

Minnesota Pollution Control Agency

Proposed Amendments to Rules Governing Water Quality Standards – Class 2 and Class 7 Use Designations, *Minnesota Rules* chapter 7050

DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number R-4561

Plain English Summary. This notice is the Minnesota Pollution Control Agency's (MPCA) legal notice of its intent to adopt amended use designation rules for Class 2 and Class 7 waters. The overall purpose of the rules is to update the use designations for some state waters. The "designated use" is a component of water quality standards that defines how the water is used (e.g. drinking water, aquatic life, recreation). The proposed rules assign appropriate use designations to individual waterbodies.

This notice provides an opportunity for the public to comment on the proposed rules. Anyone who would like to comment on the proposed rule language must submit written comment or a written request for a hearing on the proposed rules by the deadline identified below. The Subject of Rules section provides additional information about the proposed rules. If the proposed rules affect you in any, the MPCA encourages you to participate in the rulemaking process.

Public Information Meeting. The MPCA has scheduled a public information meeting on the proposed rules. The meeting will be held at the MPCA Saint Paul office and via WebEx on **Tuesday, October 29, 2019, 3:00 - 5:30 p.m.** The purpose of the meeting is to provide an overview of the proposed rules so that interested persons are able to ask questions and provide written comment on the proposed rules. Information about the public information meeting is available on the rulemaking website at <https://www.pca.state.mn.us/water/wqs-designated-uses>.

Introduction. The MPCA intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by **4:30 p.m. on Thursday, November 7, 2019**, the MPCA will hold one public hearing to be convened at **3:30 p.m. on Wednesday, December 11, 2019**. The hearing will continue until all parties have been heard or until the Administrative Law Judge (ALJ) adjourns it. The public hearing will be held at the following locations:

- MPCA Saint Paul Office, 520 Lafayette Road North, Saint Paul, Minnesota 55155
- MPCA Duluth Office, 525 Lake Avenue South, Suite 400, Duluth, Minnesota 55802
- MPCA Detroit Lakes Office, 714 Lake Avenue, Suite 220, Detroit Lakes, Minnesota 56501
- MPCA Marshall Office, 504 Fairgrounds Road, Suite 200, Marshall, Minnesota 56258
- MPCA Rochester Office, 18 Wood Lake Drive SE, Rochester, Minnesota 55904

The MPCA will hold the hearing simultaneously at the five locations listed above via videoconference. The ALJ will conduct the hearing from the Saint Paul location. MPCA staff will be present at all five locations to facilitate the process and to ensure that all persons attending will be able to see, hear, and speak during the hearing. Directions to these offices is available on the MPCA website at <https://www.pca.state.mn.us/about-mpca/mpca-offices>.

To find out whether the MPCA will adopt the rules without a hearing or if it will hold the hearing, you should contact the MPCA contact person identified below after **Thursday, November 7, 2019**, and before **Wednesday, December 11, 2019**.

Subject of Rules. Minnesota's surface waters are currently assigned, or designated, a number of possible beneficial uses (e.g., drinking water, aquatic life, and recreation such as fishing and swimming) based on which beneficial uses are or should be attained in those waters. Different physical and chemical criteria apply depending on the beneficial uses that need to be protected in each water. The MPCA routinely reviews use designations to ensure that assigned beneficial uses are protective and attainable as defined by the Clean Water Act and Minnesota Rule. As the result of routine monitoring, stakeholder requests, and data generated by the Minnesota Department of Natural Resources (MDNR) trout waters rulemaking, the MPCA has identified waterbodies where the currently designated beneficial use does not accurately reflect an attainable use. The designated beneficial use for each water body must be correct and appropriate because the designated use affects many water quality protection and restoration efforts (e.g. assessment, stressor identification, National Pollutant Discharge Elimination System permitting, and Watershed Restoration and Protection Strategies). The proposed rules update designated uses for some state waters to improve their restoration and protection. Assigning the appropriate beneficial use is an important first step in the process to assure the goals for each water body are attainable and can be protected.

The proposed rules do not change numeric or narrative water quality standards. The proposed rules make updates and corrections to Class 2 (Aquatic Life) and Class 7 (Limited Resource Value Waters) beneficial use designations or classifications for streams and lakes. These updates fall into two groups: 1) reviewing streams and lakes for appropriate classification as cold or warm water habitats; and 2) reviewing streams under the tiered aquatic life use (TALU) framework. The TALU rules are a framework for classifying streams based on the aquatic life each supports or has the potential to support, and builds upon existing water quality standards. Described below are the main parts of the rule amendments the MPCA is proposing. For more information about the proposed rules, please refer to the statement of need and reasonableness (SONAR) which is available as stated below.

1. Minn. R. 7050.0420. The proposed rules update the list of waters designated as cold water streams and lakes, and modernize the process for designating cold and warm/cool water habitats. The current use designation framework adopts the designations in MDNR rules Minn. R. 6264.0050; however, these designations are driven by the goals and objectives of the MDNR, not the MPCA. The proposed revision would remove the link between Minn. R. 7050.0420 and 6264.0050 and allow the MPCA to designate cold water habitats based on evidence supporting the designation. This update will align the waters designated as Class 2A, 2Ae, and 2Ag in Minn. R. 7050.0470 to regulatory goals in Minnesota and federal regulations for the protection of cold water aquatic life and habitat.
2. Minn. R. 7050.0470. The proposed rules revise Class 2 lake use designations for four lakes in Minn. R. 7050.0470 to assign the correct and appropriate designated use (warm/cool or cold water habitat) to each water body. The MPCA is also updating the documents incorporated by reference in Minn. R. 7050.0470 that list the specific use designations, and updating the use designations for approximately 200 stream reaches under the TALU framework.

Availability of Rules. A copy of the proposed rules is published in the *State Register* after this notice, or they can be viewed on the rulemaking website at <https://www.pca.state.mn.us/water/wqs-designated-uses>. A free copy of the rules is also available upon request from the MPCA contact person identified below.

Statement of Need and Reasonableness. The SONAR summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. The MPCA posted the SONAR on the rulemaking website at <https://www.pca.state.mn.us/water/wqs-designated-uses>. A print copy is available for the cost of reproduction by contacting the MPCA contact person identified below.

Public Comment. You have until **4:30 p.m. on Thursday, November 7, 2019**, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the deadline. Submit written comments to the Office of Administrative Hearings (OAH) Rulemaking eComments website at <https://minnesotaoah.granicusideas.com>. If it is not possible to use the eComments website, comments may be submitted in person, via United States mail, or by facsimile addressed to Administrative Law Judge Ann C. O'Reilly at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620 or at 651-539-0310 (fax). Any questions about rule procedures or submitting comments via the eComments website should be directed to Ian Lewenstein, Office of Administrative Hearings Rules Coordinator, at 651-361-7857 or ian.Lewenstein@state.mn.us. All comments received are public and will be available for review at the Office of Administrative Hearings and on the OAH Rulemaking eComments website at <https://minnesotaoah.granicusideas.com>. After the close of the comment period on November 7, 2019, the comments will also be available for viewing at the MPCA's rulemaking website at <https://www.pca.state.mn.us/water/wqs-designated-uses>.

Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. Any comments that you have about the legality of the proposed rules must also be made during this comment period.

Modifications. The MPCA may modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. The modifications must be supported by comments and information submitted to the MPCA or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the MPCA follows the procedure under *Minnesota Rules*, part 1400.2110.

Request for a Hearing. In addition to submitting comments, you may also request that the MPCA hold a public hearing on the proposed rules. You have until **4:30 p.m. on Thursday, November 7, 2019**, to submit your written request for a hearing to the agency contact person, Mary H. Lynn, at MPCA, 520 Lafayette Road North, Saint Paul, Minnesota 55155-4194, or mary.lynn@state.mn.us. Requests for hearing can be submitted in person, by United States mail, or by electronic mail. Your written request for a public hearing must include your name and postal address. You must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the MPCA cannot count it when determining whether it must hold a public hearing. You are encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the MPCA will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the MPCA must give written notice of this to all persons who requested a hearing, explain the actions the MPCA took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the MPCA will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The MPCA reserves the option to remove any section of the rule that may be controversial and to proceed without a hearing on the noncontroversial parts of the proposed rules.

Cancellation of Hearing. The MPCA will cancel the hearing scheduled for **Wednesday, December 11, 2019**, if the MPCA does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the MPCA will notify you before the scheduled hearing whether the hearing will be held. You may also call the MPCA contact person identified below after **Thursday, November 7, 2019**, to find out whether the hearing will be held or go to the rulemaking website at <https://www.pca.state.mn.us/water/wqs-designated-uses>.

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing on the rules, the MPCA will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The MPCA will hold the hearing on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard or until the ALJ adjourns it. ALJ, the Honorable Judge Ann C. O'Reilly, is assigned to conduct the hearing. Judge O'Reilly's legal assistant Sheena Denny can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone 651-361-7881, and 651-539-0310 (fax) or Sheena.Denny@state.mn.us.

Hearing Procedure. If the MPCA holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the ALJ to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the ALJ may order that this five-day comment period is extended for a longer period but not more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period when the MPCA and any interested person may respond in writing to any new information submitted. No one may submit new evidence during the five-day rebuttal period. The Office of Administrative Hearings must receive all comments and responses submitted to the ALJ via the Office of Administrative Hearings rulemaking eComments website at <https://minnesotaoah.granicusideas.com> no later than **4:30 p.m.** on the due date. If it is not possible to use the OAH eComments website, comments may be submitted in person, via United States mail, or by facsimile addressed to Administrative Law Judge Ann. C. O'Reilly at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620 or at 651-539-0310 (fax). All comments or responses received will be available for review at <https://minnesotaoah.granicusideas.com> or at the Office of Administrative Hearings. After the close of the post-hearing comment and rebuttal period, all comments and responses will be available for review at the MPCA offices and on the MPCA rulemaking website at <https://www.pca.state.mn.us/water/wqs-designated-uses>. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the

rulemaking procedure to the ALJ or the Office of Administrative Hearings Rules Coordinator, Ian Lewenstein, at 651-361-7857 or ian.Lewenstein@state.mn.us.

Adoption Procedure if No Hearing. If no hearing is required, the MPCA may adopt the rules after the end of the comment period. The MPCA will submit the rules and supporting documents to the Office of Administrative Hearings for a legal review. You may ask to be notified of the date the MPCA submits the rules to the Office of Administrative Hearings. If you want to be so notified, or want to receive a copy of the adopted rules, or want to register with the MPCA to receive notice of future rule proceedings, submit your written request to the MPCA contact person identified below.

Adoption Procedure After a Hearing. If a hearing is held, after the close of the hearing record, the ALJ will issue a report on the proposed rules. You may ask to be notified of the date that the ALJ's report will become available, and can make this request at the hearing or in writing to the ALJ. You may also ask to be notified of the date that the MPCA adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by writing to the MPCA contact person identified below.

Statutory Authority. *Minnesota Statutes*, section 115.03, subdivision 1 grants the MPCA general authority to promulgate and/or revise rules relating to pollution of waters of the state, classify waters of the state, and to adopt water quality standards. *Minnesota Statutes*, section 115.44 grants the MPCA the additional authority to group designated waters of the state into classes.

MPCA Contact Person. The MPCA contact person is Mary H. Lynn at the MPCA, 520 Lafayette Road North, Saint Paul, Minnesota 55155-4194; telephone 651-757-2439; and mary.lynn@state.mn.us. You may also call the MPCA at 651-296-6300 or 800-657-3864 or use your preferred relay service info.pca@state.mn.us.

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the MPCA contact person.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Ask any questions about this requirement of the Campaign Finance and Public Disclosure Board at Suite #190, Centennial Building, 658 Cedar Street, Saint Paul, Minnesota 55155, telephone 651-539-1180 or 1-800-657-3889.



Laura Bishop, Commissioner
Minnesota Pollution Control Agency

9/12/2019

Date