

# Minnesota Pollution Control Agency

November 30, 1999

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Legislative Coordinating Commission

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Revisor of Statutes

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House Environment and Natural Resources  
Policy Committee

Representative Mark Holsten, Chair  
Representative Tom Osthoff, DFL Lead  
House Environment and Natural Resources  
Finance Committee

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

Minn. Stat. § 14.05, subd. 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 The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules.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(MPCA) has identified the following rules that will become obsolete and unnecessary on November 30, 1999, and should be repealed:

1. Minnesota R. ch. 7023, governing motor vehicles and annual vehicle inspections.

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These rules will become obsolete and unnecessary because the authority for implementing the motor vehicle emissions testing program will sunset on November 30, 1999, due to a 1999 legislative mandate (Minnesota Laws Chapter 178-H.F. No.7) terminating the program. Our timetable for repeal is fall of 2000.

In last year's report, we identified Minn. R. chs. 4760, 7002, and 7011 having obsolete rule parts. The current status of these rules is given below.

1. Minn. R. Chapter 4760 – Lead Abatement in Soil

Chapter 4760 was originally a rule adopted by the MPCA to regulate lead in soil at residential lead abatement sites. However, authority for implementing the rule was transferred by legislative mandate to the Minnesota Department of Health. At the time of the transfer (published in the State Register on September 13, 1993,) certain parts of Minn. R. ch. 4760 were repealed and the main elements of the chapter were renumbered to Minn. R. ch. 4761. A few provisions were neither renumbered nor repealed and were left in Minn. R. ch. 4760 because of a misunderstanding about the consequences of repealing them.

In an attempt to expedite the repeal, the MPCA discussed an alternative approach with the Revisor's Office whereby the Revisor could repeal an agency rule that has become obsolete as a result of changes to the authorizing statute. The MPCA sent a letter to the Revisor's Office requesting their assistance in repealing the unnecessary rule language. The MPCA felt it was appropriate to make this request of the Revisor's Office because of the confusion surrounding the legislative and administrative changes that resulted in the reassignment of responsibilities. In addition, the MPCA stated that repealing the rule through the conventional rulemaking process would be burdensome to the MPCA and could cause unnecessary confusion to the regulated community. The Revisor's Office responded that after careful review this was beyond their scope of authority and that the responsibility to repeal the rule remained with the MPCA.

The MPCA's next step was to request from the Office of Administrative Hearings that these rules be repealed using the Good Cause Exemption statute found at Minn. Stat. § 14.388, which provides an expedited process for adopting, amending or repealing a rule by using the criteria established in this section. However, the MPCA has been advised by the attorney general's office that we may not have the authority to repeal these rule parts due to the legislative transfer of authority to the Minnesota Department of Health. It is the intent of the MPCA to have this issue resolved and the rule repealed by the end of the year 2000.

2. Minn. R. 7002.0305 – Water Quality Permit Fee Table

Minn. R. ch. 7002 establishes fees for permits issued by the MPCA that regulate water quality issues. The rules contain two tables for determining fees, part 7002.0305 and part 7002.0310.

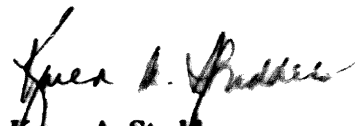
Permits were converted from the table under part 7002.0305 to the fee table under part 7002.0310 when the permits were re-issued. This transition has been completed and all permits are covered under part 7002.0310, making part 7002.0305 obsolete. The MPCA planned to repeal part 7002.0305 by rolling it into the current effort to revise Minn. R. ch. 7020 that governs Animal Feedlots. The MPCA took the initial steps to repeal this part by including the repeal in a Request for Comments notice that was published for chapter 7020. Since the publication of the Request for Comments notice the MPCA has decided to remove part 7002.0305 for two reasons: 1) Animal feedlots and permit fees are both controversial issues. Staff determined that trying to address both issues in one process was very confusing for concerned citizens and complicated the already complex feedlot rulemaking process. 2) The animal feedlot and water quality permit fee rules both impact a large audience, however they do not necessarily impact the same audience, which would have required an information dissemination effort that was too large, costly and involved to be accomplished effectively. The MPCA plans to repeal part 7002.0305 as a stand alone rule repeal to avoid citizen confusion by the end of 2000.

3. Minn. R. 7011.0800 – 7011.0825 – Portland Cement Plants

This rule was listed as obsolete in the 1997 Report because there are no Portland Cement Facilities in Minnesota and new facilities are subject to the New Source Performance Standards (NSPS) which are incorporated by reference at Minn. R. 7011.0830. The NSPS applies to all facilities regardless of size from 1971 to current. The MPCA planned to repeal this rule in a miscellaneous housekeeping rule titled Omnibus I. Due to the number of rule modifications in Omnibus I, the MPCA deferred the rule repeal until the Omnibus II housekeeping rule effort. The Omnibus II rule was completed in May 1999. An adoption notice was published in the State Register on June 1, 1999. Parts 7011.0800 – 7011.0825 governing Portland Cement Plants were repealed. This became effective on June 8, 1999.

If you have any questions regarding this report, please contact David Thornton, of my staff, at (651) 296-7265.

Sincerely,



Karen A. Studders  
Commissioner

KAS/NC:lmg