



Minnesota Pollution Control Agency

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September 26, 2013

Legislative Reference Library
645 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: Proposed rules relating to housekeeping amendments to water-related rules.
(Minn. R. chs. 7041, 7053, 7076, 7080, 7081, 7082 and 7083; Revisor's ID number 4161)

Dear Librarian:

The Minnesota Pollution Control Agency (MPCA) intends to adopt housekeeping rules to make a number of changes to Water-related chapters of Minnesota Rules. (Minn. R. chs. 7041, 7053, 7076, 7080, 7081, 7082 and 7083). I plan to publish a Notice of Intent to Adopt Rules in the September 30, 2013 *State Register*.

The MPCA has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the MPCA is sending the Library a copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Hearing.

If you have questions, please contact me at 651-757-2597.

Sincerely,

Carol Nankivel
Rule Coordinator
Resource Management and Assistance Division
Agency Rules Unit
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CN/jlr

Enclosure



Minnesota Pollution
Control Agency

Minnesota Pollution Control Agency

Resource Management and Assistance Division

STATEMENT OF NEED AND REASONABLENESS

In the Matter of Proposed Revisions of Minnesota Rule Chapters 7041,
7053, 7076, 7080, 7081, 7082, and 7083.

Upon request, this Statement of Need and Reasonableness (SONAR) can be made available in an alternative format, such as large print, Braille, or digital media. To make a request, contact Carol Nankivel at the Minnesota Pollution Control Agency (MPCA), Resource Management and Assistance Division, 520 Lafayette Road North, Saint, Paul, MN 55155-4194; telephone 651-757-2597; fax 651-297-8676; or e-mail carol.nankivel@state.mn.us. TTY users may call the MPCA at 651-282-5332 or 800-657-3864.

The *State Register* notice, this SONAR and the proposed rule will be available during the public comment period on the MPCA's Public Notices website: <http://www.pca.state.mn.us/news/data/index.cfm?PN=1>

Notice Regarding the Excerpted Language in this SONAR

The MPCA has excerpted language from the draft rules and included those excerpts in this SONAR at the point that the reasonableness of each provision of the rules is discussed. This was done to assist the reader in connecting the rule language with its justification. However, there may be slight discrepancies between the excerpted language and the rule amendments as they are proposed. The MPCA intends that the rule language published in the *State Register* at the time the rules are formally proposed is the rule language that is justified in this SONAR.

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Water-Related Housekeeping Amendments

1. Introduction

A. Executive summary

Minnesota Pollution Control Agency (MPCA) is proposing a number of small, noncontroversial changes and corrections to several chapters of Minnesota rules that relate to the regulation of water pollution (either ground or surface water). The MPCA periodically conducts these kinds of “housekeeping” rule amendments to ensure that the rules remain clear, accurate, and effective. In a housekeeping rulemaking a number of unrelated changes are proposed because none of the proposed amendments are of sufficient complexity or importance to justify the expense and effort of a separate rulemaking.

The MPCA is proposing to amend the aquaculture rules, the subsurface sewage treatment system (SSTS) rules, the sewage sludge management rules and the rules that administer Clean Water Partnership funds. This grouping of a number of individual amendments related to water pollution is being done for efficiency of rulemaking effort and for the convenience of managing stakeholder engagement. The MPCA has taken steps to notify potentially affected regulated communities and other stakeholders of the proposed changes and their review and insights have been sought.

The amendments fall into the following general areas:

- **Eliminating obsolete rules.** The MPCA annually submits a report to the Legislature to identify obsolete, unnecessary or duplicative rules. The 2012 Obsolete Rules Report (Report) identified changes relating to variances for aquaculture facilities. This rulemaking implements the suggested changes.
- **Correcting errors.** Some of the proposed changes correct errors and omissions. These errors either occurred in a previous rulemaking or are the result of subsequent changes to the originally referenced material. The changes to the SSTS standards and the sewage sludge management rules are examples of simple corrections of errors.
- **Providing updates.** In many cases, information in the rule is no longer accurate because the cited reference or process changed. An example of information that was originally correct but that must be revised to reflect subsequent changes is the reference document cited in the sewage sludge management rules.
- **Reflecting improvements.** Some amendments address requirements for which there are now better mechanisms. For example, the changes proposed to the process for providing notification of the availability of Clean Water Partnership grants reflect changes in the use of electronic notification of affected and interested parties. This notification system, which was not in place when the rules were adopted, is a more effective and cost efficient way to provide notification.
- **Providing clarification.** Some of the proposed amendments clarify what has already occurred statutorily. The amendment to the SSTS rules eliminating an exception to the continuing education requirements reflects the fact that statute no longer provides the exception.

For this rulemaking the MPCA conducted all the requirements of the state Administrative Procedures Act, plus provided additional notification and opportunities for public review

and comment. The MPCA has established the need for and reasonableness of the proposed amendments and expects that they will be approved by the Office of Administrative Hearings without the need for a public hearing.

B. Scope of the Proposed Amendments

Seven chapters of Minnesota Rules are affected by the proposed changes

- Minn. R. ch. 7041 establishes requirements governing sewage sludge management
- Minn. R. ch. 7053 establishes state waters discharge restrictions, and specifically requirements for aquaculture facilities
- Minn. R. ch. 7076 regulates the application for and disbursement of grants related to the Clean Water Partnership
- Minn. R. chapters 7080, 7081, 7082 and 7083 govern various aspects of the subsurface sewage treatment system (SSTS) program

In each of these chapters the MPCA proposes changes based on the observations of the MPCA staff implementing the rules, or suggested by MPCA partners or the regulated community.

C. Background

The amendments proposed in this rulemaking are prompted in part by a legislative mandate. Minn. Stat. § 14.05, subd.5, requires that the MPCA annually review its rules and identify any obsolete, unnecessary or duplicative rules and provide a schedule for their repeal.

Subd. 5. Review and repeal of rules.

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

The MPCA identified a number of obsolete requirements in the 2012 *Obsolete Rules Report* (Report). Some of the rules identified in the Report were repealed through legislation. Where an obsolete rule requires revision rather than repeal, the MPCA opted to conduct

rulemaking to make the necessary changes. The MPCA is conducting three separate rulemakings to address the remaining obsolete rules. In this rulemaking the MPCA is making the necessary amendments to obsolete rules associated with the MPCA's water programs (amendments relating to aquaculture variances and to the notification of Clean Water Partnership grants) and in separate rulemakings the MPCA will address the obsolete rules that are associated with air and land programs. The MPCA's decision to address the obsolete rules through three different rulemakings is based on project management concerns and to facilitate adequate notice to all the potentially affected parties.

The Report identified clearly obsolete rules. However, the MPCA administers many hundreds of rules and maintains an ongoing effort to identify errors and inconsistencies that must also be routinely addressed through rulemaking. Those types of "housekeeping" changes are also proposed in this rulemaking in addition to the obsolete rules identified in the Report.

2. Statutory Authority

The MPCA's statutory authority to make the proposed changes is based on general rulemaking authority and specific rulemaking authorities relative to each of the areas being amended.

The MPCA's general authority to amend its existing rules is found in Minn. Stat. §115.03.

115.03 POWERS AND DUTIES.

Subdivision 1. Generally.

The agency is hereby given and charged with the following powers and duties:

(g) to prescribe and alter rules, not inconsistent with law, for the conduct of the agency and other matters within the scope of the powers granted to and imposed upon it by this chapter and, with respect to pollution of waters of the state, in chapter 116, provided that every rule affecting any other department or agency of the state or any person other than a member or employee of the agency shall be filed with the secretary of state;

In addition to the general authority granted to the MPCA to alter rules, there is specific authority to adopt rules for the management of the programs being amended in this rulemaking.

The specific authority granted to the MPCA to adopt rules for the management of sewage sludge (changes to Minn. R. ch. 7041) is found in Minn. Stat. § 116.07, subd. 2, (b).

116.07 POWERS AND DUTIES.

Subd. 2. Adoption of standards.

(b) The Pollution Control Agency shall promote solid waste disposal control by encouraging the updating of collection systems, elimination of open dumps, and improvements in incinerator practices. The agency shall also adopt standards for the control of the collection, transportation, storage, processing, and disposal of solid waste and sewage sludge for the prevention and abatement of water, air, and land pollution, recognizing that due to variable factors, no single standard

of control is applicable to all areas of the state. In adopting standards, the Pollution Control Agency shall give due recognition to the fact that elements of control which may be reasonable and proper in densely populated areas of the state may be unreasonable and improper in sparsely populated or remote areas of the state, and it shall take into consideration in this connection such factors, including others which it may deem proper, as existing physical conditions, topography, soils and geology, climate, transportation, and land use. Such standards of control shall be premised on technical criteria and commonly accepted practices.

The specific authority granted to the MPCA to adopt rules for aquaculture facilities (changes to Minn. R. ch. 7053) is found in Minn. Stat. §115.44, subd. 4.

115.44 CLASSIFICATION OF WATERS; STANDARDS OF QUALITY AND PURITY.

Subd. 4. Standards.

The agency, after proper study, and in accordance with chapter 14, shall adopt and design standards of quality and purity for each classification necessary for the public use or benefit contemplated by the classification. The standards shall prescribe what qualities and properties of water indicate a polluted condition of the waters of the state which is actually or potentially deleterious, harmful, detrimental, or injurious to the public health, safety, or welfare; to terrestrial or aquatic life or to its growth and propagation; or to the use of the waters for domestic, commercial and industrial, agricultural, recreational, or other reasonable purposes, with respect to the various classes established pursuant to subdivision 2. The standards may also contain other provisions that the agency deems proper. Wherever practicable and advisable, the agency shall establish standards for effluent of disposal systems entering classified waters.

The specific authority granted to the MPCA to adopt rules for the management of the Clean Water Partnership grants (changes to Minn. R. ch. 7076) is found in Minn. Stat. § 103F.745.

103F.745 RULES.

(a) The agency shall adopt rules necessary to implement sections 103F.701 to 103F.755. The rules shall contain at a minimum:

- (1) procedures to be followed by local units of government in applying for technical or financial assistance or both;*
- (2) conditions for the administration of assistance;*
- (3) requirements for a project;*
- (4) criteria for the evaluation and approval of a project;*
- (5) criteria for the ranking of projects in order of priority for assistance;*
- (6) criteria for defining and evaluating eligible costs and cost-sharing by local units of government applying for assistance;*
- (7) requirements for providing measurable outcomes; and*
- (8) other matters as the agency and the commissioner find necessary for the proper administration of sections 103F.701 to 103F.755, including any rules*

determined by the commissioner to be necessary for the implementation of federal programs to protect, enhance, or restore water quality.

(b) For financial assistance by loan under section 103F.725, subdivision 1a, criteria established by rule shall guide requirements and administrative procedures for the clean water partnership loan program.

The specific authority granted to the MPCA to adopt rules for the management of subsurface sewage treatment systems (changes to Minn. R. chs. 7080, 7081, 7082 and 7083) is found in Minn. Stat. § 115.55, subd. 3.

115.55 Subd. 3. Rules.

(a) The agency shall adopt rules containing minimum standards and criteria for the design, location, installation, use, maintenance, and closure of subsurface sewage treatment systems. The rules must include:

- (1) how the agency will ensure compliance under subdivision 2;*
- (2) how local units of government shall enforce ordinances under subdivision 2, including requirements for permits and inspection programs;*
- (3) how the advisory committee will participate in review and implementation of the rules;*
- (4) provisions for nonstandard systems and performance-based systems;*
- (5) provisions for handling and disposal of effluent;*
- (6) provisions for system abandonment; and*
- (7) procedures for variances, including the consideration of variances based on cost and variances that take into account proximity of a system to other systems.*

(b) The agency shall consult with the advisory committee before adopting rules under this subdivision.

(c) The rules required in paragraph (a) must also address the following:

- (1) a definition of redoximorphic features and other criteria that can be used by system designers and inspectors;*
- (2) direction on the interpretation of observed soil features that may be redoximorphic and their relation to zones of periodic saturation; and*
- (3) procedures on how to resolve professional disagreements on periodically saturated soils.*

Minn. Stat. §14.05, subd. 1, provides specific statutory authority for the automatic repeal of a rule if the law authorizing the rule is repealed.

14.05, subd. 1. *Each agency shall adopt, amend, suspend, or repeal its rules in accordance with the procedures specified in sections 14.001 to 14.69, and only pursuant to authority delegated by law and in full compliance with its duties and obligations. If a law authorizing rules is repealed, the rules adopted pursuant to that law are automatically repealed on the effective date of the law's repeal unless there is another law authorizing the rules. Except as provided in section 14.06, sections 14.001 to 14.69 shall not be authority for an agency to adopt, amend, suspend, or repeal rules.*

An additional statutory authority relates to the MPCA's authority to repeal an exemption provided in Minn. R. pt. 7083.1060. The provision being repealed was added in 2003 through the authority of Minn. Stat. §115.56, subd.2, (h) which stated:

115.56, subd.2 (h) A pumper whose annual gross revenue from pumping systems is \$9,000 or less and whose gross revenue from pumping systems during the year ending May 11, 1994, was at least \$1,000 is not subject to training requirements in rules adopted under subdivision 1, except for any training required for initial licensure.

In the 2009 legislative session, Minn. Stat. § 115.56, subd.2, (h) was repealed (Minn. Laws 2009, ch. 109) so the MPCA proposes the repeal of its related rule language in Minn. R. pt. 7083.1060.

3. Need for the Amendments

The proposed amendments are referred to in this SONAR as "housekeeping" and the need for them is analogous to housekeeping or routine maintenance. The proposed amendments do not make significant changes nor impose substantive new requirements; all are minor corrections, modifications or clarifications to a structure of existing rules. The underlying need for each rule was established at the time the rule was originally adopted or significantly amended and will not be further justified in this SONAR. In general terms, the proposed amendments are needed simply to correct certain problems. Technology and processes for conducting some activities have changed, cited references have changed, and errors and omissions have been identified as the rules have been put into practice. The fundamental need for all of the proposed amendments is that some aspect of an existing rule is incorrect and must be changed to support the original purpose of the rule.

A related need for the proposed amendments is to respond to a legislative directive to address rules that have been identified as obsolete, unnecessary or duplicative. As discussed in section I. C of this SONAR, Minn. Stat. § 14.05, subd.5, requires that the MPCA annually review its rules and identify any obsolete, unnecessary or duplicative rules and provide a schedule for their repeal. In the Report the MPCA committed to conduct rulemaking to address obsolete requirements in Minn. R. ch. 7053 relating to aquaculture variances and Minn. R. ch. 7076 relating to the notification process for Clean Water Partnership grants.

4. Reasonableness of the Amendments

A. General Reasonableness

The proposed amendments are all generally reasonable for the same reason. They all fix a problem identified in the existing rules. The proposed amendments are the MPCA's best response to correct a point of confusion, error or inconsistency in the rules.

B. Specific Reasonableness

The specific reasonableness of amendments to each rule part will be discussed, starting with Minnesota Rule chapter 7041 and continuing through Minnesota Rule chapters 7083. The rule language appears in *italics*. New language is underlined and deleted language is shown by ~~strikeout~~. The discussion of the reasonableness of each proposed rule change appears immediately below the rule language.

Some of the amendments resulted in the re-numbering or changes to the lettering of items and subitems. Those types of formatting changes are insignificant and will not be identified or discussed.

Slight discrepancies may exist between the excerpted language shown in this part and the rule amendments in the draft prepared by the Office of the Revisor of Statutes and which is the version that is formally proposed in the *State Register* for public comment. The Revisor's convention requires that for each change being proposed, the text of the full subpart in which it occurs be provided. In some cases, to more conveniently identify the proposed change, the full text of the subpart is not repeated in this SONAR. The MPCA intends that the rule language that is in the Revisor of Statutes version is the language that is justified.

1. Proposed Change - Minn. R. 7041.1200, Management Practices and Limitations, subp. 3, item B.

Subp. 3. Suitable soil conditions, slopes and separation distances.

B. Suitable slopes and separation distances must be as described in this item. If applied through irrigation equipment, aerosol drift shall not be in contact with the feature specified.

**BULK SEWAGE SLUDGE APPLIED TO THE LAND
SUITABLE SLOPES AND SEPARATION DISTANCES**

Distance to public contact site⁴ 600 ft. 600 ft. 300 ft.

¹The depth is calculated from the zone of sewage sludge application and the separation distance for highly permeable soils is 5 feet.

²For the purpose of this item, a perched water condition shall not be considered a seasonal high water table.

³The depth to subsurface drainage tiles shall be considered the depth to the seasonal high water table for sites with tile drainage systems that are designed according to or equivalent to Natural Resources Conservation Service engineering standards and criteria.

⁴Separation distances may be reduced with written permission from all persons responsible for residential developments and places of recreation and all persons inhabiting within the otherwise protected distance.

⁵If downgradient surface water does not receive runoff because the site is bermed, separation distances can be reduced to 33 feet.

⁶For the purpose of this item, intermittent stream means a drainage channel with definable banks that provides for runoff flow to any of the surface waters listed in this item during snow melt or rainfall events.

⁷Separation distances are from the centerline of grassed waterways. For grassed waterways which are wider than these separation distances, application is allowed to the edge of the grass strip. Grassed waterways are natural or constructed, typically broad and shallow, and seeded to grass as protection against erosion.

Justification

The proposed amendment adds a superscript "4" to "Distance to public contact site." This superscript was omitted when the rule was adopted in 1997 and is reasonably added now to connect this requirement with the conditions provided in the footnote.

2. Proposed Change - Minn. R. 7041.1300, Operational Standards; Pathogen Reduction, subp. 2, item G.

Subp. 2. Pathogens in sewage sludge; Class A

G. Class A, Alternative 5. Sewage sludge shall be treated in one of the processes to further reduce pathogens in subitems (1) to (7).

(1) [unchanged]

(2) Heat drying. Sewage sludge is dried by direct or indirect contact with hot gases to reduce the moisture content of the sewage sludge to 10 percent or lower. Either the temperature of the sewage sludge particles exceeds 80 degrees Celsius or the wet bulb temperature of the gas in contact with the sewage sludge as the sewage sludge leaves the dryer exceeds 80 degrees Celsius.

(3) to (7) [unchanged]

Justification

The proposed amendment adds a clarifying phrase to identify the point at which the temperature of the sewage sludge is to be measured. This phrase is being added to make the language correspond to the federal counterpart to this rule found in 40 Code of Federal Regulations, Part 503, Appendix B.

3. Proposed Change - Minn. R. 7041.1800, Provisions for Sewage Sludge from Septic Tanks, subp. 4.

Subp. 4. Monitoring, record keeping, and reporting.

The permittee must obtain and keep on record for five years, the information required to be in compliance with this chapter including:

A. the following certification statement for all septage applied to the land:

"I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen and vector attraction reduction requirements in subpart 2 3, item A, B, or C [insert either subpart 3, item A, B, or C] the management practices in part 7041.1200, and the site restrictions in part 7041.1300, subpart 3, item D, has been prepared under my direction and supervision according to the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen and vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

Items B. to J [unchanged]

Justification

Item A requires appliers to sign a written certification when applying septage to land. The certification statement makes a reference to the "pathogen and vector attraction reduction requirements" and incorrectly cites subpart 2, items A, B or C. Minn. R. pt. 7041.1800, subpart 2, is titled "Agronomic rates."

Subpart 3 is titled "Pathogen and vector attraction reduction" and is the correct citation. It is reasonable to correct the citation to subpart 3, not subpart 2.

4. Proposed Change - Minn. R. 7041.3400, Analysis of Soils, subp. 3.

Subp. 3. Seasonal high water table.

The documents in items A and B are incorporated by reference for determining the depth to and type of seasonal high water table for different soil types. When the necessary information for determining the depth to and type of seasonal water table is not available from the Natural Resources Conservation Service, the information may be obtained from either the document in item A or the procedure identified in item B. These references are not subject to frequent change and are available through the Minitex interlibrary loan system or addresses given.

- A. *Determination of the depth of soil having mottles with a chroma of two or less as discussed ~~on pages 15 to 17 of in~~ Keys to Soil Taxonomy, Sixth Edition (1994 2010, and as subsequently amended), issued by the United States Department of Agriculture, Natural Resources Conservation Service (Washington D.C., United States Government Printing Office). The document is incorporated by reference, is subject to frequent change, and is available at http://soils.usda.gov/technical/classification/tax_keys/.*
- B. *Measurement of water levels at monthly intervals over the course of one year in ~~piezometers water table monitoring devices~~. The highest water level measurement obtained is acceptable as the seasonal high water table. Piezometers must be installed according to the Minnesota Department of Health Well Code, chapter 4725, available from Office of State Register, Minnesota Bookstore, 117 University Avenue, Saint Paul, Minnesota 55155.*

Justification

Several changes are being made to Minn. R. pt. 7041.3400, subp. 3.

The introductory language is revised to reflect the fact that item B is being changed to no longer reference a specific document (the Well Code) but instead item B describes a process for obtaining information about water levels through monitoring. The statement that the referenced document is incorporated by reference has been moved to item A where it specifically incorporates the document "Keys to Soil Taxonomy" by reference.

In item A, the information provided for the document "Keys to Soil Taxonomy" is reasonably updated to delete the obsolete reference to the 1994 edition and page numbers. Because the document is frequently amended, it is reasonable to reference the most recent edition and each subsequent edition. The obsolete information for obtaining the document is replaced with an URL where the document may be viewed. The last sentence incorporates the document by reference.

In item B, the references to piezometers are changed to "water table monitoring devices" At the time the rules were adopted, piezometers were the most commonly used mechanism for monitoring water levels. Since that time, other mechanisms have been found to be equally or more effective. The rules are reasonably amended to allow the use of any of a number of devices for measuring the water table. The

reference to the Well Code is reasonably deleted because not all water table monitoring devices are subject to Well Code requirements. The information regarding how to obtain the Well Code is obsolete and is reasonably deleted.

5. Proposed Change - Minn. R. 7053.0405, Requirements for Aquaculture Facilities, subp. 1, items F, G and I.

*Subp. 1. **Definitions.** For purposes of this part, the terms in items A to ~~J-G~~ have the meanings given them.*

~~F. "Continuous discharge" means a discharge that occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.~~

~~G. "Existing beneficial uses" means the uses that have been made or may be reasonably anticipated to be made during the time of the proposed operations of waters of the state for domestic water supply, tourism and recreational industries, transportation, industrial consumption, wellhead protection, wildlife sustenance, wetland protection, fire protection, fire prevention, or other uses within this state, and, at the discretion of the agency, any uses in another state or interstate waters flowing through or originating in this state.~~

~~I. "Recirculating flow" means wastewater, within a concentrated aquatic animal production facility, that is collected from aquatic animal rearing units, treated, and then returned to aquatic animal rearing units for reuse.~~

Justification

The definitions of "continuous discharge," "existing beneficial uses," and "recirculating flow" are being deleted as part of the repeal of the aquaculture variance procedures in Minn. R. pt. 7053.0405, subp 3, item C. The deleted definitions do not occur in the parts of the aquaculture rule that are not being repealed in this rulemaking and thus are reasonably deleted.

6. Proposed Change - Minn. R. 7053.0405, Requirements for Aquaculture Facilities, subp. 3, item C.

*Subp. 3. **Treatment technology discharge requirements.***

A. All concentrated aquatic animal production facilities shall collect, remove, treat, and properly dispose of unconsumed fish food and fish wastes.

B. All concentrated aquatic animal production facilities that discharge industrial or other wastes to waters of the state shall comply with the requirements of parts 7053.0225, subparts 1, 3, 4, and 5, and 7053.0275.

~~C. The owner or operator of a recirculating flow facility may apply for a variance from the requirements of item B according to parts 7000.7000 and 7053.0195. The variance application must provide detailed information on:~~

~~(1) the treatment, collection, removal, and disposal of wastes after wastewater flow leaves aquatic animal rearing units and before the wastewater is returned for reuse to rearing units;~~

~~(2)the rate of wastewater discharge flow compared to the volume of water in the aquatic animal rearing units;~~

~~(3)the reduction in the mass discharge of pollutants due to the design, operation, and maintenance of the recirculating system; and~~

~~(4)the reduction in water appropriation due to the design, operation, and maintenance of the recirculating system.~~

Justification

Minn. R. pt. 7053.0405, subp.3, item C, requires specific information to be provided in order for the owner or operator of an aquaculture facility that is a recirculating flow facility to obtain a variance from the aquaculture discharge requirements in Minn. R. parts 7053.0225, subp. 1, 3, 4, and 5 and 7053.0275.

The information requirements specific to requesting a variance from subp.3, item B, were originally included in the rules to respond to the possible development of a recirculating flow aquaculture facility. However, no such variances have been sought in Minnesota. If a recirculating flow aquaculture facility is built in the future, and if a variance should be sought, the MPCA believes it is more appropriate to conduct that variance review and approval through the process established in Minn. R. pts. 7050.0190, 7052.0280 (in the Lake Superior Basin), 7053.0195 (variance from treatment requirements), and 7000.7000 (procedural requirements). Variance requirements specific to this particular type of aquaculture were developed in anticipation of a potential need that has not yet, nor is expected to materialize. Furthermore, the MPCA believes that all water quality variance requests should be dealt with consistently using the variance provisions in 7050.0190, 7052.0280, 7053.0195 and 7000.7000.

7. Proposed Change - Minn. R. 7053.0405, Requirements for Aquaculture Facilities, subp. 5.

~~Subp. 5. Interim reversible impacts.~~

~~A. Upon application of the responsible person or persons and according to parts 7000.7000 and 7053.0195, the agency shall grant a variance from subpart 3, item A or B, if the agency also finds that:~~

~~(1)the construction, operation, and maintenance of the facility will not impair the existing beneficial uses and the level of water quality necessary to protect the existing beneficial uses;~~

~~(2)the economic or social development of concern will not occur due to the standards in subpart 3;~~

~~(3)allowing lower water quality is necessary to accommodate important economic or social development in the area in which the receiving waters are located;~~

~~(4)the baseline quality of the receiving waters has been established according to item C;~~

~~(5)a closure plan for the facility has been submitted according to item E;~~

~~(6)financial assurance for the facility has been established and maintained according to item F;~~

~~(7)the applicant has submitted a permit application for the facility for which the variance is sought in compliance with subpart 2;~~

~~(8)the applicant has submitted a completed variance application according to item B;
and~~

~~(9)the receiving waters will be restored to baseline quality within three years of initiation
of closure.~~

~~However, no variances may be granted that would result in noncompliance with
applicable federal rules, regulations, or standards for water quality.~~

~~B.In addition to the requirements of part 7000.7000, subpart 2, the written application
for a variance must contain:~~

~~(1)the baseline quality data of the receiving waters collected under commissioner-
approved protocol according to item C;~~

~~(2)the closure plan according to item E; and~~

~~(3)an up-to-date closure cost estimate for the facility prepared under item E and
evidence of the financial assurance required in item F.~~

~~C.Baseline quality must be established by no less than two consecutive years, or
equivalent, of preoperational data on the receiving waters. The equivalent testing
program must require 12 sampling events for the parameters in item E collected during
the months of May through October. Testing programs used to establish baseline quality
must be reviewed and approved by the commissioner before the start of testing. The
commissioner shall supply the specific intra-year and inter-year variables.~~

~~D.If a variance is granted under item A, the permittee shall restore the receiving waters
to baseline quality when:~~

~~(1)aquatic animal production from the facility ceases;~~

~~(2)any of the limiting concentrations in item G are exceeded;~~

~~(3)the permit for the facility expires and reissuance of the permit is not applied for or is
applied for and denied;~~

~~(4)the permit for the facility is revoked;~~

~~(5)an agency order to cease operation is issued; or~~

~~(6)the required financial assurance under item F for closure, postclosure monitoring, or
corrective actions is not maintained with the proper payment or substitute instrument.~~

~~E.The applicant shall submit a closure plan with the variance application. The closure
plan shall demonstrate financial assurance under item F for closure, postclosure
monitoring, and corrective actions for restoration of the receiving waters to baseline
quality and shall describe the methods and processes that will be implemented to restore
the receiving waters to baseline quality within three years of initiation of closure. The
demonstration must show that no additional restoration is needed beyond three years.
Restoration to baseline quality of the following parameters is required: dissolved oxygen,
total phosphorus, and chlorophyll a. Restoration to the baseline quality level means that
the mean postclosure baseline quality levels are not significantly different, as
determined with the appropriate statistical test, from the mean preoperational baseline
quality level.~~

~~F. The applicant shall submit to the commissioner, for review and approval, a closure, postclosure monitoring, and corrective action cost estimate and evidence of financial assurance, prepared according to parts 7035.2685 to 7035.2805.~~

~~G. The following limiting concentrations are established to prevent irreversible pollution and to protect the existing beneficial uses and apply to the receiving waters at all times:~~

Characteristic or Pollutant	Limiting Concentration or Range
Total organic carbon	5 mg/L*
Nitrate nitrogen	10 mg/L instantaneous value**
Chlorophyll-a	30 µg/L***
Dissolved oxygen	Not less than 3 mg/L in the bottom half of the hypolimnion and 5 mg/L in the upper half of the hypolimnion, instantaneous value****

~~* Annual mean.~~

~~** "Instantaneous value" means the concentration in one sample.~~

~~*** Monthly mean (May through September).~~

~~**** If the baseline monitoring shows that the preoperational oxygen concentration for the same time of the year is less than three milligrams per liter for the bottom half of the hypolimnion and five milligrams per liter for the upper half, there may be no further reduction of the preoperational oxygen concentrations. If the baseline quality of a pollutant is greater than the limiting concentration, or less in the case of dissolved oxygen, the baseline quality of the pollutant must be used as the limiting concentration.~~

Justification

The MPCA is repealing all of the special requirements relating to the granting of variances for aquaculture facilities because:

- 1) Removing subpart 5 does not prohibit the owner or operator of an aquaculture facility from requesting a variance. Minn. R. pts. 7000.7000, 7050.0190, 7052.0280 (in the Lake Superior Basin) and 7053.0195 (variance from treatment requirements) already establish both technical and procedural rules governing requests for a variance.
- 2) The variance requirements that are being repealed allow the MPCA to grant a variance without consideration of temporary reversible impacts. The existing requirements for obtaining a variance differ from the variance requirements being repealed by allowing the MPCA to consider temporary reversible impacts in addition to long-term impacts on water quality.
- 3) The special variance process was proposed in anticipation of the development of a specific type of aquaculture facility. There are currently no facilities that fit that criteria and no MPCA expectation that there will be any facilities of that type developed.

8. Proposed Change - Minn. R. 7076.0140, Notice of Financial Assistance Availability, subp. 1.

*Subp. 1. **Notice.** The commissioner will ~~publish in the State Register~~ provide notice that proposals for project grants and loans will be accepted whenever the commissioner determines that funds are available to award the financial assistance. Notice will be provided through the agency's Web site, through the state's electronic financial portal, or by publication in the State Register. The notice will contain the requirements necessary for the proposal and a deadline for proposal submittal, which must be no less than 60 days from the date of ~~publication~~ notification.*

Justification

This subpart is being amended to expand the options for providing notice that applications are being accepted. When this rule was first adopted the standard way to provide public notice was through publication in the *State Register*. Although the *State Register* continues to be the official publication of the State of Minnesota, other ways of providing notice have been developed and will continue to develop. The MPCA believes that limiting notice to only publication in the *State Register* is needlessly narrow and does not reflect the availability of current and future alternatives to provide faster, more specifically targeted notification. At the current time, notice of grant availability is also provided electronically through the Statewide Integrated Financial Tools (SWIFT) system. Although this is the electronic accounting system currently used by state agencies, the amended language anticipates that other systems may be developed to replace SWIFT. For that reason, the phrase "electronic financial portal" is being added to accommodate the development of new systems for providing notice. The MPCA believes that it is reasonable to update the rule language to provide for the use of alternatives to publication in the *State Register*.

The other amendments being made to this part are reasonable to support the changes discussed above, to change from the requirement to "publish" to a more generally applicable requirement to "provide notice".

9. Proposed Change - Minn. R. 7080.2050, Distribution of Effluent, subp. 3, item D, subitem (6).

*Subp. 3. **Gravity distribution.***

D. Distribution boxes must meet the standards in subitems (1) to (6).

(6) When sewage tank effluent is delivered by pump, a baffle wall must be installed in the distribution box or the pump discharge must be directed against a wall, baffle, side of the box on which there is no outlet, or directed against a deflection wall, baffle, or other energy dissipater. The baffle must be secured to the box and extend at least one inch above the crown of the inlet pipe. The discharge rate into the ~~drop~~ distribution box must not result in surfacing of sewage from the ~~drop~~ box. Pressure must not build up in the box during pump discharge.

Justification

This amendment corrects two erroneous references to "drop" box. The correct term of use is "distribution" box, not "drop" box, as is shown by the use of "distribution box" in the first sentence. The amendment does not make any change to the requirements or effect of this subitem, it only corrects an error.

10. Proposed Change - Minn. R. 7080.2150, Final Treatment and Dispersal, subpart 3, Table IX.

Subp. 3. Other technical requirements for systems.

(Note: only the changed row is shown, the remaining rows in the table are unchanged)

**TABLE IX
LOADING RATES FOR DETERMINING BOTTOM ABSORPTION AREA AND ABSORPTION RATIOS USING DETAILED SOIL DESCRIPTIONS ***

USDA Soil Texture	Soil Structure and Grad	Treatment Level C		Treatment Level A, A-2, B, B-2	
		Absorption area loading rate (gpd/ft ²)	Mound absorption ratio	Absorption area loading rate (gpd/ft ²)	Mound absorption ratio***
<i>Fine sand, very fine sand, loamy fine sand, loamy very fine sand, >35% <35% rock fragments</i>	<i>Single grain, granular, blocky, or prismatic structure; weak grade</i>	<i>0.6</i>	<i>2.0</i>	<i>1.0</i>	<i>1.6</i>

Justification

This amendment corrects an error that occurred in the 2010 amendments to this rule. The “greater than” sign was adopted by error and should have been a “less than” sign. The requirements of the table do not make sense in reference to soils that contain greater than 35 percent rock fragments. Soils with more than 35 percent rock fragments are subject to special requirements in Minn. R. pt. 7080.02150, subp. 3, item C (b). The correction of this error will not change the effect of this rule.

11. Proposed Change - Minn. R. 7080.2150, Final Treatment and Dispersal, subp. 3, footnote to Table IX.

*~~*Only includes soil horizons with <50% rock fragments, with Proposed absorption areas must meet item L and must have very friable and friable consistence, and or loose noncemented sands. Soil horizons with >50% rock fragments must not come in contact with soil dispersal system media.~~*

Justification

The requirements in the current footnote conflicts with the requirements established in 7080.2150, subp. 3, item L, which describe the suitable soil that must be in contact with the distribution media (the absorption area). Because the MPCA intends that the requirements in item L apply, the errors in the footnote are being changed to eliminate the ambiguity. The error is the result of a previous rulemaking which attempted to highlight a companion criteria dealing with suitable soil for the treatment area (vs. the media/soil contact area). The change is also described in the following table.

	Current Rule		Intended		Proposed Rule	
Suitable media/soil contact area (absorption area)	Footnote on Table IX <u>and</u> 7080.2150, subp.3, item L (conflicts)	Media cannot come into contact with soil with >50% rock fragments <u>and</u> Media cannot come into contact with soil with 35% or more rock fragments	7080.2150, subp.3, item L	Media cannot come into contact with soil with 35% or more rock fragments	7080.2150, subp.3, item L with a footnote reference under Table IX.	Media cannot come into contact with soil with 35% or more rock fragments
Suitable soil in treatment zone	7080.2150 subp. 3 item C. (1) (b)	35 to 50% rock fragments equals 50% treatment credit 50%+rock fragments equals no treatment credit	7080.2150 subp. 3 item C. (1) (b)	Media cannot come into contact with soil with 35% or more rock fragments	7080.2150, subp.3, item L with a footnote reference under Table IX.	Media cannot come into contact with soil with 35% or more rock fragments

12. Proposed Change - Minn. R. 7080.2450, Maintenance, subp. 6.

*Subp. 6. **Septage disposal.** Septage or any waste mixed with septage must be disposed of in accordance with state, federal, ~~or~~ and local requirements for septage and other wastes. If septage is disposed of into a sewage or septage treatment facility, a written agreement must be provided between the accepting facility and the maintenance business.*

Justification

The intent of this rule is that septage must be disposed of in accordance with all applicable requirements. The current use of “or” implies that this rule provides a choice between complying with either the state, federal or local requirements. The requirements in this rule do not supersede federal, local or other state requirements that may also be applicable. This sentence simply identifies the existence of other applicable requirements. The sentence is reasonably corrected to clarify that all requirements apply and that this rule does not allow for a choice of which requirements must be met.

13. Proposed Change - Minn. R. 7081.0020, Definitions, subp.2.

*Subp. 2. **Capillary fringe.** "Capillary fringe" means the soil layer directly above a saturated layer in which the pore spaces are nearly filled with water as water is drawn upward due to adhesive and cohesive forces.*

Justification

The term “capillary fringe” is no longer used in Minn. R. ch. 7081 so the definition is reasonably deleted. The requirements associated with capillary fringe were eliminated in the 2010 amendments to Minn. R. ch. 7081 but the MPCA failed to remove the definition of a capillary fringe in that rulemaking.

14. Proposed Change - Minn. R. 7081.0020, Definitions, subp.6.

*Subp. 6. **Other establishment.** "Other establishment" means any public or private structure other than a dwelling that generates sewage that discharges to an ~~MSTS~~ SSTS.*

Justification

The MPCA conducted rulemaking in 2008 that split the subsurface sewage treatment system requirements into two chapters, 7080 and 7081. Early drafts of these chapters established the technical standards for dwellings in chapter 7080 and the technical standards for non-dwellings (i.e. "other establishments") in chapter 7081. During the public rulemaking process, the split between those two chapters was changed so that the difference was based on the size of the system, not on the type of building being served by the system. The definition of "other establishment" was not changed at that time and continued to reflect its application solely to Mid-sized Subsurface Sewage Treatment System (MSTS). This reference to MSTS is an error and it is reasonable to provide the correct reference to the type of system to which an "other establishment" discharges.

15. Proposed Change - Minn. R. 7081.0150, Necessity of Soil and Site Evaluations.

Soil and site evaluations must be conducted for MSTS design. The evaluations must be conducted according to parts 7081.0160 ~~and~~ to 7081.0200. Evaluations must identify and delineate an initial and replacement soil treatment and dispersal area with appropriate system site boundaries.

Justification

The amendment corrects an error in the cross reference. The use of "and" instead of "to" implies that the site evaluation requirements are only found in two parts, Minn. R. pt. 7081.0160 and 7081.0200. In fact, there are additional site evaluation requirements in Minn. R. pts. 7081.0170, 7081.0180 and 7081.0190.

16. Proposed Change - Minn. R. 7081.0270, Final Treatment and Dispersal, subp.5, item B.

***Subp. 5. Soil absorption area sizing.**
B. If the absorption area receives septic tank or treatment level C effluent as described in ~~item A, subitem (1) part 7083.4030~~, the absorption area shall be increased by 50 percent of the amount derived in item A, subitem (1), and zoned for dosing and resting.*

Justification

The incorrect reference to the type of effluent identified in item A, subitem (1) is a remnant of a previous rulemaking. In the 2008 version of the rules, the effluent referenced in item A, subitem (1) was septic tank or Treatment Level C effluent. However, when the rules were amended in 2010, Tables IX and IX a were also amended to include the loading rates for all treatment levels, not strictly septic tank or Treatment Level C effluent. The cross reference to item A, subitem (1) is incorrect. The correct citation should be to 7083.4030, which is the rule part that identifies septic tank and Treatment Level C effluent. The change does not alter the effect of the rule, it only corrects the citation.

17. Proposed Change - Minn. R. 7081.0280, Construction Requirements, item B.

B. The ~~MSTS~~ advanced designer must observe critical periods of system construction. The designer shall prepare a report of observed construction activities and submit the report to the local unit of government prior to final inspection.

Justification

The use of the acronym "MSTS" is an error. The reference to "MSTS designer" is a remnant of an early draft of chapter 7083 in which the MPCA intended to name designers of larger systems "MSTS designers". During the public rulemaking process the name of these types of designers was changed to "advanced designer." The correct term for the type of designer that must meet the requirements in this part is "advanced" designer. Correcting this term does not change the applicability or effect of the requirement.

18. Proposed Change - Minn. R. 7082.0040, Regulatory Administration Responsibility, subp. 4, item A, subitem (1).

Subp. 4. Required fiscal and physical capacity for local programs. All local governments that administer SSTS programs must have:

A. adequate personnel to properly conduct SSTS technical and administrative functions. All local governments that administer SSTS programs must have:

(1) at least one certified inspector as described in part ~~7083.1010, subpart 2~~ 7083.1020 subpart 1 item C, who is employed by the local unit of government or a contracted licensed SSTS inspection business. Multiple local units of government are allowed to contract for services with the same certified inspector; and

Justification

The reference to Minn. R. pt. 7083.1010, subpart 2 is an error. There is no 7083.1010, subpart 2. Minn. R. pt. 7083.1020, subpart 1, item C, identifies the categories of certified specialty areas and it is reasonable to correct the citation to refer to that part.

19. Proposed Change - Minn. R. 7083.1060, Continuing Education, subp. 1, item B.

Subpart 1 Renewal requirements.

A. An individual with a maintainer certification must complete 12 hours of continuing education related in general to SSTS or nine hours of continuing education specifically related to SSTS maintenance or land application of septage every three years. ~~A maintainer whose gross annual revenue from pumping systems is \$9,000 or less and whose gross revenue from pumping systems during the year ending May 11, 1994, was at least \$1,000 is not subject to the continuing education requirements.~~

Justification

In 2003, in Minn. Stat. § 115.56 subdivision 2 (h), the Minnesota Legislature provided an exemption from the continuing education requirements for a certain category of subsurface sewage treatment system maintainers. The exemption was only applicable to those maintainers who annually earned less than

\$9,000 from their maintenance activities but who, during the year ending May 11, 1994, earned more than \$1,000 from their maintenance activities. The MPCA adopted this exemption into the Minn. R. pts. 7083.1060, subp. 1, item B in 2008.

In the 2009 legislative session, the statutory exemption was repealed (Minn. Laws 2009, ch. 109). Minn. Stat. 14.05, subd. 1 (Authority to adopt original rules restricted) states:

.... If a law authorizing rules is repealed, the rules adopted pursuant to that law are automatically repealed on the effective date of the law's repeal unless there is another law authorizing the rules. ...

Because the statutory basis for the exemption has been repealed and no additional law has authorized a similar exemption, it is reasonable to repeal the exemption provided in Minn. R. pt. 7083.1060 to conform to the legislative intent.

5. Rulemaking Requirements

A. Statutory Requirements

This part addresses the requirements of Minn. Stat. § 14.131, which require state agencies to address a number of questions in the SONAR. The MPCA's response to most of the questions applies across all of the changes proposed in this rulemaking. Where a question requires additional discussion relative to a specific amendment, that discussion is also provided.

(1) Description of the classes of person 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.

Because the proposed amendments will make changes to seven different rule chapters and several regulatory programs, a wide range of people could potentially be affected. However, in almost every case, the proposed changes will not result in any significant effect, either economic or otherwise for any class of people. In most cases, the changes necessary to deal with errors and inconsistencies have either already been addressed through policy or have not been of sufficient magnitude to require any change in enforcement or implementation of the rule.

One of the proposed amendments will have an effect. The changes to Minn. R. pt. 7076.0140, which allow the MPCA to provide notice through alternatives to publication in the *State Register*, will have a beneficial effect on the universe of parties interested in Clean Water Partnership grant availability. Parties that are interested in receiving notice of grant availability will be able to rely on being notified through a mechanism that is convenient to them and can discontinue the need to monitor the *State Register* for notices of possible interest. The MPCA believes the proposed amendments will provide a benefit to interested parties by allowing them to be actively notified of the availability of grant funding (e.g. through the SWIFT system) rather than to expect them to regularly monitor the *State Register* for the publication of that information.

The MPCA is aware of only one SSTS maintainer who has been exempted from the continuing education requirements as a result of the statutory exemption incorporated into Minn. R. pt. 7083.1060, subp.1 and which is now proposed to be repealed. The exemption provided in the rule became invalid at the time the underlying legislation was repealed. Although the MPCA continued to allow the exemption provided in the rule, the continuing education requirements have been applicable to all SSTS maintainers since 2009.

(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.

The MPCA does not anticipate that any of the proposed amendments will have any direct effect on State revenue other than the overall value of maintaining rules that are accurate and up to date and that reflect current practices. The MPCA also does not anticipate additional costs to the MPCA or other state agencies to implement or enforce the proposed amendments.

The changes to Minn. R. pt. 7076.0140, which allow the MPCA to provide notice through alternatives to publication in the *State Register*, will have a beneficial effect on the MPCA. The proposed amendments will eliminate the expense of publishing a notice in the *State Register* when that method of notice is not necessary to reach affected and interested parties.

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

The type of amendments proposed in this rulemaking are very minor and in the nature of "housekeeping." In most cases, the MPCA staff working with the different rules were aware of the errors and omissions corrected in this rulemaking but, in the interest of efficiency and cost saving, the MPCA opted to work around the errors rather than conduct individual rulemaking to correct each problem as it was identified. However, the MPCA believes it is appropriate at this time to correct these errors through a single rulemaking to ensure that the rules are as current and accurate as possible. Making these amendments through one combined rulemaking is reasonably cost effective and minimally intrusive.

(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 purpose of the proposed amendments is the correction of errors in existing rules, not to address any of the fundamental purposes of the rules being amended. The MPCA has not considered alternative methods for achieving the purposes of any of the programs regulated by the various rules being corrected. That assessment was done at the time the rules were originally adopted. However, the MPCA has made an assessment of alternative methods for making the identified minor corrections.

Minn. Stat. § 14.05, subd.5, requires agencies to assess their rules annually and where obsolete rules are identified, take steps to repeal the obsolete requirements. The MPCA identified a number of rules as obsolete in the 2012 Obsolete Rules Report. Some of the identified obsolete rules were directly addressed through legislative repeal that did not require rulemaking. The MPCA determined that the remaining obsolete rules were most reasonably addressed through rulemaking. By making the decision to address some of the identified obsolete rules through legislation, the MPCA has considered alternative methods to rulemaking. The MPCA considers that the changes being made in this rulemaking to eliminate the aquaculture variance process and the notification process for Clean Water Partnership grant fund availability (which were identified as obsolete in the 2012 Obsolete Rules Report) do not easily lend themselves to the legislative repeal process and will be more clearly addressed through this rulemaking.

- (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.**

The MPCA does not anticipate any costs associated with the proposed amendments. As discussed in item (1) above, none of the amendments will result in any additional cost or effort by any category of affected parties.

- (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.**

In general, the consideration of the consequences of not adopting the rules is reflected in the MPCA's discussion of the "need" for each specific amendment. The need for the amendments essentially provides the justification for why "not adopting the proposed rule" is not acceptable. For most of the proposed changes and corrections, there are no clear costs or consequences for not adopting the proposed amendments. Because the changes are corrections to errors or clarifications of requirements, the general consequence of not making these changes will simply be to increase the difficulty of implementing the rules and increase the possibility of error for the MPCA and for the regulated community.

Not making the proposed amendments related to the changes being proposed for the notification process for Clean Water Partnership grant funding in Minn. R. pt. 7076.0140 will result in a specific probable consequence. The proposed change provides the MPCA with notification alternatives not currently provided in the rules. If the MPCA does not make the proposed change to allow the use of those options instead of publication in the *State Register*, then the MPCA will continue to be required to provide notification through the *State Register*, which may not be either the most effective way to reach interested parties or the most cost effective option.

An additional specific consequence would result from the failure to repeal the exemption from continuing education requirements in Minn. R. pt. 7083.1060. Not repealing that exemption will create a situation where the one person who is currently

enjoying that exemption will continue in the mistaken belief that they are exempt from the continuing education requirements that apply to all other SSTS maintainers.

(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.

Minn. Stat. § 14.131, requires that the MPCA consider the proposed amendments in relation to the corresponding federal requirements and Minn. Stat. § 116.07, subd. 2, (f) requires the MPCA to also benchmark with other states bordering Minnesota and with other states within United States Environmental Protection Agency Region 5.

In almost every case, these statutes are not relevant to the amendments being proposed. The proposed amendments do not establish any new standard or requirement. They are simple corrections and adjustments to existing requirements and do not change any of the existing relationships between the state rules and any federal requirement, nor do they compare to the standards of neighboring states. In the case of the amendments to the sewage sludge management program (Discussion #2 in the discussion of Reasonableness) the amendment will make the state rule more exactly conform to the federal equivalent. Where there is no counterpart to the requirements at either the federal level or in a neighboring state, (eg. the changes to the notification process for the Clean Water Partnership grant program), no comparison can be made.

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

Minn. Stat. § 14.131 defines “cumulative effect” as “the impact that results from incremental impact of the proposed rule in addition to the other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”

The MPCA finds that the proposed amendments will not result in any cumulative effect in association with any other State or federal regulations. The amendments only correct existing requirements and do not add any additional level of regulation.

(9) Describe how the agency, in developing the rules, considered and implemented the legislative policy supporting performance-based regulatory systems set forth in Minnesota Stat. § 14.002.

Minnesota Stat. §14.002 requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of the MPCA’s regulatory objectives while allowing maximum flexibility to regulated parties and to the MPCA in meeting those objectives. The MPCA considers that any consideration of performance-based alternatives was conducted at the time the existing rules were adopted. The proposed amendments do not make any fundamental changes to the regulatory systems that are governed by the existing rules and therefore, no further discussion or consideration of this requirement is necessary.

(10) Rules requiring local implementation.

Minn. Stat. § 14.128, subd. 1, requires an agency to make a determination of whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule. The proposed amendments will not have any effect on local ordinances or regulation.

(11) Determination regarding whether the cost of complying with the proposed rule in the first year after the rule takes effect will exceed \$25,000.

Minn. Stat. § 14.127, subds. 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 any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees.”

None of the proposed amendments will result in a cost to any small business or small city.

B. Public and Required Notice

The MPCA provided the required notifications to the public and the entities identified in statute. A Request for Comments (RFC) was published in the April 29, 2013 *State Register*. At that time the MPCA also posted the RFC on its public notice webpage and sent an electronic notification (GovDelivery) to approximately 200 email addresses of people who had requested to be notified of all new MPCA rulemaking. The RFC and the email notification invited interested parties to register to be notified of future activities regarding this specific rulemaking. The resulting list of interested parties will be provided future notice as required by Minn. Stat. ch. 14. At the same time, the MPCA also posted information regarding the proposed amendments on a webpage and on the MPCA’s rule docket.

During the early stages of rule development the MPCA conducted a number of activities to reach potentially interested parties and encourage them to register to receive future GovDelivery notifications about the proposed amendments. An article encouraging interested parties to register to receive rulemaking information was published in the April/May, 2013 Minnesota Onsite Wastewater Association (MOWA) newsletter. This newsletter is sent to individuals working with SSTS systems and reaches persons who may be interested in the proposed changes to Minn. R. chapters 7080 to 7083. A copy of the RFC was also sent to an MPCA list-serve of all individuals who are licensed to operate Type IV sewage sludge landspreading systems and who would possibly be interested in the proposed changes to chapter 7041. A notice regarding the changes to the process for providing notice of Clean Water Partnership grants and loans (Minn. R. ch.7076) was published in the July, 2013 Waterfront Bulletin. The Waterfront Bulletin, an email newsletter dedicated to watershed funding, projects, research and events, is published by the MPCA every month. It currently has 1,530 subscribers, mostly watershed professionals in Minnesota. The MPCA maintains a list of several entities associated with aquaculture facilities and fish hatcheries. These parties were sent a specific notice at the time a pre-proposal draft of the rule language was made available to the public to encourage them to register to receive future GovDelivery notifications.

When the proposed amendments are published in the *State Register*, the MPCA will conduct the applicable notifications required under Minn. Stat. ch. 14. The MPCA intends to publish the proposed rules with a Notice of Intent to Adopt Rules Without a Public Hearing (Notice) and to provide additional electronic notification to all parties who have registered either their interest in all MPCA rulemakings or their interest in this specific rulemaking. The MPCA considers that the previous notifications and outreach activities provided adequate encouragement for interested parties to register with GovDelivery to receive the Notice. The Notice and a link to the proposed rules will also be posted on the MPCA's public notices website and on the website provided specifically for this rulemaking for the entire comment period.

C. Response to Comments

Although several people responded to the RFC with a request to be provided with draft rule language when it became available, only one actual comment was received in response to the Request for Comments published on April 29, 2013. The commentor initially requested clarification of a point regarding the existing prohibition on seepage beds in floodplains and in an email follow up, suggested that if changing the existing prohibition was out of the scope of a housekeeping amendment, in this rulemaking the MPCA could insert a reference in Minn. R. pt. 7080.2270, subpart 3, to the floodplain restriction in Minn. R. pt. 7080.2210. The MPCA considered this suggestion but disagrees that such a citation is necessary. A citation to Minn. R. pt. 7080.2210, which contains the prohibition on seepage beds in a floodplain is already provided in Minn. R. pt. 7080.2270, subpart 1 and repeating that citation in subpart 3 is not necessary.

6. Conclusion

In this SONAR, the MPCA has established the need for and the reasonableness of each of the proposed amendments to Minn. R. chs. 7041, 7053, 7076, 7080, 7081, 7082, and 7083. The MPCA has provided the necessary notifications 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.

8/27/13
Date



John Stine, Commissioner
Minnesota Pollution Control Agency