

HF673 - 0 - Air Toxics Emissions Reporting and Rulemaking

Chief Author: **Fue Lee**
 Committee: **Environment and Natural Resources Finance And Policy**
 Date Completed: **2/1/2023 1:55:56 PM**
 Lead Agency: **Pollution Control Agency**
 Other Agencies:
 Administrative Hearings

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings	X	
Tax Revenue		X
Information Technology	X	
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Administrative Hearings	-	-	-	-	-	-
Administrative Hearings	-	-	-	-	-	-
Pollution Control Agency	-	-	-	-	-	-
Environmental	-	625	(625)	-	-	-
State Total						
Administrative Hearings	-	-	-	-	-	-
Environmental	-	625	(625)	-	-	-
Total	-	625	(625)	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	-	-	-	-
Pollution Control Agency	-	-	-	-	-
Environmental	-	4.25	4.25	4.25	10
Total	-	4.25	4.25	4.25	10

Lead LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Jim Carlson **Date:** 2/1/2023 1:55:56 PM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2023	FY2024	FY2025	FY2026	FY2027
Administrative Hearings		-	-	-	-	-
Administrative Hearings		-	-	-	-	-
Pollution Control Agency		-	-	-	-	-
Environmental		-	625	(625)	-	-
	Total	-	625	(625)	-	-
	Biennial Total			-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Administrative Hearings		-	-	-	-	-
Administrative Hearings		-	-	-	33	-
Pollution Control Agency		-	-	-	-	-
Environmental		-	625	779	669	1,400
	Total	-	625	779	702	1,400
	Biennial Total			1,404		2,102
2 - Revenues, Transfers In*						
Administrative Hearings		-	-	-	-	-
Administrative Hearings		-	-	-	33	-
Pollution Control Agency		-	-	-	-	-
Environmental		-	-	1,404	669	1,400
	Total	-	-	1,404	702	1,400
	Biennial Total			1,404		2,102

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Chief Author: **Fue Lee**
 Committee: **Environment and Natural Resources Finance And Policy**
 Date Completed: **2/1/2023 1:55:56 PM**
 Agency: **Pollution Control Agency**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology	X	
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Environmental	-	625	(625)	-	-	-
Total	-	625	(625)	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Environmental	-	4.25	4.25	4.25	10
Total	-	4.25	4.25	4.25	10

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2023	FY2024	FY2025	FY2026	FY2027
Environmental	-	625	(625)	-	-	-
Total		-	625	(625)	-	-
Biennial Total					-	-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Environmental	-	625	779	669	1,400	1,400
Total		-	625	779	669	1,400
Biennial Total					1,404	2,069
2 - Revenues, Transfers In*						
Environmental	-	-	1,404	669	1,400	1,400
Total		-	-	1,404	669	1,400
Biennial Total					1,404	2,069

Bill Description

A bill for an act requiring reporting for air toxics emissions; requiring rulemaking to regulate air toxics emissions; proposing coding for new law in Minnesota Statutes, chapter 116. Reporting requirement is for air quality permittees to annually report air toxics emissions. The bill also requires the implementation of a comprehensive air toxics regulatory program. Rulemaking requirement is to establish the authorities for development of the reporting requirement, content of the rule, rulemaking to be started by 1/15/24, requires modification of existing permits on an undetermined timeline, and allows for collection of the costs through fees.

Assumptions

1. The costs reflected in this analysis only address Minnesota Pollution Control Agency (MPCA) costs and are over and above current program appropriations to the MPCA.
2. We assume the rulemaking process required to be initiated January 15, 2024, will take three years to complete. We assume this will be a highly complex rule and the rule will include:
 - a. A mandatory air toxics reporting program that establishes annual reporting of certain air toxic emissions.
 - b. A comprehensive air toxics regulatory program that establishes specific air toxics to be regulated, types of facilities to be regulated, requirements for emissions testing, monitoring, reporting, record keeping, and inspections. The MPCA would be required to consider human health/environmental risks, facility’s record of compliance, and environmental justice for air toxics exposure of a permitted facility. Given the concerns and complexities, the MPCA would likely convene an Advisory Group or other structure for eliciting public, stakeholder, and expert feedback during rule development. Stakeholders would include: Environmental Justice community representatives, affected air emission facilities, both with and without air emission permits, consultants, Chamber of Commerce, environmental and health equity groups. The Minnesota Department of Health (MDH) would be consulted as well; this Fiscal Note does not include staff resources from MDH. Rulemaking includes rule writer, toxics assessment staff, permitting, project management, is complex and of high public interest. 3 FTEs for each of three years.
3. We assume a mandatory air toxics reporting program would require two (2) FTE to implement. Implementation would start after the rule is adopted in FY27 or later.
 - a. The requirements within this bill for annual reporting of air toxics emissions by permitted facilities

would add workload for the development of permit conditions for each air emissions permit to identify methods for testing and requirements for reporting of chemicals that are not currently in the MPCA air toxics inventory.

b. The bill requires but does not specify a timeline to complete modifications to existing permits. MPCA currently administers approximately 2400 air emission permits-- 373 facilities hold individual air permits that would need to be modified to include the new testing protocols and reporting requirements. The remaining permits are registration permits and could be modified via permit-by-rule provisions in rulemaking. We assume individual permit modifications would take five (5) years to complete following adoption of the Air Toxics Emissions Rule.

c. Currently permitted facilities (except registration part B permits, which are very small air emitters) are asked to voluntarily report their emissions every three years in conjunction with the USEPA's National Air Toxics Emission Inventory. This bill will change this to annual mandatory report.

i. One additional emissions inventory FTE will be needed to implement the annual emissions reporting.

ii. One additional compliance and enforcement FTE will be needed to enforce the annual emissions reporting requirements. Being a new program, the rate of non-compliance and needed follow-up by MPCA compliance and enforcement staff is largely unknown.

d. We assume that the bill requires air toxics emissions reporting by all permitted facilities. Currently registration part C permittees do not voluntarily report via eServices and registration part B permittees are handled as a group and do not individually report to the MPCA's Consolidated Emissions Data Repository (CEDR). Currently 1413 facilities have air toxics emissions and can voluntarily report their air toxics emissions to MPCA. There are 1687 air permitted facilities and an additional 279 facilities with registration part B permits that are not currently asked to voluntarily report their air toxics emissions.

e. To support annual emissions reporting and additional air toxics pollutants, CEDR will need to be updated to add additional improvements and capabilities to the eServices portal to allow for input of more air toxics pollutants and to allow for reporting of option C and option B registration permits which do not currently submit inventories to CEDR. We anticipate this to cost approximately \$154,000 in MNIT services. We assume this technology would be developed in FY25, concurrently with rulemaking.

4. We assume the bill will require eight (8) FTE to implement this air toxics regulatory program. Implementation would start after the rule is adopted in FY27 or later.

If we assume that the MPCA would want to complete a risk assessment of all 373 individual permits within 7 years, we would have to complete about **53 assessments each year**. Moving the assessment program from voluntary to required as this bill envisions would aid the MPCA in completing this work, but more staff would be needed overall, as estimated:

a. One (1) FTE additional toxics staff to periodically review of risk assessment after rule adoption. Consultation with MDH.

b. One (1) FTE additional modeling staff to periodically review modeling component of risk assessment.

c. Two (2) permitting FTE to review emission estimates, draft site-specific permit conditions to limit air toxic emissions, establish required performance testing frequencies and specify ongoing recordkeeping and reporting requirements. 75 hours would be required per permit.

d. One (1) FTE additional stack testing/monitoring FTE. Compliance determination activities would increase due to an increased volume of performance testing reporting, data management and review. We estimate 15 performance test reports submitted annually that would have to be reviewed and evaluated for compliance and follow up regardless of testing method. This FTE would also involve the review and approval of performance test plans, reports and possible enforcement for non-compliance.

e. One (1) FTE additional monitoring staff. A portion of facilities are assumed to choose monitoring as a means to measure air toxic emissions, this is anticipated to increase work required to review and

approve monitoring plans and to receive, review or analyze the data to ensure compliance.

f. Two (2) FTE additional compliance and enforcement staff/facility inspectors. The bill anticipates that higher-risk facilities would be inspected more frequently, which modifies the MPCA's current approach in determining which the frequency of facility inspections. The program estimates approximately 40 hours per facility for the on-site inspection, inspection preparation, inspection follow-up, travel time and time spent on possible protracted enforcement.

5. Costs for rulemaking for program administration will be obtained through air permit fees starting in FY25. This approach allows the Agency to increase fees to cover the three years needed for rulemaking, resulting in smaller incremental increases to owners and operators required to obtain air permits in Minnesota.

6. In FY27 and all fiscal years thereafter the costs of program administration will be recovered.

Expenditure and/or Revenue Formula

Rulemaking FTE related costs:

- Attorney Costs ($\$148/\text{hour} \times 200 \text{ hours} \times 3 \text{ years}$) = \$88,800 or \$29,600 for each fiscal year FY24, FY25 and FY26
- Rule Coordinator staff ($1.0 \text{ FTE} \times \$140,000/\text{FTE} \times 3 \text{ years}$) = \$420,000 or \$140,000 for each fiscal year FY24, FY25 and FY26
- Air program staff ($1.0 \text{ FTE} \times \$140,000/\text{FTE} \times 3 \text{ years}$) = \$420,000 or \$140,000 for each fiscal year FY24, FY25 and FY26
- Risk assessment staff ($1.0 \text{ FTE} \times \$140,000/\text{FTE} \times 3 \text{ years}$) = \$420,000 or \$140,000 for each fiscal year FY24, FY25 and FY26
- Industrial staff ($1.0 \text{ FTE} \times \$140,000/\text{FTE} \times 3 \text{ years}$) = \$420,000 or \$140,000 for each fiscal year FY24, FY25 and FY26
- Communications staff ($0.25 \text{ FTE} \times \$140,000/\text{FTE} \times 3 \text{ years}$) = \$105,000 or \$35,000 for each fiscal year FY24, FY25 and FY26

Total rulemaking costs: \$1,873,800 or \$624,600 and 4.25 FTE for each fiscal year FY24, FY25 and FY26

Rulemaking administrative costs (in FY26 only):

- Office of Administrative Hearing costs (filing fees associated with the eComments site, ALJ review time, hearing costs) = \$33,075
- State Register costs (publication of all associated notices) = \$7,890
- Miscellaneous expenses (mailings/copying/transcripts) = \$3,925

Total rulemaking administrative costs: \$44,890 (in FY26 only)

Program staffing costs after rulemaking:

- Staff to administer air toxics regulatory program including risk assessment and modeling ($2.0 \text{ FTE} \times \$140,000/\text{FTE}$) = \$280,000/year
- Staff to implement the air toxics regulatory program ($8.0 \text{ FTE} \times \$140,000/\text{FTE}$) = \$1,120,000/year

Total program costs: \$1,400,000 and 10.00 FTE in FY27 and ongoing

Technology costs:

- CEDR updates = \$154,345 (in FY25 only)

Item	Cost Estimate (\$)
Loadable spreadsheet development in eServices	\$ 49,792
Additional QA/QC checks in eServices	\$ 22,015
Cost to add Air Toxics in eServices for Option C	\$ 60,523
Cost to develop Option B emission reporting?	\$ 22,015
Total:	\$ 154,345

Total Costs:

- \$624,600 in FY24 and \$778,945 in FY25 for \$1,403,545 total in the biennium
- \$669,490 in FY26 and \$1,400,000 in FY27 for \$2,069,490 total in the biennium

Cost recovery through increased air permit fees:

- FY25 = Rulemaking FTE and technology costs in FY24 and 25
 - o \$624,600 for FTEs in FY24 + \$624,600 for FTEs in FY25 + \$154,345 in technology costs in FY25 = \$1,403,545
- FY26 = Rulemaking FTE related costs and administrative costs in FY26
 - o \$624,600 for FTEs in FY26 + \$44,890 for administrative costs in FY26 = \$669,460
- FY27 and ongoing = Program costs after rulemaking
 - o \$1,400,000 for FTEs in FY27 and thereafter

*The annual cost of 1.0 FTE is \$140,000 in FY2023-2027. Annual costs for 1.0 FTE include salary, fringe, and non-specialized employee support costs (work space, computer and office supplies, office equipment, local travel, etc.)

Long-Term Fiscal Considerations

Program costs are assumed to be ongoing unless otherwise specified in the assumptions. The long-term implications for program implementation are unknown until the final rules are written.

Local Fiscal Impact

N/A

References/Sources

MPCA Staff

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HF673 - 0 - Air Toxics Emissions Reporting and Rulemaking

Chief Author: **Fue Lee**
 Committee: **Environment and Natural Resources Finance And Policy**
 Date Completed: **2/1/2023 1:55:56 PM**
 Agency: **Administrative Hearings**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings	X	
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

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	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Administrative Hearings	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Administrative Hearings	-	-	-	-	-
Total	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

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Dollars in Thousands		FY2023	FY2024	FY2025	FY2026	FY2027
Administrative Hearings	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total				-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Administrative Hearings	-	-	-	-	33	-
Total	-	-	-	-	33	-
Biennial Total				-		33
2 - Revenues, Transfers In*						
Administrative Hearings	-	-	-	-	33	-
Total	-	-	-	-	33	-
Biennial Total				-		33

Bill Description

HF673 provides for the Minnesota Pollution Control Agency (MPCA) to conduct rulemaking to adopt rules to regulate air toxics emissions for facilities operating under air quality permits issued by PCA.

The legislation also authorizes MPCA to conduct rulemaking to implement the provisions of 116.062, Air Toxics Emissions Reporting, and Sec. 2. Rulemaking; Air Toxics Emissions.

Assumptions

The Office of Administrative Hearings (OAH) has used MPCA's assumption that administrative costs for this rulemaking will total \$44,890 in FY2026, only. Of the estimated rulemaking amount of \$44,890 in FY2026, \$33,075 is for the estimated 135 hours of administrative law judge (ALJ) time.

OAH currently bills ALJ time for rulemaking at the MMB-approved billable rate of \$245 per hour (see Minn. Stat. § 16A.126, subd. 1 (2022)).

Expenditure and/or Revenue Formula

Estimated 135 hours of ALJ time for rulemaking activities related to implementing the requirements of 116.062, Air Toxics Emissions Reporting, and Sec. 2. Rulemaking; Air Toxics Emissions = 135 hours x \$245/hr = \$33,075 charged to MPCA in FY2026 pursuant to the requirements of Minn. Stat. § 14.53.

Long-Term Fiscal Considerations

Costs associated with rulemaking activities are a one-time occurrence.

Local Fiscal Impact

References/Sources

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