incorporated by reference and is only a reference source; no additional information must be provided.

Subp. 45. **Volatile Organic Compound or VOC.** The existing subpart 45 definition of “volatile organic compound or VOC” list of compounds is revised to be consistent with federal rule. The definition of VOC is revised at item III to update the reference to the compounds listed in Table 1 of the EPA’s Recommended Policy on Control of Volatile Organic Compounds (42 FR 35314), and where the list is currently available. Item III is revised to update the title to the “Complete List of VOC Exemption rules,” as amended, and incorporate the list by reference. This change is needed because the MPCA determined that a more current and re-titled version of this list of VOC compounds was available and appears to be subject to frequent change. The most current version of the “Complete List of VOC Exemption rules” is available online. It is reasonable to delete the outdated information about how to obtain the information at the Federal Register cite because it is available at the Website address being added.

## C. CHAPTER 7007 PERMITS AND OFFSETS

Chapter 7007 provides the conditions regarding the issuance of permits to construct, modify, reconstruct, or operate emissions units, emissions facilities, or stationary sources that emit any air pollutant, and the revocation, reissuance, or amendment of those permits.

The amendments to chapter 7007 primarily affect “applicable requirements” that apply to emissions units in a stationary source; waste combustors required to obtain a state permit; requirements for part 70 permits application notice and comment; EPA review of state and part 70 permits; and general requirements for registration permits and capped permits. In addition, several proposed housekeeping revisions to chapter 7007 will correct or delete outdated rules, and will align state and federal rules.

### Revising “Agency” to “Commissioner”

In chapter 7007, multiple rule parts are being revised to change the reference from “agency” to “commissioner.” Many parts of the rules require the regulated party to submit information or obtain approval from the “agency.” Since the statutory elimination of the MPCA Citizens Board, which in the MPCA administrative rules was referred to as the “agency,” the MPCA is revising such references to now refer to the MPCA “commissioner.” This is a reasonable change because it is the MPCA commissioner who actually receives the required information or conducts the required actions; and this change correctly identifies the individual who makes all decisions on behalf of the MPCA (see Minn. Stat. § 116.03, subdivision 1). The revisions to the rule parts listed below, deleting the term “agency” and adding the term “commissioner” do not change the effect or applicability of the rules.

- Part 7007.0850 – subpart 1; subpart 2, item A; item A, subitem (1); item A, subitem (1), units (b) and (c); item A, subitem (2), unit (h); item A, subitem (3); subpart 2, items B and C; subpart 2, item D, subitems (1) and (2); and subpart 2, item E; subpart 4.
- Part 7007.0950 – subpart 2, items A and B; subpart 3, item D; subpart 4
- Part 7007.1144 – subpart 1

- Part 7019.3040 – item A

#### **PART 7007.0100 DEFINITIONS.**

Subpart 1. **Scope.** Subpart 1 establishes that the definitions in this part apply to 7007.0050 to 7007.1850, and that the definitions in part 7000.0100 and 7005.0100 also apply to parts 7007.0050 to 7007.1800 unless otherwise defined in this part. This subpart is being revised because the rule language is needlessly complicated and confusing. The existing rule language applies the definitions in this part to a limited, specific range of rule parts relating to air permits that have since been amended and expanded. To avoid future inconsistencies and to increase efficiency, the rule should be clear what rules the definitions apply to. Subpart 1 is first divided into two paragraphs, adding items A and B. This change provides clarity and rule reference for the reader. Existing rule language in item A is revised to clarify that the definitions in this part, and the definitions in parts 7000.0100 and 7005.0100 apply to this chapter, unless otherwise defined. New rule language in item B establishes that the definitions in this part do not apply to parts 7007.4000 to 7007.4030. It is reasonable to update the rules to provide clarity.

Subp. 3. **Administrator.** Subpart 3 is proposed for repeal. The definition of “administrator” in part 7007.0100, subpart 3 duplicates an existing definition of “administrator” in part 7005.0100, subpart 1b that applies to all air pollution control rules. It is reasonable to delete unnecessary and redundant rules.

Subp. 7. **Applicable requirement.** Subpart 7 establishes all of the applicable requirements, listed in items A to W, that apply to emission units in a stationary source. A new item X adds the applicable requirement “any standard or other requirement of Minn. Stat. § 116.385, the White Bear Area Neighborhood Concerned Citizens Group Ban TCE Act, banning the use of trichloroethylene (TCE) on or after June 1, 2022, and prohibiting the commissioner from issuing a permit after January 1, 2022, which authorizes the use of TCE.” It is needed and reasonable to revise state rules to align with changes in Minnesota statute. A detailed explanation of the need for and reasonableness of the TCE ban is provided above in Section 1.

Subp. 29. **Written record.** A new subpart 29 defines the term “written record.” “Written record” means a record that is maintained in electronic or paper format. Air quality permits must include applicable record keeping requirements and the permittee must maintain adequate records. The definition of “written record” is needed to clarify that the required records can be maintained in electronic format or paper format. Electronic format includes email, Word/Excel documents, CD’s, DVD’s, and digital photographs. Defining “written record” reduces confusion and provides consistency because the air quality permit will not need to describe the electronic format that is acceptable for record keeping. It is reasonable to define this term so the permittee and MPCA staff will know that adequate records maintained in an electronic or paper format are both acceptable methods of record keeping.

#### **PART 7007.0250 SOURCES REQUIRED TO OBTAIN STATE PERMIT.**

Subp. 6. **Waste combustors.** Subpart 6 establishes when an owner or operator of a waste combustor must obtain a permit under part 7007.0250.

Waste combustors located at hospitals are subject to federal performance standards for Hospital, Medical, and Infectious Waste Incinerators (HMIWI) incorporated by reference in Minn. R. 7011.1292. The federal rule 40 CFR 60.50c (l) requires that emission units subject to the standard must obtain a federally-enforceable operating permit from the MPCA; therefore, subpart 6, item A is revised to eliminate the existing exemption from permitting for these emission units.



Further, the requirement for Class IV waste incinerators to meet a stack height requirement is also proposed to be eliminated. The permit height requirement was adopted to help ensure sufficient dispersion of stack gases from waste incinerators that did not have highly efficient air pollution control equipment. The HMIWI standard has more stringent air emission standards than state rules requiring the use of air pollution controls, and as a result, a regulated hospital incinerator will have far lower emissions. The MPCA evaluates an entire facility's potential impacts on ambient air during permitting, and will continue to review HMIWI installations to determine whether additional stack height limits are needed.

#### **PART 7007.0500 CONTENT OF PERMIT APPLICATION.**

Subpart 1. **Application requirements.** Subpart 1 establishes the application requirements under part 7007.0500. Item B is revised to delete "For complicated stationary sources, the agency recommends but does not require that the applicant arrange for a preapplication meeting with the agency's air quality division." The Revisor of Statutes recommends deleting this sentence because it is a recommendation and not a requirement and therefore does not meet the definition of a rule.

#### **PART 7007.0800 PERMIT CONTENT.**

Subp. 5. **Record keeping.** Subpart 5 establishes the applicable requirements related to record keeping, listed in items A to D, that the permit must incorporate. Items A, B, and C are revised to add "written" to specifically identify the type of records that the permittee must maintain and retain relating to the record keeping requirements of this subpart. This change aligns with the new definition "written record" at part 7007.0100, subpart 29. Because air emission permits require the maintenance of records to document compliance, and MPCA permit writers were frequently asked to define what a record is, including whether it is a written record, the MPCA decided to establish definitions in use in rule to ensure common use of terms and definitions. It is reasonable to update rules to ensure clarity and consistency.

#### **PART 7007.0850 PERMIT APPLICATION NOTICE AND COMMENT.**

The EPA supervises states' administration of the federal air emissions permitting program, referred to in Minnesota rules as "part 70" permits because the federal air permitting rules are contained in 40 CFR Part 70.

Citizens are afforded the ability to petition the EPA to review air emission permits drafted by permitting states. To better manage the petition process and meet the CAA requirement to respond within 45 days of submitting a petition, the EPA revised the federal permitting rules in three key areas: how a petition must be submitted, required content and format of a petition, and administrative record requirements for permits (85 FR 6431) February 5, 2020.

To maintain its federal permitting program, the MPCA must amend state rules to incorporate the federal procedures instructing persons interested in petitioning the EPA to review a permit, and to describe new procedural requirements for the MPCA air permitting program to follow. The revisions to the federal rules affect the requirements and procedures of Minn. R. 7007.0850 and 7007.0950.

Subpart 1. **Technical support document.** This subpart is being revised to delete the reference to the MPCA sending the technical support document to the EPA and others who request it. The reference to the technical support document is deleted because additional procedures related to the technical

support document are now required and included elsewhere in these rule amendments at Minn. R. 7007.0850 and 7007.0950. It is reasonable to maintain rule clarity by deleting rule language when it is no longer needed.

Subp. 2. **Public notice and comment.** Subpart 2 establishes the requirements for public notice and comment. Subpart 2, item A, subitem (1), unit (a) is revised to delete “electronically” in reference to how notices are posted on the Agency’s website for public notices. All documents posted on a website are electronic in nature; therefore, it is not necessary to state how notices are posted. It is reasonable to delete redundant rule language.

Subpart 2, item A, subitem (2), unit (f) is revised to indicate that the public notice for a permit must now include the technical support document required in subpart 1 of this part. This change is needed to meet federal requirements for public participation at 40 CFR 70.7(h)(2) which require that the notice include the statement required by 40 CFR 70.7(a)(5) (sometimes referred to as the ‘statement of basis’) for the draft permit. The MPCA refers to this statement as the technical support document. It is reasonable to revise state rules to align with federal rules.

Subpart 2, item A, subitem (4) is revised to delete existing rule language and add further instruction to the MPCA when addressing public comments. Specifically, the commissioner must respond in writing to all comments that raise issues and develop a record of the public participation process including the items listed in units (a) to (d). The EPA is now specifying in 40 CFR 70.7 (h)(5) and (6) that the permitting authority must develop a record of commenters and significant comments received during the public comment period, as well as developing an administrative record of the public participation process.

Subpart 2, item E is revised to delete “an electronic bulletin board” and add “the agency website” in reference to how current permit activities are made available to the public. This change is needed because the term “electronic bulletin board” is outdated. It is reasonable to update the rule to reflect current media terminology.

Subp. 3. **Petitions for meetings and hearings.** Subpart 3 establishes the requirements for a petition for a public informational meeting or a contested case hearing, and the criteria to grant or deny the petition. Subpart 3, item B is revised to add “The commissioner must also give notice of the public informational meeting by posting the notice on the agency website for public notices.” This change is needed to meet federal requirements for public participation at 40 CFR 70.7(h)(1); which require that the notice be published in a newspaper of general circulation or State publication designed to give general public notice, or by posting the notice on a public website identified by the permitting authority. It is reasonable to revise state rules to align with federal rules.

Subp. 4. **Additional procedures for permits containing Title I conditions.** Subpart 4 establishes that the commissioner must comply with all federal requirements for public participation applicable to permits that include Title I conditions. This subpart is revised to delete the language “In addition to the requirements of this part.” The commissioner must comply with requirements of the rule; therefore, the language is unnecessary.

#### **PART 7007.0950 EPA REVIEW AND OBJECTION.**

Subpart 1. **Review by EPA.** Subpart 1 establishes the requirements for part 70 permit and state permit documents that the MPCA must provide to the EPA for review. Subpart 1, item A, subitem (1) is revised to add the technical support document that is required in part 7007.0850 and the record of public

participation required in part 7007.0850, subpart 2 must be provided with part 70 permits. This change is needed to meet the federal requirements for permit review by the EPA at 40 CFR 70.8. It is reasonable to revise state rule to align with federal rules.

Subp. 2. **EPA objection.** Subpart 2, items A and B are revised to make the rule less wordy and more clear; “receipt of” is deleted and replaced with “receiving.” Items A and B are also revised to delete the term “necessary” and replace it with “required” in reference to the supporting information for a proposed permit or permit amendment. This change makes clear that the information received by the administrator supporting the permit is required information.

Subp. 3. **Public petitions to administrator regarding part 70 permits.** Subpart 3 establishes the requirements to petition the administrator, if the administrator does not object to a part 70 permit or major amendment to a part 70 permit. Changes are needed to subpart 3 to meet federal requirements for permit review by the EPA and affected States at 40 CFR 70.8, as discussed above at part 7007.0850. Subpart 3 is revised to restructure existing rule language and add new items A, B, and C to provide clarity and rule reference for the reader.

New item A, new subitems (1) to (4) establish what is required of a petitioner who wants to make an objection if the administrator does not object to a part 70 permit or major amendment to a part 70 permit. New subitem (1) requires the petitioner to provide a copy of the petition to the commissioner. This new subitem is needed to meet federal requirements for public petitions to the administrator at 40 CFR 70.8(d). It is reasonable to revise state rule to align with federal rules.

New subitem (2) requires the petitioner include the elements in 40 CFR 70.12(a). This new subitem is needed to meet the federal standard petition requirements at 40 CFR 70.12(a). It is reasonable to revise state rule so that it aligns with federal rule to maintain enforceability and compliance with the federal requirements.

New subitem (3) requires the petitioner submit the petition to the administrator according to the procedures required in 40 CFR 70.14. This new subitem is needed to meet the federal requirements for submission of petitions at 40 CFR 70.14. It is reasonable to revise state rule to align with federal rule to maintain enforceability and compliance with the federal requirements.

New subitem (4) is existing subpart 3 rule language that requires the petition is based only on objections to the part 70 permit or the amendment that were specifically raised during the public comment period. Minor wording changes recommended by the Revisor of Statutes are made for clarification.

New item B is existing rule language that establishes the process the commissioner must follow if the administrator objects to the part 70 permit or amendment as a result of a petition. For clarity, the rule language is revised to delete “prior to agency issuance” and replace it with “before the commissioner issues the permit or amendment.”

New item C is existing rule language that establishes the permit remains in effect until it is amended or revoked, and the owner and operator of the stationary source are not in violation of the requirement to submit a timely and complete permit application. Minor wording changes recommended by the Revisor of Statutes are made for clarification.

**PART 7007.1102 INCORPORATIONS BY REFERENCE.**

**PART 7007.1105 ELIGIBILITY FOR ENVIRONMENTAL MANAGEMENT SYSTEM (EMS) PROVISIONS IN STATE PERMITS.**

**PART 7007.1107 EMS PROVISIONS IN STATE PERMITS; APPLICATION AND PERMIT CONTENT.**

Minn. R. 7007.1102, 7007.1105, and 7007.1107 composed Minnesota's Environmental Management System (EMS) permit—a state permit that relies on an EMS to track environmental compliance at a facility. These rules were adopted in 2004 after a single permit was issued. The MPCA anticipated that five to ten additional facilities would or could be eligible for an EMS a permit<sup>3</sup>. To date, no additional facility owners have applied for or expressed interest in developing such a permit. The provisions of the permit might have been too complicated to qualify; the facility needs to have implemented an International Organization for Standardization (ISO) 14001-registered EMS, or one conforming to the ISO standard. Because the MPCA is able to provide much of the compliance flexibility expected under an EMS permit within current permits, without the ISO 14001-registration, nor the requirement of the dispersion modeling of the EMS rule, the MPCA is proposing to sunset the EMS permit and repeal associated rules. It is reasonable to clarify rules by removing provisions that no longer serve their purpose.

**PART 7007.1110 REGISTRATION PERMITS; GENERAL REQUIREMENTS.**

Subp. 2b. **Additional limitations on stationary source eligibility for registration permit.** Subpart 2b establishes the conditions for when a stationary source may not obtain an option B, C, or D registration permit. Subpart 2b, item B identifies the date by which owners and operators of a stationary source that hold a registration permit and are eligible for a sector based general permit can apply for the general permit. The MPCA proposes to delete the last sentence of subpart 2b, item B because the general permit availability and application dates have passed and the rule language is obsolete. It is reasonable to delete obsolete rule language.

Subp. 15a. **Relocating.** Revisions to subpart 15a are necessary to clarify that a permit must be amended and issued by the MPCA when a facility is relocating, rather than relying on a notification process of the existing rule. Subpart 15a is revised to restructure existing rule language and add new items A, B, and C; existing items A to D are relettered to item B, subitems (1) to (4) to provide clarity for the reader.

Permit applications must describe the location of the facility being permitted (Minn. R. 7007.0500, subpart 2). When a stationary source with an registration permit relocates, the permit application is no longer accurate. Therefore, the permittee must resubmit location information, and the MPCA must amend the air emissions permit to reflect its location.

Because a permit must reflect the location of the facility, the MPCA has always processed relocation notifications as amendments to the air emissions permits, and has collected fees for administrative changes accordingly. Thus, there will be no change in application fees as a result of this rule change.

Subp. 21. **Registration permits; general conditions.** Subpart 21, items A to O establish the general conditions that must be included in a registration permit issued by the commissioner. Item O is revised

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<sup>3</sup> SONAR, *Proposed Rules Governing Air Emission Permits to be Codified in Minnesota Rules Chapter 7007, with conforming amendments to Chapters 7011 And 7019. July 12, 2004* <https://www.leg.mn.gov/archive/sonar/SONAR-03498.pdf>

to correct the reference to the Tort Claims Act in Minn. Stat. § 3.736. It is reasonable to correct a statutory reference so that it is accurate.

#### **PART 7007.1120 REGISTRATION PERMIT OPTION B.**

As introduced in the Statement of Need for this rulemaking, the MPCA has reviewed the permitting and emission inventory rules that establish the required calculations to determine the amount lost as air emissions from a process when recycling and/or reusing materials.

Subp. 4. **Calculation method.** Subpart 4 establishes the calculation method for determining emissions from VOC-containing materials. Subpart 3, item A requires the Option B permittee to track the purchase or use of VOC-containing materials; item C limits the permittee to purchasing or using less than 2,000 gallons per year of VOC-containing material. Instructions in subpart 4 require clarification so that it is VOC-containing material that is being tracked, not VOCs as current text of subpart 4 indicates.

- Subpart 4 is clarified to state that the permittee must “track use or purchases”, as required in subpart 3. A sentence that clarifies that it is the amount of VOC-containing material recycled that is subtracted from the amount purchased or used is added to the rule to replace the existing requirement to track VOCs.
- The existing rule says that “VOC containing materials are those with HAPs.” VOC containing materials are those with VOCs, some of which are hazardous air pollutants (HAPs). Because the provision is supposed to explain how to calculate VOC-containing materials, current text is revised to eliminate the focus on HAPs and on the determination of the quantity of VOCs. This provision is also now lettered item A to help identify the new text as a definition.
- A definition of “reuse” is provided in new item B because the Option B permit holder is allowed to track “use” and will need to account for VOC-containing material that is reused.
- The definition of recycling is corrected to refer to VOC-containing material, and not VOCs. This provision is also now lettered item C to help identify the revised text as a definition.

It is reasonable to clarify rules to ensure correct accounting of materials, as this is the means of establishing enforceable air emission limits. The MPCA does not believe these revisions change how Option B permit holders are tracking emissions, because existing MPCA permit forms and tracking requirements for Option B permits already refer to the tracking of VOC-containing materials.

#### **PART 7007.1125 REGISTRATION PERMIT OPTION C.**

Subp. 3. **Compliance requirements.**

Subp. 3a. **Compliance requirements for low-emitting sources.**

Item J of subpart 3 is being revised to establish a deadline to submit the emission point inventory required by this item. Item E of subpart 3a requires that a low-emitting source also prepare this emission point inventory.

When stationary sources conduct modeling, “nearby sources” must be included if they are likely to have an impact on ambient air concentrations. These nearby sources include Option C permit holders, both those that qualify as low-emitting sources under subpart 3a as well as those subject to subpart 3 compliance demonstration requirements. In 1994, the MPCA adopted the requirement of subpart 3,

item J requiring an inventory of emission points and related potential to emit (PTE) calculations<sup>4</sup> to prepare Option C permit holders to respond to requests for information in the event they were identified as a nearby source in modeling demonstrations. Because the inventory of emission points and related PTE calculations has been a routine compliance requirement for Option C permit holders since the rule was adopted in 1994, the MPCA has determined that revisions to the rule are needed.

The MPCA proposes to include a new requirement that an Option C permittee provide this inventory to the commissioner within 21 days if requested. Establishing a limit on the response period will assist in ensuring timely responses by Option C permittees. Requiring the data be submitted on a form developed by the commissioner will aid in collecting the correct information in a form usable by the MPCA, and will minimize the effort of the Option C permittee in responding to the request. Option C permittees need only prepare this information for solid fuel-burning equipment like a boiler; the MPCA believes that because there is typically only one or two emission units at an Option C facility burning solid fuel, this request can be quickly fulfilled within 21 days.

Subp. 4. **Tables and calculations.** Subpart 4 establishes that the tables and calculations in this subpart must be used to determine if a stationary source is eligible for an Option C registration permit. Subpart 4 is revised to add “as amended” in reference to the “Annual Book of American Society for Testing Materials and Standards (ASTM)” that is incorporated by reference in this subpart. This document contains multiple volumes and is frequently updated. This change is reasonable because it clarifies that the most recent version of the document is being referenced. Subpart 4 is also revised to delete “ASTM is the author and publisher” and “University of Minnesota Library” as housekeeping type changes to this subpart.

Subpart 4 is also revised to add items A to E to letter each of the existing calculation methods established in subpart 4 – Calculation 1. Indirect Heating Emissions Units is item A, Calculation 2. Reciprocating Internal Combustion Engine Emission Units is item B, Calculation 2A. RIC Engine Fuel Usage Calculation is item C, Calculation 2B. RIC Engine Operating Hours Calculation is item D, and Calculation 3. VOC Emissions Units is item E. This change provides clarity and rule reference for the reader.

## **PART 7007.1130 REGISTRATION PERMIT OPTION D.**

This part describes the requirements specific to obtaining and operating with an Option D air emissions registration permit.

### **Revisions to clarify terms related to recycling and reuse of materials**

Subp. 3. **Compliance requirements.** Subpart 3 establishes the requirements, in items A to J, and subparts 6 to 9, that the owner or operator of a stationary source issued an Option D registration permit must comply with once the permit is issued.

As described in Section 4, Reasonableness of the rule amendments as a whole, the MPCA has reviewed rules instructing permittees how to account for recycling and/or reusing materials when completing mass balances to determine air emissions. The requirements in existing subpart 3, item A, subitem (4); subpart 3, item M, subitem (4); and subpart 4, item D do not adequately account for recycling or

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<sup>4</sup> Office of the Revisor of Statutes <https://www.revisor.mn.gov/rules/status/rule/75094>  
Revisor ID R-02381

disposal—these provisions overlook the possibility that materials can be removed by *disposal*, in addition to being shipped off-site for recycling, and thus are not lost as air emissions. It is reasonable to correct rules to ensure accurate accounting of air emissions.

Subp. 4. **Calculating air emissions.** As pointed out above, mass balances must account for recycling; materials can then be sent off-site for recovery, or can be reintroduced into the process on-site. Regardless, the materials need to be accounted, and item D of this subpart is revised to ensure that VOCs or greenhouse gas material balances track recycling. A definition of recycling is provided to ensure common use and understanding.

#### **Revisions to clarify compliance requirements**

Subp. 3. **Compliance Requirements.** This part is being renumbered because conditions are being moved to new subparts.

#### **Subp. 3a. Compliance Requirements for Low-Emitting Sources.**

There are in effect two types of Option D permits: those that qualify as a “low-emitting source” under the conditions of subpart 3a of this part, and those that are not low-emitting sources. Facilities that cannot be low emitting sources are subject to the conditions of subpart 3.

Within the rules for low-emitting sources, subpart 3a, item F states that the permittee must comply with the requirements of subpart 3, items F, H, I, and J. The MPCA is proposing to move these four compliance requirements of subpart 3, items F, H, I, and J to new subparts 6 to 9 that contain general requirements and conditions applicable to both types of Option D permits. Specifically:

- Item F is proposed to be revised and the requirements moved to existing subpart 6 (control equipment not listed) and new subpart 7 (control equipment listed). With these provisions moved to their own subparts, the remaining table is now converted to an itemized list format, which improves how to reference specific threshold requirements.
- Item H is proposed to move to new subpart 9, complying with registration permit general conditions.
- Item I is proposed to move to new subpart 9, complying with registration permit general conditions.
- Item J is being moved to new subpart 8, inventory of emission points, to clarify that this is a requirement for all Option D permit holders, including those that are able to qualify as a low-emitting source in subpart 3a, item F.

Subp. 6. **General Requirements; control equipment not listed in part 7011.0070.** Subpart 6 is being revised to now include the existing requirement of subpart 3, item F, unlisted control equipment in new item A. It is reasonable to consolidate related requirements into one subpart to ensure compliance.

Subp. 7. **General Requirements; control equipment listed in part 7011.0070.** Subpart 7 now contains the requirement of existing subpart 3, item F, subitem (1). Because this condition applies to all Option D permit holders, we are creating general requirements for all permits to ensure compliance with this condition.

Subp. 8. **Inventory of emission points.** When stationary sources conduct modeling, “nearby sources” must be included if they are likely to have an impact on ambient air concentrations. These nearby

sources include Option D permit holders, both those that qualify as low-emitting sources under subpart 3a as well as those subject to subpart 3 compliance demonstration requirements. In 1994, the MPCA adopted the requirement of existing part 7007.1130, subpart 3, item J requiring an inventory of emission points and related PTE calculations<sup>5</sup> to prepare Option D permit holders to respond to requests for information in the event they were identified as a nearby source in ambient air modeling demonstrations.

However, it has been difficult for the MPCA to collect this information from Option D permit holders. In recent modeling efforts, Option D permit holders have reported to the MPCA that they do not have current, complete emission point inventories along with PTE calculations. Because the inventory of emission points and related PTE calculations has been a routine compliance requirement for Option D permit holders since the rule was adopted in 1994, the MPCA has determined that revisions to the rule are needed.

First, the MPCA is moving the requirement to prepare and maintain the emissions point inventory to this new subpart 8 as a general condition for all Option D permits so that there is less of a chance that the requirement is overlooked. We are concerned that the structure of the existing rules has been confusing, potentially resulting in all Option D permittees overlooking the requirement to prepare an emissions point inventory.

Second, the MPCA proposes to include a new requirement that an Option D permittee provide this inventory to the commissioner within 45 days if requested. Establishing a limit on the response period will assist in ensuring timely responses by Option D permittees. Requiring the data be submitted on a form developed by the commissioner will aid in collecting the correct information on a form usable by the MPCA, and may limit the effort of the Option D permittee needed to respond to the request by providing the correct information.

It is important to improve the timeliness of providing the requested emission point inventories. Modeling demonstrations are required of new and expanding sources, or are required by existing facilities to demonstrate compliance with ambient air standards. When modeling is delayed because a nearby source does not have an emissions point inventory, construction permits issued to new or expanding facilities are delayed. The delay in a stationary source's ability to demonstrate compliance with ambient air standards means delaying health protections that the NAAQS are intended to provide. These delays cost permittees money and time, as well as delay potential ambient air improvements for Minnesota citizens.

The MPCA recognizes that Option D permittees do not know when or if they will be identified as a nearby source, and we do not believe that it is necessary for all approximately 900 Option D registration permittees to inventory stack/vent information and calculate the PTE of SO<sub>2</sub> and PM<sub>10</sub> immediately upon rule adoption. Based on the MPCA's recent experience, between 5 to 15 requests for information are made within a year to collect this information. In order to ease the preparation of inventories for Option D permittees who do not have a current inventory, the MPCA is preparing outreach and assistance through its Small Business Environmental Assistance Program. By developing calculation tools and offering technical assistance, Option D facilities should be able to more quickly respond to the MPCA's information request. Regardless, this inventory is an existing compliance requirement, and

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<sup>5</sup> Office of the Revisor of Statutes <https://www.revisor.mn.gov/rules/status/rule/75094>  
Revisor ID R-02381



through the MPCA's ongoing outreach, all Option D facilities will be notified that this inventory must be prepared and kept current.

Subp. 9. **Complying with registration permit general conditions.** Items H and I are moved from subpart 3 and placed in this new subpart 9 so that it is clear that these conditions apply to all Option D permits.

#### **PART 7007.1143 CAPPED PERMIT; GENERAL REQUIREMENTS.**

Subp. 6. **Operating in more than one location.** Subpart 6 establishes that the capped permit allow for a stationary source to operate in more than one location. Subpart 6 is revised to make the rule less wordy and more clear, and to provide consistency in rule language.

#### **PART 7007.1144 CAPPED PERMIT PUBLIC PARTICIPATION.**

Subpart 1. **Notice of applications received.** Subpart 1 establishes how information regarding the MPCA's receipt of applications for capped permits will be made available to the public; several revisions are proposed. First, subpart 1 is revised to delete "agency shall electronically" in reference to how notices are posted on the Agency's website. All documents posted on a website are electronic in nature; therefore, it is not necessary to state how notices are posted. It is reasonable to delete redundant rule language. Next, "receipt of" is deleted and replaced with "receiving." Last, subpart 1 is revised to delete "the Minnesota Pollution Control Agency Internet site" and the corresponding website address because the terminology and the address are outdated. The rule language "on the agency website for air permits" and the corresponding website address are added to update where information regarding applications for capped permits is available to the public. It is reasonable to delete obsolete rule language and to add updated information.

#### **PART 7007.1146 CAPPED PERMITS; COMPLIANCE REQUIREMENTS.**

Subp. 2. **Record keeping requirements.** Subpart 2 establishes the applicable requirements related to record keeping, listed in items A to G, that the owner or operator of a stationary source issued a capped permit must comply with.

As described in Section 4, Reasonableness of the rule amendments as a whole, the MPCA has reviewed rules instructing permittees how to account for recycling and/or reusing materials when completing mass balances to determine air emissions. The requirements in subpart 2, item A, subitem (3) do not adequately account for recycling or disposal—these provisions overlook the possibility that materials can be removed by disposal, in addition to being shipped off-site for recycling, and thus are not lost as air emissions. The equation now accounts for the possible methods for managing waste VOC: recycling off-site, recycling within the process, and collection for disposal. It is reasonable to correct rules to ensure accurate accounting of air emissions.

#### **PART 7007.1147 CAPPED PERMIT; CALCULATING ACTUAL EMISSIONS.**

Subp. 5. **Material balance method.** Subpart 5 identifies the method that the owner or operator of a stationary source issued a capped permit may use to calculate actual emissions when using a material balance. If an owner or operator uses the material balance method to calculate actual emissions, the equation in subpart 5 must be used to determine total actual emissions.

Again, as described in Section 4, Reasonableness of the rule amendments as a whole, the MPCA has reviewed rules instructing permittees how to account for recycling and/or reusing materials when completing mass balances to determine air emissions. The requirements in subpart 5 do not adequately account for recycling or disposal—these provisions overlook the possibility that materials can be removed by disposal, in addition to being shipped off-site for recycling, and thus are not lost as air emissions. The equation now accounts for the possible methods for managing waste VOC: recycling off-site, recycling within the process, and collection for disposal. It is reasonable to correct rules to ensure accurate accounting of air emissions.

#### **PART 7007.1148 AMBIENT AIR QUALITY ASSESSMENT.**

Subp. 3. **SCREEN3 method.** Part 7007.1148, subparts 2 and 3 specify the methods that an owner or operator of a stationary source may use to perform the ambient air quality assessment when applying for a capped permit or a state permit; compliance is required with the method in either subpart 2 or 3 for each relevant pollutant to be assessed. Revisions to subpart 3, item B are needed to update the reference regarding where the EPA’s SCREEN3 User’s Guide publication and screen model are available. Item B is revised to delete references to the MPCA library and Minitex interlibrary loan system, the National Technical Information Service, and the EPA Internet site. Item B is further revised to add the updated EPA website address where the SCREEN 3 User’s Guide is available. It is reasonable to delete the outdated information about how to obtain the SCREEN3 User’s Guide because it is available at no cost at the website address being added to this subpart.

#### **PART 7007.1300 INSIGNIFICANT ACTIVITIES LIST.**

Subp. 5. **Threshold table; hazardous air pollutants.** The MPCA is proposing several changes to the second (\*\*) footnote in part 7007.1300, subpart 5. First, the 1989 document “Interim procedures for estimating risk associated with exposure to mixtures” is out of date and no longer available on the EPA website. The most current document for use in determining toxicity equivalence factors is “EPA/100/R-10/005 Recommended Toxicity Equivalence Factors (TEFs) for Human Health Risk Assessments of 2,3,7,8- Tetrachlorodibenzo-*p*-dioxin and Dioxin-Like Compounds,” which is reasonably cited and incorporated by reference in this rulemaking. In addition to changing the citation to the document to be used for determining toxicity equivalence factors, the information for how to obtain the document is being revised. The document is available online at the EPA website address being added to this footnote. This change is a reasonable mechanism for obtaining the document and eliminates the need for the reference to the Minitex library system. Last, the required statement regarding the frequency of change of the document is being revised to state that the document is not subject to frequent change. Although the MPCA does not have information to indicate when the document will be changed, it is reasonable to assume that since the document has not changed since 2010, it is not frequently revised.

#### **PART 7007.1450 MINOR AND MODERATE PERMIT AMENDMENTS.**

Subp. 7. **When permittee may make proposed modification or change.** Subpart 7 establishes when the permittee may make the modification or change proposed in a minor or moderate permit amendment application. Item A is revised to delete reference to the “air quality division of the” Agency because the air quality division no longer exists under the MPCA’s current organizational structure. Item B is revised to delete “receipt of” and replace it with “receiving.” It is reasonable to delete obsolete rule language and make the rule more clear.

## **PART 7007.3000 PREVENTING SIGNIFICANT DETERIORATION OF AIR QUALITY.**

Part 7007.3000, item A is amended to clarify that “Code of Federal Regulations, title 40, part 52.21(g), (s), (t) and (u)” is not incorporated by reference into state rules.

The EPA cannot grant delegation of the authorities in 40 CFR 52.21(g), which outlines the procedures a state is to follow to redesignate areas of the state to more or less stringent air quality classifications. The procedures are not authorities the EPA can grant to the state.

40 CFR 52.21(s) requires a federal action associated with a Prevention of Significant Deterioration (PSD) project to be coordinated with an associated federal environmental impact statement required for the project. After EPA approved the PSD program in Minnesota’s SIP, the MPCA’s issuance of a PSD permit ceases to be a federal action and the requirements of paragraph (s) do not apply.

40 CFR 52.21(t) describes the process that can be used to resolve disputes over a redesignation or a permit. Similar to the redesignation procedures of paragraph (g), it is not an authority that EPA can grant to the state.

40 CFR 52.21(u) authorizes the EPA Administrator to delegate the PSD program to states, tribes, or local permitting authorities and sets the requirements under which EPA can do so. Since this provision applies only to the EPA Administrator, it is not an authority that EPA can grant to the state.

These rules are incorporated into the SIP that governs the administration and authorities of the federal air protection program in Minnesota. It is reasonable to clarify state rules so that the SIP is correct and complete.

## **D. CHAPTER 7009 AMBIENT AIR QUALITY STANDARDS**

Chapter 7009 contains the ambient air quality standards that apply to air emission sources.

### **PART 7009.0010 DEFINITIONS.**

Subpart 1. **Scope.** The MPCA is revising this part to include references to definitions in use throughout state air quality rules and permits while retaining the current terms and definitions unique to chapter 7009 and its parts. By incorporating definitions from state air quality rules, redundant definitions and terms can be deleted from this chapter, allowing for clarifying and streamlining rules.

### **PART 7009.0090 NATIONAL AMBIENT AIR QUALITY STANDARDS.**

Part 7009.0090 adopts and incorporates by reference the NAAQS for SO<sub>2</sub>, PM<sub>10</sub>, PM<sub>2.5</sub>, carbon monoxide, ozone, nitrogen dioxide, and lead, established pursuant to section 109 of the CAA. Part 7009.0090 is revised to delete the unnecessary reference to “adopted and” that was routinely included in past rulemakings to incorporate federal regulations by reference. At one time, it was standard practice to use the phrase “adopted and incorporated by reference.” However, the act of incorporating by reference is a rule adoption, making the phrase “adopted and” redundant. The Revisor of Statutes has recommended that the phrase “adopted and” be removed to eliminate possible issues about the use of two different terms to mean the same thing. It is reasonable to make the language of all the incorporations by reference in this chapter as consistent as possible.

## **PART 7009.1010 DEFINITIONS.**

Subpart 1. **Scope.** Subpart 1 establishes the scope of the definitions in part 7009.1010. This subpart is being revised because the rule language is needlessly complicated and confusing. Subpart 1 is revised to delete the existing rule language and add “The definitions in this part apply to terms used in parts 7009.1000 to 7009.1110.” It is reasonable to delete confusing rule language and to add clarifying rule language.

Subp. 4a. **Commissioner.** Subpart 4a is proposed for repeal. The definition of “commissioner” in part 7009.1010, subpart 4a duplicates an existing definition of “commissioner” in part 7005.0100, subpart 4b that applies to all air pollution control rules. It is reasonable to delete unnecessary and redundant rules.

## **E. CHAPTER 7011 STANDARDS FOR STATIONARY SOURCES**

Chapter 7011 contains the technical performance standards for air emission sources. In general, each standard of performance identifies the pollutant to be regulated, an emissions limit or work practice standards for controlling the release of pollutants, methods for measuring emissions of the pollutant to determine compliance with emission standards, and reporting and record keeping requirements.

### **PART 7011.0010 APPLICABILITY OF STANDARDS OF PERFORMANCE.**

Subp. 2. **New facility.** Part 7011.0010, subpart 2 establishes the applicability of the standards of performance for owners or operators of a new emission facility. Subpart 2 is revised to delete the rule language “‘Administrator’ has the meaning given in part 7007.0100, subpart 3.” The MPCA added a definition of “administrator” to the part 7005.0100 definitions which apply to all air quality rules. Therefore, there is no need in this subpart to provide another reference to where the term “administrator” is defined. It is reasonable to delete redundant rule language.

### **PART 7011.0120 ADJUSTING OPACITY STANDARD.**

Subp. 2. **Atmospheric dispersion modeling.** Subpart 2 is revised to update the information for obtaining the document “Guideline on Air Quality Models,” EPA-450/2-78-027R. The most current version of this document is available online. It is reasonable to delete the outdated information about how to obtain the document from the Minnesota State Law Library because it is available at no cost at the website address being added to this subpart.

### **PART 7011.0735 TABLE 2.**

The industrial process equipment standard (IPER) applies to an emissions unit when no other applicable state or federal standard applies. The standard is contained in Minn. R. 7011.0700 to 7011.0735. The rule includes two ways to calculate emissions limits: by process weight rate (Minn. R. 7011.0730) and by exhaust gas airflow (Minn. R. 7011.0735). When emission limits are calculated by both methods, the applicable limit is the more lenient or higher emission rate, of the two.

Within Minn. R. 7011.0730, there are interpolation equations provided for the process weight rate-based limit. In Minn. R. 7011.0735, there are no interpolation equations for the applicable airflow-based limit; however, the MPCA provides guidance in its [IPER Fact Sheet](#) with an interpolation equation for the

airflow-based limit<sup>6</sup>. If a permittee did not find the IPER Fact Sheet, there is no indication in the existing rule that additional emission limits based on gas volume are allowed, thus the MPCA proposes to revise Minn. R. 7011.0735 to include the interpolation equations necessary for calculating emission limits based on gas volume. It is reasonable to clarify rules to improve application and use.

#### **PART 7011.1201 DEFINITIONS.**

##### **Subp. 11. Class C waste combustor.**

Subp. 14. **Class II waste combustor.** The MPCA is proposing to revise the definitions of a Class C waste combustor (subpart 11) and a Class II waste combustor (subpart 14) in Minn. R. 7011.1201 so that the cutoff dates of state rules corresponds with the dates within federal rules that distinguish between “new” and “existing” small municipal solid waste waste combustors (MWC). The EPA’s dates are:

- For “existing” units: 40 CFR Part 62, Subpart JJJ – Federal Plan Requirements for Small Municipal Waste Combustor Units Constructed on or Before August 30, 1999.
- For “new” units: 40 CFR Part 60, Subpart AAAA – Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001.

The proposed rule revision would now define a Class C waste combustor as one where the "construction of the waste combustor was commenced on or before August 30, 1999." Similarly, the proposed rule revision would now define a Class II waste combustor as one where "construction of the unit is commenced after August 30, 1999, or modification or reconstruction is commenced after June 6, 2001."

Subpart JJJ has applied to Minnesota’s existing small MWCs since the federal plan was adopted by the EPA in 2003, establishes more stringent standards than existing Minnesota rules, and is being incorporated by reference in this rulemaking (see new part 7011.1295). To properly apply the federal standards to Class C waste combustor units, the definition of a Class C waste combustor is being revised to align with Subpart JJJ.

New Source Performance Standards (NSPS) Subpart AAAA applies to small MWC units that are constructed after August 30, 1999. These standards have already been incorporated into state rules in Minn. R. 7011.1293.

It is reasonable to align state rules with federal rules to clarify and streamline regulatory structure when there are environmental benefits for Minnesotans.

#### **PART 7011.1210 NOTIFICATION REQUIRED OF CLASS IV WASTE COMBUSTORS.**

The requirements of this part only apply to waste combustors located at hospitals. Beginning in 1997, the EPA adopted a series of standards of performance for waste combustors located at hospitals that became progressively more stringent than technical requirements of Minn. R. 7011.1201 to 7011.1285. At the same time, the Minnesota Legislature clarified the definition of infectious waste, helping Minnesota hospitals to better segregate and handle medical wastes, ultimately minimizing the amount of solid waste that requires special handling and disposal via incineration. As a result, Minnesota

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<sup>6</sup> MPCA, October 2010. *The Industrial Process Equipment Rule* <https://www.pca.state.mn.us/sites/default/files/aq4-06.pdf>

hospitals have found it unnecessary to rely on on-site incinerators, and all have ceased operating Class IV waste incinerators.

Because the federal Hospital, Medical, and Infectious Waste Incinerator rule 40 CFR 60.50c (I) requires that emission units subject to the standard must obtain a federally enforceable operating permit from the MPCA, the notification process required of any new Class IV waste combustor located at a hospital is now obsolete. Therefore, the MPCA is repealing this rule.

#### **PART 7011.1215 APPLICABLE STANDARDS OF PERFORMANCE FOR WASTE COMBUSTORS.**

Subp. 3. **Exemptions from standards of performance.** In administering this rule, the MPCA has found that owners of crematoria and animal carcass incinerators had difficulty identifying this subpart as containing the requirements for their incinerators. Therefore, the MPCA is retitling this subpart to better direct the reader. Further, because part 7011.1210 is being repealed, reference to it is being struck. It is reasonable to provide clarity to better administer rules.

#### **PART 7011.1225 STANDARDS OF PERFORMANCE FOR WASTE COMBUSTORS.**

Subp. 2. **Class I waste combustors.**

Subp. 2a. **Class II waste combustors.** A new subpart 2a is proposed to provide a correct, unique reference for Class II waste combustors standards of performance in existing rule 7011.1229. Minn. R. 7011.1229 is proposed to be retitled to identify the class of facilities to which the standards apply. Accordingly, subpart 2 is revised to delete reference to Class II waste combustors to reference only the Class I waste combustor standards of performance in Minn. R. 7011.1230. It is reasonable to correct rules to ensure proper application and interpretation.

#### **PART 7011.1228 NITROGEN OXIDES LIMITS FOR CLASS A WASTE COMBUSTORS.**

This part includes a reference to 7011.1270 that upon adoption of this rule will be renumbered. Part 7011.1270 is being updated to include additional numbering to provide for more precise citing of requirements. The reference to 7011.1270 will be updated to specifically cite the newly renumbered, existing provisions.

#### **PART 7011.1229 PERFORMANCE STANDARDS FOR CLASS II WASTE COMBUSTORS.**

The MPCA proposes to retitle Minn. R. 7011.1229 "Performance Standards: Class II Municipal Waste Combustors" to accurately describe the subject of the conditions in this part.

Additionally, existing applicable requirements of Minn. R. 7011.1225, subpart 2 are being included in new subpart 1. It is reasonable to support compliance with existing requirements by placing all requirements in a single rule part as best as possible.

#### **PART 7011.1230 PERFORMANCE STANDARDS; CLASS I MUNICIPAL WASTE COMBUSTORS.**

This part includes a reference to 7011.1270, Item E in subparts 1 and 2 that upon adoption of this rule will be renumbered to 7011.1270, subpart 6. Part 7011.1270 is being updated to include additional numbering to provide for more precise citing of requirements. The reference to 7011.1270 will be updated to specifically cite the newly renumbered, existing provisions.

#### **PART 7011.1235 REQUIREMENTS OF CLASS IV WASTE COMBUSTORS.**

Subp. 3. **Mercury and ash plans.** Part 7011.1210 is being repealed, making the rule provision in part 7011.1235, subpart 3 referencing it obsolete. It is reasonable to remove obsolete provisions to maintain rule applicability and clarity.

#### **PART 7011.1255 PLAN TO SEPARATE SOLID WASTES CONTAINING MERCURY.**

Subpart 1. **Preparing mercury waste separation plan.** Because part 7011.1210 is being repealed, this subpart is revised to remove the reference to part 7011.1210.

Subp. 3. **Periodically revising plan.** This subpart is being revised to remove the requirement that Class C waste combustors update a mercury waste separation plan annually. The plan to separate wastes containing mercury was initially adopted in 1994, prior to the availability of post-combustion mercury emission controls. As an effort to lower mercury emissions from uncontrolled waste combustors, this plan was required to be updated every year by Class C waste combustors, every five years for Class IV waste combustors, and with each application to reissue an air emission permit.

In 2003, the EPA adopted mercury emission limits for Class C waste combustors which require the use of activated carbon injection (ACI), and Minnesota facilities have complied. ACI results in extremely efficient control of mercury, and has been demonstrated at Class C waste combustors to be far better controlled than what could have been achieved with waste separation alone.

While ash composition testing shows mercury in waste is declining, it has not disappeared. As a result, the MPCA believes that it is reasonable to maintain a mercury waste separation plan to identify opportunities for capturing mercury when possible to avoid air emissions and to minimize mercury in ash. However an annual update of the mercury waste separation plan by Class C waste combustors is unwarranted. The MPCA thus proposes to amend this provision to require Class C waste combustors to update the plan every five years, when the application for permit reissuance is due.

#### **PART 7011.1265 REQUIRED PERFORMANCE TESTS, METHODS, AND PROCEDURES.**

Subp. 3. **Performance test methods for other air contaminants.** Operators of MWCs have requested of the MPCA to allow the use of Fourier Transform Infrared Spectroscopy (FTIR), tuneable diode lasers (TDL), or a hydrogen chloride (HCl) continuous emissions monitor (CEM) in lieu of M26 to measure hydrogen chloride emissions. The MPCA is proposing to modify this rule to include alternative HCl measurement methods that the EPA has designated as approved alternative measurement techniques for compliance demonstration.

Continuous monitoring methods are reliable options to stack testing methods 26/26A. The EPA has required or allowed continuous HCl monitors in the Mercury and Air Toxics Standard for coal-fired electric generating units and the NSPS for portland cement plants. In Minnesota, facilities have used FTIR in tandem with stack tests to compare results or to monitor operations, and demonstrated good results.

HCl CEMS are already allowed by the EPA for use in measuring HCL emissions at MWCs (40 CFR 60.58b(n)) following 40 CFR Part 60, Appendix B Performance Specification (PS 18) and quality assurance procedure (Procedure 6). The FTIR technology could be used in a CEM under PS 18.

#### **PART 7011.1270 PERFORMANCE TEST, WASTE COMPOSITION STUDY, AND ASH SAMPLING FREQUENCY.**

This part is being updated. Currently, the part is poorly organized, difficult to read and comprehend, and has numerous unlettered paragraphs that cannot be cited precisely. The changes to the part are intended as technical formatting, not substantive other than the change described below, though they look extensive.

Newly updated subpart 3, item E (previously Item B, subitem (4)) is proposed for revision. Class II waste combustors includes the waste combustor facility operated by the Mayo Clinic in Rochester, Minnesota. After completing the 2015 waste composition study, Mayo inquired as to whether waste composition studies remain necessary, given the increasing risk that the nature of the waste stream presents to sorting personnel. The MPCA proposes to revise item B, subitem (4) to restrict waste composition studies to waste combustors accepting municipal solid waste, as the waste studies at a medical campus have served their purpose and are no longer needed by the MPCA's solid waste management program administrators.

#### **PART 7011.1295 INCORPORATION BY REFERENCE; FEDERAL PLAN REQUIREMENTS FOR SMALL MUNICIPAL WASTE COMBUSTOR UNITS.**

Subpart 1. **Incorporation by reference.** New part 7011.1295, subpart 1 is being proposed to incorporate by reference the federal plan in 40 CFR Part 62, Subpart JJJ for small municipal waste combustors.

The EPA may delegate the authority for the implementation and enforcement of standards promulgated under the CAA to states that demonstrate appropriate mechanisms for implementing and enforcing the standards. The MPCA will seek delegation from the EPA for the implementation and enforcement authority of the federal plan regulating small MWCs after this rule is adopted. Operating a delegated state program assures a higher degree of consistency between the state and federal regulations; provides access to additional federal resources to support implementation and enforcement of the standards; allows for the MPCA to manage federal requirements if they affect unique state environmental issues; and reduces the need for regulated parties to understand and comply with different federal and state regulations.

By incorporating the federal plan into state rules, the rules have the effect of state law. Once this rule is effective, the MPCA will submit its request for delegation to the EPA referencing this rule as demonstration that the MPCA has the authority to administer and enforce the federal plan.

Subp. 2. **Exceeding emission limits.** Minn. Stat. § 116.85 establishes responsibilities for notification, retesting and/or shutdown of an incinerator that exceeds emission limits. Minn. R. 7011.1340 establishes the specific procedures for those notifications and retesting requirements. New subpart 2 reminds the reader of these additional requirements contained elsewhere in Minnesota rules as they apply to small MWCs.



## **PART 7011.1340 EMISSION LIMITS; EXCEEDANCE REQUIREMENTS.**

Subpart 1. **Applicability.** Part 7011.1340 establishes the procedures and operating requirements that an owner or operator of an incinerator must follow to comply with the conditions set forth in Minn. Stat. § 116.85. The statute applies to incinerators that have mercury or dioxin standards. Because the federal plan for small MWCs in new part 7011.1295 contain standards limiting emissions of mercury and dioxin, the requirements of Minn. R. 7011.1340 apply. Subpart 1 is therefore revised to add new part 7011.1295.

## **PART 7011.3470 INCORPORATION BY REFERENCE; NEW SOURCE PERFORMANCE STANDARDS; CALCINERS AND DRYERS IN THE MINERAL INDUSTRY.**

New part 7011.3470 is proposed to maintain the MPCA's delegation agreements related to the NSPS. The MPCA routinely incorporates NSPS that it seeks delegation of implementation and enforcement authorities from the EPA. This NSPS is not new, but has been overlooked in past rulemakings where NSPS were incorporated by reference.

The NSPS delegation agreement between the EPA and the State of Minnesota requires that delegated standards must have the force of law in Minnesota. To achieve that, the MPCA needs to adopt federal NSPS into state rule. The NSPS are important parts of the federal air quality program, and by extension, Minnesota's program for protecting human health and the environment.

Maintaining the federal delegation is a benefit to the regulated community in Minnesota. As a delegated state, the MPCA, rather than the EPA, is the primary enforcement agency for the standards. Therefore, once the MPCA has received delegation, regulated facilities need only communicate and report to the MPCA instead of to both agencies.<sup>7</sup> Maintaining the MPCA's delegation avoids duplicative reporting requirements and confusion regarding enforcement of the rules. If the MPCA did not maintain the delegation of the program, affected facilities would experience more duplication of effort and regulatory uncertainty.

Maintaining the federal delegation is a benefit to Minnesota citizens in protecting their health and the environment. As the primary enforcement agency for the incorporated federal standards, the MPCA is able to direct state resources to health and environmental protection priorities that may not be a priority to the EPA, and can address these priorities more promptly and more frequently. Those priority state activities include enforcement of non-compliance, inspection of affected facilities, compliance review of tests and reports, responsiveness to implementation questions, and communicating with the public about how a standard protects ambient air quality, human health, and the environment.

## **PART 7011.3515 INCORPORATION BY REFERENCE; NEW SOURCE PERFORMANCE STANDARDS; MUNICIPAL SOLID WASTE LANDFILLS EXISTING AFTER JULY 17, 2014.**

Subp. 2. **Incorporation by reference.** When Minnesota incorporated by reference this federal standard in 2020, the EPA had announced its plans to relax or forego enforcing this standard that controls

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<sup>7</sup> There are some limited exceptions to the MPCA's primacy, such as, key decision making authority that is retained by the USEPA and Title V compliance certifications that go to both the MPCA and the USEPA.

methane release from landfills<sup>8</sup>, contrary to Minnesota goals to reduce greenhouse gases<sup>9</sup>. Because of the unknown outcome from this announcement and subsequent legal actions by landfill owners and environmental groups, the MPCA incorporated the federal rule as of July 1, 2018, to maintain methane control requirements for new municipal solid waste landfills as a state standard. The MPCA expected to review future revised rules and determine whether final federal rules supported Minnesota's greenhouse gas mitigation programs.

Ordinarily, the MPCA incorporates by reference federal standards "as amended" because the EPA's amendments of standards are frequently conducted to resolve technical issues that develop during implementation, add new requirements for monitoring and recordkeeping, or to make more stringent air pollutant emission limits. Since adopting Minn. R. 7011.3515, the EPA no longer has plans to revise this standard that relax its control requirements. This subpart is therefore revised to remove the reference to the July 1, 2018, version of the federal standard, and continue the MPCA's standard practice of adopting standards of performance "as amended."

**PART 7011.3525 INCORPORATION BY REFERENCE; EMISSION GUIDELINES AND COMPLIANCE TIMES; MUNICIPAL SOLID WASTE LANDFILLS EXISTING ON OR BEFORE JULY 17, 2014.**

In May 2021, the EPA adopted a "federal plan" establishing standards of performance for existing municipal solid waste landfills. The EPA is required to promulgate a federal plan applicable to any state that is found to not have submitted complete state plans implementing the municipal solid waste landfill emission guidelines. The emission guidelines were incorporated into Minnesota rules in this part.

As explained in proposed new part 7011.3530, it is more administratively efficient for the MPCA and the affected municipal solid waste landfills in Minnesota, for the MPCA to request implementation and enforcement delegation of the federal plan, rather than having the MPCA complete the process of developing a state plan to acquire delegation of the emission guidelines in this rule. Thus, to avoid duplication of standards, the MPCA proposes to repeal this rule adopting the emission guidelines.

**PART 7011.3530 INCORPORATION BY REFERENCE; FEDERAL PLAN REQUIREMENTS FOR MUNICIPAL SOLID WASTE LANDFILLS THAT COMMENCED CONSTRUCTION ON OR BEFORE JULY 17, 2014, AND HAVE NOT BEEN MODIFIED OR RECONSTRUCTED SINCE JULY 17, 2014.**

Under the CAA, when the EPA adopts standards of performance for new sources under Section 111(b), the EPA may evaluate the need to develop standards for existing stationary sources under Section 111(d). These standards for existing sources are referred to as "emission guidelines" and are written as guidance to craft standards by a state to regulate existing facilities located in each state. If a state does not submit its "111(d) plan" by the deadline established by the EPA, Section 111(d) then requires that the EPA prepare a federal plan to establish federally enforceable facility emission control requirements. States are encouraged to accept delegation of the federal plan.

Minnesota adopted the emission guidelines controlling methane releases from landfills when the MPCA adopted Minn. R. 7011.3525 in 2020 as a step in the development of its 111(d) plan. However, during the period that the MPCA was in plan development, the EPA completed the adoption of the federal

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<sup>8</sup> The procedural history of this federal standard can be viewed at <https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-new-source-performance-standards>

<sup>9</sup> The Next Generation Energy Act 216H.02 establishes the goal of reducing greenhouse gas emissions 80% by 2050.

plan. Because the form the federal plan is written to applies directly to the facility, it is easier for the MPCA to administer: it is easier to properly identify applicable conditions of the standard, as well as easier to incorporate into facilities' operating permits. Further, in promulgating the federal plan, the EPA resolved several applicability and technical issues the MPCA and affected facilities had identified in the original emission guidelines. It is reasonable to adopt rules that improve administration of standards for both the MPCA and regulated parties; fewer resources are needed and the potential of overlooking or misinterpreting standards is lessened.

Subpart 1. **Scope.** Because there are multiple standards that could apply to a municipal solid waste landfill, it is reasonable to clearly state what the applicability requirement is for this rule.

Subp. 2. **Incorporation by reference.** Subpart 2 is being proposed to incorporate by reference the federal plan in 40 CFR Part 62, Subpart OOO for municipal solid waste landfills.

The EPA may delegate the authority for the implementation and enforcement of standards promulgated under the CAA to states that demonstrate appropriate mechanisms for implementing and enforcing the standards. The MPCA will seek delegation from the EPA for the implementation and enforcement authority of the federal plan regulating municipal solid waste landfills after this rule is adopted. Operating a delegated state program assures a higher degree of consistency between the state and federal regulations; provides access to additional federal resources to support implementation and enforcement of the standards; allows for the MPCA to manage federal requirements if they affect unique state environmental issues; and reduces the need for regulated parties to understand and comply with different federal and state regulations.

By incorporating the federal plan into state rules, the rules have the effect of state law. Once this rule is effective, the MPCA will submit its request for delegation to the EPA referencing this rule as demonstration that the MPCA has the authority to administer and enforce the federal plan.

## **F. CHAPTER 7017 MONITORING AND TESTING REQUIREMENTS**

Chapter 7017 contains the monitoring and testing requirements air emission facilities must comply with.

### **PART 7017.0200 INCORPORATION BY REFERENCE; COMPLIANCE ASSURANCE MONITORING.**

Part 7017.0200 adopts and incorporates by reference the "Code of Federal Regulations, title 40, sections 64.1 to 64.10, as amended, entitled "Compliance Assurance Monitoring." Part 7017.0200 is revised to delete the unnecessary reference to "adopted and" that was routinely included in past rulemakings to incorporate federal regulations by reference. At one time, it was standard practice to use the phrase "adopted and incorporated by reference." However, the act of incorporating by reference is a rule adoption, making the phrase "adopted and" redundant. The Revisor of Statutes has recommended that the phrase "adopted and" be removed to eliminate possible issues about the use of two different terms to mean the same thing. It is reasonable to make the language of all the incorporations by reference in this chapter consistent with one another.

### **PART 7017.1060 PRECERTIFICATION TEST REQUIREMENTS.**

Subp. 3. **Certification pretest meeting.** The MPCA is proposing to revise subpart 3 to better restate the process for requesting a pretest meeting. The paragraph was awkward. Therefore, we are taking this opportunity to restate the process in language we believe is clearer. Subpart 3 is revised to restructure

existing rule language to clarify the process for the proposed certification pretest meeting with Agency staff. New items A and B are added to establish the conditions for when the commissioner must reject the results of a certification test. This change is reasonable because the owner or operator needs to know under what conditions the certification test results would be rejected.

## **G. CHAPTER 7019 EMISSIONS INVENTORY REQUIREMENTS**

Chapter 7019 provides the conditions regarding the emission inventory and calculation of actual emissions for air emission sources.

### **PART 7019.1000 NOTIFICATIONS OF DEVIATIONS ENDANGERING HUMAN HEALTH OR THE ENVIRONMENT; SHUTDOWNS AND BREAKDOWNS.**

Subpart 1. **Notification of deviations which endanger human health or the environment.** Subpart 1 requires an owner or operator of an emission facility to notify the commissioner or state duty officer in the event of any deviation which could endanger human health or the environment. This subpart is revised to update the manner of notification. The term “facsimile” is deleted and “email” added. The telephone numbers for the state duty officer are also added. It is reasonable to delete obsolete rule language and add updated notification information.

Subp. 2. **Breakdown notification.** Subpart 2 establishes the notification requirements in the event of a breakdown of any control or process equipment that causes an increase in emissions of any regulated air pollutant. Subpart 2 is revised to delete “duration” in reference to “a breakdown of more than one hour.” This revision is reasonable because use of the term is redundant and not needed. Items A to C identify when notification is not required. Item A is revised to add a reference to each of the rule parts where the definitions of “applicable requirement” and “compliance document” are found. This revision is needed for two reasons: these terms are not defined in chapter 7019, and subpart 6 of this part is proposed for repeal. Subpart 6 identifies the rule parts where the meaning of the terms “applicable requirement” and “compliance document” are found. It is reasonable to reference where these terms are defined to assist the owner or operator in determining if notification is required.

Subp. 3. **Shutdown notification.** Subpart 3 establishes the notification requirements in the event of a planned shutdown of any control or process equipment that would cause any increase in the emissions of any regulated air pollutant. The rule language “notification shall be made to” is deleted and “the owner or operator must notify” is added. This change is needed to identify who is responsible for notifying the commissioner as soon as possible after the shutdown if the owner or operator does not have advance knowledge of the shutdown. This change is reasonable because it makes clear that the owner or operator are responsible for shutdown notification.

Subpart 3, item A is revised to add reference to the rule parts where the terms “applicable requirement” and “compliance document” are defined. This change is needed to align with the proposed repeal of subpart 6 in this part. This change is reasonable because it aids the reader by identifying where the terms used in the rule are defined.

Subp. 4. **Operation changes.** Subpart 4 requires operation changes in the event of any shutdown, breakdown, or deviation covered by subparts 1, 2, and 3 of this part. This subpart is revised to add that the owner or operator must immediately “or as soon as possible considering plant and personnel safety” take all practical steps to modify operations to reduce the emission of any regulated air pollutant. This

revision is needed for two reasons: the term “immediately” is not defined in chapter 7019, and subpart 6 of this part is proposed for repeal. The term “immediately” is defined in subpart 6. It is reasonable to specify what is meant by “immediately” to assist the owner or operator in determining when to take steps to modify operations. Subpart 4 is next revised to delete “The commissioner may require feasible and practical modifications in the operation to reduce emissions of air pollutants.” This sentence does not fit with the requirements of this subpart. The first sentence clearly states what the owner or operator must do, and the last sentence clearly states what is not allowed. It is reasonable to delete rule language that is not needed.

Subp. 6. **Definitions.** Subpart 6 identifies the rule parts where the meaning of the terms “applicable requirement” and “compliance document” are found, and the term “immediately” is defined. Subpart 6 is proposed for repeal. Definitions are generally placed at the beginning of a rule chapter or part, and terms are defined separately. Placement of multiple terms in subpart 6 are not easily located, nor are they necessary. Subpart 2, item A, and subpart 4 of this part are revised to add reference to each of the terms identified in this subpart. It is reasonable to repeal unnecessary and redundant rules.

#### **PART 7019.3040 CONTINUOUS EMISSION MONITOR (CEM) DATA.**

Part 7019.3040 establishes the requirements for facilities that collect emissions data through the use of CEM and the reporting requirements of that data to the commissioner. Item A is revised to delete “facility” and add “owner or operator must” to specify that it is the owner or operator of a facility that must report CEM data to the commissioner in the emission inventory. Next, “the facility’s” is added to reference the emission inventory. These changes are reasonable because the owner or operator of a facility needs to know that they are responsible for reporting the CEM data to the commissioner in the emission inventory for the facility.

Item B establishes that facilities that use the CEM method must include specific information in their emission inventory. Item B is revised to delete “Facilities required to use this method shall include the following information in their” emission inventory. This change is needed because item A of this part identifies who is responsible for reporting the data and the data to be reported. Item B is next revised to add that an emission inventory “submitted according to item A must include:” This change makes clear what the reported data in the emission inventory must include; specifically, the information in subitems (1) to (3). This change is reasonable because the owner or operator of a facility needs to know what information they are responsible for reporting in the emission inventory for the facility.

#### **PART 7019.3060 VOLATILE ORGANIC COMPOUND (VOC) MATERIAL BALANCE.**

Part 7019.3060 is used to standardize the method used by a permittee when calculating VOC emissions to report to the annual emissions inventory. This part is revised to add “the owner or operator” in multiple references to specific activities related to calculating VOC emissions. The changes are reasonable because the owner or operator of a facility needs to know they may use the method in this part for calculating VOC emissions and the requirements when doing so.

Next, the MPCA is concerned that permittees are not interpreting the conditions related to material balances correctly; therefore, this part is revised to align terms used in describing the variable “CE” in the equation in this part with definitions used in the control equipment rule in part 7011.0060.

In the existing rule, the variable “CE” is described as the “overall efficiency” and is the product of capture efficiency and control efficiency. There is no definition of “overall efficiency” in the control

equipment rule, rather, “control efficiency” is the product of capture efficiency and destruction or collection efficiency. To clarify this part, the rule is being revised to delete the use of “overall efficiency” and use “control efficiency”, and use either the “collection efficiency” or destruction efficiency” in place of “control efficiency” as defined in Minn. R. 7011.0060, subparts 3 and 3d.

#### **PART 7019.3065 MERCURY MATERIAL BALANCE.**

Part 7019.3065 is used to standardize the method used by a permittee when calculating mercury emissions to report to the annual emissions inventory. This part is revised to add “the owner or operator” in multiple references to specific activities related to calculating mercury emissions. The changes are reasonable because the owner or operator of a facility needs to know they may use the method in this part for calculating mercury emissions and the requirements when doing so.

Next, the MPCA is concerned that permittees are not interpreting conditions related to material balances correctly; therefore, this part is revised to align terms used in describing the variable “CE” in the equation in this part with definitions used in the control equipment rule in part 7011.0060.

In the existing rule, the variable “CE” is described as the “overall efficiency” and is the product of capture efficiency and control efficiency. There is no definition of “overall efficiency” In the control equipment rule, rather, “control efficiency” is the product of capture efficiency and destruction or collection efficiency. To clarify this part, the rule is being amended to delete the use of “overall efficiency” and use “control efficiency”, and use either the “collection efficiency” or destruction efficiency” in place of “control efficiency” as defined in Minn. R. 7011.0060, subparts 3 and 3d.

#### **PART 7019.3070 SO2 MATERIAL BALANCE.**

Part 7019.0370 describes the SO2 material balance method that may be used to calculate SO2 emissions when the methods identified in parts 7019.3040 and 7019.3050 are unavailable to an emission reporting facility. This part is revised to add “the owner or operator” in multiple references to specific activities related to calculating SO2 emissions. The changes are reasonable because the owner or operator of a facility needs to know they may use the method in this part for calculating SO2 emissions and the requirements when doing so.

#### **PART 7019.3080 EMISSION FACTORS.**

Part 7019.0370 describes the emission factors that may be used to calculate emissions when the methods identified in parts 7019.3030 and 7019.3050 are unavailable to an emission reporting facility. This part is revised to add items A and B to letter each of the existing paragraphs in this part. This change provides clarity and rule reference for the reader.

Part 7019.3080 is revised throughout to add “the owner or operator” in multiple references to specific activities related to using emission factors to calculate actual emissions. These changes are needed to make clear who is responsible for calculating the facility’s emissions and how the emissions are to be calculated. The changes are reasonable because the owner or operator of a facility needs to know what emission factors and methods may be used to calculate emissions and the requirements for doing so.

## **PART 7019.3090 ENFORCEABLE LIMITATIONS.**

Part 7019.3090 establishes that any enforceable permit limitation or applicable requirement limitation may be used to calculate actual emissions if methods in part 7019.3040 or 7019.3050 are unavailable to an emission reporting facility. This part is revised to add “owner or operator” in multiple references to calculating actual emissions. The changes are reasonable because the owner or operator needs to know what methods and enforceable limitations may be used to calculate actual emissions and the requirements for doing so.

## **PART 7019.3100 FACILITY PROPOSAL.**

Part 7019.3100 establishes that an emission reporting facility can propose an alternative method for calculating actual emissions and specifies the criteria for doing so including what the proposal must include, deadlines for submittal of the proposal, and when the commissioner must revoke approval of the method proposed. Items A and C are revised to add “owner or operator” in reference to an alternative method proposal and submittal. These changes are reasonable because the owner or operator needs to know that if the facility is seeking an alternative method for calculating actual emissions, they are responsible for demonstrating the proposed method is accurate and timely submittal of the proposal. Item C is revised to delete “shall expire no more than” and add “expires” to identify when approval of a method expires. It is reasonable to make clarifying changes. Last, item C is divided into two paragraphs, adding item D to separately identify the requirements for revoking approval of the method. This change provides clarity and rule reference for the reader.

## **6. Statutorily required regulatory analysis and additional analysis**

Several Minnesota statutes require agencies to address certain topics in the SONAR. The discussion in this section addresses each of the requirements of Minnesota statutes and law as they specifically relate to the proposed revisions.

### **A. Statutory mandates of Minn. Stat. § 14.131**

Minn. Stat. § 14.131 sets out eight factors for the regulatory analysis that must be included in the SONAR of the proposed rule. Items (1) through (8) below quote these factors and then provide the MPCA’s response. Items (9) through (12) address additional requirements listed in Minn. Stat. §§ 14.002 and 14.14.

- 1. Description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.*

#### **Who is affected?**

General response. Affected parties are owners and operators of stationary sources that have air emissions permits (e.g. registration permits, individual state permits or federal part 70 permits), facilities with individual air emissions permits that plan on making modifications, and applicants for air emissions permits. These include industrial, institutional, and commercial establishments that generate enough air pollution to require an air permit plus those emission sources to which a state and/or federal standards of performance already applies.

The MPCA does not expect that any activities requiring an EAW will be affected as a result of the adoption of the proposed rule amendments. Part 7002.0019 is revised for clarity and to correspond with the amended environmental review rules at Minn. R. 4410.4300 (44 SR 691).

Specific response. Registration permit holders. These rules clarify terms and compliance requirements for Option B, C, and D registration permit holders. Some Option B, C, and D registration permit holders may be affected by the record keeping requirements for emissions inventories.

Small MWC units. Without this rulemaking, operating small MWC units in Minnesota would continue responding to both the MPCA and EPA with compliance notices and other reports, as currently there are separate state and federal requirements. The MPCA believes small MWC operators will benefit with the federal plan requirements being incorporated by reference in this rulemaking at part 7011.1295 as it will allow the MPCA to become the authority responsible for implementation and enforcement of these standards, thereby removing the requirement to separately respond to the EPA.

New Source Performance Standards. Similarly, facilities may benefit from the federal NSPS for calciners and dryers in the mineral industry being incorporated by reference at part 7011.3470 because this action then allows the MPCA to be delegated as the primary authority for implementation and enforcement rather than the EPA.

Federal part 70 permit holders. Last, this rulemaking clarifies the requirements that the MPCA must follow when public noticing a permit, and requirements a person must follow to petition the EPA with objections to a part 70 permit. The MPCA has been implementing its responsibilities at the time that the EPA rules were formally adopted; however, the state rules will now reflect part 70 permit administration requirements.

#### **Who bears the cost of complying with these rules?**

If there are costs, entities subject to the air emissions permitting program requirements are most likely to bear the cost of complying with the amended rules. However, the proposed rule amendments are unlikely to result in additional costs because most changes clarify existing requirements, conform Minnesota Rules to federal law, or eliminate outdated or duplicative requirements.

Because the federal standards of performance proposed for incorporation by reference are already federally effective, the MPCA does not expect that any industry in Minnesota will bear additional costs as a result of the adoption of any of the federal rules incorporated by reference. When the the federal plan requirements/NSPS were adopted, they affected specific industries and activities by imposing new requirements. The EPA's justification for the federal plan requirements/NSPS is presented in the Federal Register where those regulations were proposed, and includes a discussion of the potential effects on the specific industries and activities subject to the requirements. The MPCA is relying on those federal evaluations in support of this rulemaking. The Federal Register discussion of identified industries and activities, and the effect of the amendments on those identified entities, extends to those affected industries and activities located in Minnesota.

#### **Who benefits?**

Owners and operators of permitted sources and stationary sources, and permit applicants are expected to benefit from the proposed rule amendments. The proposed amendments will make the rules clearer, resulting in fewer errors on the part of permit applicants. Processing of air permits is more efficient for both the MPCA and permit applicants when there are fewer errors in the applications.



The citizens of Minnesota and the environment will benefit. The efficient issuance of permits allows the MPCA to better issue permits that include all applicable requirements. The requirement for some registration permit holders to provide their emissions inventory, if requested, to the commissioner in a specific timeframe will assist in ensuring timely responses by the registration permit holders and more efficient processing of air permits by the MPCA. As described in Section 5, Rule-by-rule-analysis, the MPCA needs the emissions inventory data to conduct modeling for construction permits issued to new or expanding facilities. A delay in a stationary source's ability to demonstrate compliance with ambient air standards means delaying health protections that the NAAQS are intended to provide. This costs permittees money and time, as well as delay ambient air improvements for Minnesota citizens.

2. *The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.*

#### **What are the costs to the MPCA of implementation and enforcement?**

The proposed rule amendments clarify practices already in place for permit applications and compliance requirements for registration permits, and therefore are unlikely to result in a significant increase in costs to the state. Costs associated with the implementation and enforcement of the existing rules includes MPCA staff time and staff resources to review permit applications, permit amendments, and compliance reporting.

One goal of the proposed rules is to reduce staff time needed to process permit applications and permit amendments by aligning state and federal requirements, and ensuring permit applications and notices include the necessary information for processing the permit appropriate action. The proposed rules will also reduce staff time needed to complete modeling demonstrations by updating and clarifying the registration permit compliance and submittal requirements for the emissions inventory.

#### **What are the costs to the other agencies of implementation and enforcement?**

Some other agencies hold MPCA permits. Those agencies already incurred costs to apply for the initial permit and they incur some additional costs for renewals and amendments. Most of the permitting changes proposed in this rulemaking are intended to make permitting and compliance clearer and easier, so any increase in costs as a result of this rule should be nominal. In addition, other agencies that are subject to any of the standards and compliance requirements in this rulemaking could be subject to an enforcement action from the MPCA if they violate the standards or requirements. The same would be true if they were to violate the existing standards or requirements.

#### **What is the anticipated effect on State revenue?**

The State will not need to request additional funds to implement and enforce this rulemaking. Any additional staff resources needed on a temporary basis for rule outreach and implementation of the updated emissions inventory requirements for registration permits and implementation of the TCE ban requirements will be achieved through reassignment of existing staff resources.

3. *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.*

One of the goals of this rulemaking is to ensure that the MPCA identifies opportunities to clarify and streamline the rules or reduce the burden of compliance. For example, in this rulemaking the MPCA clarifies several requirements for registration permit holders including when a facility is relocating,

compliance demonstration calculations to better account for recycling and re-use of materials, and when submittal of an emission point inventory is required. To the extent this rule makes it easier to understand and comply with air quality regulations, and to more speedily obtain necessary permits, this rule may reduce costs.

The MPCA's alternatives are limited. There is no reasonable alternative to this rulemaking; the proposed changes could not be addressed through Agency policy or internal rule interpretation. Specifically, rulemaking is needed to effectuate in permits the Minnesota Legislature's ban on the use of TCE. The law bans the use of TCE on or after June 1, 2022, in any facility that is required to have a state air permit, including manufacturing, processing, and cleaning processes. In addition, Minnesota must present a SIP to the EPA that shows how Minnesota will comply with the CAA. Many of the changes in the rulemaking are to conform to federal requirements including the chapter 7007 requirements for permit notice and comment and EPA permit review; and the incorporation by reference of the federal plan requirements/NSPS. The EPA requires all components of the SIP to be enforceable at the state level, thereby requiring their incorporation into rule. Consequently, there are no less costly methods for achieving the purpose of the proposed rule amendments.

4. *A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.*

The alternative of not conducting this rulemaking was considered. However, this would not achieve the overall purpose of the proposed rules of keeping the air quality rules current, ensuring consistency with applicable federal and state regulations, clarifying ambiguous rule language, and correcting gaps or errors identified while administering the existing rules. Therefore, not amending the existing rules was rejected by the MPCA in favor of the proposed rule amendments. In addition, this rulemaking is needed to promulgate a new rule that is needed to implement the Minnesota Legislature's ban on the use of TCE.

Again, the MPCA's alternatives are limited. The proposed changes could not be addressed through Agency policy or internal rule interpretation. For regulated parties to take advantage of streamlined options, they must be available in a rule. The MPCA is required to adopt many of the changes in this rule related to National Emission Standards for Hazardous Air Pollutants (NESHAP) in order to retain delegation of regulatory authority from the EPA under Section 112 (I) of the federal CAA. If the MPCA were to lose its delegation of regulatory authority from the EPA, the NESHAP would still apply to the same regulated entities, but the EPA would enforce them.

The MPCA finds it necessary to proceed through the rulemaking process because many of the proposed changes were made with the intent to update and clarify the existing rules. Additionally, rulemaking is the most open, consistent process that also assures that the requirements are legally enforceable, as required by EPA. The MPCA is unaware of any viable alternatives that would achieve the stated purpose and scope of this rulemaking. Therefore, there were no other alternative methods for achieving the purpose of the proposed rules seriously considered by the MPCA.

5. *The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.*

In addition to amending rules to complete the process the Minnesota Legislature started in the statutory ban on the use of TCE, the MPCA is making many small changes to a variety of air-related rules. The goal of the rulemaking is to bring the rules up to date, to correct errors and to make compliance with some existing requirements easier.

There are likely some costs for users related to the ban on the use of TCE in efforts to find suitable replacement solvents, or to apply for variances under the statute. These costs are not a result of this rulemaking but of the conditions of the statute.

The MPCA believes that the housekeeping aspects of the proposed rules may reduce costs to air quality permittees, but it is difficult to quantify by how much. Most of the amendments clarify or update existing rules, so regulated entities are already incurring the cost of compliance.

Regarding the proposed revisions at Minn. R. 7007.1102 and 7007.1125 that affect the Option B and C registration permit holders, the MPCA believes that no additional costs will be incurred at the facility due to these revisions. This is because these facilities will continue to bear the expense of ongoing record keeping of the emissions inventory for their facility, and the emissions inventory was already required under existing state permitting rules.

For the Option D registration permit holders, the MPCA believes there may be additional costs incurred when a facility is identified as a “nearby source” in modeling demonstrations. Given that the MPCA began issuing registration permits in 1995, some permits are quite old, and it is possible that some registration permit holders have not maintained accurate records. The MPCA is preparing outreach and assistance through its Small Business Environmental Assistance Program to help Option D facilities be able to quickly respond to the MPCA’s information request. Some may choose to engage an environmental consultant to re-develop accurate inventories.

Regarding the incorporation by reference of several federal rules, the cost of complying with the federal plan requirements/NSPS exists whether or not the MPCA incorporates them into Minnesota Rules.

6. *The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.*

The alternative of not conducting this rulemaking was considered. However, this would not achieve the overall purpose of the proposed rules of keeping the air quality rules current, ensuring consistency with applicable federal and state regulations, clarifying ambiguous rule language, and correcting gaps or errors identified while administering the existing rules.

It is unlikely that there would be significant new costs to the affected parties if the proposed rule amendments are not adopted. As identified in item 1 above, costs are mainly borne by permittees. The State incurs costs, primarily staff costs, when reviewing permit applications and reports submitted by the permittees, and costs associated with the implementation and enforcement of the existing rules.

There may be adverse consequences to not making the amendments that update and clarify existing rule language. Although many of the changes are proposed only to update the rule language to be more current and consistent, some of the changes are important to ensure compliance. The changes that update and clarify the language of existing requirements are important in order to minimize the

potential for confusion on the part of the regulated community and also the MPCA as it implements those requirements.

The consequence of not promulgating a new rule to implement the Minnesota Legislature's ban on the use of TCE would be more significant. As discussed above in Section 1, the Act banning TCE requires that "cessation of use must be made enforceable in the air emissions permit for the facility..." by June 1, 2022. In order for the MPCA to meet the legislative intent of banning TCE, the MPCA needs to modify every air emissions permit. The most efficient means of revising the approximately 2000 air emission permits administered by the MPCA to include the ban on TCE in a timely way is to revise the chapter 7007 air emission permit rules for issuing and holding permits.

The consequences of not incorporating by reference the federal plan requirements/NSPS would also be significant. Minnesota is delegated authority to implement the CAA, and that delegation requires that the state rules reflect the federal requirements. The consequence of not adopting the federal plan requirements/NSPS will be that the MPCA will not receive delegation to implement the federal requirements and that the EPA will be responsible for implementing those requirements in Minnesota, including permitting and compliance monitoring. This means many facilities would have to demonstrate compliance to both the MPCA and EPA, resulting in confusion for all parties and duplicative regulatory burden on individual facilities. This will result in significant waste of resources and unnecessary burden to the affected regulated parties. The changes that provide updates to incorporated by reference materials will ensure that the regulated community uses the most current version and that the materials are reasonably available for access by the regulated community.

7. *An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.*

There are no federal regulations that govern rulemaking procedures for Minnesota state agencies that are adopting, amending, or repealing its rules through Minn. Stat. ch. 14. The purpose of this rulemaking is to complete minor clarifications, revisions, and updates to existing air quality rules. The MPCA believes that the proposed rule amendments do not differ greatly from federal rules. Many of the revisions are to align state rule with federal rules and requirements. These are discussed below in item B of this section and described in Section 5, Rule-by-rule analysis.

8. *An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.*

The MPCA is proposing these rule amendments to provide clarity and consistency, to keep the air quality rules up to date, reduce uncertainty in the rules and, where possible, increase efficiency by streamlining the regulatory process. The proposed rule amendments are intended to align state air rules with the most current federal rules and do not establish overlapping or cumulative requirements or standards that would apply in addition to federal regulations. The proposed rule amendments will not result in any cumulative effect in association with any other state or federal regulations. The MPCA believes that the rules will benefit permittees in their understanding of the air quality rules by providing clear and consistent direction and regulatory requirements.

By incorporating several federal regulations by reference and maintaining federal delegation of the air quality program, the rules are eliminating the potential for a cumulative effect by removing an additional tier of regulatory review and enforcement. The proposed rule amendments will align Minnesota's state air quality rules with the federal rules that are already in effect. Incorporating the

federal requirements by reference ensures that the state rules do not overlap or add new requirements that could be considered cumulative with the existing federal requirements. Incorporating the federal regulations by reference will not add a level of regulation, it will only change the implementation authority from the EPA to the MPCA, with no increase in regulatory burden.

9. *The SONAR must also describe how the agency, in developing the rules, considered and implemented the legislative policy supporting performance-based regulatory systems set forth in Minn. Stat. § 14.002, which requires state agencies, whenever feasible, to develop rules and regulatory programs that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.*

The MPCA considered how it might meet the statutory directive to support performance-based regulatory systems and has often included performance-based concepts into state rules. Although the MPCA proposes to add a few new rule parts, most of the proposed changes are amendments to existing rules. Many changes are made to update the rules to conform to federal requirements as well as clarify rule language. Updating the rules for these reasons achieves the policy outlined in Minn. Stat. § 14.002 because it attempts to clarify the purpose of the rules and any applicable procedure outlined in the rules. Updating the rules should help remove confusing language and discrepancies in the existing rules, thereby increasing the effectiveness of the regulatory program and the ease of following its requirements.

In developing the proposed rule amendments, the MPCA tried to be very conscientious about including in the revised rules only that information needed to enable the MPCA to carry out its responsibilities in an effective and efficient manner. By making the rules clearer and in some cases deleting outdated rule text, the proposed rules increase flexibility within the limited scope of the rule. In general, however, the MPCA is constrained by the need to retain delegation of the air emissions permit program from the EPA and to enforce specific rules, which are protective of the NAAQS.

10. *The SONAR must also describe the agency's efforts to provide additional notification under Minn. Stat. § 14.14, subd. 1a, to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made.*

A description of the MPCA's efforts to provide this additional notification is provided below in Section 8, Notice plan.

11. *The agency must consult with the commissioner of management and budget to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government.*

As required by Minn. Stat. § 14.131, the MPCA will consult with Minnesota Management and Budget (MMB). The MPCA will do this by sending MMB copies of the documents sent to the Office of the Governor for review and approval on, or near, the same day the MPCA sends them to the Governor's Office. The MPCA will do this before publishing the Notice of Intent to Adopt Rules in the in the *State Register*. The documents will include the Governor's Office Proposed Rule and SONAR Form, the proposed rule amendments, and the SONAR. The MPCA will include a copy of the cover correspondence and any response received from MMB in the rulemaking record the MPCA submits to the Office of Administrative Hearings for the required review by the Administrative Law Judge.

12. *The agency must send a copy of the SONAR to the Legislative Reference Library when the notice of proposed rules is mailed under Minn. Stat. § 14.14, subd. 1a.*

As identified below in Section 8, Notice plan, the MPCA will satisfy this requirement and provide appropriate documentation in its submittal of the rulemaking record to the Office of Administrative Hearings.

## **B. Minn. Stat. § 116.07, subd. 2(f), comparison to federal and other state standards**

Minn. Stat. § 116.07 subd. 2 requires, in part, that for proposed rules adopting air quality standards, the SONAR must include:

1. An assessment of any differences between the proposed rule and:
  - (i) Existing federal standards adopted under the CAA, 42 U.S.C. § 7412(b)(2); Clean Water Act, 33 U.S.C. §§ 1312(a) and 1313(c)(4); and the Resource Conservation and Recovery Act, 42 U.S.C. § 6921(b)(1);
  - (ii) Similar standards in states bordering Minnesota;
  - (iii) Similar standards within the EPA Region 5 (“Region V”); and
2. A specific analysis of the need and reasonableness of each difference.

Non-substantive changes. In this SONAR, the MPCA is not providing a discussion of the differences that exist between federal regulations and the requirements of surrounding states for those amendments that are only clarifications and corrections. At the time those rules were adopted, the MPCA would have provided a discussion of the differences between those rules and their federal regulations and the regulations in surrounding states. None of the corrections and clarifications the MPCA is proposing in this rulemaking change the effect of each of the rules previously adopted and no additional comparison is necessary.

Comparison between substantive amendments and federal requirements. The substantive amendments being proposed consist of the federal plan requirements/NSPS that are being incorporated by reference. The federal plan requirements/NSPS are being incorporated in exactly the same form as they exist in the federal regulations and therefore, there is no difference between the proposed rules and the corresponding federal regulations.

Although there are no differences between the requirements of the federal plan requirements/NSPS and those being proposed for incorporation by reference in this rulemaking, there are differences between the scope of the federal air quality program in terms of the federal plan requirements/NSPS that are in effect federally and those that are being proposed for incorporation into the state rules. The proposed rules do not incorporate all of the currently promulgated federal regulations. The MPCA is only proposing to incorporate those federal plan requirements/NSPS that could be applicable to Minnesota industries and although this includes almost all of the federal plan requirements/NSPS, a few of the federal regulations have not yet been adopted in state rules.

Comparison between the substantive amendments and the requirements of surrounding states. The states that either border Minnesota or are in EPA Region V and are considered “surrounding states” are:

State	EPA Region
Illinois	V
Indiana	V
Iowa	VII
Michigan	V
North Dakota	VIII
Ohio	V
South Dakota	VIII
Wisconsin	V

It is difficult to summarize the differences between the proposed amendments and “similar standards” in surrounding states. Each state is unique regarding which federal plan requirements/NSPS are relevant to the emissions generated in that state and therefore, which federal plan requirements/NSPS have been identified as priorities for adoption into state rules. In addition, each state also has their own administrative process and delegation agreement with the EPA for implementing federal requirements, sometimes incorporating by reference (e.g. Indiana), sometimes adopting state-specific rule language that reflects the federal requirements, and sometimes using other methods, such as including the federal requirements in individual permits (e.g. Ohio and Wisconsin).

Although the Region V states either conduct rulemaking to incorporate federal standards, as Minnesota does, or implement the federal regulations through some other mechanism (such as including them in individual permits), every Region V state has obtained basic delegation for the CAA. This means that every Region V state is actively pursuing the necessary steps to implement the relevant federal plan requirements/NSPS in their state. The non-Region V states that border Minnesota are similar in that, at a minimum, they have basic delegation to implement the CAA.

In general, the proposed amendments do not make Minnesota’s air quality program significantly more or less stringent than the corresponding air quality programs in neighboring states or other states in Region V. There may be differences regarding exactly which federal plan requirements/NSPS each state implements, and there may be differences in each state’s mechanisms for implementing them, but all of the states have to some extent sought to implement an air quality program equivalent to the federal program.

### **C. Minn. Stat. § 14.127, subs. 1 and 2, cost of complying for small business or city**

Minn. Stat. § 14.127, subs. 1 and 2, require an agency to:

*“determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for (1) any one business that has less than 50 full-time employees, or (2) any one statutory or home rule charter city that has less than ten full-time employees.”*

The MPCA has considered the cost of complying with the proposed rules and has determined that the cost of complying with the rules in the first year after they take effect will not exceed \$25,000 for any small business or small city. The MPCA has made this determination based on the fact that, as discussed

in this SONAR, there will be no probable costs of complying with the proposed rules. The MPCA has determined that where a cost may be incurred, it is a cost that was incurred at the time the federal standards were adopted and not at this point when they are being incorporated into state rule, or is a result of not maintaining accurate records as required by existing permits.

#### **D. Minn. Stat. § 14.128, subd. 1, impact on local government ordinances and rules**

Minn. Stat. § 14.128, subd. 1, requires an agency to:

*“determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with a proposed agency rule.”*

The state air quality standards are not implemented at the local level and therefore, no changes to local ordinances or regulations will be required in response to the proposed amendments. It is possible that the proposed amendments will affect a local unit of government in their role as a regulated source of air emissions and therefore subject to the requirement. Some counties operate MWCs that may be subject to the proposed requirements of 40 CFR Part 62, Subpart JJJ, (proposed to be adopted at Minn. R. 7011.1295). However, the MPCA does not anticipate that, even in those cases where a local unit of government is a regulated entity, the adoption of these requirements into state rules will result in the need to adopt or amend an ordinance to comply with the requirements incorporated by reference.

## **7. Environmental justice framework**

When undertaking rulemaking the MPCA considers how the impacts of a proposed rule are distributed across Minnesota and works to actively engage all Minnesotans in rule development. This discussion of how the MPCA considered environmental justice in the context of the proposed revisions is an important element of the MPCA’s rulemaking process. The review of the impacts and meaningful involvement are provided in this section of the SONAR for ease of review with the rest of the Regulatory Analysis, although these analyses are not a requirement of Minnesota’s Administrative Procedures Act (Minn. Stat. ch. 14). Considering environmental justice means that the MPCA strives to:

- Consider how proposed rules may affect low-income populations and communities that have a high proportion of people of color; and
- Involve members of those communities in the rulemaking process.

The MPCA has developed a policy and strategy for environmental justice similar to that of the EPA. The MPCA’s environmental justice policy states that:

*“The MPCA will, within its authority, strive for the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.*

Fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.

Meaningful involvement means that:



- People have an opportunity to participate in decisions about activities that may affect their environment and/or health;
- The public's contribution can influence the regulatory agency's decision;
- Their concerns will be considered in the decision making process; and
- The decision-makers seek out and facilitate the involvement of those potentially affected.

The above concept is embraced as the understanding of environmental justice by the MPCA.”

In 2013, the MPCA renewed its commitment to environmental justice and added an environmental justice goal and objectives in the MPCA's strategic plan. In the 2018-2022 strategic plan, (<https://www.pca.state.mn.us/about-mpca/mpca-strategic-plan>) the MPCA has identified 16 strategic goals, one being: Incorporate strategies to address environmental justice concerns in all programs.

As it has developed the proposed amendments and conducted the rulemaking process, the MPCA has considered the appropriate way to address both aspects of the environmental justice policy: fair treatment and meaningful involvement.

Fair treatment. The proposed federal plan requirements/NSPS will have a neutral effect on the environmental burden borne by any community. In terms of the burden of emission sources, the proposed amendments do not have any effect on where regulated facilities can be located and therefore do not have any effect on current or future environmental burden on particular communities. The proposed federal plan requirements/NSPS regulate emissions from many different sources and those sources may or may not be located in communities where there is a disproportionate environmental burden. In terms of improving air quality in communities that are currently environmentally burdened, the proposed amendments will not have any effect, except to the extent that permitting and compliance issues will be more effectively addressed at the state level, including implementing the statutory TCE ban. The MPCA is proposing to adopt the federal requirements verbatim and is not proposing more stringent emission standards than are currently federally effective.

Meaningful involvement. Although the MPCA has, for some rulemakings, conducted additional outreach and engagement to specific communities where the environmental justice issues are identified, for this rulemaking the MPCA has not conducted additional outreach to solicit engagement by specific communities. Because it is incorporating the federal requirements by reference without any state-specific changes, the MPCA is relying on the efforts already made by the EPA to notify and engage interested and affected parties. The EPA addressed environmental justice issues in the Federal Register at the time each of the proposed federal plan requirements/NSPS were proposed ([Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations](#)). The proposed amendments do not change the requirements that are already in effect and therefore, are not creating a new issue relating to environmental justice.

The MPCA does specific outreach to Minnesota's tribal communities for rulemaking as described below in Section 8, Notice plan. In this case, this notice is a government-to-government courtesy and not based on anticipation of specific issues related to environmental justice. For this rulemaking, the MPCA contacted Minnesota's tribal communities to notify them of opportunities to provide comment. In addition to providing notice to the tribal contacts who have registered to receive GovDelivery rulemaking notices, the MPCA has provided specific notice throughout the rulemaking process to contacts identified by the tribes as liaisons for air quality issues.

In this rulemaking, the MPCA intends to meet the statutory notice requirements by publishing notice of the proposed rules and providing GovDelivery notices to many interested parties and through several different mechanisms. However, the MPCA has not and does not intend to provide additional notification to any particular community based solely on environmental justice concerns. Because the MPCA does not believe that the proposed amendments will have a negative effect on any communities where environmental justice is an issue, it does not feel that special efforts to engage these communities is an appropriate use of either MPCA or community resources.

### **Equity Analysis**

The MPCA strives to evaluate how proposed rule amendments may affect low-income populations and communities that have a high proportion of people of color. In particular, the MPCA's goal is to look at whether implementing proposed rules will create any disproportionate impacts or worsen any existing areas of disproportionate impact (where environmental burdens and the resulting human health effects are unequally distributed among the population). Where applicable, the MPCA also looks at the distribution of the economic costs or consequences of the proposed rule, and whether those costs are disproportionately borne by low-income populations and communities of color.

The proposed incorporation by reference of the federal plan requirements/NSPS will have a neutral effect on the environmental burden borne by any community. In terms of the burden of emission sources, the proposed amendments do not have any effect on where regulated facilities can be located and therefore do not have any effect on current or future environmental burden on particular communities. The proposed federal plan requirements/NSPS regulate emissions from many different sources and those sources may or may not be located in communities where there is a disproportionate environmental burden. In terms of improving air quality in communities that are currently environmentally burdened, the proposed amendments will not have any effect, except to the extent that permitting and compliance issues will be more effectively addressed at the state level, including implementing the statutory TCE ban. The MPCA does not expect the proposed rules to have any negative environmental consequences. The proposed rules will apply statewide, with no particular effect on any community more than another will.

Therefore, the MPCA believes that this rulemaking has no effect on disproportionate environmental impacts, to a slightly positive effect in reducing disproportionate impact.

## **8. Notice plan**

The Administrative Procedures Act (Minn. Stat. ch. 14) and the Office of Administrative Hearing rules (Minn. R. ch. 1400) govern how state agencies must adopt administrative rules. This includes providing required notifications to the general public and affected stakeholders, various state agencies and departments, the legislature, and Office of the Governor. Minn. Stat. § 14.131 requires that the SONAR describe how the MPCA provided additional notification of the rulemaking to potentially affected parties, if applicable.

Specifically, Minn. Stat. § 14.131 states that the SONAR:

*“describe the agency’s efforts to provide additional notification under section 14.14, subd. 1a, to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made.”*

This section addresses how the MPCA will provide the required notifications and additional notification.

## **A. Required notice**

### **Request for Comments**

- For this rulemaking, the first notice required by Minn. Stat. § 14.101, is the Request for Comments. The MPCA published the Request for Comments on Possible Amendments to Rules Governing Air Quality, Minnesota Rules Chapters 7002, 7005, 7007, 7008, 7009, 7011, 7017, and 7019, in the *State Register* on December 14, 2020. To inform the public, the MPCA notified interested parties who subscribed to the Air Quality Housekeeping Rule GovDelivery list of the Request for Comments the same day it was published. The GovDelivery notice was sent to 1,673 recipients. Also on the same date, the MPCA provided specific notice of the Request for Comments to the designated air tribal contact persons. This electronic notice contained the information in the December 14, 2020, GovDelivery notice about the Request for Comments. The MPCA maintains a list of the 11 federally recognized tribes in Minnesota and updates the list quarterly. As explained above in Section 2, Public participation and stakeholder involvement, GovDelivery is a self-subscription service for interested and affected persons to register to receive rule-related notices via email.

In addition, the MPCA also:

- Posted the Request for Comments, the same day it was published in the *State Register*, on the MPCA's Public Notice webpage at <https://www.pca.state.mn.us/public-notices>.
- Posted the MPCAs explanatory "preliminary concepts to amend the rules," the same day the Request for Comments was published in the *State Register*, on the MPCA's Air Quality Housekeeping Rule webpage at <https://www.pca.state.mn.us/air/rulemaking-air-quality-housekeeping>.

### **Remaining required notifications**

The remaining required notifications are listed below with a description of how the MPCA will comply with each.

1. Minn. Stat. § 14.14, subd. 1a. On the date the proposed amendments are published in the *State Register*, the MPCA will send an electronic notice, using GovDelivery, with a hyperlink to the webpage where electronic copies of the Notice of Intent to Adopt Rules (Notice), proposed rule amendments, and SONAR can be viewed. The GovDelivery notice will be sent to all parties who have registered with the MPCA to receive notices of the Air Quality Housekeeping Rule (1,768 subscribers as of May 19, 2021). Persons registered to receive non-electronic notices will receive copies of the Notice and the proposed amendments via U.S. mail. Both the electronic and U.S. mail notice will be sent at least 33 days before the end of the comment period.
2. Minn. Stat. § 14.116. The MPCA will send a cover letter by electronic or U.S. mail to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed amendments, and to the Legislative Coordinating Commission, as required by Minn. Stat. § 14.116. The letter will include a link to electronic copies of the Notice, proposed rule amendments, and SONAR. This Notice will be sent at least 33 days before the end of the comment period.

3. Minn. Stat. § 14.131. The MPCA will send an electronic copy of the SONAR to the Legislative Reference Library in accordance with Minn. Stat. § 14.131 when the Notice is mailed under Minn. Stat. § 14.14, subd. 1a. This Notice will be sent at least 33 days before the end of the comment period.
4. Minn. Stat. §14.111. If the rule affects farming operations, Minn. Stat. § 14.111 requires an agency to provide a copy of the proposed rule changes to the Commissioner of Agriculture no later than 30 days before publication of the proposed rule in the *State Register*. The proposed amendments are not expected to directly impact agricultural land or farming operations. However, as a courtesy the MPCA will send an electronic copy of the proposed rule amendments to the Commissioner of Agriculture at least 30 days before publication in the *State Register*.

The following notices are required under certain circumstances; however, they do not apply to this rulemaking and will not be sent:

1. Minn. Stat. § 14.116. In addition to requiring notice to affected/interested legislators, this statute also states that if the mailing of the notice is within two years of the effective date of the law granting the agency authority to adopt the proposed rules, the agency must make reasonable efforts to send a copy of the notice and SONAR to all sitting House and Senate legislators who were chief authors of the bill granting the rulemaking. This requirement does not apply because the MPCA is using its general rulemaking authority for these rules, and no bill was authored within the past two years granting special authority for this rulemaking.
2. Minn. Stat. § 116.07, subd.7i. This statute requires notification of specific legislators of the adoption of rules applying to feedlots and fees. The proposed amendments do not relate to feedlots or fees so this requirement does not apply.

## **B. Additional notice plan**

Minn. Stat. § 14.14 requires that in addition to its required notices:

*“each agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication.”*

The MPCA considered these statutory requirements governing additional notification and as detailed in this section, intends to fully comply with them. In addition, as described in Section 2, Public participation and stakeholder involvement, the MPCA has made reasonable efforts, thus far, to notify and involve the public and stakeholders in the rule process, including various meetings and publishing the RFC.

The MPCA intends to request that the Office of Administrative Hearings review and approve the Additional Notice Plan, pursuant to Minn. R. 1400.2060. The MPCA’s plan to notify additional parties includes the following:

1. Publish its Notice on the MPCA’s Public Notice webpage at <https://www.pca.state.mn.us/public-notices>.
2. Provide specific notice to tribal authorities. The MPCA maintains a list of the 11 federally recognized tribes in Minnesota and updates the list quarterly. The MPCA will send electronic notice to the designated air tribal contact person of Minnesota’s tribal communities. The notice will be sent on or near the day the proposed rule amendments are published in the *State Register*, and will have a

hyperlink to the webpage where electronic copies of the Notice, proposed rule amendments, and SONAR can be viewed.

3. Provide specific notice to the two entities, Complete Health Environmental and Safety Services, Inc. and Xcel Energy, that submitted comments during the Request for Comments public comment period. Electronic or U.S. mail notice will be sent to these entities on or near the day the proposed rule amendments are published in the *State Register*, and will have a hyperlink to the webpage where electronic copies of the Notice, proposed rule amendments, and SONAR can be viewed.
4. Provide electronic or U.S. mail notice to facilities for which federal performance standards are being amended or adopted:
  - Municipal waste combustor units subject to 40 CFR Part 62, Subpart JJJ federal plan requirements.
  - Municipal solid waste landfill owners and operators subject to 40 CFR Part 62, Subpart OOO federal plan requirements.
  - Minnesota businesses subject to 40 CFR Part 60, Subpart UUU standards for calciners and dryers in the mineral industry.
5. Provide specific notice to associations and environmental groups. Electronic or U.S. mail notice will be sent to the following associations and environmental groups on or near the day the proposed rule amendments are published in the *State Register*, and will have a hyperlink to the webpage where electronic copies of the Notice, proposed rule amendments, and SONAR can be viewed.
  - Alliance of Automotive Service Providers of Minnesota
  - American Coating Association
  - Association of Metropolitan Municipalities
  - Association of Minnesota Counties
  - Association of Woodworking and Furnishing Suppliers
  - Clean Water Legacy
  - Clean Water Minnesota Isaak Walton League Minnesota Chapter
  - Coalition of Greater Minnesota Cities
  - League of Minnesota Cities
  - Metropolitan Council
  - Minnesota Association of Small Cities
  - Minnesota Chamber of Commerce
  - Minnesota City/County Management Association
  - Minnesota Environmental Science and Economic Review Board
  - Minnesota Center for Environmental Advocacy
  - Minnesota Environmental Partnership
  - Professional Refinishers Group
  - Sierra Club North Star Chapter
  - White Bear Area Neighborhood Concerned Citizen Group

Note: some members of these associations may already subscribe to receive GovDelivery notices.

7. Provide specific notice to EPA Region V air program staff. Electronic notice will be sent to EPA Region V on or near the day the proposed rule amendments are published in the *State Register*, and will have a hyperlink to the webpage where electronic copies of the Notice, proposed rule amendments, and SONAR can be viewed.
8. Provide notice in electronic newsletters. The MPCA uses electronic newsletters to provide updates and information about rulemakings, as explained above in Section 2, Public participation and stakeholder involvement. The MPCA will provide notice in its Air Mail and Small Business Enterprise newsletters with a hyperlink to the webpage where electronic copies of the Notice, proposed rule amendments, and SONAR can be viewed. Because the newsletters are published quarterly, it is not always possible to assure that the newsletters will be published exactly at the start of the public comment period. Therefore, the MPCA will provide the maximum possible notice by either publishing notice of the comment period in the newsletter edition that is published closest to the public comment period or send notice to all subscribers to these newsletters when the rules are proposed.
9. Post rulemaking updates and documents including the proposed rule amendments and SONAR on the on the Air Quality Housekeeping Rule webpage at <https://www.pca.state.mn.us/air/rulemaking-air-quality-housekeeping>.

The MPCA believes that by following the steps of this Additional Notice Plan, and its regular means of public notice, including early development of the GovDelivery mail list for this rulemaking, publication in the *State Register*, and posting on the MPCA's webpages, the MPCA will adequately provide additional notice pursuant to Minn. Stat. § 14.14, subd. 1a.

## 9. Consideration of economic factors

In exercising its powers, the MPCA is required by identical provisions in Minn. Stat. § 116.07, subd. 6 and Minn. Stat. § 115.43, subd. 1 to give due consideration to:

*...the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result there from, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstance...*

The MPCA has met the requirements of this statute by the discussions provided in Section 6, Statutorily required regulatory analysis and additional analysis, of this SONAR regarding the possible economic effect of the proposed rules.

## 10. Authors

- Anne Jackson, P.E., MPCA
- Mary Lynn, Rule Coordinator, MPCA

## 11. Conclusion

In this SONAR, the MPCA has established the need for and the reasonableness of each of the proposed amendments to Minn. R. chs. 7002, 7005, 7007, 7009, 7011, 7017, and 7019. The MPCA has provided the necessary notice and in this SONAR documented its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules.

Based on the forgoing, the proposed amendments are both needed and reasonable.

A handwritten signature in blue ink that reads "Peter Tester". The signature is written in a cursive, flowing style.

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Peter Tester, Acting Commissioner  
Minnesota Pollution Control Agency

August 20, 2021

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Date