



520 Lafayette Road North | St. Paul, Minnesota 55155-4194 | 651-296-6300

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November 15, 2018

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

The Honorable Dan Fabian
Chair, Environment and Natural Resources Policy
and Finance Committee
359 State Office Building
St. Paul, MN 55155

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

The Honorable Carrie Ruud
Chair, Environment and Natural Resources Policy
and Legacy Finance Committee
3233 Minnesota Senate Building
St. Paul, MN 55155

The Honorable Chris Eaton
Ranking Minority Member, Environment and
Natural Resources Policy and Legacy Finance
Committee
2403 Minnesota Senate Building
St. Paul, MN 55155

The Honorable David Osmek
Chair, Energy and Utilities Finance and Policy
Committee
2107 Minnesota Senate Building
St. Paul, MN 55155-1206

The Honorable John Marty
Ranking Minority Member, Energy and Utilities
Finance and Policy Committee
2401 Minnesota Senate Building
St. Paul, MN 55155

The Honorable Bill Ingebrigtsen
Chair, Environment and Natural Resources
Finance Committee
3207 Minnesota Senate Building
St. Paul, MN 55155

The Honorable David Tomassoni
Ranking Minority Member, Environment and
Natural Resources Finance Committee
2235 Minnesota Senate Building
St. Paul, MN 55155

The Honorable Pat Garofalo
Chair, Job Growth and Energy Affordability
Policy and Finance Committee
485 State Office Building
St. Paul, MN 55155

The Honorable Jean Wagenius
DFL Lead, Job Growth and Energy Affordability
Policy and Finance Committee
251 State Office Building
St. Paul, MN 55155

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

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

RE: Annual Report on Obsolete, Unnecessary, or Duplicative Rules, as Required by
*Minnesota Statute (Minn. Stat.) § 14.05, subd. 5*¹

Minn. Stat. § 14.05, subdivision 5, states:

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

The Minnesota Pollution Control Agency (MPCA) has conducted a review of its rules and requested input from interested external parties (e.g., Minnesota Chamber of Commerce, regulated parties, local government and environmental advocacy groups) to identify rules that are obsolete, unnecessary, or duplicative.

Rules identified as obsolete, unnecessary, or duplicative in 2018

1. Environmental Management System (EMS) Rules, *Minn. R. pt. 7007.1105-1107*

The MPCA has identified *Minn. R. pt. 7007.1105-1107*, which pertains to eligibility for and application and permit content of EMS provisions in State air permits, as unnecessary. These rule parts were used rarely, and are no longer in use by any air permitted facilities. The MPCA plans to address the EMS rule provisions in a future air omnibus housekeeping rule, expected to begin in 2019.

2. Wastewater Treatment Rule Redundancy, *Minn. R. pt. 9400.0500, subpart 4, item C*

The MPCA identified that *Minn. R. pt. 9400.0500, subpart 4, item C*, pertaining to classification of wastewater treatment facilities, was a duplicate of item B in the same subpart. We notified the Office of the Revisor of Statutes, which eliminated the redundancy without need for a formal rulemaking process.

Status of rules identified in previous Obsolete Rules Reports (ORRs)

The MPCA has identified obsolete rules in previous ORRs, some of which have already been addressed/remedied by the agency. For the previously identified rules listed below, the MPCA is either

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

currently completing rulemaking to address them or still evaluating options to make the necessary changes.

1. MPCA Board Rules (2015 ORR)

The 2015 Legislative session eliminated the MPCA Citizens' Board (*Minn. Stat.* § 116.02, subd.6 and 8 (<https://www.revisor.mn.gov/laws/?id=4&year=2015&type=1>)). *Minn. R.* ch. 7000 and several other MPCA rules include obsolete references to the Board and its activities. The MPCA planned to address these obsolete rules by working with the Office of the Revisor of Statutes to prepare proposed legislation repeal obsolete rule provisions related to the Board according to Laws 2015, First Special Session chapter 4, article 4, section 149.

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

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

2. Hazardous Waste Rules (2013 and 2015 ORRs)

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

- ***Minn. R. pt. 7035.9120, subparts 4 and 5.*** Aspects of these subparts regulating transportation of infectious waste relate to activities of the Minnesota Department of Health, which has amended their rules regulating infectious waste management. As a result, some requirements in this part are obsolete or require correction. Additional requirements correspond to marking and placarding requirements of the federal hazardous material regulations administered by the U.S. Department of Transportation, which supersede conflicting state requirements.
- ***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. As of 2014, U.S. Environmental Protection Agency (EPA) regulations prohibit the use of alternate manifests.
- ***Minn. R. pt. 7045.0125, subparts 4–6.*** These subparts, which relate to the transportation of hazardous waste being recycled, contain obsolete citation to repealed *Minn. Stat.* § 221.0355.
- ***Minn. R. pt. 7045.0206, subpart 6, item B.*** This part establishes generator size determination requirements. Obsolete requirements related to polychlorinated biphenyls are being deleted.
- ***Minn. R. pt. 7045.0230, subpart 1a.*** This part establishes very small quantity generator license application requirements, which are duplicative because of proposed language revisions.
- ***Minn. R. pt. 7045.0243, subpart 3, item G.*** This part establishes the terms and conditions of a hazardous waste generator license; item G is obsolete because the MPCA's process for issuing licenses has changed.
- ***Minn. R. pt. 7045.0261, subpart 1a, item B; 7045.0294, subpart 1a; and 7045.0381, subpart 5.*** These subparts provide the option of using an alternate manifest, which is no longer allowed under the federal hazardous waste manifest program.

- **Minn. R. pt. 7045.0325, subpart 2.** This subpart provides exceptions to the federal uniform hazardous waste manifest. The EPA has preempted and prohibited all state manifest requirements at variance with the federal manifest.
- **Minn. R. pt. 7045.0365, subpart 3.** Item I in this subpart establishes requirements applicable to hazardous waste transfer facilities. These requirements conflict with federal recordkeeping requirements of the regulations administered by the U.S. Department of Transportation under the authority of the Hazardous Material Transportation Act.
- **Minn. R. pt. 7045.0371.** This part, which requires hazardous wastes to be transported in accordance with applicable state statutes and federal requirements, contains obsolete reference to repealed *Minn. Stat.* § 221.0355.
- **Minn. R. pt. 7045.0395, subpart 5.** This subpart requires specific actions in response to a spill of hazardous waste, which are preempted by the Federal Hazardous Materials Transportation Act.
- **Minn. R. pt. 7045.0686.** This part establishes the requirements for the management of spent or waste household batteries. In 2005, the MPCA adopted the Federal Universal Waste Rule (*Minn. R. pt. 7045.1400*), under which all spent or waste household batteries became eligible for management in Minnesota as universal wastes in lieu of the more strict previous requirements of this part. MPCA staff are not aware of any remaining operators operating under the requirements of this part when managing these batteries.
- **Minn. R. pt. 7045.0875, subpart 8, item B.** This part establishes that used oil processor/refiner must submit biennial reports, which the MPCA no longer requires.
- **Minn. R. pt. 9210.0120, subpart 5, and Minn. R. pt. 9210.0810, subpart 1.** These rules relate to the administration of solid waste grants and contracts. The parts of these rules that refer to providing notice specifically through publication in the *State Register* were rendered obsolete by the implementation of the new SWIFT system.

The MPCA has started rulemaking to make minor corrections, clarifications, and updates to its solid and hazardous waste rule chapters; this rulemaking will also address the obsolete rules identified above. Addressing these obsolete requirements will involve a number of changes to several chapters of Minnesota rules. The MPCA expects to complete this rulemaking, referred to as the Land-Related Housekeeping Rule (Revisor's ID #4155), in 2019.

3. Green House Gas Emissions Rules (2014 ORR)

Portions of the Green House Gas Emissions rules were vacated by a 2014 Supreme Court decision. The MPCA is waiting to initiate rulemaking to repeal the obsolete rules until the EPA finalizes its proposed rule amendments to address the vacated portions of the rule.

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

Sincerely,



Greta Gauthier
Assistant Commissioner
Commissioner's Office