

Minnesota Pollution Control Agency

REQUEST FOR COMMENTS

Planned New Rules Governing Cumulative Impacts Analysis for Permit Decisions in Environmental Justice Areas, *Minnesota Rules*, chapter 7001; Revisor's ID Number R04805

Overview. The Minnesota Pollution Control Agency (MPCA) is requesting comments on legislatively mandated amendments to air rules, *Minnesota Rules*, ch. 7001. This rulemaking project is referred to as the Cumulative Impacts Analysis Rule. The MPCA is required to undertake this rulemaking to comply with [Laws of Minnesota 2023, chapter 60, article 8, section 3](#), and the scope of this rulemaking is limited to that purpose. The MPCA is planning to amend the listed rule chapter and requests comments on the proposed amendments from affected or interested parties. See the [Comments](#) and [MPCA Contact Person](#) sections of this notice for information on how to submit comments.

This request for comments (RFC) is the MPCA's legal notice of its intent to begin rulemaking. This is the first of several opportunities for public comment and input on this rulemaking. At this stage, we do not have a draft rule; we want your feedback to inform us about the ideas described under the [Subject of Rules](#) section.

If you have ideas related to this rulemaking that we need to consider, please submit them in writing. Submitting your ideas and information at this early stage in rulemaking allows us more time to address issues that may come up and helps to ensure informed decision-making on our part. If the proposed rules affect you in any way, the MPCA encourages you to participate in the rulemaking process.

View the [Alternative Format/Accommodation](#) and [MPCA Contact Person](#) sections of this notice for information on requesting this document in an alternative format.

Subject of Rules. The MPCA requests comments on the development of new rules governing cumulative impacts analysis for permit decisions in environmental justice (EJ) areas. The MPCA will develop rules that involve the expansion of cumulative impacts analysis for air permit projects. Many issues are outlined, and many definitions are already defined in the legislation, and the MPCA is seeking comment on various parts of a future rule. As required by statute, the rules would apply to:

- (a) This section applies to an application for a permit by a facility that:
 - (1) is located in or within one mile of a census tract that is part of an EJ area; and
 - (2) is located:
 - (i) in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, or Washington; or
 - (ii) in a city of the first class.

(b) The commissioner must enter into consultation, consistent with section 10.65, regarding the application of this section to permit applications located in Indian Country. After consultation, the Tribal government with jurisdiction over the applicable EJ area may elect that the facility seeking the permit action be subject to this section and must so notify the commissioner in writing.

Some people have exposure to more or multiple kinds of pollution. Some people are more vulnerable to the health impacts of pollution. These groups of people may be more severely affected by air pollution, and many may live in identified EJ areas.¹ Information from cumulative impacts analysis can help the MPCA identify what these impacts are, how they affect people, and what the MPCA can do to help mitigate these effects.

This is an initial RFC, and the elements of this rulemaking may change based on comments received or other information. This rulemaking is needed to enact the cumulative impacts analysis requirements as directed by Minnesota Session Law 2023, which include rules that will:

- 1) Establish benchmarks to assist the Commissioner's determination regarding the need for a cumulative impacts analysis.
- 2) Establish the required content of a cumulative impacts analysis and provide sources of public information that an applicant can access regarding environmental stressors present in an EJ area.
- 3) Define conditions, criteria, or circumstances that establish an environmental or health impact as a substantial adverse impact.
- 4) Establish the content of a community benefit agreement and procedures for entering into community benefit agreements, which must include:
 - i) active outreach to residents of the affected EJ area designed to achieve significant community participation;
 - ii) considerations other than or in addition to economic considerations, but with priority given to considerations that directly impact the residents of the EJ area; and
 - iii) at least one public meeting held within the affected EJ area.
- 5) Establish a petition process and form to be submitted to the agency by EJ area residents to support the need for a cumulative impact analysis.
- 6) Establish a process through consultation as defined in MN Statute 10.65 by which a Tribal government can elect to apply this section to a permit application.
- 7) Establish methods for holding public meetings and handling public comments.

In addition, the MPCA encourages comments on the development of an engagement process that actively incorporates input from community and stakeholders during the cumulative impact analysis rulemaking development, including but not limited to establishing the community benefit agreement and petition processes.

MPCA welcomes all other relevant comment on cumulative impacts analysis.

Parties Affected. The new rules would be most likely to affect residents of EJ areas as defined by the legislation in as well as potential permit applicants in those areas.

The MPCA plans to convene a stakeholder and community engagement process throughout the rule development process, beginning with this notice and public information sessions to be held in September 2023 in affected areas (dates and locations to come at <https://www.pca.state.mn.us/get->

¹ <https://www.pca.state.mn.us/about-mpca/mpca-and-environmental-justice> This tool will be updated to reflect the statutory definition.

[engaged/cumulative-impacts](#)). All engagement opportunities will conform with the notice requirements in the statute. The MPCA encourages comments on how to develop an engagement process that actively incorporates input from community and stakeholders. The MPCA does not anticipate that the rules will require a local government to adopt or amend an ordinance or other regulation under *Minnesota Statutes* section, 14.128. Local governments may submit written information to the contrary. The MPCA also requests any information pertaining to the cumulative effect of the rule amendments with other federal and state regulations related to the specific purpose of the rule. 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.

Comments. Interested parties may submit written comments or information on these possible rules until **4:30 p.m. on Friday, October 6, 2023**. During the public comment period associated with this RFC, submit written comments or information to the:

1) Office of Administrative Hearings (OAH) Rulemaking eComments website at <https://minnesotaoah.granicusideas.com>; or

2) OAH attn: William Moore, 600 North Robert Street, P.O. Box 64620, St. Paul, MN 55164-0620 or fax 651-539-0310.

You may view frequently asked questions about the OAH Rulemaking eComments website at https://mn.gov/oah/assets/ecomments-faq_tcm19-82012.pdf. Any questions about submitting comments via the Rulemaking eComments website should be directed to William Moore of the OAH at 651-361-7900 or by email at William.T.Moore@state.mn.us; **please note that you may not submit rulemaking comments by phone or email.**

Comments received are public and will be available for review at the OAH Rulemaking eComments website at <https://minnesotaoah.granicusideas.com/discussions> and at the OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, MN 55164-0620. NOTE: The MPCA will carefully consider all comments received in response to this RFC. However, these comments will not necessarily be included in the formal rulemaking record submitted to the Administrative Law Judge (ALJ) if and when a proceeding to adopt rules is started. The MPCA is required to submit to the ALJ only the written comments received in response to the draft rules after they are proposed with a Notice of Intent to Adopt Rules. If you submit comments during the RFC stage of rule development and want to ensure that the ALJ reviews them, you should resubmit your comments after the rules are formally proposed with a Notice of Intent. The MPCA will not publish a Notice of Intent for this project until more than 60 days have elapsed from the date of this RFC.

MPCA Contact Person. The MPCA contact person is Rule Coordinator Katie Izzo at the MPCA, 520 Lafayette Road North, St. Paul, MN 55155-4194; email katie.izzo@state.mn.us; telephone 651-757-2595. You may also call the MPCA at 651-296-6300 or 1-800-657-3864; use your preferred relay service. Again, please note that you may not submit rulemaking comments by phone or email.

1. During the public comment period associated with this RFC:
 - a) Submit all comments in response to this notice as described in the [Comments](#) section of this RFC.
 - b) Contact the MPCA contact person with clarification questions and requests for more information.
2. After the public comment period closes, route communications to the following staff:
 - a) Rulemaking process: Katie Izzo at 651-757-2595 and katie.izzo@state.mn.us

- b) Technical subject expert: Hassan Bouchareb at 651-757-2653 and Hassan.Bouchareb@state.mn.us

Rules Drafts. The MPCA has not yet drafted the new rule amendments. Parties interested in being notified when a draft of the rules is available and of other activities relating to this rulemaking are encouraged to register at http://public.govdelivery.com/accounts/MNPCA/subscriber/new?topic_id=MNPCA_523 (MPCA GovDelivery—Rulemaking: Cumulative Impacts).

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, please contact the [MPCA contact person](#).

Statutory Authority. *Minnesota Statutes*, section 115.03, assigns the MPCA the authority to adopt rules regarding the discharge of pollutants, and [Laws of Minnesota 2023, chapter 60, article 8, section 3](#), requires the Commissioner of the MPCA to adopt rules to implement cumulative impacts analysis for permit decisions in EJ areas. The content of the rule is specified in the law.

Katrina Kessler

Katrina Kessler, Commissioner
Minnesota Pollution Control Agency

July 12, 2023

Date