



## Minnesota Pollution Control Agency

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December 1, 2014

The Honorable Mark Dayton  
Governor, State of Minnesota  
75 Rev. Dr. Martin Luther King Jr. Blvd.  
Room 130  
St. Paul, MN 55155-1606

The Honorable Paul Thissen  
Minnesota State Representative, Chair  
Legislative Coordinating Commission  
100 Rev. Dr. Martin Luther King Jr. Blvd., Rm 463  
St. Paul, MN 55155-1606

The Honorable David Dill  
Minnesota State Representative  
House Environment and Natural Resources  
Policy Committee  
571 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155-1606

The Honorable David J. Tomassoni  
Minnesota State Senator  
Senate Environment, Economic Development  
and Agriculture Division  
Capitol, Room 317  
75 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155-1606

The Honorable Jean Wagenius  
Minnesota State Representative  
House Environment, Natural Resources,  
and Agriculture Finance Committee  
449 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

The Honorable John Marty  
Minnesota State Senator  
Senate Environment and Energy Committee  
Capitol, Room 323  
75 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155-1606

The Honorable Tom Hackbarth  
Minnesota State Representative  
Ranking Minority Member  
House Environment and Natural Resources  
Policy Committee  
309 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

The Honorable David M. Brown  
Minnesota State Senator  
Ranking Minority Member  
Senate Environment and Energy Committee  
109 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155-1206

The Honorable Denny McNamara  
Minnesota State Representative  
Ranking Minority Member  
House Environment, Natural Resources and  
Agriculture Finance Committee  
359 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, Minnesota 55155

The Honorable Bill Ingebrigtsen  
Minnesota State Senator  
Ranking Minority Member  
Senate Environment, Economic Development  
and Agriculture Division  
143 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155-1206

RE: Annual Report on Obsolete, Unnecessary, or Duplicative Rules, as Required by  
*Minn. Stat. § 14.05, subd. 5*

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*Minnesota Statute § 14.05, Subdivision 5, states:*

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

The Minnesota Pollution Control Agency (MPCA) has conducted an internal review of its rules and also requested help from external customers (e.g. Minnesota Chamber of Commerce, tribal representatives and environmental advocacy groups) to identify rules that are obsolete, unnecessary or duplicative. This review did not identify any rules that were clearly obsolete, unnecessary or duplicative. However, a 2014 Supreme Court decision has vacated certain parts of federal rules governing air quality permits and that decision may render certain corresponding state rules obsolete.

**Rules identified as obsolete.**

A Supreme Court decision addressing the application of stationary source permitting requirements to greenhouse gases may make certain parts of the state rules relating to air quality permits obsolete. An EPA guidance on the subject (July 24, 2014) states *“In very brief summary, the Supreme Court said that the EPA may not treat greenhouse gases as an air pollutant for purposes of determining whether a source is a major source required to obtain a Prevention of Significant Deterioration (PSD) or title V permit.”* In 2013 the MPCA adopted rules governing Greenhouse Gas Emissions based on the federal requirements that were in effect at that time but which are now, at least in part, vacated.

**The Minnesota Pollution Control Agency’s planned process for the repeal of the identified obsolete rules.**

The question of which parts of the Greenhouse Gas rules are now obsolete is being discussed at both the state and national level and has yet to be resolved. The MPCA and EPA has identified this area of rules as requiring further examination to determine exactly which rule parts are affected by the Supreme Court decision and the appropriate remedy to address those vacated requirements.

### **Status of obsolete rules identified in the Minnesota Pollution Control Agency's 2012 and 2013 Obsolete Rules Reports.**

The MPCA initiated three separate rulemakings to address obsolete rules identified in the 2012 and 2013 Obsolete Rules Reports.

- 1) ***Minn. R. part 7011.0725, subp. 2 (Performance Test Procedures)***. This rule identifies tests applicable to operators of industrial process equipment.

The MPCA is in the rulemaking process to amend these rules (Revisor's #4097). The MPCA published a Request for Comments to address these obsolete rules on September 17, 2012 and expects that the changes will be effective in 2015.

- 2) ***Minn. R. part 7053.0405, subps. 3, 4 and 5 (Requirements for Aquaculture Facilities) and Minn. R. part 7076.0140, subp. 1 (Notice of Financial Assistance Availability)***. Minn. R. part 7053.0405, subparts 3, 4 and 5 contains language relating to variances for a specific type of aquaculture facility. Minn. R. 7076.0140 relates to the administration of Clean Water Partnership grants. These rules were repealed through an MPCA rulemaking (Revisor's #4161) effective January 20, 2014 (38 SR 1001).

- 3) ***Minn. R. parts 9210.0120, subpart 5 (Grant Application Procedures), and Minn. R. parts 9210.0810, subp. 1 (Request for Proposals)***. These rules relate to the administration of solid waste grants and contracts. As part of the scoping process for the rulemaking to address these obsolete rules, a number of additional rules were also found to be obsolete and were identified in the 2013 Obsolete Rules Report as obsolete rules that would be addressed through the same rulemaking (Revisor's # 4155). Those additional obsolete rules are:

- ***Minn. R. pt. 7035.9120, subparts 4 and 5***. These subparts regulate the transportation of infectious waste.
- ***Minn. R. pt. 7045.0075, subpart 5***. This subpart provides a mechanism to petition for the use of an alternate manifest for hazardous waste transportation.
- ***Minn. R. pt. 7045.0125, subparts 4, 5 and 6***. These subparts, which relate to the transportation of hazardous waste being recycled.
- ***Minn. R. pt. 7045.0325, subpart 2***. This subpart provided exceptions to the federal uniform hazardous waste manifest.
- ***Minn. R. pt. 7045.0365, subpart 3***. This subpart establishes requirements applicable to hazardous waste transfer facilities.
- ***Minn. R. pt. 7045.0395, subpart 5***. This subpart requires specific actions in response to a spill of hazardous waste.
- ***Minn. R. pt. 7045.0686***. This rule establishes the requirements for the management of spent or waste household batteries.

The MPCA is in the process of amending these rules. The MPCA published a Request for Comments to address these obsolete rules on October 21, 2013 and expects that the changes will be effective in 2015.

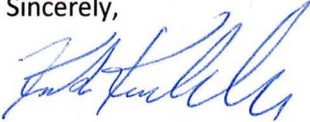
**Cost of preparing this report**

In compliance with Minn. Stat. § 3.197, the cost of preparing this report is as follows:

Staff cost: \$500. This includes time for review of rules, customer research and the time to complete the report.

If you have any questions regarding this report, please feel free to contact me at 651-757-2681.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kirk Koudelka", is written over the typed name.

Kirk Koudelka  
Assistant Commissioner

KK:CN:jlr

cc: Greg Hubinger