

39398 Minnesota Pollution Control Agency Rebuttal Comment Period for Cumulative Impacts Rule

Closed Sep 28, 2026 · Discussion · 6 Participants · 1 Topics · 6 Answers · 0 Replies · 0 Votes

6

PARTICIPANTS

1

TOPICS

6

ANSWERS

0

REPLIES

0

VOTES

SUMMARY OF TOPICS

SUBMIT A COMMENT

 6 Answers · 0 Replies

Important: All comments will be made available to the public. Please only submit information that you wish to make available publicly. The Court of Administrative Hearings does not edit or delete submissions that include personal information. We reserve the right to remove any comments we deem offensive, intimidating, belligerent, harassing, or bullying, or that contain any other inappropriate or aggressive behavior without prior notification.

Andrew Morley · Citizen · (Postal Code: unknown) · Sep 23, 2026 2:55 pm

 0 Votes

Please find further additional comments from the Minnesota Chamber of Commerce attached.

Fue Lee · Citizen · (Postal Code: unknown) · Sep 28, 2026 8:00 am

 0 Votes

Please see the attached document.

Charles Lee · Citizen · (Postal Code: unknown) · Sep 28, 2026 9:38 am

 0 Votes

I am writing to support comments submitted by the Tishman Environment and Design Center in the Matter of the Proposed New Rules Governing Cumulative Impacts Analysis for Permit Decisions in Environmental Justice Areas. I respectfully reiterate the following key points for your consideration.

(1) Methods for assessing cumulative impacts should be stronger

- The proposed rules rely on pollutant-by-pollutant thresholds and discretionary judgment, which do not sufficiently address cumulative impacts.
- The analysis lack clear criteria for determining Substantial Adverse Impacts.
- The rules do not specify how MPCA will evaluate the significance of impacts or contributions from multiple sources.

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- Discretion is left to the commissioner, reducing transparency and accountability when making impact determinations.

(2) Disproportionality should be a key factor in assessing cumulative impacts

- The law's goal of remedying disproportionate pollution burdens should make disproportionality a clear factor in the assessment.

(3) Stronger measures for facility renewals are needed

- Permit reissuance rules depend on recent enforcement actions, which are typically weaker in communities with EJ concerns.

(4) Requirements for impact mitigation should be stronger

- The rules should contain concrete requirements for permit applicants to avoid, minimize, or reduce adverse impacts, irrespective of a finding for Substantial Adverse Impacts.

- Information on control measures and other actions that could be taken to avoid, minimize, or reduce impacts should be disclosed and made available to the public.

- Permit applicants should disclose all possible mitigation measures.

(5) Criteria for undertaking or rejecting Community Benefit Agreements (CBAs) should be clarified

- Perspectives of impacted community members are vital for triggering or pursuing a CBA.

- The rules lack clear criteria for rejection of CBAs.

- Triggering CBA negotiations automatically upon a finding of substantial adverse impacts should be avoided. Doing so risks turning the process into a backhanded mechanism for guaranteeing permits.

Nicky Sheats · Citizen · (Postal Code: unknown) · Sep 28, 2026 11:00 am

 0 Votes

Please see attached comments.

Ava Corey-Gruenes · Citizen · (Postal Code: unknown) · Sep 28, 2026 3:21 pm

 0 Votes

Please see attached comments from Health Professionals for a Healthy Climate.

Sasha Lewis-Norelle · Citizen · (Postal Code: unknown) · Sep 28, 2026 3:54 pm

 0 Votes

Please see the attached document with comments from the Frontline Communities Protection Coalition



September 23, 2026

Minnesota Court of Administrative Hearings
Administrative Law Judge Kimberly Middendorf
600 N. Robert Street
St. Paul, Minnesota 55101

Comments submitted electronically through CAH eComments

Re: Minnesota Pollution Control Agency Proposed New Rules Governing Cumulative Impacts Analysis for Permit Decisions in Environmental Justice Areas, Minnesota Rules Chapter 7007; Revisor R-4805; CAH Docket No. 21-9003-39398

Dear Judge Middendorf:

I write today on behalf of the Minnesota Chamber of Commerce (Chamber), a statewide trade association representing more than 6,300 businesses and more than 500,000 employees providing additional comment post-hearing on the Proposed New Rules Governing Cumulative Impacts Analysis for Permit Decisions in Environmental Justice Areas. Please find these comments as an addendum to Chamber comments submitted on September 21, 2026.

Cost Estimate

In Paragraphs 358 and 359 of the Minnesota Pollution Control Agency's (MPCA) response to pre-hearing comments, MPCA states the following, respectively:

"On average, the MPCA inferred from the survey responses an average staff time (internal staff and/or hired consultants) of 287 hours for a facility that had to complete all of the compliance steps. Dividing the total average estimated compliance cost of \$151,000 by 287 hours equates to well over \$500 an hour, which as the MPCA explained in the SONAR is likely to well exceed the average cost per hour for either a permittee's own staff or an external consultant."

"Using the combination of these two sources of information – the survey responses from the regulated community and the MPCA's own analysis of likely compliance costs – the MPCA estimated a total compliance cost range of \$69,000 to \$170,000 for a typical facility that has to complete all of the compliance steps associated with the proposed rule. For most permittees this is a likely overestimation of compliance costs as the bulk of regulated facilities will not have to complete all of these steps to comply with the proposed rule."

MPCA has not met its statutory obligation in Minn. Stat. 14.131¹ to reasonably ascertain the “probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.”

The referenced survey that is the primary basis of the MPCA’s cost estimate was put out in October 2025, seven months before the draft rule was issued.² MPCA had provided draft concepts of the rule, but the draft concepts were incomplete. Therefore, potentially affected permittees responding to the survey would not have had a way to provide informed feedback on the potential cost of the rule. It is highly likely that this contributed to the low response rate noted in the SONAR and MPCA’s response to comments.

Further, note that from Page 175 of the Statement of Need and Reasonableness (SONAR), the survey offered categories of hours and costs, the maximum categories being “More than 80 hours” and “More than \$50,000”. If a survey responder chose those categories, MPCA applied a 1.5x factor to those maximum hours/costs. So if a potentially affected party responding to the survey thought that a component of the rule would require 200 hours or \$100,000 (not necessarily associated with the same task), their only option was “More than 80 hours” or “More than \$50,000”, and the time/cost was extrapolated to be 120 hours and \$75,000. Potentially affected parties were not given the opportunity to indicate specific hours or costs. Therefore, it is not clear how MPCA could interpret the responses, or how MPCA could conclude that the “total investment would be approximately 287 hours” or average \$151,000. This could also explain why MPCA concluded that the work would be completed at over \$500/hour.

It is not clear what MPCA means by “the bulk of regulated facilities will not have to complete all of these steps to comply with the proposed rule.” MPCA has conducted no analysis to determine what portion of facilities are expected to require a CIA or CBA and MPCA has also not clarified in the SONAR what percentage MPCA considers to be “the bulk.”

Given the amount of discretion that MPCA has retained regarding the decision to require a CIA, and the discretion in the determination of a significant adverse impact resulting in the requirement for at CBA, it is reasonable to conclude that there will be a high likelihood that permittees will have to complete both a CIA and CBA, and will therefore be subject to the associated costs for those stages.

On behalf of permittees potentially impacted by the draft rule, the July 17, 2026 Chamber comments indicated that the costs would be significantly more than what MPCA has estimated in the SONAR. This conclusion was reached based on a clearer assessment of the requirements in the draft rule and accounted for the requirements associated with the CIA and projects that could be required under a CBA requiring substantial capital investment. MPCA appears to have disregarded this input and maintained its SONAR estimate in the response to comments and even stated again that the MPCA SONAR estimate is overstated.

¹ <https://www.revisor.mn.gov/statutes/cite/14.131>

²

<https://media.beefree.cloud/pub/bfra/la2h29b2/ddi/dhi/mf4/2025.9.25%20MPCA%20GovDelivery%20Cumulative%20impacts%20rulemaking%20economic%20survey.pdf>

The Chamber noted in prior comments that the analysis was incomplete, but this was not addressed in MPCA's response to comments. To be compliant with the SONAR requirements, MPCA should conduct a more thorough assessment of the potential costs to permittees, including legitimate alternatives that are less costly and intrusive and achieve the purpose of the rule. MPCA evaluated voluntary and policy- or guidance-based alternative approaches which would never have been a legitimate alternative to meet the statute. MPCA should consider less costly rules-based alternatives that would still implement Minn. Stat. 116.065. Examples could include:

- Narrower applicability thresholds;
- Fewer or different environmental stressors;
- Different criteria for determining combined stressor total or adverse cumulative stressors;
- Different cumulative impact mandatory triggers;
- Simpler analytical requirements under the CIA;
- Reduced reporting obligations;
- Alternative or more specific criteria for substantial adverse impact;
- Caps on cost for CBAs; and
- Other tiered approaches based on facility size or emissions.

This assessment should include input from permittees that are likely to be impacted by the rule and their consultants and should account for all impacts of the rule. MPCA should clearly state whether the revised cost is reasonable. MPCA should also provide the basis for saying the "bulk" of regulated facilities will not have to complete a CIA or CBA.

Permitting Efficiency and Timeliness

In Paragraphs 464 and 467 of the MPCA response to pre-hearing comments, MPCA states the following, respectively:

"Minn. Stat. § 116.065 requires the MPCA to adopt rules to review the cumulative impacts of pollution in certain parts of Minnesota during the air permitting process. The legislature has also directed the MPCA to do permitting efficiently under Minn. Stat. § 116.03, subp. 2b, which sets a permitting efficiency goal of 150 days for tier 2 permits. Applications subject to the proposed rule would fall under the tier 2 category, thus this goal will apply. However, MPCA notes that the scope of reviews and determinations under the rule, with the potential for a cumulative impacts analysis, multiple public meetings, and a community benefit agreement, means that the permitting efficiency goals would likely not be met for projects that require a cumulative impacts analysis and CBA. Therefore, for projects subject to the proposed rule, the MPCA will need to balance permitting efficiency as well as the more complex reviews for permit projects subject to the proposed rule."

"The MPCA recognizes that compliance with the proposed rule may increase timeframes needed for processing some permit actions subject to the rule. In order to be efficient in processing these permit actions, MPCA will work to create external and internal procedures for streamlined reviews and determinations. As MPCA implements the rule, MPCA will develop guidance for owners and operators, community members, and MPCA staff to ensure permitting moves forward in a timely manner. Implementation of the

proposed rule will also involve development of standard forms; e-services options; templates; and other materials to ensure that application and supplemental application materials required under the rule are consistent and include all relevant information. The proposed rule is a new aspect of the air permitting program, and although it incorporates several known processes, there will be work to do in refining its implementation. The MPCA is a learning organization and receptive to feedback that will help make the review and determination steps proceed more efficiently.”

Under current rules, MPCA meets the permitting efficiency goal under Minn. Stat. 116.03, subp 2b. for tier 2 air quality permits a very low percentage of the time. According to the November 2025 MPCA Annual Permitting Efficiency Report, 15% of Priority and 8% of Non-priority Tier 2 air permits (which would include permits subject to the CIA rule) met the 150-day issuance goal in 2025. According to the December 2024 MPCA Annual Permitting Efficiency Report, 0% of Priority and 6% of Non-priority Tier 2 air permits met the 150-day issuance goal in 2024. The goal was codified in 2011 and this has been the typical performance for Tier 2 air quality permits. Little has been learned or done in those 15 years to improve efficiency and meet the goal at a more acceptable rate without the CIA rules. Not only will the goal “likely not be met”, based on an assessment of the rule requirements and the New Jersey example, the rule will likely add one to two years to the permitting process. MPCA should clearly state whether this is a reasonable timeline and impact to permitting efficiency.

Thank you for consideration of these additional comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Morley', with a stylized flourish at the end.

Andrew Morley
Director, Environmental Policy
Minnesota Chamber of Commerce
amorley@mnchamber.com

September 25, 2026

Rebuttal Comments

Proposed New Rules Governing Cumulative Impacts Analysis for Permit Decisions in Environmental Justice Areas, *Minnesota Rules* chapter 7007

CAH Docket. No. 21-9003-39398

Attn: Administrative Law Judge Kimberly Middendorf

Submitted by: State Representative Fue Lee

7007.6010, subp. 5. Definition. Adverse cumulative stressors.

7007.6010, subp. 6. Definition. Adverse environmental stressor

7007.6019, subp. 22. Definition. Geographic point of comparison

7007.6020, subp. 5. Applicability and procedures. Environmental stressors database.

Responses 639-642

The agency's response to my comments criticizing the use of a "geographic point of reference" in determining the need for cumulative analysis fails to acknowledge or address the problem I identified: Environmental conditions **outside** of an EJA are irrelevant to and should be given no weight in the commissioner's decision as to whether a cumulative analysis is required to be prepared. That decision should be based solely on conditions **within** an EJA. While the statute calls for the agency to establish benchmarks to assist the commissioner in making this decision, those benchmarks should relate to the cumulative and current exposures and stressors experienced only by EJA residents, and how those factors compare with known risks of environmental harm.

The agency also does not address my comments that its proposed "geographic point of reference" methodology serves to eliminate consideration of the **severity** of the actual stressors in an EJA, surely a key factor to be taken into account. If a stressor is 100 times the level of a county or state measure, that fact is not necessarily presented to the commissioner, who only sees that it exceeds the levels in those irrelevant geographic areas. The agency responds that the proposed rule "does not require" it to "treat all 'levels' of the stressors equally," but neither do the rules prohibit the agency from doing so. They should.

7007.6010, subpart 19

Responses 551-559 and 665-669

The proposed rule excludes facilities from the requirement to prepare a cumulative analysis based solely on the future impact of the permit modification they are seeking, if the agency considers those impacts to be minor. As a result, a law designed to force consideration of past impacts determines which facilities are subject to it by ignoring those past impacts.

The proposed rule adds something to the statute that is not there. The statute's definition of "permit" reads: "Permit includes a permit required for new construction or facility expansion or the reissuance of an existing permit." This definition does not restrict the applicability of the statute in any manner, certainly not to facilities based on future impacts alone. The agency does not have the authority to rewrite the statute by implementing such restrictions.

The agency's position ignores the import of the statute's explicit applicability to permit reissuances, many of which do not increase emissions levels. As I stated in my notice comments, this is a basic misreading of the statute:

"By making reissuances subject to the statute, **the statute authorizes the commissioner to deny a permit based on the cumulative impacts experienced in an EJA in combination with a facility's previously permitted emissions.** The statute's innovative feature is that it recognizes the harm that cumulative impacts have imposed on EJA residents and requires that these be evaluated anew and taken into account in decisionmaking, rather than ignored as they have been until now, and that by doing so the status quo – cumulative plus continuing impacts – can rise to the level of a "substantive adverse effect" and result in a permit denial."

The statute requires a new look at the old way of regulating environmental impacts in order to provide greater protection to EJA residents. The agency's proposed rule in this instance fails to implement that principle.



Tishman Environment
and Design Center

September 21, 2026

Attn: CAH Docket No. 21-9003-39398

Minnesota Pollution Control Agency
520 Lafayette Road North
Saint Paul, MN 55155-4194

Submitted via webform at

<https://minnesotaoah.granicusideas.com/discussions/39398-minnesota-pollution-control-agency-post-hearing-comment-period-on-cumulative-impacts-rule>

Re: In the Matter of the Proposed New Rules Governing Cumulative Impacts Analysis for Permit Decisions in Environmental Justice Areas, Minnesota Rules chapter 7007; Revisor's ID Number R-4805

Introduction

The Tishman Environment Design Center at The New School ("Tishman Center") submits the following comments in reference to the Minnesota Pollution Control Agency's (MPCA's) Proposed Permanent Rules Relating to Cumulative Impacts Analysis in Environmental Justice Areas. The Tishman Center is a center focused on environmental justice (EJ), with expertise and a long-standing body of work related to cumulative impacts science and policy. As a technical partner to grassroots and frontline EJ organizations around the country, as well as in Minnesota and the Twin Cities area specifically, we have followed with interest the passage of Minnesota's Frontline Communities Protection Act in the state's omnibus law H.F. 2310¹ (hereinafter, "the law" or "the cumulative impacts law") and the MPCA's subsequent rule-making.

We would like to express our concern and feedback on several key aspects of MPCA's proposed rules. Many of these points were expressed by commenters, including the Frontline Communities Protection Coalition and the Minnesota Environmental Justice Table, during the pre-hearing comment period as well as the public hearing held on Sept. 1, 2026. We believe that these aspects of the proposed rules seriously compromise the agency's ability to address cumulative impacts, the intent of the law. The intention was well captured by the MPCA commissioner's own words in her letter to the H.F. 2310 conference committee during the final legislative negotiations, wherein the commissioner noted, "Throughout the session the House, Senate, and Governor have all proposed a version of cumulative impacts [policy], a testament to our shared commitment to protect vulnerable and overburdened populations from harmful

¹ Minnesota Statutes § 116.065, <https://www.revisor.mn.gov/bills/93/2023/0/HF/2310/versions/4/>.

effects of pollution...’’² The MPCA understands the purpose of the law and sees its role as follows: “The purpose of this rulemaking project, known as the Cumulative Impacts rule, is to comply with **Minnesota Statutes § 116.065, intended to remedy Minnesotans’ disproportionate exposure to pollutants**. The statute defines EJ areas and **requires the MPCA to conduct a rulemaking process to address the cumulative impacts of pollution during permitting processes**.’’³

At this point in the post-hearing comment period, we feel compelled to express our disappointment with MPCA’s Pre-Hearing Response to Comments,⁴ which reveal that the agency thus far has largely been unswayed by public input and unwilling to make the necessary improvements to the proposed rules that community members have asked for. We sincerely hope that the agency will take this post-hearing opportunity to reconsider its stance on these issues and meaningfully strengthen the proposed rules, so that the law and rule together can be a noteworthy example of cumulative impacts policy, effectively protecting vulnerable and overburdened populations and remedying their disproportionate pollution exposures as intended.

Our top-level concerns are as follows:

1. Methods for Determining Substantial Adverse Impact will Insufficiently Address Cumulative Impacts.

Under the law, the rules should “define conditions, criteria, or circumstances that establish an environmental or health impact as a substantial adverse impact.”⁵ In our view, the three-avenue approach proposed by MPCA in part 7007.6100, Substantial Adverse Impact, is an inadequate definition of substantial adverse impact in the context of a law to address cumulative impacts. Two avenues of the approach to determine substantial adverse impact rely on pollutant-by-pollutant comparisons to risk assessment-derived benchmarks that are themselves established in a pollutant-by-pollutant way, while the third approach, which acknowledges that cumulative impacts are relevant to the determination, leaves the decision at the discretion of the commissioner. In other words, MPCA’s proposed rules provide no assurance to communities that there is *some* level of endured cumulative impacts beyond which additional pollution should not be permitted.

A. Air Quality Modeling Analysis

The first condition under which a requested permit action would be determined to result in a substantial adverse impact is if “emissions from the stationary source would result in a contribution to modeled air pollution concentrations of pollutants that are greater than or equal to 50 percent of any ambient air

² Sarah Strommen, “State Agency Letters to Conference Committee,” April 28, 2023, https://assets.senate.mn/conference_committee/2023-2024/1526_Conference_Committee_on_H.F._2310/State%20Agency%20Letters%20to%20Conference%20Committee.pdf.

³ “Notice of Intent to Adopt Rules With a Hearing,” Minnesota Pollution Control Agency, 2026, <https://www.pca.state.mn.us/sites/default/files/aq-rule2-25ad.pdf>.

⁴ Minnesota Pollution Control Agency (MPCA), “Cumulative Impacts Rule: Pre-Hearing Response to Comments,” Aug. 2026, <https://www.pca.state.mn.us/sites/default/files/aq-rule2-25af.pdf> (hereinafter, “Pre-Hearing Response to Comments”).

⁵ Minnesota Statutes § 116.065, subd. 6(c)(3).

quality standard.”⁶ The MCPA’s response to comments justified the greater than or equal to 50 percent threshold as “human-health protective, as it is lower than the National Ambient Air Quality Standards (NAAQS) and Minnesota Ambient Air Quality Standards (MAAQS) and it ensures that no single source may emit air pollution at concentrations near levels that cause significant risk to human health and the environment in areas that are already burdened by cumulative impacts.”⁷ However, the NAAQS were not defined with cumulative impacts considerations, and do not account for the harm associated with multiple pollutants or compounding stressors that may exacerbate impacts in EJ communities. Even when in theory, the NAAQS are supposed to be set at levels protective of both general populations and sensitive subpopulations,⁸ in reality the consideration of sensitive subpopulations in the establishment of NAAQS and other risk thresholds has been deficient, as problematized in a 2023 consensus statement from a multidisciplinary expert panel on chemical assessments: “EPA has not applied a consistent or complete approach to identifying PESS [potentially exposed or susceptible subpopulations] thus far and does not currently incorporate factors or utilize methodologies to approximate the combined risk resulting from exposure to multiple chemicals, and non-chemical stressors such as food insecurity, pre-existing disease, poverty, or racism, into its risk evaluations – even though doing so would reflect the ‘best available’ scientific approach to risk assessment in many cases.”⁹

Simply put, chemical evaluations that lead to the establishment of thresholds such as the NAAQS do not adequately account for the multiple burdens that frontline communities experience. Pullen Fedinick et al. call attention to the problem as follows: “Extensive scholarship has demonstrated that communities of color, low-income communities, and Indigenous communities face greater environmental and health hazards compared to communities with more White or affluent people. These communities disproportionately face extreme threats to their health from their environments, including high numbers of toxic ‘legacy’ sites, large numbers and concentrations of chemical storage and industrial facilities, air pollution from traffic or ports, environmental exposure to heavy metals such as lead, workplace and take-home exposures, increased rates of drinking water violations, and heightened exposure to toxic chemicals, such as pesticides and other contamination in consumer products, food, and air.... Despite the mountains of evidence that demonstrate the existence and significance of the elevated toxic social and environmental exposures experienced by these communities, the inclusion of these factors into chemical

⁶ Minnesota Pollution Control Agency, “Proposed Permanent Rules Relating to Cumulative Impacts Analysis in Environmental Justice Areas,” (April 6, 2026) <https://www.pca.state.mn.us/sites/default/files/aq-rule2-25ab.pdf> (hereinafter, “Proposed Rules”), part 7007.6100, subpart 1(a)(1).

⁷ Pre-Hearing Response to Comments, para. 1189.

⁸ In developing the NAAQS, the United States Environmental Protection Agency (EPA) was required to create standards with an “adequate margin of safety...” Historically, the NAAQS margin of safety has been interpreted as “requiring the protection of both general populations and sensitive subpopulations, or those subgroups potentially at increased risk for ambient particle health effects.” Philip R. S. Johnson and John J. Graham, “Fine Particulate Matter National Ambient Air Quality Standards: Public Health Impact on Populations in the Northeastern United States,” *Environmental Health Perspectives* 113, no. 9 (2005): 1140–47, <https://doi.org/10.1289/ehp.7822>.

⁹ Tracey J. Woodruff et al., “A Science-Based Agenda for Health-Protective Chemical Assessments and Decisions: Overview and Consensus Statement,” *Environmental Health* 21(Suppl 1) (2023): 132, <https://doi.org/10.1186/s12940-022-00930-3>. See also Kristi Pullen Fedinick et al., “A Cumulative Framework for Identifying Overburdened Populations under the Toxic Substances Control Act: Formaldehyde Case Study,” *International Journal of Environmental Research and Public Health* 18, no. 11 (2021): 6002, <https://doi.org/10.3390/ijerph18116002>; Philip R. S. Johnson and John J. Graham, “Fine Particulate Matter National Ambient Air Quality Standards: Public Health Impact on Populations in the Northeastern United States,” *Environmental Health Perspectives* 113, no. 9 (2005): 1140–47, <https://doi.org/10.1289/ehp.7822>.

evaluations has been scarce.”¹⁰ Thus, regardless of the percentage used (50 percent or something else), the approach of part 7007.6100, subpart 1(A)(1) relies on a contaminant-by-contaminant comparison to thresholds established disregarding cumulative impacts, rendering the approach on its own inadequate for addressing cumulative impacts.

B. Air Emissions Risk Analysis

The second condition for determining substantial adverse impacts is also dependent on risk assessment analyses, requiring the owner or operator of a stationary source to analyze air emissions risk from the facility pollutant by pollutant, using “acceptable risk levels” including cancer risks, hazard quotients for “acute, subchronic, and chronic inhalation risk,” and hazard indexes for “noncancer health endpoints.”¹¹ The MPCA’s response to comments stated, “The strongest and clearest methods for understanding the potential risk of air toxics is achieved through an air toxic risk assessment utilizing the air emissions risk analysis (AERA) process required by the MPCA. Consequently, these parameters function as conservative, health-protective screening values that mirror existing air permitting benchmarks rather than acting as isolated toxicological thresholds.”¹² However, risk assessment parameters inadequately account for the cumulative impacts of multiple pollutants or other social or environmental factors that may exacerbate the risk of harm to local communities, as we described in the subsection above. Therefore, air toxic risk assessments that analyze the impacts of individual pollutants on specific health endpoints are not conservative or health-protective thresholds for reducing harm in EJ communities. Moreover, the air toxics contributions from the source in question are evaluated one by one, not jointly at any point. Once again, we note that doing a pollutant-by-pollutant analysis against risk-based quantitative thresholds inadequately accomplishes the goals of a cumulative impacts policy.

C. Determining Environmental or Health Impacts are Substantial Adverse Impacts

(i) The list of criteria is unclear and does not constitute an adequate methodology for determining substantial adverse impacts.

The third condition for determining a substantial adverse impact relies on the commissioner’s own finding that an environmental or health impact identified in the cumulative impacts analysis (CIA) is a substantial adverse impact (part 7007.6100, subpart 1(A)(3)). However, apart from specifying that the commissioner must consider criteria including the requested permit action, the CIA, environmental stressors in the impacted EJ area, and public comments, the proposed rules do not lay out a specific methodology for how cumulative impacts should be assessed in this determination. According to part 7007.6100, subpart 2, the commissioner must evaluate: “A. the type, extent, and reversibility of the environmental or health impact; B. cumulative impacts, considering: (1) whether the impact is significant; (2) whether the contribution from the requested permit action is significant when viewed in connection with other contributions to the impact,” and any actions proposed by the owner or operator to “eliminate, minimize, or mitigate the

¹⁰ Kristi Pullen Fedinick et al., “A Cumulative Framework for Identifying Overburdened Populations under the Toxic Substances Control Act: Formaldehyde Case Study,” *International Journal of Environmental Research and Public Health* 18, no. 11 (2021), 2, <https://doi.org/10.3390/ijerph18116002>. (Citations removed.)

¹¹ Proposed Rules, part 7007.6100, subpart 1(A)(2).

¹² Pre-Hearing Response to Comments, para. 1194.

contributions from the requested permit action.” The rules do not define “significant” as it is used in this section, nor do they specify how any pollution contributions from the requested permit action should be evaluated in conjunction with other stressors or pollution contributions.

The MPCA wrote that substantial adverse impacts are determined by a “comprehensive assessment that heavily weighs human-health vulnerabilities and social context alongside direct emissions,”¹³ but with no methodology for evaluating these factors, how vulnerability, social context, and pollution information are weighed and assessed is left to the commissioner’s discretion. Moreover, without a decision threshold, impacted communities cannot easily understand how permit decisions are made, which reduces MPCA’s accountability to the communities they serve (as well as predictability for owners and operators). The MPCA defended this lack of a cumulative impacts calculation, writing “relying on a static checklist or tally of stressors would obscure the highly localized, compounding risks that the MPCA is statutorily mandated to evaluate.”¹⁴ Yet notably, the first two conditions used to define a substantial adverse impact (part 7007.6100, subparts 1(A)(1) and 1(A)(2)) are the exact type of “static checklist” thresholds the MPCA claims to avoid. We agree that using static checklists of risk-based thresholds and health endpoints are insufficient to assess cumulative impacts. However, the rules must outline a clear and replicable methodology that actually consists of a *cumulative* assessment and that does not rely on the discretion of the commissioner, to increase both accountability and transparency.

(ii) Disproportionality should be a clear trigger for determining substantial adverse impact, as remedying disproportionality is the main purpose of the law.

When responding to comments requesting that Minnesota adopt a cumulative impacts methodology similar to New Jersey’s cumulative impacts rule, MPCA wrote that it would be “inappropriate,” since “environmental stressors do not necessarily result in an adverse impact merely because their values are above the median percentile of non-overburdened areas.”¹⁵ However, a disproportionate burden, as compared to other areas of the state or county, should be considered an adverse impact. This follows logically from the purpose of the law, which the MPCA well recognizes is to “remedy Minnesotans’ disproportionate exposure to pollutants.”¹⁶ Quantifiable risk thresholds are not needed to identify disproportionate burdens and adverse impacts on overburdened communities. This risk-focused mindset directly contradicts the purpose and spirit of the cumulative impacts law and rules.

Moreover, the centering of risk-centered approaches in a cumulative impacts policy starkly contrasts with the call to action for cumulative impacts policies, growing out of the EJ movement’s denouncement of the systemic failures of risk-based frameworks to address the lived reality of fence-line communities.¹⁷ It is disappointing to see MPCA’s proposed rules relying so heavily on risk-based methodologies as one of the

¹³ Pre-Hearing Response to Comments, para. 1147.

¹⁴ Pre-Hearing Response to Comments, para. 1150.

¹⁵ Pre-Hearing Response to Comments, para. 1147.

¹⁶ “Notice of Intent to Adopt Rules With a Hearing,” Minnesota Pollution Control Agency, 2026, <https://www.pca.state.mn.us/sites/default/files/aq-rule2-25ad.pdf>.

¹⁷ Yukyan Lam et al., Seeing the Whole: Using a Cumulative Impacts Analysis to Advance Environmental Justice (Natural Resources Defense Council, 2022), 7-8, <https://static1.squarespace.com/static/634ec24de312bd652b110530/t/63d9652fdaa29811a5a498d8/1675191601636/seeing-whole-cumulative-impacts-analysis-ej-report.pdf>.

primary ways of determining grounds for permit denials. Given that the stated purpose of the law is to remedy disproportionate exposures, it is astounding that amongst the proposed rules' criteria for evaluating substantial adverse impacts, not a single factor captures the concept of disproportionality (part 7007.6100, subpart 2). Whether MPCA chooses to adapt New Jersey's method or offer its own method, it should at the very least incorporate disproportionality into its decision-making criteria (along with criteria such as pre-existing pollution from other stationary and non-stationary sources, etc.), and specify an actual methodology for reaching a decision based on said criteria.

2. Existing facilities are insufficiently covered by requirements to conduct a mandatory cumulative impacts analysis, compromising the law's objective of *reducing* pollution and *remediating* disproportionate exposures.

Policies that are meant to address environmental injustice must reduce existing sources of pollution that have and continue to contribute to a community's disproportionate burden. The renewal of existing facilities in EJ communities continues to drive disproportionate pollution burdens, and allowing these facilities to pollute under "business as usual" operations, even if those operations meet regulated pollutant thresholds, does not remedy legacy pollution or the problem of cumulative impacts. The law's definition of environmental justice includes "consideration [for] the history of the area's and its residents' cumulative exposure to pollutants cumulative impacts" and further defines cumulative impacts as "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," highlighting how legacy pollution is critical to addressing cumulative impacts.¹⁸ Shortly before the passage of Minnesota's cumulative impacts law, MCPA Commissioner Katrina Kessler wrote, "I am confident we are close to finding a collaborative solution that will accomplish the goal of reducing pollution impacts in environmental justice areas..."¹⁹ Her comment reflects the intent of the law, which is not just preventing but actively *reducing* pollution in EJ communities, requiring the rejection of the status quo of existing facilities and incorporating cumulative impacts requirements into permit reissuance applications.

A. Permit Reissuances

The threshold for requiring a permit reissuance applicant to conduct a CIA should not rely only on a stationary source's history of enforcement actions. The proposed rules currently require applications for a reissuance of a permit to conduct a mandatory CIA if "an enforcement action was issued to the stationary source by the commissioner, a county governmental authority delegated powers by agreement with the commissioner, or the United States Environmental Protection Agency for any environmental media within the three years before the date the application for reissuance is received...."²⁰ However, research has

¹⁸ Minnesota Statutes § 116.065, subd. 1.

¹⁹ Sarah Strommen, "State Agency Letters to Conference Committee," April 28, 2023, https://assets.senate.mn/conference_committee/2023-2024/1526_Conference_Committee_on_H.F._2310/State%20Agency%20Letters%20to%20Conference%20Committee.pdf.

²⁰ Proposed Rules, part 7007.6050, subpart 4(C).

shown that the enforcement of environmental regulations is weaker in EJ communities.²¹ Additionally, using a history of enforcement actions to determine the need for a CIA means that communities must experience the harm from previous violations before qualifying for a CIA that could lead to a permit denial. Using recent enforcement actions as the lone benchmark for permit reissuances contradicts the intent of the law, which is not merely to prevent new sources of pollution, but to *reduce* pollution and *remedy* disproportionate exposures, as quoted earlier.²²

In their response to comments, the MPCA wrote “the enforcement action benchmarks in part 7007.6050, subpart 4, are not the only way existing facilities applying for reissuance can be required to conduct a [CIA]... As described under part 7007.6070, subpart 1 and 2, a [CIA] can be required on a mandatory or discretionary basis.”²³ However, under both the mandatory and discretionary bases, the only other conditions (in addition to the enforcement action provision) that require a permit reissuance application to conduct a CIA include: 1) the commissioner determines that a CIA is necessary, 2) the owner/operator of the stationary source requests a CIA, or 3) the commissioner determines that the permit “may substantially impact the environment or the health of the residents of the impacted environmental justice area,” (part 7007.6070, subpart 2(B)). The definition of “substantial impact” is nearly identical to the definition of “substantial adverse impact” discussed above, with the same lack of cumulative impacts methodology. Since the other requirements for mandating a CIA for permit reissuances are the commissioner’s discretion or the request of the owner/operator, the rules effectively rely on the enforcement action provision as the strongest process for requiring a CIA. This provides nowhere near enough scrutiny of legacy sources of pollution, the importance of which was encapsulated by the very ways “cumulative impacts” and “environmental justice” are defined in the law, as quoted earlier.

Rather than relying solely on a facility’s history of enforcement actions, we support the recommendation made by the Minnesota Environmental Justice Table that would require all facilities to conduct a CIA for their first permit reissuance application after the rules take effect.²⁴ Adding this requirement would ensure that all existing facilities undergo at least one evaluation of their emissions contributions to the existing stressors and burdens present in the EJ community. Additionally, if the MPCA chooses to keep history of enforcement actions as a benchmark, we strongly recommend that the agency consult with EJ areas to develop and implement a strategy to bolster enforcement in EJ areas.

B. Permits for Expansions

The proposed rules further describe how expansion permit applicants would only be required to develop a CIA if “the facility expansion has the potential to emit... one or more of the following pollutants at a rate

²¹ David M. Konisky et al., “Environmental Injustice in Clean Water Act Enforcement: Racial and Income Disparities in Inspection Time,” Environmental Research Letters 16, no. 8 (2021): 084020, <https://doi.org/10.1088/1748-9326/ac1225>; Kristi Pullen Fedinick et al., Watered Down Justice (Natural Resources Defense Council, 2019), <https://www.nrdc.org/sites/default/files/watered-down-justice-report.pdf>.

²² Sarah Strommen, “State Agency Letters to Conference Committee,” April 28, 2023, https://assets.senate.mn/conference_committee/2023-2024/1526_Conference_Committee_on_H.F._2310/State%20Agency%20Letters%20to%20Conference%20Committee.pdf; “Notice of Intent to Adopt Rules With a Hearing,” Minnesota Pollution Control Agency, 2026, <https://www.pca.state.mn.us/sites/default/files/aq-rule2-25ad.pdf>.

²³ Pre-Hearing Response to Comments, para. 722.

²⁴ Compiled Comments, pp. 93-94.

equal to or greater than the specified amount, in pounds per hour....”²⁵ These pollutant-specific benchmarks pose the same issues as outlined in the air emissions risk analysis section above; using individual pollutant thresholds to determine whether a CIA is required contradicts the intention of a cumulative impacts law. However, if the MCPA chooses to require CIAs for permit expansions based on the facility’s “potential to emit,” we support FPCP’s recommendation that this benchmark should take into account the total potential emissions from the entire facility, rather than the expansion portion.²⁶ The expansion does not operate in isolation from the rest of the facility, and therefore the rule should mandate the assessment of potential emissions from the entire stationary source when determining CIA requirements.

3. The rules should contain concrete requirements for owners/operators to avoid, minimize, or reduce adverse impacts, found to be substantial or not. At the very least, information on control measures and other actions that could be taken to avoid, minimize, or reduce the impacts should be disclosed and included at key points in the process.

The proposed rules are extremely weak in terms of obligations imposed on the owner or operator to avoid, minimize or reduce adverse impacts caused by the proposed permit action, or to even share information about possibilities for avoiding, minimizing or reducing adverse impacts. There are no requirements to adopt such measures, merely some suggestive language that applies only after a determination of substantial adverse impact is made: “A. If issuing the requested permit action would have a substantial adverse impact on the environment or the health of the residents of the impacted environmental justice area under subpart 1, the owner or operator *may* identify and analyze additional emission limits, operational conditions, control measures, or other measures to avoid, minimize, or reduce the negative impacts of the stationary source.... B. The owner or operator *may* incorporate the measures identified in item A into the requested permit action and revise the cumulative impacts analysis to include the measures identified.”²⁷

This level of discretion afforded to owners and operators undermines the intent of the law, which, as noted above, is to reduce pollution and remedy disproportionate exposures. Owners and operators should be required to avoid, minimize, or reduce adverse impacts on EJ areas, whether or not such impacts are found to be substantial and certainly if they are determined to be substantial. There should be a hierarchy of mitigation measures required, with a preference for avoidance, followed by minimization, then reduction, as noted by residents in pre-hearing comments.²⁸

The MPCA responds to commenters by stating that the obligatory nature of the proposed rules lies in the fact that “[i]f a facility refuses to incorporate these verified controls into its written permit application, the substantial adverse impact determination remains in place, and the permit cannot be issued unless the operator enters the formal community benefit agreement (CBA) process outlined in part 7007.6110.”²⁹ With respect to mitigation, this constitutes no requirement at all. As written, owners/operators can choose

²⁵ Proposed Rules, part 7007.6050, subpart 4(B).

²⁶ Compiled Comments, pp. 108-109.

²⁷ Proposed Rules, part 7007.6100, subparts 5(A) and 5(B). (Emphasis added.)

²⁸ Compiled Comments, pp. 267-268.

²⁹ Pre-Hearing Response to Comments, para. 1222.

to bypass any discussion or incorporation of avoidance, minimization, and reduction measures, and move straight ahead to the CBA process; the MPCA hands them the option to prioritize negotiating benefits over designing less harmful operations.

In this regard, the MPCA gives the impression that it does not think that the law confers authority for the agency to impose obligations on owners/operators to avoid, minimize, and reduce adverse impacts to EJ areas. In its response to comments, the MPCA speaks of “ensur[ing] that any proposed mitigation measures evaluated during the permitting process are backed by an ongoing public regulatory authority that makes them legally enforceable, allowing the MPCA to formally incorporate those restrictions directly into the final air permit as binding conditions.”³⁰ We disagree with this interpretation in light of the broader purpose of the cumulative impacts law, which we amply quoted above.

Even if the MPCA does not exercise its authority to impose mitigation measures on owners/operators, the agency should at least require them to disclose any and all possible measures to avoid, minimize, and reduce their impacts, regardless of how substantial they are or not. This is fully within the agency’s authority to do as part of its work to define the contents and processes of the initial assessment, CIA, and potential CBA. However, the proposed rules are currently weak and/or unclear in terms of obligations imposed on owners/operators to even share such information. For example, according to part 7007.6050, subpart 3(I), the content of an initial assessment must include “a description of any current or proposed emission or operating limits, operational conditions, control measures, or other measures to: (1) avoid, minimize, or reduce negative impacts of the stationary source on the environment or the health of residents of the impacted environmental justice area.” In other words, it would appear that owners/operators only need to include information in the initial assessment on mitigation measures that are currently in effect or that they choose to propose. Even for the CIA, the proposed rules are not very clear, with language from part 7007.6090, subpart 3(G) requiring applicants to include: “An analysis and proposal of emission limits, operational conditions, control measures, or other measures necessary to: (1) avoid the negative impacts of the stationary source to the environment or the health of residents of the impacted environmental justice area; and (2) minimize or reduce the negative impacts of the stationary source to the environment or the health of residents of the impacted environmental justice area.” To avoid confusion in interpretation, MPCA should clarify and potentially reword subpart 3(G) so that it is clear that applicants must disclose any conditions and measures that could potentially avoid negative impacts, as well as those that could minimize or reduce negative impacts.

We believe these are important changes because information about the existence of mitigation measures should not be discretionary. *All options* should be disclosed to residents of the impacted EJ area so that they can fully understand what they are facing and meaningfully engage in the permitting process at its various stages, including during a potential petition process, the public meetings held before and after the CIA, and the public meetings held before and after preparation of the draft CBA. If there are measures that can help avoid, minimize, or reduce the adverse impacts of the proposed permit beyond those that the owner/operator is willing to adopt upfront, communities should have a right to know about them. This information could influence whether a community decides to undertake a petition process or how they show up to a public hearing. If the owner/operator does not want to undertake mitigation measures even though they are available, a community should be able to ask them why. This information could influence

³⁰ Pre-Hearing Response to Comments, para. 1221.

how community members might view a proposed CBA, for example, hence showing how crucial it is for their meaningful participation in the process.³¹

4. There should be criteria for rejecting the scenario of a Community Benefit Agreement (CBA), that include the impacted community's perspective. CBA negotiation should not be undertaken automatically upon a finding of substantial adverse impact, nor should CBAs be accepted simply because they have met process requirements.

In general, the proposed rules frame CBAs in a way that appears to be contrary to the law. Minnesota Statute § 116.065 is very clear in how it frames CBA – as the exception, not the default. The MPCA is required to deny a permit after a finding of substantial adverse impact *unless* the owner/operator enters into a CBA with the commissioner. Yet the proposed rules at various points appear to imply that a CBA would be expected or even “required.”³² Under the law, the CBA is never “required.”

Unfortunately, this is not just an issue of semantics. This bias towards the CBA appears to have resulted in there being no clear criteria for when a CBA should be rejected or when negotiation of a CBA should cease or be avoided altogether. Critically, while public comments are considered in the commissioner's decision whether to enter into a CBA (under part 7007.6110, subpart 9(B)) and the owner/operator needs to “address issues raised” by the public (under part 7007.6110, subpart 9(A)), these are extremely vague provisions that provide no real assurance that the community can alter the course of a CBA – especially if it does not want one. Many commenters expressed their concern that CBAs are framed as inevitable in the proposed rules and that there are no clear criteria for rejecting a CBA, both in situations where the community does not want one and when the owner/operator fails to put forth a viable CBA.³³

In response to such concerns, which had been expressed throughout the rule-making process, the MPCA states that it does not allow a process for the community to approve or deny a CBA because this would constitute impermissible delegation of the agency's permitting authority which it legally cannot delegate.³⁴ We do not agree with this interpretation. Minnesota Statute § 116.065 has already circumscribed the MPCA's permitting authority – permits must be denied as a matter of course upon a finding of substantial adverse impact. This is precisely the point of the cumulative impacts policy, and the MPCA cannot delegate an authority it does not have.

³¹ Note, in this regard, that the law in subd. 6(c)(4) specifies that the MPCA should define the content and process of a CBA, which must include: “considerations other than or in addition to economic considerations, but with priority given to considerations that directly impact the residents of the environmental justice area.” Although mitigation measures that reduce impacts should not be considered a “benefit” to the community, they are considerations that have a direct impact on the residents of the EJ area and should absolutely be disclosed in the CBA discussions.

³² The proposed rules say, for example, in part 7007.6020, subpart 6(D): “If the commissioner determines that issuing the requested permit action would have a substantial adverse impact according to part 7007.6100, the owner or operator must...(2) prepare and submit a community benefit agreement according to part 7007.6110...”

³³ See, e.g., Compiled Comments, pp. 116-117.

³⁴ Pre-Hearing Response to Comments, para. 1298.

Moreover, to interpret the community's say on a CBA as 'permitting,' is a harmful mischaracterization. The CBA process only comes into play, if at all, after the agency has made a finding of substantial adverse impact. The community is doing nothing more than voicing their position on the CBA. Even if the rules were to establish a strong presumption for the commissioner to accept the recommendation of the community, this would still not constitute permitting. It would still be MPCA's responsibility to oversee the permitting process, take the official action of denying or granting the permit, and detail and enforce the permit if granted. To MPCA's argument that the law expressly states that a CBA is between the MPCA and an owner/operator, there is nothing in the law that would contradict establishing a strong presumption in favor of the community's recommendation on the CBA. The Frontline Communities Protection Coalition offered detailed, constructive recommendations to better center impacted communities during the CBA negotiation while recognizing that the CBA is between the MPCA and the owner/operator.³⁵ We strongly urge MPCA to adopt these recommendations, which should more than assuage any real fears about non-delegation while also fulfilling the law's requirement of "active outreach...designed to achieve significant community participation" in the CBA process.³⁶ This is indispensable when the history of CBAs has shown that procedural justice is absolutely crucial to their ability to achieve meaningful community outcomes.³⁷ Historically marginalized communities can easily be disadvantaged in these contractual agreements due to unequal bargaining power, access to information, and resources.³⁸ As one legal scholar put it, "[t]hat CBAs may, in practice, fail to adhere to the objective ideals of transparency, inclusiveness of participation, and representativeness in negotiations, has been one of the instrument's most well documented criticisms."³⁹

Last but not least of all, it is important not to lose sight of the purpose of this law – to address cumulative impacts, reduce pollution burdens and remedy disproportionate exposures that have long affected Minnesota's EJ communities. If it becomes the norm that permits that cause substantial adverse impacts are allowed to go forward simply because a CBA is reached between the facility and the MPCA commissioner, then these goals will be completely undermined. If the so-called CBAs are made against the will of impacted communities, then this will be a double injustice.

³⁵ Compiled Comments, pp. 115-118.

³⁶ Minnesota Statutes § 116.065, subd. 6(c)(4)(i).

³⁷ Salkin, Patricia E., and Amy Lavine. 2008. "Understanding Community Benefits Agreements: Equitable Development, Social Justice and Other Considerations for Developers, Municipalities and Community Organizations." *UCLA Journal of Environmental Law and Policy* 26 (2): 291–332.

³⁸ Recent examples of harmful CBA practices in the context of energy infrastructure siting were highlighted by the former White House Environmental Justice Advisory (WHEJAC) in its second report on carbon management. Amongst other bad faith practices, the WHEJAC found that developers of the so-called "hydrogen hubs" did not adhere to standard public participation and engagement practices with the affected communities, such as providing appropriate notifications or access to meetings hosted by project applicants, ensuring transparency regarding meeting records, questions, or follow up, presenting technical information in accessible formats, or providing clarity about the role that public participation would have in shaping or informing the project proposal. The WHEJAC report also highlighted a troubling lack of information detailing how public funds were used to leverage support for the projects. White House Environmental Justice Advisory Council. (2024). Recommendation report 2: White House Environmental Justice Advisory Council recommendations: Carbon Management Workgroup. <https://www.epa.gov/system/files/documents/2024-10/whejac-carbon-management-recommendations-october-2024.pdf>.

³⁹ Seigel, Steven M. 2014. "Community Benefits Agreements in a Union City: How the Structure of CBAs May Result in Inefficient, Unfair Land Use Decisions." *The Urban Lawyer* 46 (3), 481, <https://www.jstor.org/stable/24392991>. (Citation removed.)

We thank the MPCA for considering our feedback and welcome the opportunity to discuss any of the ideas contained in these comments.

Prepared and respectfully submitted by:
The Tishman Environment & Design Center at The New School

September 27, 2026

Attn: CAH Docket No. 21-9003-39398

Minnesota Pollution Control Agency
520 Lafayette Road North
Saint Paul, MN 55155-4194

Submitted via webform at <https://minnesotaoah.granicusideas.com/discussions/39398-minnesota-pollution-control-agency-post-hearing-comment-period-on-cumulative-impacts-rule>

Re: In the Matter of the Proposed New Rules Governing Cumulative Impacts Analysis for Permit Decisions in Environmental Justice Areas, Minnesota Rules chapter 7007; Revisor's ID Number R-4805

Introduction

The following comments are being submitted on the Minnesota Pollution Control Agency's (MPCA's) Proposed Permanent Rules Relating to Cumulative Impacts Analysis in Environmental Justice Areas (CAH Docket No. 21-9003-39398). More specifically, these comments are submitted to support those already submitted on this matter by the Tishman Design and Environment Center at the New School. Those comments are incorporated by reference in their entirety but this document focuses on the portion of those comments that discusses whether or not the community has the ability under the proposed rules to approve or deny a community benefits agreement (CBA) between MPCA and a polluting facility.¹ These comments strongly agree with the Tishman Center comments that the CBA should be subject to the approval of the community.

The author of these comments currently works at Princeton University as a Senior Policy Fellow and Lecturer at the School of Public and International Affairs (SPIA) and is affiliated with the Center for Policy Research on Energy and the Environment, which sits within SPIA. But perhaps more importantly, he is also a member of the New Jersey Environmental Justice Alliance, which is an integral part of the environmental justice (EJ) community in New Jersey and nationally. Both communities have a long history of working on cumulative impacts and New Jersey

¹ *Comments on Minnesota Pollution Control Agency's Proposed Permanent Rules Relating to Cumulative Impacts Analysis in Environmental Justice Areas*. Tishman Environment and Design Center at the New School. at Section 4 of comments entitled "There should be criteria for rejecting the scenario of a Community Benefit Agreement (CBA), that include the impacted community's perspective. CBA negotiation should not be undertaken automatically upon a finding of substantial adverse impact, nor should CBAs be accepted simply because they have met process requirements.", pp. 10-11, (September 21, 2026). (Hereinafter these comments will be referred to as the Tishman Center comments).

recently adopted a groundbreaking cumulative impacts and EJ law that embodies policies which were significantly influenced by the New Jersey EJ community.²

Approval or Rejection of a CBA Between MPCA and a Polluting Facility Should Be Subject to the Approval of the Community or At the Very least Heavily influenced by the Wishes of the Community

As discussed, in the Tishman Center comments, MPCA has taken the position that subjecting a CBA between MPCA and a polluting facility to the approval of the community would be an illegal delegation of permitting authority to the community and therefore should not be allowed.³ There are at least two reasons why these comments express the belief that this argument is incorrect.

First, as the Tishman Center comments point out, even if there were a strong presumption that acceptance or rejection of a CBA should be guided by the wishes of the community (the presumption vs. outright acceptance of the community's recommendation will be discussed below), "It would still be MPCA's responsibility to oversee the permitting process, take the official action of denying or granting the permit, and detail and enforce the permit if granted."⁴ In other words MPCA would still be administering the regulatory process, and it should also be added that this would be a process that MPCA *created* as well. In addition, MPCA would have already made what is arguably the most important finding in the entire process, which is that granting the permit would cause a substantial adverse impact.⁵ Given that MPCA would be making this critical decision and administering a process that it created, allowing the community to make a decision within this framework would not be an abrogation of MPCA's permitting authority.

A second reason why subjecting a CBA to the approval of the community would not be an illegal delegation of permitting authority is because such an action would be in furtherance of MPCA's statutory obligation to achieve significant community participation in the regulatory process.⁶ It appears that "significant community participation" has not been specifically defined by the statute and for that reason subjecting a CBA to community approval could be the best way to ensure this important requirement is met.

² See Sheats, N., Baptista, A., Lopez-Nunez, M., and M. Miles. *They Said it Couldn't Be Done*, Environmental Justice, No. 18(6): 366-373 (November 2025).

³ *Cumulative Impacts Rule, Pre-hearing Response to Comments*, Minnesota Pollution Control Agency, Revisor ID No. R-04805, CAH Docket No. 21-9003-39398, at paragraph 1298 (August 2026); *see also* Tishman Center comments, *supra* note 1, at 10.

⁴ Tishman Center comments, *supra* note 1, at 11.

⁵ *Id.* at 10-11.

⁶ *See id.* at 11.

In fact, MPCA may be in a situation where it is almost compelled to grant this level and type of involvement if it wants to establish meaningful and enduring community participation in the cumulative impacts regulatory process. This could be true because if a CBA is forced on a community that it believes is inadequate and does not want, after MPCA has already made a finding that granting the permit would cause a substantial adverse impact on the community, it would not be at all surprising if the community lost all faith in the regulatory process. This loss of faith could then result in little to no future community participation and MPCA would probably agree this would be disastrous for the regulatory process.

If the above arguments are not sufficient to convince MPCA that a CBA should be subject to the approval of the community then at the very least, it should strongly consider an alternative contained in the Tishman Center comments: there should be a strong presumption, or another term for this is a rebuttable presumption, that the recommendation from the community regarding CBA approval or rejection should be honored by MPCA. Surely a strong or rebuttable presumption that the community's wishes regarding a CBA should be followed is not an illegal delegation of MPCA's permitting authority given it would ensure significant community participation, is occurring within a process created and administered by the state agency, and also occurring after MPCA has made the crucial finding that granting the permit would cause a significant adverse impact.

The author of these comments, thanks MPCA for the opportunity to submit these comments and welcomes the chance to discuss anything contained in them with MPCA.

Submitted by:

Nicky Sheats, Ph.D., Esq.
Senior Policy Fellow and Lecturer
Center for Policy Research on Energy and the Environment
School of Public and International Affairs
Princeton University
Member of the New Jersey Environmental Justice Alliance

Note: These titles are for identification purposes only and do not indicate these comments are being submitted on behalf of these organizations.



Health Professionals for a Healthy Climate

Health Professionals for a Healthy Climate
PO BOX 583013
Minneapolis, MN 55458-3013

The Honorable Kimberly Middendorf, Administrative Law Judge
c/o William Moore, Rules Coordinator
Court of Administrative Hearings
600 North Robert St
PO BOX 64620
St. Paul, MN 55164-0620

In the Matter of the Proposed New Rules Governing Cumulative Impacts Analysis for Permit Decisions in Environmental Justice Areas, Minnesota Rules chapter 7007; Revisor's ID Number R-4805 (CAH Docket No. 21-9003-39398)

September 28, 2026

Dear MPCA and Judge Mittendorf,

Health Professionals for a Healthy Climate (HPHC) appreciates the opportunity to comment on the proposed cumulative impacts rules. HPHC is a multidisciplinary network of hundreds of health professionals across Minnesota working to protect and improve human health by promoting climate health.

INTRODUCTION

As established in our previous comments, HPHC writes in support of the Cumulative Impacts Law (MN Statutes §116.065) and the need for permitting decisions to consider cumulative pollution impacts in Environmental Justice (EJ) communities. In this comment, we support strengthening the rules, and reply to some of the MPCA's statements regarding specific recommendations we had made to strengthen the rules. In addition to this specific comment, we support the comments submitted by the Frontline Communities Protection Coalition, of which we are a member.

Clarification of Benchmarks for requiring a cumulative impacts analysis for permit reissuances. 7007.6050, subp. 4, C.

HPHC commented that permit reissuances need benchmarks for requiring a cumulative impact analysis based on the pollution impacts of the facility and health and environmental conditions in the community, in addition to consideration of enforcement actions. In response to this suggestion, MPCA responded in paragraph 605: *Existing facilities may be subject to the proposed rules when the applicability requirements in part 7007.6020 are met and the owner or operator of the facility applies for a permit application for facility expansion or reissuance of an expiring permit.* MPCA describes in paragraphs 606-611 the circumstances under which a permit reissuance would be subject

to the CI analysis requirement. However, as written, it is unclear how the Commissioner will apply these benchmarks in evaluating the initial assessment submitted by an owner/operator for a permit reissuance. We suggest that MPCA add language to 7007.6050, subp. 4, C to reference the benchmarks that would be applied to permit reissuances, which should include 7007.6050, subpart 3, F through K, to determine if a full CI analysis should be required.

Requiring the facility to contact/work with community organizations

In response to this suggestion, the MPCA states in paragraph 967 *“It is not needed or reasonable for the MPCA to forward [sic] with the requirement for facilities to work directly with local or trusted organizations to conduct outreach and engagement for multiple reasons.”*

Their first reason is that *“it would be difficult to determine reasonable processes for selecting organizations and requirements for which entities, and how many entities a facility would be required to contact or consult in the various census tracts affected by the rule across the state.”* We suggest that the MPCA could open a comment period in which residents could nominate trusted organizations. The comment period results could determine how many entities to include in each area.

Their second reason is that some areas may have no organized, trusted group able or willing to engage in this process. Our suggested comment period could determine whether this is an issue. If so, we suggest that residents in that area could either form a group to fill that role, or elect to have permits automatically declined due to inability to conduct the community engagement needed to gain informed community consent. If a community organization is willing but lacks the staff capacity to engage in this process, it could be reasonable for a facility to contribute funding to expand the trusted organization’s staffing, as long as that funding is not dependent on a profitable outcome for the facility.

Their third reason is that “the MPCA does not have the authority to require those organizations to meet with or consult with the facility, as would be required.” We are not asking for the MPCA to take enforcement action against a community organization that elects not to coordinate with a facility. We are asking that permit issuance or re-issuance be predicated on the facility meeting certain requirements for public engagement, including documentation of good-faith attempts to reach community members through trusted organizations. We feel that this is a necessary and reasonable step.

Signage and notification

We appreciate the MPCA’s response that posting and maintaining physical signage and making newspaper notices are needed and reasonable actions, and that including the language in paragraph 989 is not reasonable and would allow for noncompliance with the law.

We appreciate the MPCA’s acknowledgment *“that posting an 8.5”x11” sign may present accessibility challenges,”* and appreciate their statement that allowing smaller signs can increase the ability to post these signs in a wider variety of high-traffic locations. We feel that it’s reasonable for a facility to place some 8.5x11 signs in high-traffic locations that wouldn’t allow larger signs, if such locations exist. However, we want to reiterate our original point that an 8.5x11 sign containing all required information would not be large enough to meet accessibility

guidelines, and therefore should not count toward meeting the minimum number of posted signs.

The MPCA suggests that the commissioner has “*the ability to enforce the legibility requirement in part 7007.6080 subpart 7, item (A), subitem (1)*,” however, this section does not actually have any specific legibility requirements, beyond that the signs must be “*in a legible condition*.”

Without clarifying the minimum size needed to meet accessibility guidelines, or defining “*legible condition*,” we are concerned that this will be determined by the commissioner’s subjective perception of legibility, without consideration for people with vision impairments. If a facility cannot provide signs that meet accessibility requirements, it should be required to demonstrate an effort to specifically inform people with vision disabilities through other avenues.

HPHC appreciates the opportunity to submit comments and recommendations in support of the effective implementation of Minnesota's groundbreaking cumulative impacts law and its anticipated contribution to social and health equity.

Sincerely,

Kathleen Schuler, MPH, Policy Director

Ava Corey-Gruenes, MA, Organizer & Outreach Coordinator

Health Professionals for a Healthy Climate

In the Matter of the Proposed New Rules Governing Cumulative Impacts Analysis for Permit Decisions in Environmental Justice Areas, *Minnesota Rules* chapter 7007; Revisor's ID Number R-4805; CAH Docket No. 21-9003-39398

Reply comments from the Frontline Communities Protection Coalition

Permit reissuances and benchmarks

FCPC commented that permit reissuances need benchmarks for requiring a cumulative impact analysis that are based on the pollution impacts of the facility and health and environmental conditions in the community, in addition to consideration of enforcement actions.

MPCA's response to this comment - 605: *Existing facilities may be subject to the proposed rules when the applicability requirements in part 7007.6020 are met and the owner or operator of the facility applies for a permit application for facility expansion or reissuance of an expiring permit.* MPCA goes on to describe in paragraphs 606-611 the circumstances under which a permit reissuance would be subject to the CI analysis requirement.

However, the existing benchmarks for permit reissuances fall short of what is needed to accomplish the goals of this law. The cumulative impacts law was passed in large part because there is a significant existing burden of pollution in environmental justice communities. While we understand that MPCA has the authority to require a cumulative impacts analysis under the discretionary cumulative impacts analysis section, we believe that the benchmarks should be set at a level that will protect environmental justice communities. This means setting benchmarks based on pollution impacts and existing health conditions in the community. MPCA has already shown the ability to set pollution based benchmarks for permit expansions, and there is no reason why permit reissuances should be treated differently. This will ensure that we are properly studying the impacts of existing polluters in environmental justice communities regardless of whether they have violated their permits in the years leading up to their application.

Determination of substantial adverse impact

FCPC commented that the definition of substantial adverse impact should be as objective as possible to avoid uncertainty and legal challenge to agency decisions. We believe that the current approach is far too subjective, lacks clarification and guidelines for decision making, and will leave many parties confused and frustrated about how decisions are made.

MPCA's response to this comment - 1166: *Developing a standardized review mechanism is inherently challenging given that cumulative impacts do not conform to a singular, quantifiable formula. Understanding and evaluating cumulative impacts requires considering both quantitative and qualitative criteria to determine substantial adverse impacts. Each permit application will be unique in its impact on existing environmental stressors due to its specific air emissions, location, and environmental stressors present in the surrounding area. Providing a detailed framework for evaluating cumulative impacts of factors that lack numerical thresholds is very difficult due to the wide range and complex mixtures of potential cumulative impacts caused by each unique project proposal. Many of the non-air*

environmental stressors and factors do not have clear numerical benchmarks available for comparison, and an objective methodology weighing comments received from the public does not exist. However, these are still crucial criteria to consider when coming to a determination of whether approving a permit would result in a substantial adverse impact. Rather than attempting to specify thresholds for all potential substantial adverse impact outcomes, the MPCA has proposed a general framework that is applicable to the entire range of possible impact scenarios incorporating qualitative and quantitative criteria.

1167. While the framework relies on qualitative flexibility, it balances this discretion with rigorous requirements for administrative accountability. The MPCA recognizes the importance of clarity in reaching a determination and preparing the decision document for consistency and transparency. Part 7007.6100, subpart 4, requires the MPCA to prepare a written decision document containing the reasons for the determination, including descriptions of the information used and how the information was weighed in consideration. The MPCA will make every effort to deliver clear, detailed reasoning and to ensure consistency, transparency, and fairness in reaching these decisions within each decision document. As a result, this mandatory explanatory record creates a clear, predictable standard that protects the integrity and fairness of every final permitting action.

However, we disagree that the mandatory explanation record creates a clear, predictable standard. Regardless of the agency providing documentation of how they have made a decision, there is still significant uncertainty going into a cumulative impacts analysis. We agree that there is some need for discretionary decision-making due to the complicated nature of what is being considered, but the current approach relies too heavily on this discretion. The MPCA has already shown an ability to set objective definitions of substantial adverse impact for the air quality modeling analysis and air emission risk analysis. We believe adding a third objective definition based on a cumulative impacts stressor analysis will result in more cases being covered by objective standards and reduce the agency's reliance on its own discretion. This will maintain the agency's ability to make decisions for permit applications that may be more complicated or should have additional considerations while providing a more objective and predictable approach to decision-making for most permits.

CBA revisions and permit denial

FCPC commented that the proposed rules fail to establish criteria under which a proposed community benefit agreement would be denied. We believe that environmental justice communities should have the option to advocate against a CBA entirely. We also raised concerns about the lack of clarity about when a proposed CBA would be denied by the agency.

MPCA response to this comment - 1324: *Minn. Stat. § 116.065, subd. 5(b) establishes a reason to deny a permit, which states, "Unless the commissioner enters into a community benefit agreement with the facility owner or operator, the commissioner must deny a permit...". Part 7007.6110, subpart 9, item A specifies the requirements that must be satisfied before the MPCA can enter into a CBA, including demonstrating that the CBA and owner's or operator's responses address the issues raised during the CBA public notice and comment periods described in part 7007.6080, and that the CBA gives priority to benefits that directly impact the residents of the impacted environmental justice area. If those requirements are not*

satisfied, part 7007.6110, subpart 9, item C requires the owner or operator to provide additional information, or revise the community benefit agreement based on information considered in part 7007.6110, subpart 9, item B. MPCA goes on to state in paragraph 1325: If the owner or operator does not provide additional information or revise the community benefit agreement, the MPCA will not enter into the CBA and must deny the permit.

However, we believe that this response does not properly address our concerns. There is still no way for communities to directly advocate against a CBA. If a community opposes a CBA, their best option would be to raise as many issues as possible to create a high bar for addressing the issues raised during the CBA public notice and comment periods. This could lead to tension and unproductive conversations that leave all parties frustrated. The proposed rules also do not include any limitations on how much a proposed CBA can be changed, nor does it include any process for gathering further community feedback when a proposed CBA is revised. This could lead to a facility gathering feedback, proposing a CBA that does not meet the criteria, then continuously revising the proposed CBA until it gets approved. This goes against the entire purpose of community outreach in the development of the CBA. We believe that if a facility needs to revise a proposed CBA more than once, they should have to go through the public engagement process again. This would ensure that community input is still relevant in the finalization of a CBA.

Building Trades comment and MPCA response to analysis of environmental stressors

The Building Trades commented that comparing stressors to a state or county average is relative and arbitrary and it doesn't mean that the stressor is necessarily unhealthy. They also note: "It appears that by using whichever metric is lower on any given stressor and census tract, the agency is tilting the scale toward finding that there are adverse stressors. This is not a valid way of measuring community health."

MPCA response to this comment- 407: *The geographic point of comparison is not a health-based benchmark. Where a stressor specific reference value is available, that value is used to determine whether a stressor is adverse. When no reference value exists, the lower of the state or county median is used to identify census tracts where an environmental stressor is relatively elevated. Comparing a census tract to the 50th percentile helps identify potentially disproportionate environmental burdens that may not be captured by a health-based benchmark. This designation indicates a potentially disproportionate burden, not that the stressor exceeds a level known to be harmful.*

We agree with the MPCA that a geographic point of comparison is not a health-based benchmark. When evaluating stressors, the FCPC agrees with the MPCA that using a geographic comparison point for stressors that do not reflect measurable health impacts, but increase susceptibility to harm from pollution, provides a valid comparison point and using the lower or more protective value in this analysis is consistent with the statute. MN statutes 116.065Subd. 1 (f) defines "environmental stressors" as "factors that may make residents of an environmental justice area susceptible to harm from exposure to pollutants." These include social and environmental factors that impact health but are not health-based benchmarks. This

methodology is consistent with legislative intent, as reflected in the statutory definition of environmental justice in MN statutes 116.065 Subd. 1 (d) (2) “social and environmental factors, including but not limited to poverty, substandard housing, food insecurity, elevated rates of disease, and poor access to health insurance and medical care.”

Thank you for your consideration of our reply comments.

Sincerely,

Frontline Communities Protection Coalition