

Minnesota Pollution Control Agency

Request for Comments on a Planned Rule Amendment to Change Use Classifications for a Portion of Dark River in St. Louis County, Minn. R. pt. 7050.0470; Revisor's ID Number 4572

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) is requesting comments from affected or interested parties on a planned amendment to rules establishing the beneficial use classifications of the trout stream portion of Dark River in St. Louis County (identified as AUID 09030005-525). The planned amendments will only affect the use classifications of this portion of the Dark River as identified in Minn. R. pt. 7050.0470.

Plain-Language Summary of the Request for Comments. This is the MPCA's legal notice of its intent to begin the rulemaking process to amend the rule establishing the use classification of the trout stream portion of the Dark River. This is the first opportunity for public comment and input on this rule project. We want your feedback to inform us about the ideas described under the **Subject of Rules** section below. If you have comments or ideas about the amendment being considered, please submit them in writing according to the **Public Comment** section below. Submitting your ideas and information at this early stage in rulemaking allows us more time to address issues, and helps to ensure informed decision-making.

Subject of Rules. Minnesota's surface waters are currently assigned, or designated, multiple beneficial uses (e.g., drinking water, aquatic life, industrial consumption) 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. Unless specifically reclassified in rule, all waters are by default assigned the uses for aquatic life, industrial and agricultural use, wildlife, and aesthetic enjoyment. This Request for Comments (Request) provides notice that the MPCA is considering conducting rulemaking to change certain of the existing use classifications that apply to a trout stream portion of the Dark River in St. Louis County.

Minn R. 7050.0405 establishes that any person may petition the MPCA to consider the reclassification of a water body by submitting evidence that a beneficial use does not exist or is not attainable. The MPCA has received such a petition from U.S. Steel Corporation requesting specific changes to the use classification of the portion of Dark River currently classified as a trout stream. The portion of the Dark River classified as a trout stream originates 1.59 miles downstream of Dark Lake and continues for 7.91 miles (identified as AUID 09030005-525). The portions of the Dark River upstream and downstream of this section are not being considered for reclassification.

The petition requests to remove the Class 1B (drinking water), Class 3 (industrial consumption), and Class 4A (agricultural irrigation) beneficial use designations from the portion of the Dark River designated as a trout stream on the basis that they are not existing or attainable uses. The MPCA has reviewed the petition request and tentatively supports the requested changes. With this notice, the MPCA is seeking public comment on its intent to enter into the state's administrative rulemaking process to make the changes necessary to remove the Class 1B, 3, and 4A uses from the trout stream portion of the Dark River.

The MPCA's decision to propose these changes is based on the determination that the specific beneficial uses of drinking water, industrial consumption, and agricultural irrigation do not currently exist for the trout stream portion of the Dark River and are not reasonably expected to exist in the future. All other use classes, and the standards that protect those uses, including the protection of aquatic life and the identification of this water as a trout water, will not be affected by the use

classification changes being considered. The U.S. Steel petition, which provides the technical basis for the change in use classifications, is available for review at <https://www.pca.state.mn.us/water/wqs-dark-river>.

The planned changes in this rulemaking will update the document incorporated by reference in Minn. R. 7050.0470 that lists the specific use designations for the trout stream portion of the Dark River to remove the Classes 1B, 3, and 4A designated uses. The Classes 2Ag, 4B, 5, and 6 designated uses will remain unchanged.

Persons Affected. The persons affected by this rule change will be the petitioner and any persons who have a current or future interest in the use of this portion of the Dark River for drinking water, agricultural irrigation or industrial consumption. Persons who may be interested, though unaffected, may be environmental groups, trout fishers, wild rice harvesters and any persons interested in the protection of Minnesota's waters.

Statutory Authority. *Minnesota Statutes* § 115.03, subd. 1(b) and 1(c) authorizes the MPCA to "...make such classification of the waters of the state as it may deem advisable..." and to "...alter such reasonable pollution standards for any waters of the state in relation to the public use to which they are or may be put as it shall deem necessary..."

115.03, subd. 1. Generally.

The agency is hereby given and charged with the following powers and duties:

(a) to administer and enforce all laws relating to the pollution of any of the waters of the state;

(b) to investigate the extent, character, and effect of the pollution of the waters of this state and to gather data and information necessary or desirable in the administration or enforcement of pollution laws, and to make such classification of the waters of the state as it may deem advisable;

(c) to establish and alter such reasonable pollution standards for any waters of the state in relation to the public use to which they are or may be put as it shall deem necessary for the purposes of this chapter and, with respect to the pollution of waters of the state, chapter 116;

Minnesota Statutes § 115.44, subd.2 also authorizes the MPCA to "...group the designated waters of the state into classes, and adopt classifications and standards of purity and quality therefor. Such classification shall be made in accordance with considerations of best usage in the interest of the public and with regard to the considerations mentioned in subdivision 3 hereof."

Public Comment. Interested persons or groups may submit comments or information on these possible rules in writing until 4:30 p.m. on April 29, 2019. The MPCA will not publish a notice of intent to adopt the rules until at least 60 days have elapsed from the date of this Request.

In addition to seeking general information and opinions about the changes being considered, the state rulemaking process requires agencies to seek and consider information on specific topics relating to the changes being considered. The MPCA requests that interested persons submit:

- Information regarding the possible economic effect of the possible rule amendments.

- Information pertaining to the cumulative effect of the possible rule amendments. *Cumulative effect* means the impact that results from incremental effects of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules.
- Information on the potential effect on local government ordinances or regulations as described in *Minnesota Statutes* § 14.128. The MPCA does not anticipate that the rule amendments will require a local government to adopt or amend an ordinance or other regulation. Local governments may submit written information to the contrary.

Rule Drafts. Information about the proposed amendment and rulemaking activities will be posted on <https://www.pca.state.mn.us/water/wqs-dark-river> and you are encouraged to register at [GovDelivery](#) to receive notice and information about this rulemaking.

MPCA Contact Person. Written comments, questions, and requests for more information on this possible amendment should be directed to:

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Alternative Format. Upon request, the MPCA can make this information available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the MPCA contact person at the address or telephone number listed above.

NOTE: Comments received in response to this notice will be considered by the MPCA in the development of proposed rules but will not necessarily be included in the formal rulemaking record submitted to the Administrative Law Judge (ALJ). The MPCA is required to submit to the ALJ only those written comments received in response to the rules after they are proposed. If you want the ALJ to review your comments, you must resubmit them when the MPCA publishes proposed rules for public comment.

March 4, 2019

/s/ Laura Bishop, Commissioner
Minnesota Pollution Control Agency