

# Updating and clarifying electronic waste statutes

Modernize outdated language to improve efficiency and reduce confusion

## Challenge

Current e-waste statutes contain passages that are unclear, erroneous and outdated. Some of this language dates back to the early days of the MPCA's e-waste program more than a decade ago. These holdovers have caused confusion for regulated parties and resulted in additional MPCA staff time spent explaining how to apply the statutes.

## Proposal

Clean up e-waste statutes to enhance agency efficiency and reduce confusion.



## Technical changes

<p><b>Clarify the definition</b> of "phase II credit."</p>	<p><b>Current language is ambiguous</b> about whether credits are awarded if a company recycles more than they are obligated to recycle in a given year. The change would clarify this point of ambiguity and align with the definition the program has used consistently since 2016.</p>
<p><b>Correct an error</b> in a formula.</p>	<p>A specific formula for calculating the manufacturer's fee (mentioned in 115A.1314) <b>does not match the definition</b> given earlier in the section and must be corrected.</p>
<p><b>Remove outdated language</b> that no longer applies.</p>	<p>Some language in 115A.1320, Subd. 1 (e) through (g) is <b>no longer applicable</b> and should be removed. (Need a sentence stating topic of this language)</p>
<p><b>Clarify a restriction</b> that is not explicitly stated in statute.</p>	<p>Despite legislative intent, the <b>statute does not explicitly state</b> that retailers may not sell video display devices to Minnesota households unless the brand is registered with the state. An explicit restriction would enable the program to enforce the process outlined in the rest of the section.</p>
<p><b>Update definitions</b> of certain digital devices to include new technologies</p>	<p>Rapid evolution of digital devices makes it <b>difficult to interpret portions</b> of 115A.1310. Streamlining and consolidating definitions would better reflect devices in use today and would improve clarity of the statute going forward.</p>
<p><b>Clarify the applicability</b> of the variable recycling fee for small manufacturers</p>	<p>Despite legislative intent, current language appears to suggest that only manufacturers who sell 100 or more video display devices in a calendar year are subject to the variable recycling fee. <b>Revising would reduce confusion</b> for the 16 applicable manufacturers and the state agencies charged with enforcement.</p>

## Why it's important

The overall goal of this proposal is to ensure that Minnesota's electronic waste statutes can be administered and enforced as the Legislature intended. Removing outdated language and clarifying ambiguous provisions would ensure that the legislature's original intent and the program's current regulatory practices are preserved, while also making more efficient use of MPCA staff time.



## For more information

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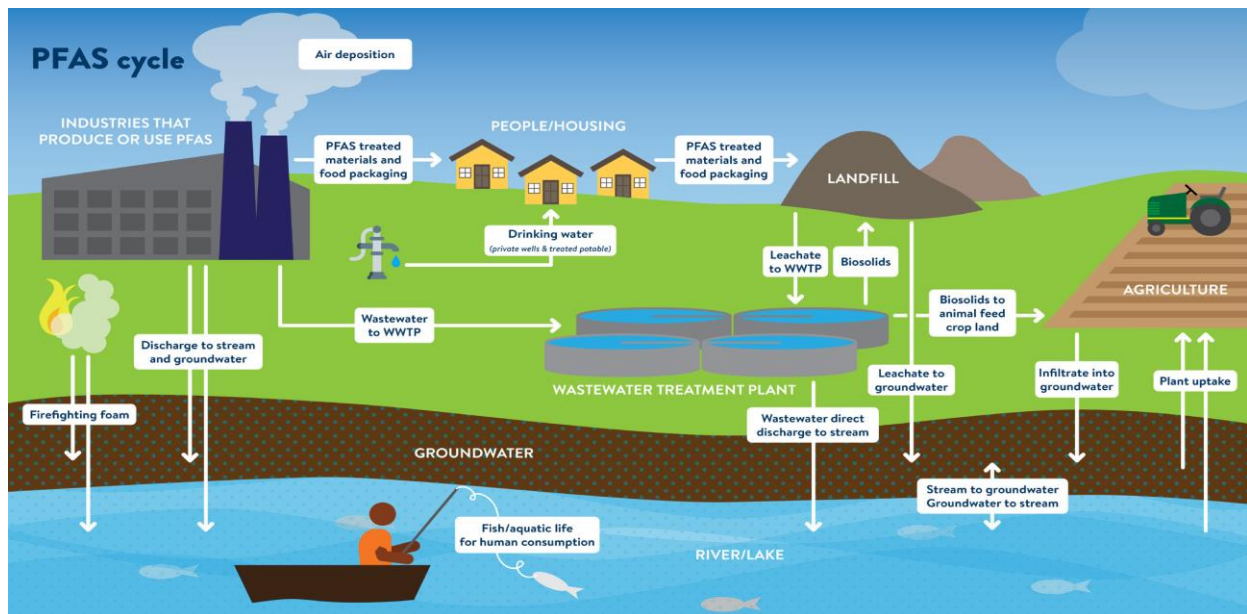
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## Requiring companies to disclose information on contaminants

Address a key data gap that has hindered the agency's ability to find the source of contaminants such as PFAS.

### Challenge

As technologies for environmental monitoring advance, we have become increasingly aware of the prevalence of emerging contaminants, such as PFAS, in our air, water and land, along with humans, fish and wildlife. These contaminants may be associated with products used either in industrial processes or by consumers. Understanding the sources of this pollution is a first step toward protecting human health and the environment. Gaps in current law mean that the MPCA has very limited ability to understand from parties what chemicals are used in their processes and products, even when we are attempting to identify or clean up known contamination in the environment or sources of human exposure.



### Why it's important

Over the past few years, the MPCA has clearly heard the public's desire for more proactively addressing potential human health and environmental impacts from PFAS and other harmful chemicals. In order to address known contamination in the environment, we need to know its source. With more information, MPCA will be better equipped to work with facilities, businesses, and communities to reduce pollution at the source through the

permitting process, incentives, or voluntary pollution prevention. Because pollution often has a disproportionate and cumulative impact on people who live in poverty and people of color, this work will also help MPCA address inequities around environmental justice.

## Proposal

This proposal gives the agency authority to require submittal of information on the use of PFAS and other contaminants in products and processes when environmental or human health monitoring shows unexplained presence a chemical or contaminant. It is a targeted approach compared to setting broad reporting requirements on a wide spectrum of products and industries. Once sources have been identified and necessary information is obtained, the reporting requirement would be eliminated.

### With this new authority, MPCA can:

- **Identify sources** of these contaminants more quickly
- **Help prevent water, land and air pollution** and potential public health impacts
- **Gain efficiencies** in addressing contaminated sites and reducing human exposure

Any information received by the agency containing trade secrets would be protected as “not public” data under the Minnesota Data Practices Act. Although there are more than 5,000 chemicals in the ‘PFAS family,’ the new, limited authority would apply to any pollutant, not just PFAS.



## For more information

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## Three land policy changes

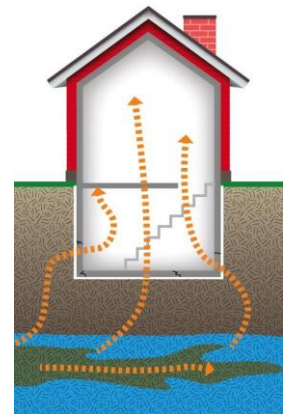
Improve risk assessment, safeguard the long-term care and maintenance of closed landfills, and ensure fairness for all stakeholders.

### Challenge: outdated tools don't capture current risks

State agencies use federal guidance and tools to analyze the risks that contaminated sites pose for the environment and human health. But current rules prescribe the use of a specific and outdated version of the U.S. EPA's hazard ranking system from the early 1990s. This tool is outdated and does not account for the risks from vapor intrusion. EPA updated its ranking procedures in 2018.

### Proposal

Amend state law so MPCA always uses the most current hazard ranking system developed by EPA to assess Superfund sites. Adopting flexible statutory language will ensure Minnesota remains compliant with federal guidance and tools even as scientific knowledge advances. This change is needed for federal conformance.



### Challenge: potential contamination from closed landfills

Even after they are closed, landfills require long-term maintenance and monitoring to prevent the waste from leaking into groundwater or producing methane or other volatile gases, but the MPCA lacks the legal tools to ensure adequate protection or maintenance of closed landfills.

MPCA can negotiate with the landowner to ensure that contamination left in place is protected and maintained – but only if the cleanup takes place under our remediation programs. Current law does not provide the same authority for the approximately 150 old and closed landfills under our solid waste program. These landfills are not part of the Closed Landfill Program.

### Proposal

Provide the tool of legally binding agreements to ensure long-term care and maintenance of closed landfills and notify future owners of the existence of a closed landfill on their property.

Measures could be required to ensure the protective cover is not damaged, such as prohibiting certain types of construction or uses on the landfill or planting vegetation with long root systems (e.g. trees). The agreements could be subsequently modified with the consent of both parties. The proposed new authority would make the legal tools offered by the Uniform Environmental Covenants Act available to the solid waste program, creating consistency across cleanup programs. These tools are already available to our remediation program.



This proposal would also ensure that future owners are fully informed about the waste buried on their property. In recent years, old dumps have been disturbed by new activity, exposing the community and the environment to risks from contamination and making new cleanups potentially necessary.

## Challenge: loopholes leave taxpayer dollars vulnerable

Priority qualified facilities are a special category of closed landfills—listed as both state and federal Superfund sites—whose owners refuse to clean them up to remove human health and environmental risks, and also refuse to let the state do this critical work. In these cases the landfill owner is rewarded for being uncooperative at the taxpayers' expense. Current law has loopholes that could allow uncooperative landfill owner to sidestep their obligation. Under one loophole, the state is forced to purchase a priority qualified facility through condemnation in order to clean up the site. But if the state buys the property, it cannot collect cleanup expenses from the owner until after the work is completed, often years later. By that time, the money from the state's purchase may be spent or it may be sheltered in assets that the state cannot access to recover taxpayers' investment in the property.

If, on the other hand, the owner retains the property during the cleanup process, the state can place a lien on it. Another loophole means the state may not be able to collect if the property is generating income. This means an uncooperative landfill owner could sidestep their obligation to repay the taxpayers' costs for cleanup expenses. These and other loopholes in current law could allow an uncooperative landfill owner to benefit financially from the state's cleanup work.

## Proposal

Modify state law to allow the state to acquire the property and recover remediation costs at the same time, if the state is forced to acquire the property using condemnation to protect human health and the environment. This would also protect landfill owners from double liability of paying cleanup costs and being reimbursed only for the value of the property as contaminated.

In situations where the uncooperative facility owner continues ownership, allow the state to collect on its lien even if the property is earning income, and remove the current six-year time limit on the lien. In addition, establish a windfall lien option so that the state, not the property owner, would recoup any financial rewards from the state's investment in environmental cleanup. A windfall lien would ensure the state receives the difference between the fair market value of the property before the cleanup and its increased value (due to the cleanup) afterwards.

Uncooperative landfill owners should not receive a financial windfall at the expense of Minnesota taxpayers. Minnesota taxpayers—not a single private party—should receive the benefits of state-funded cleanup at a facility.

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## Ensure public awareness of sewage discharges

Require municipalities to notify residents and downstream communities when untreated or partially treated wastewater is released.

### The challenge

Aging infrastructure leads to hundreds of releases of untreated or partially treated wastewater to Minnesota lakes, streams, public spaces and/or private properties each year. More frequent and severe rainstorms are making the situation worse.

Heavy rains quickly infiltrate cracked sewer lines to a point that wastewater treatment systems are overwhelmed with the high volume of water. Facilities then face a difficult decision: Release wastewater that is not fully treated, or risk the backup of sewage into homes.

### Why it's important

Downstream residents and communities should be aware of releases of untreated or partially-treated sewage for several reasons:

- **Bacteria and other harmful substances** in the water can pose acute or long-term human health risks.
- **People can make informed decisions** about the timing of activities such as fishing, swimming and boating if they know of such releases.
- **At least 13 communities**, including Minneapolis and St. Paul, draw their drinking water from surface waters.
- **Downstream communities** can make informed decisions about their use of surface waters if they know of such releases.

### Wastewater releases: the numbers



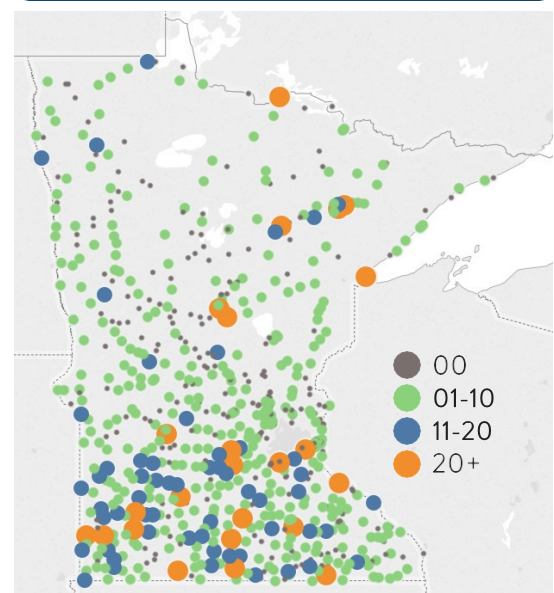
**200** releases of untreated or partially treated wastewater on average per year in Minnesota



**150** of those releases are related to wet weather



**446** facilities have reported unauthorized releases



*All reported releases from municipal wastewater treatment facilities in Minnesota from 2010–2020.*

## Proposal

Allow MPCA to require that municipalities notify the public in the event of wastewater discharges.

Current rules require facilities to report releases to the Minnesota State Duty Officer, but do not require notification to downstream drinking water sources or the public.

While the MPCA can currently recommend municipalities provide public notification of wastewater releases, it cannot require them to do so.

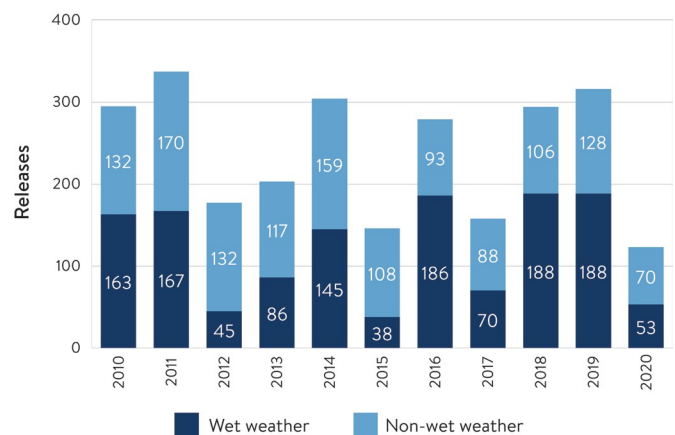
Thus, this proposal will result in consistent notification of such releases to both downstream users and the general public.



*Above, untreated wastewater flows in the street of a Minnesota community in October 2019. In some locations, releases have entered not only streets, but also parks and yards, where residents, especially children, can inadvertently come into contact with wastewater.*



### Municipal wastewater releases by year 2010–2020



*Municipal wastewater releases in Minnesota by year 2010–2020: Wet weather releases result from inflow or infiltration of precipitation into sewer lines and other wastewater infrastructure. Non-wet weather releases result from incidents like broken or clogged pipes, equipment failures and emergency repairs.*

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