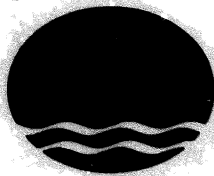


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Minnesota Pollution Control Agency

Office of the Commissioner

December 1, 2000

Governor Jesse Ventura

**Representative Steve Sviggum, Chair
Legislative Coordinating Commission**

**Michele Timmons
Revisor of Statutes**

**Senator Jane Krentz, Chair
Senator Len Price, Budget Division Chair
Senate Environment and Natural Resources
Committee**

**Representative Dennis Ozment, Chair
House Environment and Natural Resources
Policy Committee**

**Representative Mark Holsten, Chair
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 The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules.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."

December 1, 2000

Page 2

The Minnesota Pollution Control Agency (MPCA) has identified the following rules that are obsolete and unnecessary and should be repealed:

1. Minn. R. 9220.0100 – 9220.0180 - Waste Tire Abatement
2. Minn. R. 9220.0800 – 9220.0935 – Waste Tire Processing Grant and Loan Program

The Waste Tire Abatement rules listed above have become unnecessary because the pre-1985 large tire piles have been cleaned up and the MPCA can use its statutory authority (115A.906) for enforcement and abatement of any new tire piles. The MPCA no longer handles waste tire grants and loans, the Office of Environmental Assistance (OEA) has been charged with this responsibility. OEA operates the Environmental Assistance Grant and Loan program under Minn. Stat. § 115A.0716. Since the MPCA no longer provides grants or loans, the Waste Tire Processing Grant and Loan Program rules should also be repealed. The MPCA's timetable for repeal of these rules is fall of 2001.

In last year's report the MPCA identified Minn. R. chs. 4760, 7002 and 7023 as having some obsolete rules. 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.

The MPCA planned to complete a general housekeeping rulemaking that would include the above referenced rules by the end of the year 2000. This rulemaking would also clarify rule intent, correct typographical errors, eliminate redundant or outdated requirements, correct conflicting requirements, eliminate overly burdensome requirements and streamline administrative procedures. However, the MPCA is still in the process of preparing the final draft rule amendments, therefore the date for completion of this rulemaking has been moved to the end of the year 2001.

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.

December 1, 2000

Page 3

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 revision of Minn. R. ch. 7020 that governs Animal Feedlots, however the MPCA 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 2001.

3. Minn. R. Chapter 7023 – Motor Vehicles and Annual Inspections

These rules became obsolete because the authority for implementing the motor vehicle emissions testing program sunset on November 30, 1999, due to a 1999 legislative mandate (Laws of Minnesota 1999, chapter 178, sections 10 and 11) terminating the program. The MPCA planned to repeal these rules through the Administrative Procedure Act process, however the Revisor's Office advised the MPCA that they had the authority to omit the rules from the Revisor's official rules publication citing Minn. Stat. § 14.05, subd. 1 which 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" and Minn. Stat. § 14.47, subd. 6, paragraph (b) which states: "For the purposes of any compilation or publication of the rules, the revisor, unless the attorney general objects, may omit any rules that, by their own terms, are no longer effective or have been repealed directly by the agency, repealed by legislature, or declared unconstitutional or otherwise void by a court of last resort." The Revisor's Office completed this process on March 31, 2000, and removed the rules from their official rules publication.

If you have any questions regarding this report, please contact Kristen Applegate, of my staff, at (651) 296-7354.

Sincerely,


for Karen A. Studders
Commissioner

KAS:lmg