

The Road Ahead: Preparing Asphalt Facilities for Upcoming MPCA Regulations

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Fredrikson

The logo for Fredrikson, featuring the name in a bold, black, sans-serif font. A red horizontal bar is positioned below the 'i' in 'Fredrikson', extending to the right and ending under the 'n'.

Topics We're Covering Today

- 2023 legislation regarding:
 - Cumulative Impacts/Environmental Justice
 - Air Toxics Regulation and Emissions Reporting
 - Odor Management
- MPCA rulemaking efforts in those areas
- Steps to consider taking in the meantime



Cumulative Impacts/Environmental Justice

Cumulative Impacts: Statute & Key Definitions

- **New Minn. Stat. § 116.065** (“Cumulative Impact Analysis; Permit Decision in Environmental Protection Areas”)
- **Cumulative Impacts**
 - “The impacts of aggregated levels of past and current air, water, and land pollution in a defined geographic area to which current residents are exposed”
- **Permit**
 - Major source air permit (Minn. R. 7007.0200) or a state air permit ((Minn. R. 7007.0250, subps 5 or 6), which includes a permit for new construction, facility expansion, or reissuance of an existing permit

Cumulative Impacts: Key Definitions (cont.)

- **Environmental Justice**

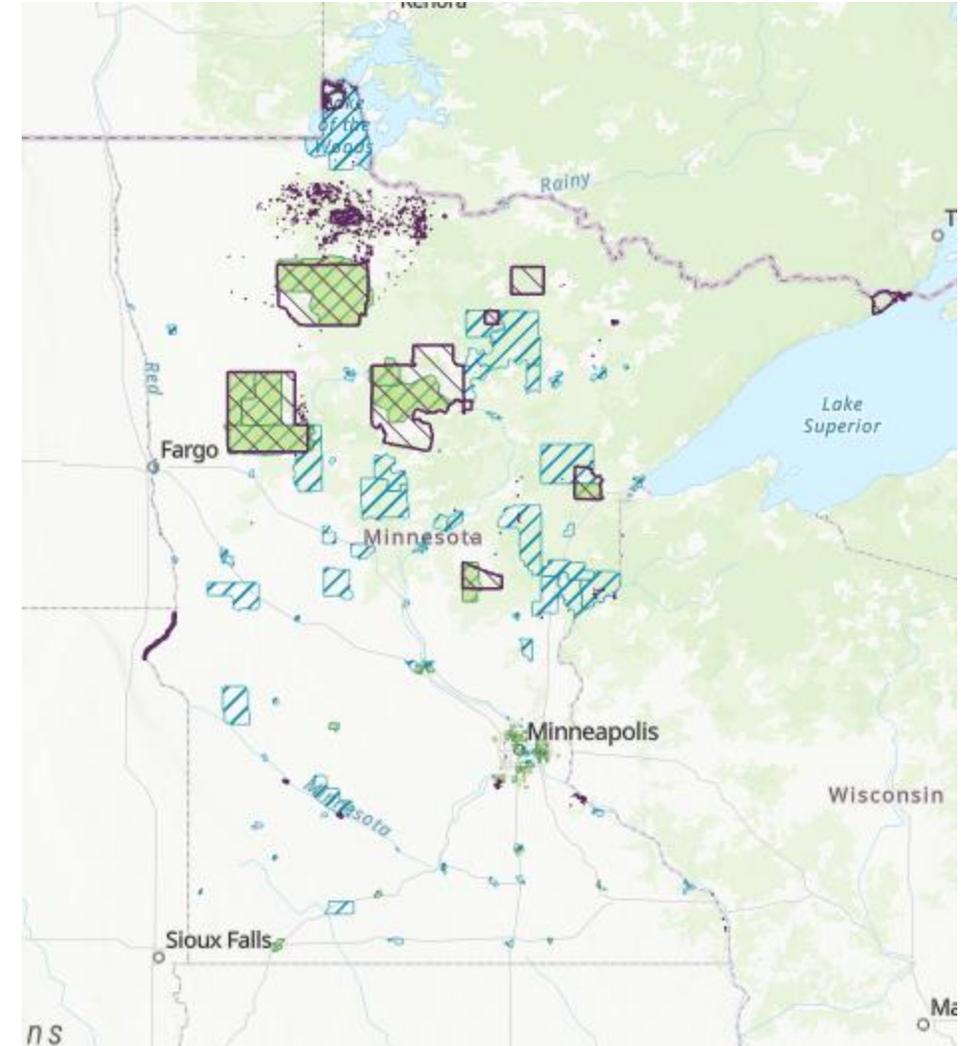
- Fair treatment/meaningful involvement of all people in development, implementation, and enforcement of environmental laws, regulations, and policies, regardless of race, color, national origin, or income; and
- Due consideration in decisions with potential to affect EJ area's environment or residents' health to the history of the area, residents' cumulative pollutant exposure, and to current socioeconomic conditions that could increase residents' harm from additional pollutant exposure

- **Environmental Justice Area**

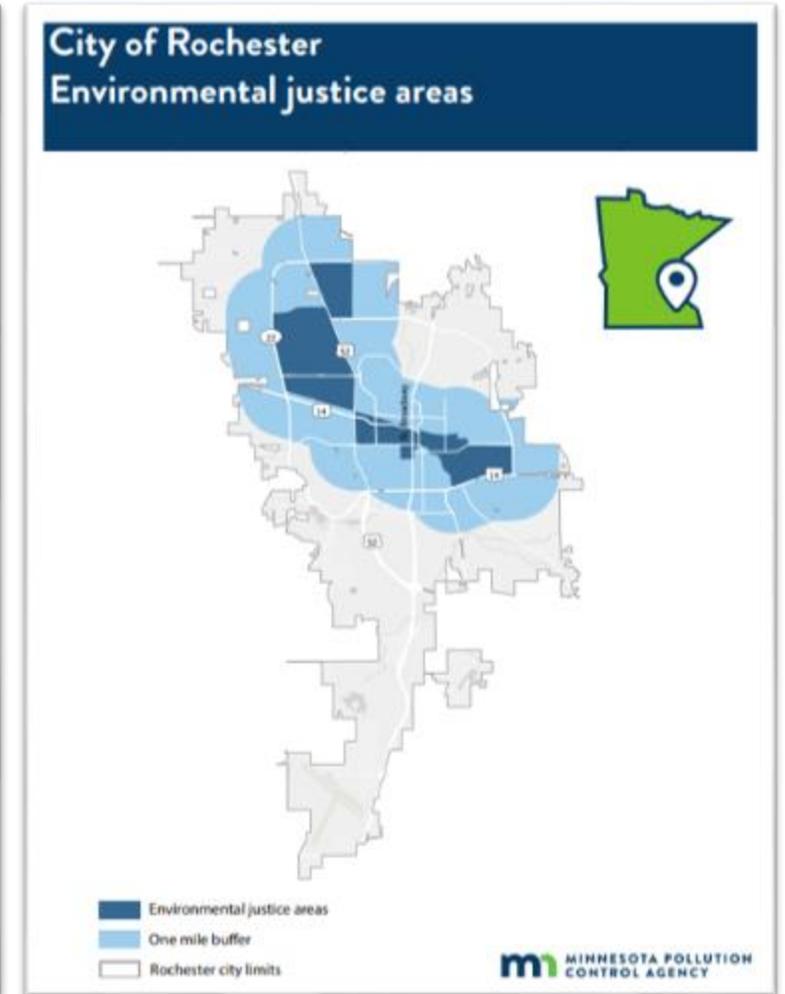
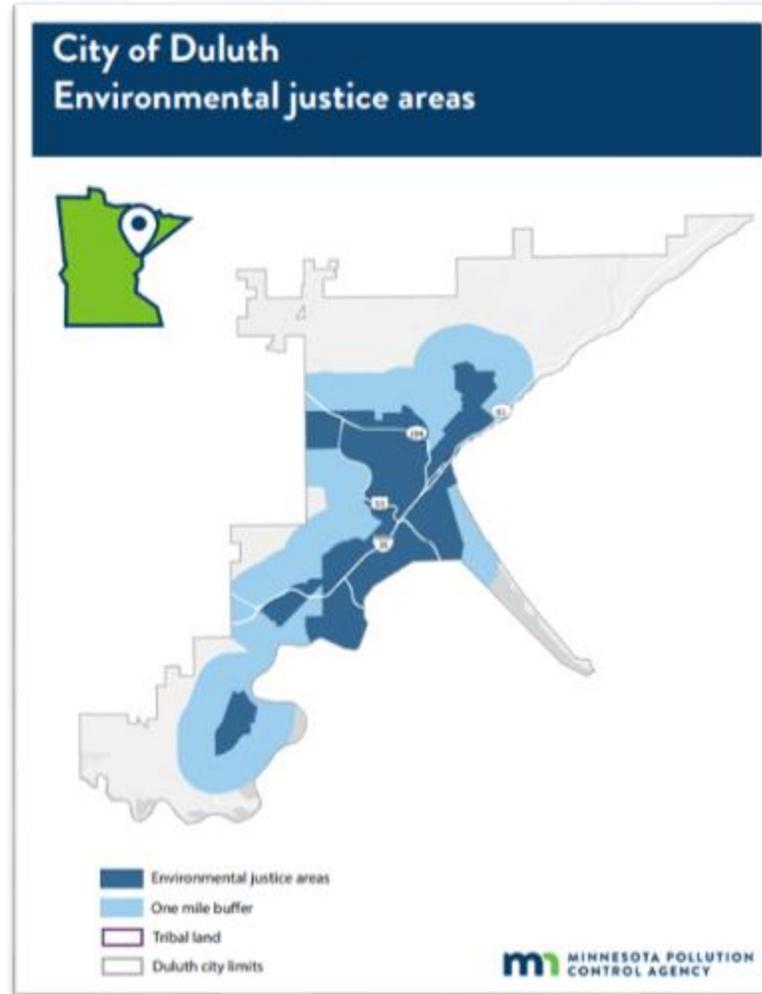
- 1 or more census tracts: (1) w/40% nonwhite, 35% households at or below 200% poverty level, or 40% limited English proficiency; or (2) in Indian country.

Cumulative Impacts: Applicability

- New requirements apply to permit applications for facilities in or within one-mile of EJ area in either seven-county Metro area or city of the first class (e.g., Rochester and Duluth)
 - And possibility to facilities within Indian Country
- MPCA estimated as of October that 105 facilities may be affected by CI law
 - 52 w/expiring permits, 53 with non-expiring; latter only affected if circumstances change



Environmental Justice Areas: Twin Cities, Duluth, Rochester



Cumulative Impact Analysis (CIA): Permit Application

- Permit applications in an EJ area must include:
 - Applicant's **determination of permit action's likely impact** on environment, health;
 - **Data used** to make determination; and
 - **Information and data** MPCA needs to determine **whether impact of permit issuance will exceed benchmarks** for requiring CIA



CIA Determination of Need

- Commissioner must determine:
 - ✓ Whether proposed Permit action may substantially impact EJ area resident's health, environment; and
 - ✓ Whether CIA is needed
- To do so, Commissioner must:
 - ✓ Review application and assessment;
 - ✓ Determine whether project will exceed forthcoming benchmarks; and
 - ✓ Review other relevant information

CIA Determination of Need (cont.)

- Commissioner **must** require CIA if:

- Permit issuance impacts exceed one or more CIA benchmarks; or
- Permit issuance may substantially impact environment or health of EJA residents

Commissioner must post written explanation of decision within 30 days

- Commissioner **may** require CIA if:

- Below benchmarks but Commissioner determines CIA necessary and supported by substantial evidence; or
- Petition by 100+ individuals in affected EJA

CIA: Public Meeting Requirement

- Permit applicants/holders who must complete CIA must hold at least two public meetings in EJ the area (one before CIA, one after)
 - Also must allow “robust” discussion, take written and oral comments, and provide to comments and transcript to MPCA
- Applicant and MPCA have certain publication obligations
- Commissioner can require more meetings as a permit condition



Permit Decision

- Commissioner must consider the CIA, testimony and comments in determining whether to issue or deny permit; have to wait at least 30 days after last meeting to issue
- Must deny if CIA determines permit would have substantial impact on environment or health of EJ residents, in combination with other environmental stressors and in considering socio-economic impacts of facility to residents
 - Can still issue if Commissioner enters into “community benefit agreement” with facility O/O and can be issued with conditions that protect environment and human health
 - Community Benefits Agreement (CBA) has to be executed before permit can be issued

Permit Decision (cont.)

- MPCA must maintain a list of state EJ areas on its website and a database of environmental stressors in EJ areas
 - “Environmental stressors” means factors that may make residents of an environmental justice area susceptible to harm from exposure to pollutants. Includes:
 - environmental effects on health from exposure to past and current pollutants in the EJ area; and
 - social and environmental factors
- Permittees are responsible for costs of compliance with all these requirements, including MPCA’s reasonable costs

MPCA Must Create Rules That

- Establish **benchmarks**;
- Establish **cumulative impact analysis contents** and provide public information on environmental stressors;
- Define conditions that establish “**substantial adverse impacts**” on environment and public health;
- Establish contents of **CBA**;
- Establish **CIA petition process** in EJ areas;
- Establish **process Tribes can adopt** within their territories; and
- Establish **methods for holding public meetings** and **receiving public comments**.



MPCA Rulemaking Efforts To Date



Air, Water,
Land, Climate

Trending
Topics

Business
With Us

Get
Engaged

About
MPCA

[Get Engaged](#) / [Proposed rules](#)

Cumulative impacts rulemaking

Date	Action
July 24, 2023	Request for Comments until October 3, 2023
January – May 2024	Four “co-learning community conversations”
June – November 2024	Five “working sessions”

Upcoming MPCA Rulemaking Efforts

Date	Pending Action
Early 2025	Establish and share key rule concepts
2025	Establish and share key rule concepts
NLT May 18, 2026	Publish notice of hearing and draft rule text in <i>State Register</i>
TBD	Final adoption of rules

Air Toxic and Criteria Emission Reduction Grant

- MPCA awarding \$5.6M in FY 25; projects must be completed by June 30, 2027; **applications due January 22, 2025, 4:00 p.m.**
- Eligible applicants:
 - Hold individual air permit
 - In or within one mile of EJ area
 - Propose project to reduce air toxics or criteria pollutants
 - Extra points for reducing multiple pollutants; must be able to quantify reductions



Air Toxics Regulations

Air Toxics Law (Minn. Laws, Ch.60, Art. 8, sec. 5)

- MPCA Commissioner must pass rules that specify:
 - Air toxics to be regulated;
 - Types of facilities with air permits to be regulated (except Option B reg permits);
 - Performance tests to measure air toxics emissions and testing methods, etc.;
 - Required air emissions monitoring, reporting, and recordkeeping requirements; and
 - Frequency of facility inspections and inspection activities that provide emissions information.



Rules must reflect

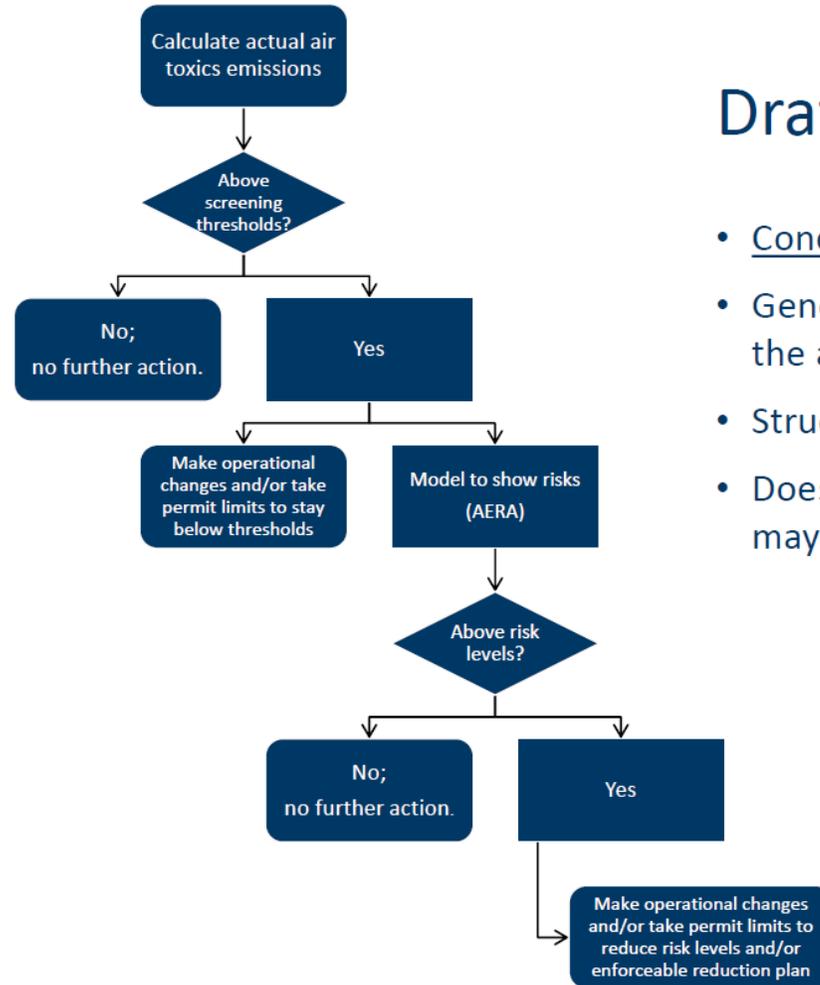
- Different risks to environment and human health posed by specific air toxics and amounts emitted by facility
 - Facilities posing higher risk must have increased requirements
- Facility's record of compliance with air toxics emission limits and other permit conditions; and
- Any exposure of EJ area residents to the facility's air toxics emissions.



Permit Amendments and Costs

- Commissioner has to **amend existing air permits within three years** of adoption of above rules to conform with those rules.
- Commissioner must **recoup costs** of rulemaking and regulating from permit holders under annual permit fees.

MPCA's Current Working Concept



Draft rules structure flowchart

- Conceptual framework
- Generally, outlines how we're looking to structure the air toxics rules.
- Structure is similar to rules from other states.
- Does not include all the details, like where there may be exemptions.

MPCA Rulemaking Schedule

Dates	Task(s)
July 24, 2023	Notice of Request for Comments published in the State Register
October 2023-December 2025	<ul style="list-style-type: none">• Review comments received in response to Request for Comments• Informal public engagement• Prepare draft rules and Statement of Need and Reasonableness
May 18, 2026	Publish notice of intent and proposed draft of amendments in State Register
To be determined	Adoption of rules

Air Toxics Emissions Reporting

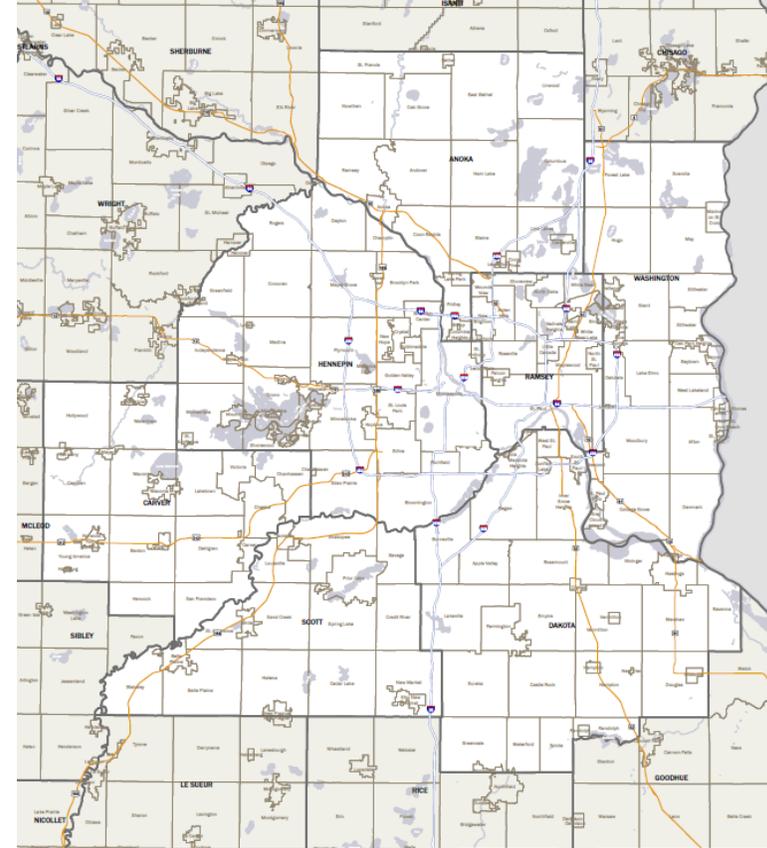
Air Toxics Emissions Reporting (Minn. Stat. § 116.065)

- Currently: **voluntarily** report emissions of air toxics **every three years**.
- New law **requires annual** reporting of air toxics, even if not covered in permit
- Commissioner must determine measurement/estimation method and must make enforceable



Air Toxics Reporting: Applicability

- All facilities in seven-county metro area with air permit (except Option B permit)
- Commissioner must make enforceable through permit amendments, rulemaking, enforceable agreements or combo



Twin Cities 7 County
Metropolitan Area



Air Toxics: Definition

- **HAPs** under CAA;
- Chemicals reported under **TRI** of EPCRA (which now includes **PFAS** compounds!);
- Chemicals with DOH-developed **health-based values** or risk assessment advice;
- Chemicals for which risk to human health has been assessed under **EPA's IRIS**; and
- Chemicals reported by facilities under their most recent **triennial emissions inventory**



Proposed Rule Released November 26

Office of the Revisor of Statutes Administrative Rules



TITLE: Proposed Permanent Rules Relating to Air Toxics Reporting

AGENCY: Minnesota Pollution Control Agency

REVISOR ID: R-4599

MINNESOTA RULES: Chapters 7002, 7005, 7007, and 7019

- Dual hearing notice
- Also repeals emergency affirmative defenses, per EPA
- Comments accepted until **January 15, 2025, 4:00 p.m.**

Proposed Rule: Highlights

- Adds **definition of “air toxics,”** etc., consistent with new statute
- Requires (now) **annual air toxics air emission inventory reports** to be consistent with annual ones for criteria pollutants
 - Same for consistency requirement for **emissions calculation methods**
- Creates new rule that **lists “air toxics”** (including PFAS compounds), ***de minimis* levels** for reporting some pollutants, **calculation, and recordkeeping requirements**
- Bonus: **Repeals Title V emergency affirmative defense** provisions of Minn. R. Ch. 7007

Odor Management

Odor Management: Statute & Prohibition

- **New Minn. Stat. § 116.064** (“Odor Management”)
- **Prohibition**
 - No facility in seven-county metro area “may cause or allow emission into the ambient air of any substance or combination of substances in quantities that produce an objectionable odor beyond the property line of the facility that is the source of the odor.”
 - 10 types of facilities/operations are exempt; none would capture asphalt facilities

Odor Management: Key Definitions

- **Objectionable Odor**

- Ambient air pollution beyond a facility's property line consisting of an odor that, considering its characteristics, intensity, frequency, and duration:
 - is, or can reasonably be expected to be, injurious to public health or welfare; or
 - unreasonably interferes with the enjoyment of life or the use of property of persons exposed to the odor.

- **Odor Compliant**

- A notification received and recorded by the MPCA or by a political subdivision from an identifiable person that describes the nature, duration, and location of the odor.

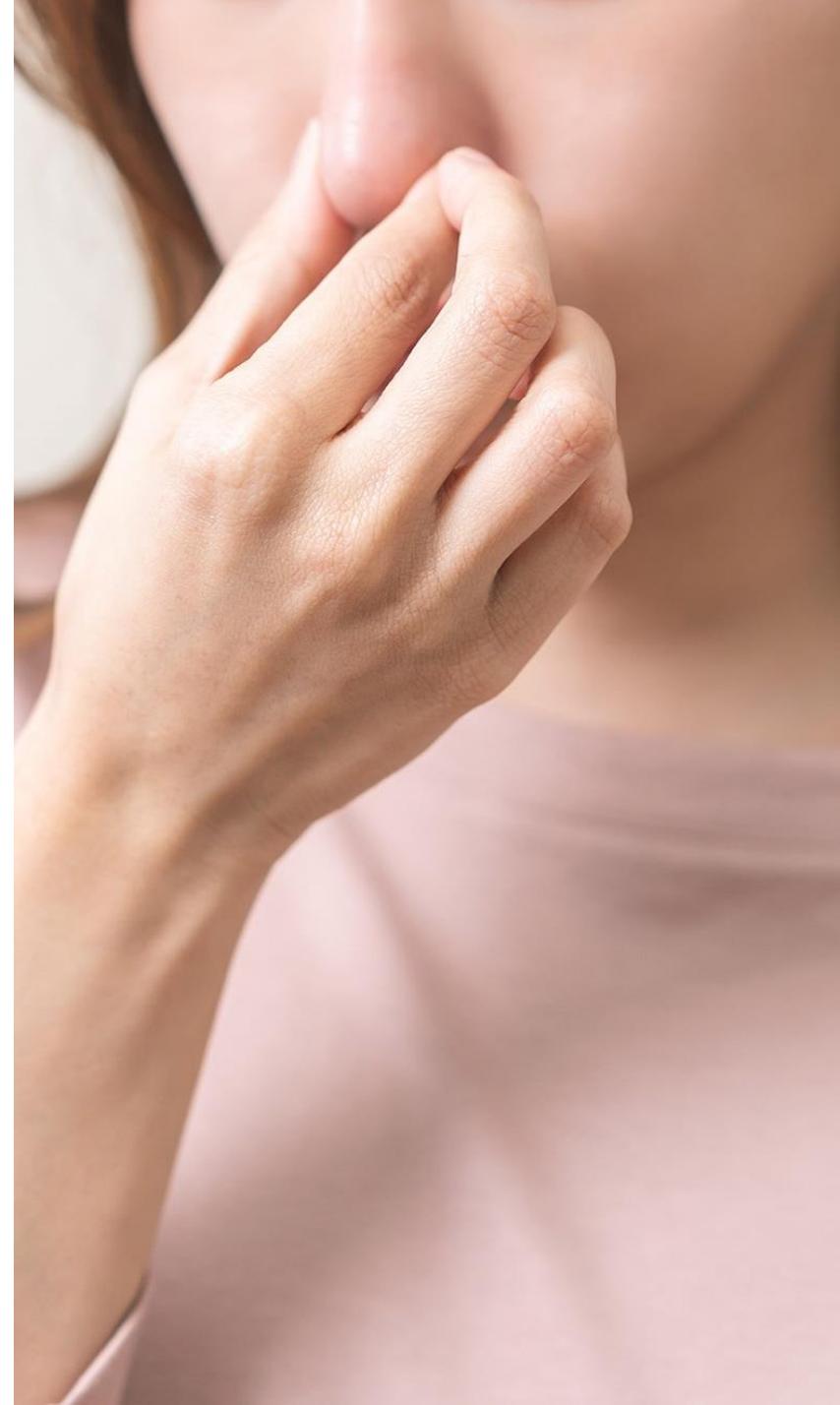
Odor Complaints/MPCA Investigation

- MPCA must conduct **site investigation** of any facility with 10 or more odor complaints in 48 hours to MPCA or local officials. Investigation must include:
 - **Interview** with facility O/O;
 - **Physical examination** of the site, etc.; and
 - **Testing** at locations of the odor complaints and other points outside the facility
- Commissioner **shall determine** if “objectionable odor” based on above investigation and testing and considering the nature, intensity, frequency and duration of the odor and other relevant factors
 - Commissioner **can consider** opinions of random sample of people exposed to samples of odor in ambient air beyond property line in making the above determination



Objectionable Odor/Mgmt Plans

- If Commissioner makes an “objectionable odor” determination, facility must develop and submit an **odor management plan (OMP)** for MPCA review **within 90 days** of determination
- MPCA has to provide **technical assistance to property owners** required to create plans, including:
 - identifying odor control technology and equipment and alternative operating methods to help reduce odors
- Minimum requirements of OMP:
 - Description of **operations and materials that generate odors**;
 - **Proposed changes** in equipment, operations, or materials aimed at mitigating odors;
 - Plan’s **estimated effectiveness**;
 - **Estimated** implementation **costs**; and
 - **Implementation schedule**



OMPs (cont.)

- Commissioner can **accept, reject, or modify** an OMP
- Commissioner must order facility owner to revise OMP within 90 days if Commissioner determines OMP implementation has failed to reduce odors.
 - Commissioner shall use “objectionable odor” factors to determine
 - Commissioner **may impose civil penalties or revoke the facility’s air permit if** she determines revised **OMP is unacceptable or it fails to reduce odors** to manageable levels

MPCA Must Create Rules Regarding

- Objectionable odor standard;
- Process for determining;
- Process of investigating and addressing odor complaints;
- Guidance for developing OMPs; and
- Procedures and criteria for determining success/failure of an OMP



MPCA Rulemaking Efforts

Date	Action/Proposed Action
July 14, 2023	Notice of Request for Comment in <i>State Register</i>
Fall 2023 – Fall 2024	“Research and information gathering”
2025	Prepare draft rules and SONAR
TBD	Publish Notice of Intent to Adopt Proposed Rules in <i>State Register</i>
TBD	Final adoption

Note: No deadline by which odor rules have to be adopted; MPCA not currently prioritizing

Tips for Facilities While They Await These Rules

- Determine applicability of rules to your facility, e.g., EJA, permit type
- Sign up for MPCA rulemaking newsletters (and track individually and as an industry)
- Review/consider community engagement plans
 - MPCA has resources to assist
- Review odor-causing materials, practices; consider possible changes
 - Also consider surroundings and trends in surroundings



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