



Cumulative Impacts Rule
Rebuttal Period Post-Hearing Response to
Comments

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Introduction

This document contains the response to the public comments received during the post-hearing public notice regarding the Minnesota Pollution Control Agency's (MPCA's) Notice of Intent to Adopt Rules With a Hearing (Notice) published May 18, 2026. Six commenters submitted comments to the Court of Administrative Hearings' eComments website or via U.S. mail by 4:30 pm on September 21, 2026, for the post-hearing comment period for the rule hearing. This document contains the response to the public comments received after 4:00 pm on September 18, 2026.

The MPCA posted its "Hearing and Post-Hearing Response to Comments" to Court of Administrative Hearings' eComments website on September 18, 2026. That document contains the response to the public testimony provided during the public hearing held on September 1, 2026, and the public comments received during the post-hearing public notice period that were received prior to 4:00 pm on September 18, 2026. That document includes comments provided by 14 commenters who provided verbal testimony during the rule hearing on September 1, 2026, and by one commenter who submitted comments to the Court of Administrative Hearings' eComments website on September 7, 2026.

The MPCA appreciates the thoughtful and thorough comments that were received during the post-hearing comment period for this rule. Many of the submissions received included multiple components. The agency has provided its responses to those comments below, and where possible, has grouped similar comments together to provide a single response.

List of interested parties

The following is a list of interested parties who submitted written comments on the proposed rules during the post-hearing public comment period from September 1, 2026, through September 21, 2026. Only interested parties who submitted written comments after 4:00 pm on September 18, 2026, are listed in the table below.

For interested parties who submitted verbal testimony or written comments on the proposed rules during the public hearing held on September 1, 2026, or the post-hearing public comment period prior to 4:00 pm on September 18, 2026, please see the MPCA's response in the MPCA preliminary response to post-hearing comments (aq-rule2-25ak).

Table 1. List of interested parties

Commenter ID	Date	Commenter Name	Organization Name	Notes
077	September 21, 2026	Andrew Morley	Minnesota Chamber of Commerce	
078	September 21, 2026	Jenni Lansing	Minneapolis Health Department	
079	September 21, 2026	Mike Karbo	American Petroleum Institute	
080	September 21, 2026	Yukyan Lam	Tishman Environment and Design Center	
081	September 21, 2026	Kevin Pranis	LIUNA Minnesota and North Dakota	
082	September 21, 2026	Brian Ryks	Metropolitan Airports Commission	

General comments

The MPCA received 20 general comments that were not specific to any rule part, which are identified and responded to below.

General support for the proposed rule

1. The MPCA received six comments that expressed general support for the proposed rule, for specific requirements identified in the proposed rule, and/or the goals of the proposed rule. These comments are identified and responded to below.
2. Some commenters included a summary/overview of their comments alongside their comments expressing general support. In some cases, commenters also included statements expressing support for adopting more stringent rules or improvements to the proposed rules identified elsewhere in their comments. While these summary/overview statements are also identified alongside the commenter's general support, the more detailed comments provided by the commenter are responded to elsewhere in this document.
3. **Minneapolis Health Department-078-16:** The Minneapolis Health Department stated, "The Minneapolis Health Department Sustainability, Healthy Homes, and Environment Division appreciates the opportunity to submit these comments on MPCA's cumulative impacts rulemaking."
4. **American Petroleum Institute-079-01:** The American Petroleum Institute stated, "Thank you for the opportunity to provide post-hearing comments regarding the proposed cumulative impacts rule.

API appreciates the effort that the Minnesota Pollution Control Agency (MPCA) has invested in developing this framework and the extensive stakeholder engagement conducted throughout the rulemaking process. The Agency has clearly undertaken a significant effort to respond to comments and provide additional explanation regarding the proposed rule. Our comments focus on whether several key elements of the proposed rule have been sufficiently supported and explained to demonstrate their need, reasonableness, and practical implementation."

5. **American Petroleum Institute-079-08:** The American Petroleum Institute stated, "**CONCLUSION**
API appreciates MPCA's efforts to develop a cumulative impacts framework and its willingness to engage stakeholders throughout this process. We respectfully encourage careful consideration of these issues as part of the review of whether the proposed rule is supported by a sufficient showing of need and reasonableness.

Thank you for the opportunity to comment."

6. **Tishman Environment and Design Center-080-12:** The Tishman Environment and Design Center stated, "We thank the MPCA for considering our feedback and welcome the opportunity to discuss any of the ideas contained in these comments."
7. **Metropolitan Airports Commission-082-01:** The Metropolitan Airports Commission stated, "The Metropolitan Airports Commission (MAC) appreciates the opportunity to submit post-hearing comments regarding the proposed Cumulative Impacts Analysis (CIA) rules published by the Minnesota Pollution Control Agency (MPCA) on May 18, 2026 (the "Proposed Rules" or "Rules"). MAC submits these comments with appreciation for the thoughtful work the MPCA and the 182 commenters have put into the rulemaking process. MAC's intent in submitting these post-hearing comments is to help improve the final rules in a way that balances the laudable goal of mitigating historically disproportionate environmental impacts with reasonable requirements for businesses that provide critical economic growth and stability to our region.

MAC, the owner and operator of Minneapolis-St. Paul International Airport (“MSP”) and a system of six general aviation airports in the Twin Cities metropolitan area, continues to have strong concerns about the detrimental effects the Rules may have on MAC’s statutory mandate to promote air transportation and its associated impact on economic growth and positive community benefits throughout Minnesota. Specifically, MAC has concerns about the following aspects of the Proposed Rules:”

8. **Metropolitan Airports Commission-082-05:** The Metropolitan Airports Commission stated, “MAC appreciates this opportunity to provide post-hearing comments on the Rules. Although MAC supports the overall goals of the Proposed Rules, we remain very concerned that aspects of the Proposed Rules will suppress the development of aviation facilities and related high-paying aviation jobs and blunt MAC’s statutory mandate to develop the full potential of the metropolitan area as an aviation center. We strongly urge MPCA to fashion final rules that advance the goal of environmental justice while at the same time providing sufficient certainty for, and eliminating needless additional regulatory burden upon, permittees seeking to grow aviation facilities and foster the associated economic benefits that will allow our great state to thrive.”

MPCA RESPONSE

9. The MPCA appreciates the statements of support for the proposed rule.

General opposition

10. The MPCA received three comments that expressed general opposition for the proposed rule, for specific requirements identified in the proposed rule, and/or the adoption of the proposed rule in its current form. These comments are identified and responded to below.
11. Some commenters included a summary/overview of their comments alongside their comments expressing general opposition. In some cases, commenters also included statements expressing opposition for adopting the proposed rules without specific changes suggested by the commenters identified elsewhere in their comments. While these summary/overview statements are also identified alongside the commenter’s general opposition, the more detailed comments provided by the commenter are responded to elsewhere in this document.
12. **Tishman Environment and Design Center-080-01:** The Tishman Environment and Design Center stated, “**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. 2310 (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 effects of pollution...” 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.”

At this point in the post-hearing comment period, we feel compelled to express our disappointment with MPCA’s Pre-Hearing Response to Comments, 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.”

13. **LIUNA Minnesota and North Dakota-081-01:** The commenter stated, “LIUNA Minnesota and North Dakota (“LIUNA”) appreciates the opportunity to submit comments on the Cumulative Impacts Analysis Rule proposed by the Minnesota Pollution Control Agency (“MPCA”).

LIUNA is a construction union that represents roughly 14,000 skilled construction laborers across the state of Minnesota, including thousands that live and work in environmental justice areas as defined in Minn. Stat. 116.065 Subd. 1(e). This fact gives LIUNA a relatively unique perspective among stakeholders: we want to ensure that our members, their families and all Minnesotans can enjoy a healthy environment, but we also recognize that many of our members, along with other blue-collar families, rely on economic opportunities associated with industrial and other activities that have potential environmental impacts.

During the 2023 legislative session, LIUNA was directly involved in negotiating the legislative compromises that created Minn. Stat. 116.065, because we agreed with the authors’ goal of protecting socioeconomically and environmentally overburdened communities from incremental industrial development that does not produce net benefits for residents. At the same time, we wanted to ensure that the law did not unnecessarily deprive our members of work opportunities or inadvertently intensify the socioeconomic facing environmental justice communities by blocking beneficial development.

The keys to our support for the final bill were language requiring that adverse impacts be “substantial” in order to justify denial of a permit or requirement of a community benefits agreement; and the establishment of “benchmarks” designed to ensure that the process advanced environmental justice by targeting communities that are both socioeconomically burdened – as defined in statute – and environmentally burdened. Unfortunately, despite the best efforts of agency staff, we do not believe the proposed benchmarks meet the letter or spirit of the law.”

14. **LIUNA Minnesota and North Dakota-081-06:** The commenter stated, “We do not see any simple means to correct these fundamental flaws which threaten to harm our members and many communities the rule is supposed to protect without a full redraft of the benchmarks to meet their original purpose – targeting the rule to communities that are socioeconomically and environmentally overburdened.

We thank your honor for your consideration.”

MPCA RESPONSE

15. The MPCA appreciates the statements expressing opposition and/or concerns regarding the proposed rule. The MPCA does not dispute that the proposed rule will have an impact on regulated parties, the people living nearby them, and the people of Minnesota broadly. However, the MPCA disagrees with the statements that the proposed rule fails to meet the objectives identified in Minn. Stat. § 116.065, subd. 6, that the proposed rule goes beyond the scope of Minn. Stat. § 116.065, and that the proposed rule is unreasonable. As identified in the Statement of General Need section of the SONAR (p. 10-18) and the General Reasonableness section of the SONAR (p. 51-52), the MPCA believes the proposed rules meet the obligations set forth in Minn. Stat. § 116.065, the proposed rules develop a suitable set of cumulative impacts tools and analyses to evaluate cumulative impacts from the actions/projects regulated parties pursue to meet those statutory obligations, and the proposed rules provide a consistent methodology for the decision-making processes identified therein.

Decision criteria and statutory obligations

16. The MPCA received two comments expressing concern regarding decision criteria and statutory obligations for the determinations regarding whether to require a cumulative impacts analysis and when an environmental or health impact is a substantial adverse impact. Commenters expressed concerns that they believe the MPCA has failed to meet the statutory obligations in Minn. Stat. § 116.065.

17. **Minnesota Chamber of Commerce-077-02:** The Minnesota Chamber of Commerce stated, “**MPCA Decisions Regarding Whether to Require a Cumulative Impacts Analysis**

Another area of the proposal that needs greater certainty and predictability is the section governing when MPCA will require a cumulative impacts analysis. While the proposed rule provides some benchmarks, it also provides the Commissioner broad discretion to require an analysis even if benchmarks are not met based on a determination that one is “necessary” and “supported by material evidence,” without more definition of what that means. We understand that this catch-all derives from the statute; however, the proposed rule could and should provide some guidance regarding what would make a cumulative impact analysis “necessary” under Subpart 2. Without any real guidance as to when the Commissioner is likely to exercise discretion and require a CIA, the proposed rule will create substantial uncertainty for owners and operators considering potential capital investments. As noted above, uncertainty undermines capital investment in new and existing infrastructure, which drives economic expansion and new jobs for our communities. The Chamber therefore recommends MPCA consider some form of notice and guidance prior to the Commissioner exercising discretion and requiring a CIA.”

18. **Metropolitan Airports Commission-082-03:** The Metropolitan Airports Commission stated, “**In pre-hearing comments, MAC noted that the Proposed Rules give the Commissioner too much discretion at critical points in the process.** In response, MPCA did not explain how the Commissioner might determine a CIA is “necessary and supported by material evidence” even if the results of an Initial Assessment show the requested permit action does not exceed any established pollutant benchmarks. Proposed Rule 7007.6070, subp. 2.A. MAC reiterates its comment that by simply restating the broad statutory language in Minn. Stat. § 116.05, subd. 3(e)(1), the Proposed Rule provides no definition of or parameters for when a CIA would be “necessary” or supported by “material evidence.” The resulting unfettered discretion creates uncertainty in the impacts analysis process and will again make permittees hesitant to invest in new or expanded facilities.

MAC therefore strongly recommends MPCA develop objective parameters to guide and limit the Commissioner's discretion in ordering CIAs for a facility with emissions below relevant pollutant levels or, better still, eliminate this vague and unlimited power altogether in the final version of this Rule."

MPCA RESPONSE

19. These comments are similar to comments identified in paragraphs 305 to 317, under the "decision criteria and statutory obligations" subheading in the MPCA response to notice comments (aq-rule2-25af).
20. Please see the MPCA's response to comments regarding decision criteria and statutory obligations in paragraphs 318 to 330 in the MPCA response to notice comments (aq-rule2-25af).
21. The MPCA intends to make applicability and agency expectations as clear as possible on documents, forms, and websites. Additionally, part 7007.6070, subpart 6 in the proposed rules requires the commissioner to prepare and post a document that contains the reasonings for determining whether to require a cumulative impacts analysis. The document must describe the information that was considered in making the decision and how the information was weighed. These documents will provide additional understanding of how these determinations are made and how information is weighed that is specific to the requested permit action.

Cumulative Impacts Mapping and Analysis Platform (CI-MAP)

Environmental stressors

22. The MPCA received one comment regarding environmental stressors and how they are selected or developed in the Cumulative Impacts Mapping and Analysis Platform (CI-MAP).
23. **Minnesota Chamber of Commerce-077-01:** The Minnesota Chamber of Commerce stated, "I write today on behalf of the Minnesota Chamber of Commerce, 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.

CI-MAP and Environmental Stressors Database

The CI-MAP tool and the data it contains regarding environmental stressors play an important role in the proposed rule, as both the Minnesota Pollution Control Agency (MPCA) and various commenters have recognized. As the MPCA noted in its response to comments from various parties regarding the environmental stressors, Minn. Stat. § 116.065, subd. 5(f) provides that MPCA is to create and maintain an "updated database of environmental stressors" and that the database is to be accessible to the public. See MPCA Pre-Hearing Response to Comments at paragraph 394. The Agency also recognized the need for a transparent update process and the importance of public comment in the update process stating, "Public comment has historically been, and will remain, the pathway for reviewing and revising environmental stressors. MPCA intends to continue robust community engagement alongside its ongoing work to develop clear and transparent standard operating procedures as part of the update and maintenance cycle of environmental stressors and CI-MAP."

To implement that intent, the Chamber recommends that MPCA amend the proposed rule to explicitly provide for a transparent process for updating CI-MAP that includes a specific cadence and process, including a comment period. The environmental stressors play a key role in the proposed rule. The details for how CI-MAP is updated should not be left to be worked out through more

informal guidance following this rulemaking. As noted in multiple sets of comments on the proposal, the regulated community needs greater certainty and predictability under this rule to make it workable in practice and not undermine future investments.”

MPCA RESPONSE

24. These comments are similar to comments identified in paragraphs 378 to 392, under the “Environmental stressors” subheading in the MPCA response to notice comments (aq-rule2-25af).
25. Please see the MPCA’s response to comments regarding environmental stressors in paragraphs 394 to 407 in the MPCA response to notice comments (aq-rule2-25af).

Comments related to implementation of the proposed rule

Permitting efficiency and timeliness

26. The MPCA received two comments regarding permitting efficiency and timeliness.
27. **LIUNA Minnesota and North Dakota-081-03:** LIUNA Minnesota and North Dakota stated, “We recognize efforts made by MPCA to develop a reasonable process for evaluating applications from existing facilities for permit reissuances and modifications. It is possible that applicants for those permits will navigate the process because they have no choice if they want to continue operating. On the other hand, we fear based on our experience and recent conversations that firms and institutions considering new investments are extraordinarily unlikely to subject themselves to a new, unknown and potentially arduous process when they could simply pursue better-off locations where that investment is less needed. This would be the definition of a perverse outcome, yet it is an almost certain outcome based on the current benchmark framework.”
28. **Metropolitan Airports Commission-082-02:** The Metropolitan Airports Commission stated, “**In its pre-hearing comments, MAC raised concerns that current and future permittees subject to the Proposed Rules may forgo new or facility expansion projects because of the additional time and costs. MPCA’s response acknowledges that the Proposed Rules will further delay already slow permitting timelines in Minnesota.**

MAC reiterates its comments encouraging MPCA to review its Proposed Rules to consider efficiencies and time limits that could decrease the uncertainty on regulated parties and help ensure compliance with statutory permitting goals. Permitting delays and uncertainty have the potential to discourage growth of aviation facilities and thereby blunt MAC’s statutory mandate and stunt economic growth in Minnesota, including the associated high-paying jobs.

In particular, MAC urges MPCA to provide a way to meet the statutory permitting efficiency goals in Minn. Stat. § 116.03 while implementing Minn. Stat. § 116.065. MAC is concerned by MPCA’s acknowledgment that “permitting efficiency goals would likely not be met for projects that require a cumulative impacts analysis [(CIA)] and [Community Benefit Agreement (CBA)].” Minn. Stat. § 116.065 does not modify the statutory permitting goal in Minn. Stat. § 116.03, and MAC is concerned by MPCA’s recognition that the Proposed Rules would not comply with the Minnesota Legislature’s permitting efficiency goals.

This failure to provide a path for a CIA and CBA that meets the statutory goal may lead permittees in Minnesota to forgo expansion opportunities or compel these businesses to undertake expansion outside of Minnesota. This is true for any expansion that has the potential to subject a facility to the Proposed Rules—even one that might ultimately result in reduced impacts or emissions through, for example, adopting new control technologies as part of the expansion.”

MPCA RESPONSE

29. These comments are similar to comments identified in paragraphs 447 to 463, under the “Permitting efficiency and timelines” subheading in the MPCA response to notice comments (aq-rule2-25af).
30. Please see the MPCA’s response to comments regarding permitting efficiency and timelines in paragraphs 464 to 474 in the MPCA response to notice comments (aq-rule2-25af).

Forms, guidelines, guidance, and other suggestions regarding implementation

31. The MPCA received one comment that provided suggestions for materials and other efforts the MPCA could take to aide in the implementation of the proposed rule.

32. **American Petroleum Institute-079-07:** The American Petroleum Institute stated, **“IMPLEMENTATION CONSIDERATIONS**

Finally, multiple commenters raised concerns regarding implementation complexity, permitting timelines, and resource requirements associated with the proposed framework. These concerns were not limited to industry commenters and were raised by a variety of stakeholders.

As implementation moves forward, we believe it will be important to ensure that the process remains predictable, transparent, and focused on information that is most relevant to the permit decision under review.”

MPCA RESPONSE

33. These comments are similar to comments identified in paragraphs 493 to 497, under the “Forms, guidelines, guidance, and other suggestions regarding implementation” subheading in the MPCA response to notice comments (aq-rule2-25af).
34. Please see the MPCA’s response to comments regarding forms, guidelines, guidance, and other suggestions regarding implementation in paragraph 498 in the MPCA response to notice comments (aq-rule2-25af).

Requests for clarifications

Information considered in decision points

35. The MPCA received one comment regarding environmental and health impacts and how they are connected to the requested permit action under review.

36. **American Petroleum Institute-079-02:** The American Petroleum Institute stated, **“FOCUS ON IMPACTS ASSOCIATED WITH THE PERMIT DECISION**

One question raised throughout this rulemaking is how the cumulative impacts analysis remains connected to the permit action under review. The proposed framework incorporates a broad range of environmental, health, social, and community indicators. Many of these factors provide important context regarding community conditions and may help characterize existing burdens. However, it remains unclear how some factors ultimately inform permit decisions when they are not directly attributable to, or reasonably influenced by, the facility seeking a permit.

In our view, the administrative record would benefit from additional explanation regarding how MPCA distinguishes between:

- information that provides community context;
- information that is used to evaluate facility-specific impacts; and
- information that can meaningfully influence permit outcomes or mitigation measures.”

MPCA RESPONSE

37. The MPCA appreciates the commenter's suggestion to clarify how information is used to inform decision points throughout the proposed rule. The MPCA offers the following clarifications to provide a better understanding of how different information is considered as part of various decision points.
38. Broadly, there is a variety of information that the MPCA must consider as part of the process and decision framework provided by Minn. Stat. § 116.065. For example, this includes information like the permit application and the applicant's assessment of the need to conduct a cumulative impacts analysis (see Minn. Stat. § 116.065, subd. 3(c)(1)) as well as other information the commissioner deems relevant (see Minn. Stat. § 116.065, subd. 3(c)(1)). Accordingly, the proposed rule identifies the information that the MPCA will consider and the criteria the MPCA will use in considering that information in making the required decisions consistent with the statutory requirements in Minn. Stat. § 116.065.
39. The environmental stressor database, CI-MAP, and the information that it provides are examples of the information that provide community context. This database provides information regarding environmental stressors that are present in a given census tract and allows the MPCA to better understand the impacts associated with the requested permit action.
40. The assessment of impacts required under part 7007.6050, subpart 3, item G is an example of information that is used to evaluate facility-specific impacts. This portion of the initial assessment provides information specifically regarding the impacts of the requested permit action, both positive and negative, for the MPCA to evaluate as part of determining whether to require a cumulative impacts analysis.
41. The description of any current or proposed emission/operating limits, operational conditions, control measures, or other measures required under part 7007.6050, subpart 3, item I and the analysis and proposal of emission/operating limits, operational conditions, control measures, or other measures required under part 7007.6090, subpart 3, item G are examples of information that can influence permit outcomes or mitigation measures. These portions of the initial assessment and cumulative impacts analysis provide information regarding what the facility is doing to address the impacts of the requested permit action. For example, a facility seeking to add a new process that emits pollution may also propose additional controls that reduce the impacts associated with that new process. This provides information for the MPCA to evaluate as part of determining whether to require a cumulative impacts analysis and as part of determining whether issuing the requested permit action would have a substantial adverse impact, which would require the MPCA to deny the permit unless the facility entered into a community benefit agreement with the MPCA .
42. The MPCA previously provided details regarding decision criteria and the information considered at the decision points in the proposed rule in response to comments provided during the pre-hearing public notice. These comments are identified in paragraphs 305 to 317, under the "decision criteria and statutory obligations" subheading in the MPCA response to notice comments (aq-rule2-25af).
43. Please see the MPCA's response to comments regarding decision criteria and statutory obligations in paragraphs 318 to 330 in the MPCA response to notice comments (aq-rule2-25af).

Environmental stressors

44. The MPCA received three comments regarding environmental stressors and how they are included and evaluated under the proposed rule in general.

45. **American Petroleum Institute-079-03:** The American Petroleum Institute stated, “**SCIENTIFIC SUPPORT FOR EVALUATING ENVIRONMENTAL STRESSORS**

API remains concerned that portions of the cumulative impacts analysis appear to require evaluation of interactions among environmental stressors for which accepted methodologies remain limited or evolving. The rule appropriately recognizes that community vulnerabilities can influence overall health outcomes. At the same time, questions remain regarding how applicants are expected to evaluate interactions among nonchemical stressors and facility-specific emissions in a consistent and scientifically supportable manner. We believe additional clarity would improve implementation and reduce the likelihood of inconsistent analyses across facilities and communities.”

46. **LIUNA Minnesota and North Dakota-081-02:** LIUNA Minnesota and North Dakota stated, “LIUNA agrees broadly with comments filed on July 16, 2026 by the Minnesota State Building and Construction Trades Council concerning the flaws in the benchmark framework and definitions. These flaws include:

- Use of benchmark categories that correlated strongly with the socioeconomic factors that define an environmental justice area under the statute, effectively diluting the “environmental” half of environmental justice (cost burden, inequality, education, unemployment, health coverage, food insecurity, and potentially disability)
- Setting benchmarks based on the lower of the state and county medians, effectively defining levels of pollution or other factors that are entirely normal for an area as excessive burdens requiring special protections.
- Use of benchmarks for which census tracts are not an appropriate unit of analysis (e.g. lack of recreational open space which may be present at very short distances immediately across a census tract line).
- Use of environmental benchmarks that are of dubious value in assessing the actual environmental quality and health of residents (e.g. using impervious surfaces based on the putative connection to water quality even though water quality is being separately measured).

We are concerned that use of the proposed benchmarks will lead to arbitrary decisions that do not align with the needs of communities. And we are even more concerned that the scheme risks punishing low-income communities whose burdens are largely if not entirely socioeconomic by delaying and driving away investments that could enhance the incomes, health coverage, food security, and overall economic security of residents.

47. **LIUNA Minnesota and North Dakota-081-05:** LIUNA Minnesota and North Dakota stated, “Our concern that results could be arbitrary and even perverse are not just theoretical. We have attached three examples of Environmental Justice Areas where the benchmarks would apparently require cumulative impacts review in places where underlying levels of pollution are modest to minimal, and where the requirement for analysis would be driven by socioeconomic factors that could be helped by investment, by double-counting of co-related factors, and by setting benchmarks that allow an area that is the same or better than its county or state to be treated as burdened because it equals or exceeds a single median.”

MPCA RESPONSE

48. The MPCA appreciates the commenters’ concerns regarding how environmental stressors are evaluated and used throughout the proposed rule. Additionally, the MPCA believes that one commenter is mistaken in their understanding of environmental stressors versus benchmarks, and how they are used under proposed rule 7007.6050 to determine whether a cumulative impacts

analysis is required. The MPCA offers the following clarifications to provide a better understanding of environmental stressors and benchmarks including what they are, what they are not, and how they are evaluated as part of analyses required under the proposed rule.

49. Part 7007.6050, subpart 3 establishes information that must be submitted as part of the initial assessment. This information includes the environmental stressor information for the impacted environmental justice area. Environmental stressors provide the MPCA with information about the area and are factors that may make residents of the area susceptible to harm from exposure to pollutants, as defined in 116.065, subd. (f). Subpart 4 establishes benchmarks for requiring cumulative impact analysis. Unlike environmental stressors, benchmarks are used to evaluate the requested permit action and as required by Minn. Stat. § 116.065, subd. 6(c)(1), establish objective criteria for determining whether a cumulative impacts analysis is required to further evaluate the potential impacts of the requested permit action.
50. Environmental stressors are defined in part 7007.6010, subpart 17 and Minn. Stat. § 116.065, subd. 1(f). Part 7007.6020, subpart 5 in the proposed rule identifies the information that the MPCA must include in the environmental stressor database (also known as CI-MAP) required under Minn. Stat. § 116.065, subd. 5(f). MPCA believes one commenter is mistakenly referring to this environmental stressor database, as benchmarks.
51. Environmental stressors, and the information provided in CI-MAP, are not benchmarks. Environmental stressors are contextual information used to help understand the impacts that a facility may have on the environment or the health of residents of an environmental justice area. Environmental stressor information for a census tract does not solely determine whether a cumulative impacts analysis is required or not.
52. The proposed rules require regulated parties to include the environmental stressor information provided by the MPCA as part of an initial assessment required under part 7007.6050 (see part 7007.6050, subpart 3, item F). The proposed rules require that the owner or operator preparing an initial assessment consider those environmental stressors as part of the assessment of impacts of the requested permit action (see part 7007.6050, subpart 3, item G). This assessment focuses on the impacts to the environment and the health of the residents of environmental justice areas, consistent with the statutory directives in Minn. Stat. § 116.065, subd. 3(a).
53. The MPCA expects the evaluation of impacts associated with the requested permit action, and consideration of the environmental stressors present, will require a site-specific evaluation. Each facility and environmental justice area is unique and therefore, the MPCA cannot provide an exhaustive list of specific ways in which environmental stressors and impacts associated with the requested permit action will interact. However, the MPCA anticipates creating materials that provide examples and other suggestions of how facilities could evaluate these interactions.
54. Regarding one commenter's concern that this may drive away permit actions that bring in economic development and/or other benefits for the environment and the residents of an environmental justice area, the proposed rule specifically identifies that owners or operators provide that information to the MPCA and public during the initial assessment of the impacts of a requested permit action, both positive and negative, under part 7007.6050, subpart 3, item G. This allows owners or operators of a facility who believe a permit action will result in positive impacts, to highlight those for consideration by the MPCA and the public.
55. Regarding one commenter's examples that were included as part of their comments, the commenter include three printouts of census tract summaries from CI-MAP, with no additional context or information provided alongside those printouts. These examples are incomplete and do

not include the information necessary to determine if a cumulative impacts analysis would be required (e.g., they do not include a requested permit action nor the initial assessment for the requested permit action that provides the required information under part 7007.6050, both which are needed as part of the information needed for the MPCA to determine whether a cumulative impacts analysis is required for a requested permit action).

56. Additionally, these comments are also similar to comments identified in paragraphs 378 to 392, under the “Environmental stressors” subheading in the MPCA response to notice comments (aq-rule2-25af).
57. Please see the MPCA’s response to comments regarding environmental stressors in paragraphs 394 to 407 in the MPCA response to notice comments (aq-rule2-25af).
58. Furthermore, these comments are also similar to comments identified in paragraphs 635 to 638, under the “Use of environmental stressors throughout the rule” subheading in the MPCA response to notice comments (aq-rule2-25af).
59. Please see the MPCA’s response to comments regarding the use of environmental stressors throughout the rule in paragraphs 639 to 642 in the MPCA response to notice comments (aq-rule2-25af).

Comments outside the scope of this rule

60. The MPCA received one comment regarding topics outside the scope of this rule.
61. **LIUNA Minnesota and North Dakota-081-04:** LIUNA Minnesota and North Dakota stated, “We appreciate the careful work done by project proposers to prepare a Certificate of Need application that meets all of the requirements set out in statute and rule. We recommend that the Commission accept the application as complete and order an informal review process as recommended by the Department of Commerce and MISO.”

MPCA RESPONSE

62. The MPCA notes these comments.

Comments specific to the Proposed Rules

The MPCA received 33 comments regarding specific rule parts which are summarized and responded to below.

PART 7007.1450 MINOR AND MODERATE PERMITS AMENDMENTS

When a permittee may make a proposed modification or change

63. The MPCA received one comment regarding when a permittee may make a proposed modification or change. Commenters expressed concern that facilities may no longer be able to begin actual construction of a moderate amendment upon MPCA approval letter due to applicability of the new proposed rules.
64. **Minnesota Chamber of Commerce-077-06:** The Minnesota Chamber of stated, “**Building Prior to Completion of Cumulative Impact Analysis or Permit**

Under proposed Minn. R. 7007.1450, subp. 7(C), permittees are not allowed to begin construction until either the commissioner determines no cumulative impact analysis is required or, if one is required, a permit is issued. MPCA did not identify any statutory requirement for this aspect of the proposed rule, see MPCA Pre-Hearing Response Comments at paragraphs 534-535, and there is no

indication in the statutory text that the Legislature intended for such a change. Of course, operations of the modification cannot begin until an amended permit is issued, which will protect the public and the environment from any adverse impacts (including contributions to cumulative impacts), but owners and operators should be allowed, at their own risk, to begin construction prior to receiving moderate permit amendments with a letter of approval, as is currently the case.

Thank you for consideration of these additional comments.”

MPCA RESPONSE

65. This comment is similar to comments identified in paragraphs 530 to 533, under the “When a permittee may make a proposed modification or change” subheading in the MPCA response to notice comments (aq-rule2-25af).
66. Please see the MPCA’s response to comments regarding when a permittee may make a proposed modification or change in paragraphs 534 to 535 in the MPCA response to notice comments (aq-rule2-25af).
67. The MPCA has general statutory authority in Minn. Stat. § 116.07, subd. 4 to adopt rules and referenced this general authority, in addition to the specific statutory authority to adopt the proposed rules provided in Minn. Stat. § 116.065, subd. 6, in the SONAR (p. 21) for the proposed rules. Under this general authority, the MPCA has the broad authority to adopt, amend, and rescind rules including the proposed modifications to the existing part 7007.1450, subpart 7.

PART 7007.6010 DEFINITIONS

Definition of “impacted environmental justice area”

68. The MPCA received one comment related to the definition of impacted environmental justice area. Commenters recommended that an EJ area should be within one mile of a proposed permit action rather than the property boundary of a stationary source.
69. **Metropolitan Airports Commission-082-04:** The Metropolitan Airports Commission stated, **“In its pre-hearing comments, MAC explained that the Proposed Rules define “impacted environmental justice area” too broadly, without consideration of which communities may be most impacted by a proposed permit action.** In response, MPCA concludes that the definition of “impacted environmental justice area” is consistent with the statute. In reaching this conclusion, MPCA conflates the statute’s applicability provisions in Minn. Stat. § 116.065, subd. 2, with the phrase “environmental justice area impacted by the facility” and does not recognize that the Proposed Rules use the phrase “impacted environmental justice area” more broadly than the statute. In doing so, MPCA effectively concludes that any environmental justice area located in or within one mile of the stationary source boundary is “impacted” by a permit action at the facility without regard for the location of the permit action within the facility. As a result, the Proposed Rules would require an applicant to provide information about an entire stationary source as part of the initial assessment, even if the proposed permit action would be well over a mile from the relevant environmental justice area.

MAC offers MSP as an example to provide a sense of scale for some facility boundaries. MSP neighbors several different environmental justice communities with different needs. MSP is approximately 2.5 miles across, and a permit action in the southwest corner would impact different communities than one in the northeast. Nonetheless, the proposed rules define “impacted environmental justice area” as an environmental justice area that is “within one mile of the *property boundary* of a stationary source,” without regard for whether a change to an existing stationary

source—such as the types of facility expansion projects that bring economic development to MSP—is within one mile *of an environmental justice area*.

MAC continues to recommend that MPCA consider amending the proposed definition of “impacted environmental justice area,” Minn. R. 7007.6010, subp. 26, as follows:

“one or more environmental justice areas, in whole or in part, that are within one mile of the proposed permit action property boundary of a stationary source, including any environmental justice area that the proposed permit action stationary source is located in.”.

This change would better align the Proposed Rules with the plain language of the statute, which requires the Commissioner to determine whether a *proposed permit action* may substantially impact the environment or health of the residents of an environmental justice area and requires the evaluation of whether the *permit action* sought is likely to impact the environment or health of residents.

While MAC believes this definition change would be the clearest way to revise the Proposed Rules to reflect the statutory scope, MPCA could also revise the proposed requirements on providing information as part of the Initial Assessment process to tailor the Initial Assessment to the statutory requirement that MPCA consider the *proposed permit action* rather than the whole stationary source.”

MPCA RESPONSE

70. These comments are similar to comments identified in paragraphs 565 to 568, under the “Definition of “impacted environmental justice area”” subheading in the MPCA response to notice comments (aq-rule2-25af).
71. Please see the MPCA’s response to comments regarding creating a definition of community in paragraphs 569 to 571 in the MPCA response to notice comments (aq-rule2-25af).

PART 7007.6020 APPLICABILITY AND PROCEDURES

Existing facilities and exemptions

72. The MPCA received two comments regarding the applicability of the proposed rules to existing facilities and whether the proposed rules provide a pathway for requiring existing facilities to conduct a cumulative impacts analysis.
73. **Minneapolis Health Department-078-01:** The Minneapolis Health Department stated, “**The Minneapolis Health Department Sustainability, Healthy Homes, and Environment Division submits these comments in response to the Minnesota Pollution Control Agency’s (MPCA) Notice of Intent to Adopt proposed new rules governing cumulative impacts analysis for permit decisions in Environmental Justice areas, Minnesota Rules chapter 7007.**

7007.6050 Subpart 1: The definition of “requested permit action” in 7007.6000 Subpart 35 is “an application submitted by an owner or operator of a stationary source that requests a permit.” The definition of “permit” in 7007.6000 Subpart 31 is “any part 70 permit issued under part 7007.0200 or any state permit issued under part 7007.0250, subpart 5 or 6, that authorizes new construction or facility expansion.” The definition of “facility expansion” in 7007.6000 Subpart 19 states that facility expansion does not include insignificant modifications, administrative permit amendments, or minor permit amendments. Therefore, we interpret this section to mean that the only permit amendment/modification types triggering an initial assessment are moderate and major amendments (in addition to new permits and permit renewals). We recommend that MPCA states clearly in this section and/or in guidance documents which permit types and specific actions under

those permit types do and do not trigger the initial assessment (i.e., state clearly if administrative and minor permit amendments do not trigger the initial assessment). Additionally, we request clarification on whether a major amendment that is not triggered by an emissions increase would be required to complete the initial assessment (e.g., if the major amendment is triggered by changes to monitoring, reporting, or recordkeeping requirements only). We recommend that MPCA takes into consideration facilities that are completing voluntary pollution control equipment installations which require permit amendments and that MPCA minimizes permitting burden on these facilities. Finally, we recommend that MPCA publishes an annual update of the August 2025 list of current facilities affected by the cumulative impacts law (Press release: Approximately 89 current facilities may be affected by Minnesota's new cumulative impacts law)."

74. **Tishman Environment and Design Center-080-07:** The Tishman Environment and Design Center stated, **"Existing facilities are insufficiently covered by requirements to conduct a mandatory cumulative impacts analysis, compromising the law's objective of reducing pollution and remedying 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. Shortly before the passage of Minnesota's cumulative impacts law, MPCA 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..." 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."

MPCA RESPONSE

75. These comments are similar to comments identified in paragraphs 590 to 602, under the "Existing facilities and exemptions" subheading in the MPCA response to notice comments (aq-rule2-25af).
76. Please see the MPCA's response to comments regarding applicability of the proposed rules for existing facilities and exemptions in paragraphs 603 to 612 in the MPCA response to notice comments (aq-rule2-25af).
77. The MPCA appreciates the comments and recommendations. The MPCA agrees with the commenters' interpretation of moderate and major amendment applicability, and agrees that applicability needs to be made as clear as possible on documents, forms, and websites. This includes keeping an updated list of potentially subject facilities. To clarify, a major amendment must include a modification to meet the proposed definition of facility expansion under part 7007.6010, subpart 19. Modification is defined under part 7007.0100, subpart 14. A major amendment for changes to only monitoring, reporting, and recordkeeping requirements, does not meet the definition of modification or facility expansion and is not required to complete an initial assessment. Likewise, adding voluntary pollution control equipment is unlikely to meet the definition of modification which requires the change to result in an increase in emissions. For facility expansion applicability,

the MPCA recommends reviewing the definition of modification under part 7007.0100, subpart 14, the allowed changes in subitems (1) to (5) that are not considered modifications, and the calculation methods described in part 7007.1200.

78. With regard to existing facilities contributing to a community's disproportionate burden, the MPCA believes the proposed rules establish various pathways for existing facilities to be required to conduct a cumulative impacts analysis, and the MPCA expects facilities will propose limits and reductions to reduce impacts as a result.

PART 7007.6050 INITIAL ASSESSMENT

Benchmarks for reissuance permits

79. The MPCA received three comments regarding the benchmarks for reissuance permits. One commenter expressed concern related to the applicability of small fines, one commenter expressed concern related to relying on enforcement action history, and one commenter expressed concern related to pending enforcement actions.
80. **Minnesota Chamber of Commerce-077-03:** The Minnesota Chamber of Commerce stated, "Benchmark for Reissuance of Existing Permits. In proposed Minn. R. 7007.6050, subp. 4(C), MPCA establishes a benchmark for whether a CIA is required for permit reissuances based on enforcement actions issued by the Agency, county governments acting under delegated MPCA authority, or U.S. EPA for a violation (1) for a failed performance test; (2) that includes criminal enforcement; (3) that includes a forgivable or nonforgivable monetary penalty; or (4) that results in an administrative penalty. The University of Minnesota and the Chamber pointed out that this benchmark could result in facilities having to conduct cumulative impact analyses based on minor violations with no nexus to environmental harm. The University of Minnesota provided some examples of violations with small monetary penalties that could trigger a CIA based on the proposed rule: the mislabeling of a hazardous waste container, an out-of-date contact on a contingency plan, and a tank owner's failure to pass an agency-required examination. See MPCA Pre-Hearing Response to Comments at paragraph 674. Similarly, the Chamber pointed out that the rule would sweep in paperwork errors that did not increase emissions or otherwise contribute to environmental stressors. *Id.* at paragraph 673. The Agency failed to engage with these points; instead, it claimed that while an enforcement action may be resolved "the past impacts from it still need to be considered," *id.* at 728, which misses the point that in some instances the conduct at issue will not have resulted in an impact or any genuine risk of one. The Chamber recommends that this portion of the rule be amended to only encompass violations which resulted in some actual impact to the health or environment in an environmental justice area."
81. **Minneapolis Health Department-078-03:** The Minneapolis Health Department stated, "7007.6050 Subpart 4(C): We recommend that, in addition to the four violation types listed, a pending violation investigation (e.g., an unresolved finding of violation) be added as a trigger for cumulative impacts analysis. We understand that the process between an initial notice of violation and a final determination of criminal enforcement, monetary penalty, or administrative order can be lengthy. We request that facilities in active conference with a regulatory agency over an environmental violation be included in cumulative impacts analysis, both to ensure that facilities with very recent violations undergo cumulative impacts analysis, and to disincentivize intentional lengthening of the violation conference process."
82. **Tishman Environment and Design Center-080-08:** The Tishman Environment and Design Center stated, "**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....” However, research has shown that the enforcement of environmental regulations is weaker in EJ communities. 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.

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.” 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 words “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. 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.”

MPCA RESPONSE

83. The comments are similar to comments identified in paragraphs 671 to 720, under the “Benchmarks for reissuance permits” subheading in the MPCA response to notice comments (aq-rule2-25af).
84. Please see the MPCA’s response to comments regarding benchmarks for reissuance permits in paragraphs 721 to 729 in the MPCA response to notice comments (aq-rule2-25af).
85. The MPCA does not believe the rule can be amended to only encompass the violations which resulted in some actual impact, as recommended, because it is not possible to know, during the rulemaking process, the circumstances of future violations and all factors that will contribute to determining whether the violation resulted in an actual impact. This is why the cumulative impacts analysis is needed, to further review and assess the violations for potential impacts before making such a determination. Furthermore, as discussed in paragraph 728 in the MPCA response to

comments document (aq-rule2-25af), the MPCA maintains that a history of violations can be indicative of larger operational concerns that may have the potential to impact. Additionally, an industrial facility with history or pattern of non-compliance can impact public trust that operations are not impacting the environment or health of an environmental justice area. The MPCA believes it is important to maintain that trust by requiring a cumulative impacts analysis prior to reissuing a permit with a history of violations.

86. The MPCA agrees with the importance of enforcement in environmental justice areas. The MPCA disagrees that the definition of “substantial impact” is nearly identical to the definition of “substantial adverse impact.” The MPCA would like to clarify that when making a determination of need for a cumulative impacts analysis under 7007.6070, subpart 1, item B, the commissioner is responsible for determining whether issuing the requested permit action “may substantially impact the environment or the health of the residents of an environmental justice area” using the criteria in part 7007.6070, subpart 4. This criteria requires the commissioner to consider specific elements of cumulative potential impacts. Additionally, part 7007.6070, subpart 3 requires the commissioner to consider the initial assessment that contains a variety of cumulative impacts related information, and evaluate the impacts that may be expected to occur. This means cumulative impacts are evaluated and considered for every reissuance permit subject to the rules even when they are below the mandatory enforcement benchmarks. This determination of need process is discussed in the SONAR (p. 97-101) and is distinctly different than the process for making a determination that there will be a “substantial adverse impact” based on a cumulative impacts analysis.
87. The MPCA acknowledges the concern related to pending enforcement actions. Minn. R. 7007.0800, subp. 2 outlines the limitations and standards required to be included in a permit to “ensure compliance with all applicable requirements at the time of permit issuance.” Minn. R. 7007.1000, subp. 1(E) also notes “The following conditions must be satisfied for the agency to issue a permit or permit amendment: the conditions of the permit provide for compliance with all applicable requirements and the requirements of parts 7007.0100 to 7007.1850.” In practice, these rules make clear the MPCA will not issue a permit if a facility is not in compliance with any of the requirements it contains. After issuance, enforcement is pursued if noncompliance is determined.
88. When determining need for a cumulative impacts analysis, the MPCA expects to consider pending enforcement actions as part of the determination process that occurs after checking the mandatory benchmarks, as described on pages 97-101 of the SONAR. This process requires consideration of the initial assessment (detailed and complete compliance history), material evidence, and any other information and data the commissioner deems relevant. Additionally, the MPCA may require a cumulative impacts analysis, as discussed on page 101 of the SONAR, if a pending enforcement action prevents the MPCA from having the information necessary to make a reasoned and informed decision.

Benchmarks for facility expansion permits

89. The MPCA received two comments regarding the benchmarks for facility expansion permits
90. **Minneapolis Health Department-078-02:** The Minneapolis Health Department stated, “7007.6050 Subpart 4(B)(1)(a-h): The criteria pollutant benchmarks listed here are the same as the maximum emissions increases for an insignificant modification as defined in 7007.1250. This indicates that a project with emissions increases in the minor amendment category would require a cumulative impacts assessment, despite minor amendments being excluded from the cumulative impacts process. We recommend that MPCA provides clarification on this. Is it possible that a facility completing a major amendment could have lower emissions increases than a facility completing a minor amendment (due to recordkeeping, monitoring, or reporting changes triggering the major

amendment requirement)? And in that case would a major amendment facility be required to complete cumulative impacts analysis while another facility with larger emissions increases (completing a minor amendment) would not? We are concerned about scenarios where facilities completing voluntary air pollution control equipment installations could trigger major amendments due to permit changes despite relatively low emissions increases associated with the project, and that cumulative impacts analysis requirements could discourage them from pursuing the project.”

91. **Tishman Environment and Design Center-080-09:** The Tishman Environment and Design Center stated, “**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 equal to or greater than the specified amount, in pounds per hour....” 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 MPCA 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. 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.

MPCA RESPONSE

92. The comments are similar to comments identified in paragraphs 671 to 720, under the “Benchmarks for reissuance permits” subheading and comments identified in paragraphs 730 to 735 under the “Benchmarks for facility expansions permits” subheading in the MPCA response to notice comments (aq-rule2-25af).
93. Please see the MPCA’s response to comments regarding benchmarks for reissuance permits in paragraphs 721 to 729 and paragraphs 735 to 740 in the MPCA response to notice comments (aq-rule2-25af).
94. The MPCA would like to clarify that benchmarks, as discussed in paragraph 722 in the MPCA response to notice comments (aq-rule2-25af), are intended to be a specific, easily verifiable set of objective criteria for determining when a cumulative impacts analysis is required without further consideration or evaluation. So while total facility emissions are not considered as part of the mandatory benchmarks for expansion permits, the next step, as described in the SONAR (p. 97-101), is the determination process that requires the commissioner to consider a wider range of total facility information contained within the permit application and initial assessment when determining need.
95. The MPCA would like to clarify that a moderate or major amendment with an emissions increase below the mandatory benchmarks (those established in part 7007.6050, subpart 4, item B) are required to submit an initial assessment and may still be required to conduct a cumulative impacts analysis based on potential impacts to the environment or the health of residents of an environmental justice area, material evidence, or through the petition process. To clarify applicability, a major amendment must include a modification to meet the proposed definition of facility expansion under part 7007.6010, subpart 19. Modification is defined under part 7007.0100, subpart 14. A major amendment for changes to only monitoring, reporting, and recordkeeping requirements does not meet the definition of modification or facility expansion and is not required to complete an initial assessment. Likewise, adding voluntary pollution control equipment is unlikely to meet the definition of modification which requires the change to result in an increase in

emissions. For facility expansion applicability, the MPCA recommends reviewing the definition of modification under part 7007.0100, subpart 14, the allowed changes in subitems (1) to (5) that are not considered modifications, and the calculation methods described in part 7007.1200.

MPCA review of an initial assessment

96. The MPCA received one comment regarding the review of the information contained within an initial assessment by MPCA and other interested parties.
97. **Minneapolis Health Department-078-04:** The Minneapolis Health Department stated, “7007.6050 Subpart 5(B)(4): We support the requirement for MPCA to post a notice including a description of the requested permit action. We emphasize the importance that this description of the requested permit action be clear, brief, and understandable to the general public so that potential petitioners can focus their petitions appropriately. We recommend that MPCA includes in this description a distinction between the requested permit action that is up for review and the facility’s general operations that are not up for review. Additionally, MPCA should specify in this posting if/when the facility’s general operations will be up for review (e.g., a permit renewal timeline) so that potential petitioners know when they could plan for a petition unrelated to the current requested permit action.”

MPCA RESPONSE

98. This comment is similar to comments identified in paragraphs 774 to 775, under the “MPCA review of an initial assessment” subheading in the MPCA response to notice comments (aq-rule2-25af).
99. Please see the MPCA’s response to comments regarding MPCA review of an initial assessment in paragraphs 776 to 778 in the MPCA response to notice comments (aq-rule2-25af).
100. The MPCA appreciates the comments and recommendations, and as discussed in paragraph 778 of the MPCA response to notice comments (aq-rule2-25af), the MPCA is still considering the best and most effective ways to provide that information. The MPCA agrees that information should be provided in a way that allows interested parties to focus on relevant aspects of a facility or project to allow for more effective and meaningful participation. The MPCA expects to summarize and surface information from the permit, permit application, and initial assessment, including relevant dates or timelines, to make that information more accessible to the public.

PART 7007.6060 PETITION PROCESS

Material evidence

101. The MPCA received one comment regarding material evidence. Commenters provided suggestions regarding what constitutes material evidence and how material evidence should be evaluated under the petition process established in part 7007.6060.
102. **American Petroleum Institute-079-05:** The American Petroleum Institute stated, “**MATERIAL EVIDENCE AND PETITION-TRIGGERED ANALYSES**
- The petition process is an important mechanism for public participation. However, uncertainty remains regarding what constitutes material evidence and how that evidence will be evaluated when determining whether a cumulative impacts analysis should be required. A clearer description of evidentiary standards would benefit both communities seeking to participate in the process and applicants seeking to understand how permitting decisions will be made.”

MPCA RESPONSE

103. This comment is similar to comments identified in paragraphs 780 to 786, under the “Material

evidence” subheading in the MPCA response to notice comments (aq-rule2-25af).

104. Please see the MPCA’s response to comments regarding material evidence in paragraphs 787 to 791 in the MPCA response to notice comments (aq-rule2-25af).

Petition decision process

105. The MPCA received one comment regarding the decision to grant or deny a petition under part 7007.6060. Commenters provided suggestions regarding how material evidence should be evaluated under the petition process established in part 7007.6060 and reconciling multiple petitions.
106. **Minneapolis Health Department-078-06:** The Minneapolis Health Department stated, “7007.6060 Subpart 2(A)(6): We have concerns about the petition process. It is a challenging task for residents to understand the scope of the requested permit action, the specific pollutants involved, and the adverse impacts of those pollutants. It is concerning that the community may go through the time-consuming process of submitting a petition and evidence if the facility was to fall into the mandatory cumulative impacts analysis anyway. MPCA should be transparent about what metrics in the petition process will push a facility into a discretionary cumulative impacts analysis. We recommend that MPCA’s criteria for granting a petition be made public. As this process begins, if petitions do not actually result in discretionary cumulative impacts analysis requirements this will be a major source of frustration for impacted communities. One option to reduce the burden on communities would be to move the timing of the petition process until after the MPCA review of the initial assessment. If the MPCA determines the facility does not meet the requirements for a mandatory cumulative impacts analysis, then the MPCA could open the process at that point for community petition. We also recommend that MPCA provide examples of material evidence and make support resources available to help residents understand the requested permit action and the pollutant implications.”

MPCA RESPONSE

107. This comment is similar to comments identified in paragraphs 793 to 795, under the “Petition decision process” subheading in the MPCA response to notice comments (aq-rule2-25af).
108. Please see the MPCA’s response to comments regarding the petition decision process in paragraphs 796 to 798 in the MPCA response to notice comments (aq-rule2-25af).
109. Additionally, the MPCA would like to note that residents have the ability to wait until after the MPCA’s review of an initial assessment and determination of whether a cumulative impacts analysis is needed to submit a petition. As long as the petition is filed on or before the date the public notice and comment period for the draft permit ends (see part 7007.6060, subpart 1, item B). There is no obligation on communities to prepare a petition in advance of the MPCA’s determination of whether a cumulative impacts analysis is needed.
110. As MPCA implements the rule, MPCA will develop guidance for owners and operators, community members, and MPCA staff for several aspects of the rule. Implementation of the proposed rule will also involve developing standard forms; templates; and other materials to support portions of the rule like the petition process identified in part 7007.6060. Additionally, the MPCA must create a form for environmental justice area residents to use in submitting a petition to the MPCA as identified by Minn. Stat. § 116.065, subd. 6(c)(5). The MPCA anticipates that this form and/or other guidance materials will identify examples of material evidence that petitioners could include within a petition.
111. The MPCA would also like to note that a draft of the petition form, labeled “Cumulative Impacts

analysis petition form (mm-cm2-02), is publicly available on MPCA's Cumulative Impacts Rulemaking Website (<https://www.pca.state.mn.us/get-engaged/cumulative-impacts-rulemaking>).

Community participation, petition notifications, and petition submittal deadlines

112. The MPCA received three comments regarding participation in petition process. Commenters provided suggestions for how the MPCA make information available to enable communities to participate and use the petition process available to them. Commenters also provided suggestions regarding what information should and shouldn't be posted as part of providing notice of the opportunity to submit a petition. Furthermore, commenters provided suggestions regarding the deadline for submitting a petition identified in part 7007.6060, subpart 1, item B.
113. **Minneapolis Health Department-078-07:** The Minneapolis Health Department stated, "7007.6060 Subpart 3(B): We oppose the requirement for petitioners to notify the facility directly. This is a burden on residents due to potential fear of retaliation if petitioners have to interact directly with the facility. Additionally, a mailing from a resident may not be filed properly and reach the right people at the facility as compared to a communication from MPCA. We recommend that MPCA add an option for MPCA to notify the facility after receiving the petition."
114. **Minneapolis Health Department-078-08:** The Minneapolis Health Department stated, "7007.6060 Subpart 4(B): We support the requirement for MPCA to notify the petitioner and facility about whether the petition is compliant with the rule. We recommend that MPCA add a timeline specifying how long MPCA has to review and provide this compliance notification. If there is no timeline specified, a petitioner could be waiting for months to hear back about a petition and then suddenly find out that their petition was noncompliant and only have 15 days to correct."
115. **Minneapolis Health Department-078-10:** The Minneapolis Health Department stated, "7007.6060 Subpart 6(B)(5): Signatories may fear retaliation if the petition is posted online and includes their names and addresses. This is a particular concern if there are petition signatories who work at the facility or live immediately adjacent to the facility. We recommend that MPCA redact signatory names and addresses in the online posting and when providing the petition to the facility. If this is not possible, we request that MPCA make it clear to signatories that their information will be posted."
116. **MPCA RESPONSE**
117. This comment is similar to comments identified in paragraphs 800 to 805, under the "Community participation, petition notifications, and petition submittal deadlines" subheading in the MPCA response to notice comments (aq-rule2-25af).
118. Please see the MPCA's response to comments regarding community participation, petition notifications, and petition submittal deadlines in paragraphs 806 to 809 in the MPCA response to notice comments (aq-rule2-25af).
119. Regarding the requirement for petitioners to notify the facility, the notification serves multiple purposes by allowing the owners and operators to be involved early in the petition process and encourage direct contact between all parties early in the petition process. The SONAR (p. 93-94) discussed the need and reasonableness of the notification established in part 7007.6060, subpart 3, item B.
120. The MPCA will prioritize reviewing petitions for permit actions subject to the proposed rule. When a petition is received, part 7007.6060, subpart 6 establishes that the MPCA will post notice of receiving a petition on the agency website. The MPCA expects this notice to create a prioritization to review a submitted petition for both completeness, and if complete, to make a determination of

whether to grant or deny the petition.

121. Lastly, under part 7007.6060, subpart 6, item A, the proposed rule establishes the petition must be posted on the agency website. Item B identifies the information that must be included, which does not include information such as personally identifiable information.

Petition process statutory requirements

122. The MPCA received one comment regarding aspects of the petition process that are established by statutory requirements under Minn. Stat. § 116.065. Commenters included suggestions regarding alternative signature thresholds, alternative petition methods for Tribes, applicability to existing facilities, requirement to include material evidence, and general support for the inclusion of a petition process as part of the proposed rules.

123. **Minneapolis Health Department-078-05:** The Minneapolis Health Department stated, “7007.6060 Subpart 2: We recommend that MPCA provide an optional petition template to help residents meet the requirements of this section, similar to the petition template and instructions webpage provided by the Minnesota Environmental Quality Board.”

MPCA RESPONSE

124. This comment is similar to comments identified in paragraphs 811 to 819, under the “Petition process statutory requirements” subheading in the MPCA response to notice comments (aq-rule2-25af).
125. Please see the MPCA’s response to comments regarding petition process statutory requirements in paragraphs 820 to 823 in the MPCA response to notice comments (aq-rule2-25af).
126. The MPCA would also like to note that a draft of the petition form, labeled “Cumulative Impacts analysis petition form (mm-cm2-02), is publicly available on MPCA’s Cumulative Impacts Rulemaking Website (<https://www.pca.state.mn.us/get-engaged/cumulative-impacts-rulemaking>).

Timeline for correcting incomplete petitions

127. The MPCA received one comment regarding the timeline for correcting incomplete petitions. Commenters expressed support for the ability to revise a petition if deemed incomplete and suggested that the MPCA provided a different amount of time than the 15 calendar days specified in part 7007.6060, subpart 4, item D, subitem (4).

128. **Minneapolis Health Department-078-09:** The Minneapolis Health Department stated, “7007.6060 Subpart 4(D)(4): We oppose the timeline of 15 calendar days to remedy petition deficiencies before the petition is voided. This timeline is too short if petitioners are expected to go back to 100 people to get signature information corrected or collect additional signatures. We recommend making this timeline 30 calendar days. We anticipate a potential scenario in which a resident organizes a petition that focuses on the facility’s general operations rather than a specific requested permit action, submits the petition, and finds out that it is deficient due to the incorrect focus. In this case 15 days would not be sufficient for them to re-educate signatories on the requested permit action and re-collect 100 signatures.”

MPCA RESPONSE

129. This comment is similar to comments identified in paragraphs 833 to 837, under the “Timeline for correcting incomplete petitions” subheading in the MPCA response to notice comments (aq-rule2-25af).
130. Please see the MPCA’s response to comments regarding timeline for correcting incomplete

petitions in paragraphs 838 to 840 in the MPCA response to notice comments (aq-rule2-25af).

PART 7007.6070 DETERMINATION OF NEED

Transparency in decision making

131. The MPCA received one comment regarding transparency in decision-making regarding the determination of need established in part 7007.6070.

132. **American Petroleum Institute-079-04:** The American Petroleum Institute stated, “**NEED FOR GREATER TRANSPARENCY IN DECISION-MAKING**

The proposed rule establishes benchmarks and screening criteria, which we can support as an effort to improve consistency and predictability. However, the rule also provides significant discretion regarding determinations of need, substantial adverse impacts, and consideration of material evidence. Several commenters requested greater clarity regarding how these determinations will be made and how competing sources of information will be weighed.

The MPCA responses acknowledge these concerns but generally reference existing explanations in the SONAR. While those explanations are helpful, we continue to believe additional clarity regarding decision criteria would strengthen implementation of the program and improve transparency for all parties.

MPCA RESPONSE

133. This comment is similar to comments identified in paragraphs 848 to 850, under the “Transparency in decision making” subheading in the MPCA response to notice comments (aq-rule2-25af).

134. Please see the MPCA’s response to comments regarding transparency in decision making in paragraphs 851 to 854 in the MPCA response to notice comments (aq-rule2-25af).

135. The MPCA intends to make applicability and agency expectations as clear as possible on documents, forms, and websites. Additionally, 7007.6070, subp. 6 in the proposed rules requires the commissioner to prepare and post a documents containing the reasons for determining need. The document must describe the information that was considered in making the decision and how the information was weighed. The MPCA believes these postings will provide additional understanding of how these determinations are made and how information is weighed.

PART 7007.6080 Public Participation

Requiring the facility to contact/work with community organizations

136. The MPCA received two comments regarding outreach and engagement activities with the public.

137. **Minneapolis Health Department-078-11:** The Minneapolis Health Department stated, “7007.6080 Subpart 6: We support the meeting-specific requirements in this section. We recommend that MPCA add a requirement for the facility or MPCA to provide childcare and/or a community meal and/or a hybrid option for these community meetings to improve access for community members.”

Minneapolis Health Department-078-12: The Minneapolis Health Department stated, “7007.6080 Subpart 7: We support the public notice requirements in this section. We recommend that MPCA adds a requirement for facilities to directly notify the local municipality and neighborhood association or other community groups, if present in the environmental justice area, about the public meeting.”

MPCA RESPONSE

138. This comment is similar to comments identified in paragraphs 950 to 966, under the “Requiring the facility to contact/work with community organizations” subheading in the MPCA response to notice comments (aq-rule2-25af).
139. Please see the MPCA’s response to comments regarding requiring the facility to contact/work with community organizations in paragraphs 967 to 976 in the MPCA response to notice comments (aq-rule2-25af).

PART 7007.6090 CUMULATIVE IMPACTS ANALYSIS**Cumulative impacts analysis contents: odor, dust, and noise impacts**

140. The MPCA received one comment regarding odor, dust, and noise impacts and evaluations within the contents of a cumulative impacts analysis required under part 7007.6090.
141. **Minneapolis Health Department-078-14:** The Minneapolis Health Department stated, “7007.6090 Subpart 3(F): While we support the requirement for the facility to develop an odor, dust, and noise mitigation or management plan, we are concerned that the inclusion of this requirement at this point in the process will incentivize facilities to claim that they have no potential to cause odor, dust, or noise off-site, in order to move forward without developing the mitigation or management plan. We recommend that MPCA provide a mechanism of accountability to determine if claims from facilities that they have no potential to cause odor, dust, or noise off-site are reasonable. Odor, dust, and noise are common concerns from residents so we support the inclusion of those topics in this process.”

MPCA RESPONSE

142. The MPCA appreciates the commenter’s support for the inclusion of a requirement to evaluate odor, dust, and noise impacts and potential mitigation or management plans and the concern regarding accountability. The proposed rules establish minimum requirements for facility submittals, the process for MPCA to review and make determinations regarding those submittals. Information provided by a facility must also be certified by the responsible official for truth, accuracy, and completeness (see part 7007.6040, subpart 1). Additionally, the Commissioner retains the ability to deem a facility submittal incomplete or inadequate if needed and request additional information (see part 7007.6040, subpart 2 and 5; part 7007.6070, subpart 5; and part 7007.6100, subpart 3).
143. The MPCA must evaluate every submittal and information provided, including verifying every piece of information provided to verify that information is true and accurate. If information is not true or accurate, the facility is required to proactively supplement or correct the information under part 7007.6040, subpart 5.

Air quality modeling analysis

144. The MPCA received one comment regarding the air quality modeling analysis included as part of a cumulative impacts analysis required under part 7007.6090.
145. **Minnesota Chamber of Commerce-077-04:** The Minnesota Chamber of Commerce stated, “**Air Modeling**

In Paragraph 1106 of its Pre-Hearing Response to Comments, MPCA addressed recommendations regarding the focus and scope of air modeling stating:

To fully understand the impacts of air emissions from a facility the proposed rules, the maximum modeled concentration beyond the ambient air boundary should be identified, regardless of

whether that concentration is associated with a receptor placed within or outside of an environmental justice area. The MPCA would consider changes to clarify how the modeled results are used in the substantial adverse impact determination but is still determining what specific changes would be needed.

The Chamber welcomes the Agency's explanation of its position and its willingness to consider a change. The Chamber notes that there is a difference between a desire of "understanding" and an enforceable compliance point or boundary. Given the statutory focus on environmental justice areas, the Chamber believes an amendment to the proposed rule is appropriate. MPCA refers to the possibility of addressing the issue in guidance documents, see *id.* at 1107; however, addressing it in the proposed rule is more appropriate. Specifically, the Chamber recommends that a new item B be added to Subpart 1 of proposed Minn. R. 7007.6100 that provides as follows:

In evaluating the results of the air quality modeling analysis or air emissions risk analysis under item A, the commissioner shall focus the substantial adverse impact determination on modeled concentrations within the impacted environmental justice areas identified in the initial assessment or acceptable risk levels for receptors within the impacted environmental justice areas."

MPCA RESPONSE

146. This comment is similar to comments identified in paragraphs 1095 to 1103, under the "Air quality modeling analysis" subheading in the MPCA response to notice comments (aq-rule2-25af).
147. Please see the MPCA's response to comments regarding air quality modeling analysis in paragraphs 1104 to 1107 in the MPCA response to notice comments (aq-rule2-25af).
148. The MPCA recognizes that the commentor would like to isolate maximum modeled concentration to the environmental justice areas, but the MPCA disagrees with this assessment. Many facilities require multiple air permits at the same time or have to apply for other situational items that apply to their facility, for example the Prevention of Significant Deterioration (PSD) program. If the MPCA only required modeling to occur within a certain boundary, the facility would have to provide multiple modeling scenarios to fulfill each and every statutory or rule requirement that the facility would be subject to. The approach MPCA is proposing within the Cumulative Impacts Rule would save the facility both time and money.
149. The MPCA would also like to note, that the maximum modeled concentration is the gold standard within the MPCA, wherever it may be within the modeling domain that is prescribed by the facility's dynamics and structure, and is used within the current processes within MPCA. For example, within the MPCA's Air Emissions Risk Analysis Guidance (<https://www.pca.state.mn.us/sites/default/files/aq9-18.pdf>), Page 21, "When dispersion modeling is performed for use in AERAs, the maximum annual modeled air concentrations and the first high modeled hourly air concentrations are used." This is used in both current permits that require air toxics modeling and environmental review analyses.
150. Within the currently acceptable modeling that the MPCA accepts (EPA certified models), most models use the steady state Gaussian plume model, which takes into account the source's parameters, nearby buildings, weather, terrain, and other factors to calculate where the highest concentration of ground level pollution occurs. This can land outside of an environmental justice area, but this also means that it doesn't always land outside of an environmental justice area, as each update to the meteorological data, buildings, or terrain will change where the highest concentration occurs. This shift can also occur daily and hourly as the winds and weather fronts change day to day.

Overlap with other rules and statutes

151. **Minnesota Chamber of Commerce-077-05:** The commentor stated, “**Potential Overlap with CIAs Required Under Other Rules**”

In its previous comments, the Chamber pointed out that the cumulative impact analyses required under the proposed rule could, in some cases, overlap with cumulative impact analyses required as part of environmental review and/or cumulative impact analyses required pursuant to the Agency’s proposed Air Toxics Rule. In responding to the Chamber’s comments on both issues, MPCA recognized the potential for such overlap, but did not agree to any amendment of the proposed rule. See MPCA Pre-Hearing Response to Comments at paragraph 1116 and 1121. With respect to cumulative impact analyses required for environmental review, MPCA stated it could “where applicable” use information that “can be shared across programs” but that the Commissioner reserves the right to request newer information. With respect to the proposed Air Toxics Rule, MPCA similarly noted the “opportunities to use existing information” between the two rules but disagreed that it should “establish rules that state that one analysis prepared for a different purpose always satisfies the requirements to prepare an analysis for the proposed rule.”

The Chamber takes the Agency’s point that information from a prior cumulative impact analysis will get stale as time passes and that there will not always be a perfect match between cumulative impact analyses prepared for different purposes. This is why the Chamber recommended that prior analyses should “presumptively” be satisfactory. Moreover, given the Agency’s recognition of the real potential for overlap, the Chamber recommends that the proposed rule be amended to provide for the submission of a cumulative impact analysis originally prepared for another purposes, when appropriate. The Chamber has concerns about not having the principle recognized in the rule text and deferring everything to guidance. In the absence of textual support, Agency staff are likely to perceive legal risk if they do not do a new analysis each time. Adding the point to the text will reduce regulatory burden without creating any harm. Specifically, the Chamber recommends that a new Subpart 3 be added to proposed Rule 7007.6090 which would read as follows:

If the owner or operator has submitted a cumulative impact analysis for the same facility within the prior three years pursuant to Minnesota statutes or rules and such analysis substantially complies with the requirements set forth in this Section, it may re-submit that same cumulative impact analysis in lieu of preparing and submitting an entirely new cumulative impact analysis. It may also prepare an updated or supplemented version of such a prior cumulative impact analysis and submit that updated or supplemented version in lieu of preparing and submitting an entirely new analysis. However, the commissioner may respond to such a submission of a prior, updated, or supplemented cumulative impact analysis by, when appropriate, directing that the owner or operator update the cumulative impact analysis, in whole or in part, supplement the cumulative impact analysis to address specific additional matters, or to prepare an entirely new cumulative impact analysis.

This proposed addition would allow MPCA to ensure that it has the analysis it needs, while giving owners and operators the opportunity to avoid potentially unproductive duplication.

MPCA RESPONSE

152. The MPCA thanks the commenter for their comment. The MPCA received seven previous inquiries on the intersection of the Cumulative Levels and Effects statute (Minn. Stat. § 116.07, subd. 4a(c)), and the environmental review program, documented within MPCA’s response to notice comments (aq-rule2-25af), starting in paragraph 1108, with current commenter being one of the commentors.

153. The MPCA responded to these inquiries regarding the overlap of Minn. Stat. § 116.07, subd. 4a(c) and the environmental review program, in paragraph 1116 of MPCA's response to notice comments (aq-rule2-25af).
154. The MPCA also received three comments regarding the intersection of the proposed rule and the proposed Air Toxics Regulations Rule, and it is presented within MPCA's response to notice comments (aq-rule2-25af), starting in paragraph 1117.
155. The MPCA responded to these inquiries regarding the proposed rule and the Air Toxics Regulations Rule, starting in paragraph 1121 of MPCA's response to notice comments (aq-rule2-25af).
156. The MPCA believes that the information that is filed years prior is not necessarily applicable to the standards or information and should not be "presumptively" acceptable, as it is dependent on the situation in which an applicant has to apply or file within the respective rules and statutes. However, the MPCA does anticipate that a previous cumulative impacts analysis may be informative as established in the proposed part 7007.6050, subpart 3, item L, "if a cumulative impacts analysis was previously approved according to parts 7007.6000 to 7007.6120, a summary of the most recently approved cumulative impacts analysis and a description of any changes or proposed changes to data and information used to support the most recently approved cumulative impacts analysis compared to the data and information included in the initial assessment required by this part." This provides owners and operator the opportunity to discuss a previously approved cumulative impacts analysis, including the information and data used to support that analysis, as part of the initial assessment prepared for the current requested permit action.
157. Furthermore, the MPCA would like to note that it is the facility's responsibility to certify their submittals and information, including the cumulative impacts analysis under Minn. R. 7007.6040 Subpart 1, and if MPCA did a presumption of acceptance, it would override the statutory and rule requirements that a facility is required to perform; or an item or requirement may be skipped or non-disclosed by the facility based on that presumption.
158. Lastly, the MPCA would like to note that the analyses with environmental review, Air Toxics Regulations, and the proposed rule are different in various manners, including actionable levels and items, that would create approval or disapproval. An approval of one program does not automatically mean that the information provided by that program is transferable or approvable to others.

Timeline for publishing a cumulative impacts analysis

159. The MPCA received one comment regarding MPCA posting the cumulative impacts analysis prior to the public meetings.
160. **Minneapolis Health Department-078-13:** The Minneapolis Health Department stated, "7007.6090 Subpart 2(A): We support the requirement for the facility to submit a cumulative impacts analysis to MPCA at least 45 days before the public meeting. We recommend that a required timeline is specified for MPCA to publish the cumulative impacts analysis prior to the public meeting. For example, "The commissioner must publish the cumulative impacts analysis online and provide it to interested community members at least 15 calendar days before the public meeting." This will give community members time to review the analysis before the public meeting"

MPCA RESPONSE

161. The MPCA thanks the commenter for their comment. Part 7007.6080, subpart 9 establishes that the MPCA must post a variety of documents and materials, including a cumulative impacts analysis,

at least 30 calendar days in advance of the identified public meetings. For more information regarding these requirements, please see the SONAR (p. 124-126)

PART 7007.6100 SUBSTANTIAL ADVERSE IMPACTS

Air quality modeling thresholds for determining substantial adverse impact

162. The MPCA received one comment regarding the air quality modeling thresholds used in the determination of whether issuing a permit would result in a substantial adverse impact.

163. **American Petroleum Institute-079-06:** The American Petroleum Institute stated, “**SCIENTIFIC BASIS FOR SUBSTANTIAL ADVERSE IMPACT THRESHOLDS**

API also continues to question whether the record provides sufficient explanation for the selection of certain thresholds used in the substantial adverse impact determination. For example, MPCA's response regarding the 50 percent NAAQS and MAAQS threshold explains the policy rationale for the selected value but also acknowledges that the threshold does not correspond to a specific health or toxicity endpoint.

We respectfully suggest that additional explanation connecting the selected threshold to the statutory concept of a "substantial adverse impact" would strengthen the administrative record and provide greater transparency regarding how these determinations will be made.”

MPCA RESPONSE

164. The MPCA appreciates the commenter’s feedback regarding the scientific basis and explanation for the thresholds used in the substantial adverse impact determination. The agency maintains that the administrative record (specifically paragraphs 1189 - 1191 in the MPCA response to notice comments (aq-rule2-25af)) provides a reasonable argument for the selection of the 50 percent National and Minnesota Ambient Air Quality Standards (NAAQS/MAAQS) threshold. The MPCA is not statutorily required to anchor every regulatory trigger to a specific toxicological endpoint, especially in the context of cumulative impacts where individual chemical endpoints fail to capture the total burden a community faces.

165. While the commenter correctly notes that this threshold does not correspond to a single, isolated biological health endpoint, it directly advances the statutory mandate to define the conditions and circumstances that constitute a substantial adverse impact. The statutory concept of a “substantial adverse impact” in a cumulative impact context inherently requires looking beyond isolated, single-chemical toxicity endpoints, which fail to account for the compounding nature of multiple pollution sources in overburdened communities.

166. Establishing a 50 percent NAAQS/MAAQS threshold is a deliberate, health-protective policy mechanism designed to act as a preventative margin of safety. In areas already facing significant cumulative environmental and socioeconomic burdens, allowing a single new or expanding stationary source to consume the entirety of the remaining air quality capacity would fundamentally result in a substantial adverse impact on that community, even if the air quality stays just below 100 percent of the NAAQS/MAAQS. Therefore, the proposed 50 percent threshold represents a critical benchmark where and individual facility’s contribution becomes “substantial” enough to warrant deeper scrutiny. This approach is firmly within the MPCA’s regulatory authority to manage baseline capacity and prevent localized environmental degradation, ensuring that the rule provides both transparency and a rational connection between the threshold and the statutory intent of the law.

Defining substantial adverse impact conditions, criteria, or circumstances

167. The MPCA received one comment regarding how the MPCA has established the conditions,

criteria, or circumstances defining when issuing a permit would result in a substantial adverse impact.

168. **Tishman Environment and Design Center-080-06:** The Tishman Environment and Design Center stated: *“(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.” 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.” 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. It is disappointing to see MPCA’s proposed rules relying so heavily on risk-based methodologies as one of the 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.

MPCA RESPONSE

169. The MPCA acknowledges the commenter’s perspective regarding the role of disproportionality and the critique of risk-centric approaches within cumulative impacts frameworks. The agency disagrees, however, that the proposed rule ignores the concept of disproportionality or that relative statistical disproportionality should function as an automatic, standalone trigger for a substantial adverse impact determination. Under Minn. Stat. § 116.065, subd. 5(b), the statutory mandate requires the agency to evaluate whether a permitting action will result in a substantial adverse *environmental or health impact* within a designated environmental justice (EJ) area. In accordance with this statutory architecture, the rule appropriately utilizes macroscopic disproportionality metrics, such as race, income, and localized environmental stressors, at the initial baseline stage to identify EJ areas and trigger the mandatory requirement for a comprehensive cumulative impacts analysis.
170. As detailed in the agency’s Statement of Need and Reasonableness (SONAR), an environmental stressor or health metric that places a census tract above a statewide median percentile does not inherently establish that an additional localized emission will cause an actionable, substantial adverse impact on public health or the environment. Conversely, a reliance on statewide median percentile benchmarks would create regulatory blind spots, failing to protect communities in instances where a specific environmental stressor falls below the statewide median percentile but still actively contributes to a localized cumulative impact. Elevating relative demographic or

exposure disparities to an automatic permit-blocking threshold, independent of a site-specific exposure and risk evaluation, would create a regulatory framework detached from measurable health outcomes and vulnerable to legal challenges regarding agency authority. Instead, the proposed framework provided in part 7007.6100, subpart 2 requires a multi-variable, qualitative and quantitative assessment of the type, extent, and reversibility of localized impacts. This structure ensures that disproportionate historical burdens and community-specific health vulnerabilities are heavily weighted on a case-by-case basis to determine actual cumulative harm, rather than relying on a singular, relative statistical threshold.

Substantial adverse impact avoidance and mitigation

171. The MPCA received one comment regarding the consideration of avoidance and mitigation efforts in the substantial adverse impact determination.
172. **Tishman Environment and Design Center-080-10:** The Tishman Environment and Design Center stated **“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.”

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.

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.” With respect to mitigation, this constitutes no requirement at all. As written, owners/operators can choose 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.” 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 how community members might view a proposed CBA, for example, hence showing how crucial it is for their meaningful participation in the process.”

MPCA RESPONSE

173. The MPCA disagrees with the characterization that the proposed rule allows owners or operators to bypass environmental protections or that the mitigation framework is discretionary. Under the statutory framework established by Minn. Stat. § 116.065, subd. 5(b), if a cumulative impacts analysis confirms that a requested permit action will result in a substantial adverse impact, the MPCA is required to deny the permit unless the facility enters into a CBA with the MPCA. Imposing mandatory reductions on minor or negligible emissions in the absence of a demonstrated cumulative harm would create an undue administrative and financial burden on regulated entities,

failing to provide a logical connection between regulatory requirements and actual environmental protection. In cases where a substantial adverse impact is identified, the inclusion of the word “may” in part 7007.6100, subpart 3, reflects the applicant’s procedural options within the regulatory framework, not an exemption from compliance. An operator must either successfully propose and incorporate enforceable emission limits, operational conditions, or control measures that eliminate the substantial adverse impact, or they must enter the formal, community-led CBA process. If an applicant refuses to implement verified mitigation controls and fails to execute a CBA, the permit will be denied.

174. The MPCA also clarifies that the rule text under part 7007.6090, subpart 3, item G does not limit disclosure of information to only those measures an applicant voluntarily favors. The rule explicitly mandates an objective analysis and proposal of the specific emission limits, operational conditions, and control measures “necessary to” avoid, minimize, or reduce negative impacts. To satisfy this requirement, the cumulative impacts analysis must evaluate technically feasible control configurations and mitigation strategies relevant to the facility’s source categories. This data becomes part of the public administrative record, ensuring that impacted communities possess the comprehensive information required to understand the available technical alternatives and meaningfully engage throughout the public comment and public meeting phases. Furthermore, the proposed rule at part 7007.6040, subpart 7 requires that the owner or operator to incorporate any emission limits, operational conditions, control measures, or other measures that they assume as part of or to avoid the applicability of the requirements of the proposed rule. The agency maintains that the current rule text provides the necessary regulatory authority to compel the disclosure and implementation of rigorous, legally enforceable permit conditions while maintaining the structured alternative pathways required by the authorizing statute.

Methods for determining substantial adverse impact will insufficiently address cumulative impacts

175. The MPCA received one comment regarding the sufficiency of the proposed methods to determine substantial adverse impacts from cumulative impacts.
176. **Tishman Environment and Design Center-080-02:** The Tishman Environment and Design Center stated **“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.” 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.”

MPCA Response

177. The MPCA designed the three-avenue approach to establish a legally defensible, scientifically robust framework that fulfills the statutory mandate while acknowledging the complexities of cumulative impacts. The proposed framework is intentionally structured to balance standardized, reproducible science with the necessary flexibility to address the exact multi-pollutant and non-

chemical stressors highlighted by the commenter.

178. The first two avenues utilize existing peer-reviewed risk assessment benchmarks. While these benchmarks are often derived on a pollutant-by-pollutant basis, they provide an objective, reproducible baseline grounded in established toxicological science. Unfortunately, there are no universally accepted, clear quantitative benchmarks to evaluate truly synergistic combinations of pollutants in regulatory frameworks due to data scarcity as toxicological profiles are derived from single-chemical laboratory testing and multi-pollutant exposure data is rare. While the proposed toxicological benchmarks are scientifically limited to single-pollutant exposures, they provide an objective, data-driven baseline. Incorporating these standards ensures that the rule remains legally defensible, predictable, and firmly rooted in measurable environmental health metrics.
179. The third avenue is specifically included to capture the exact "cumulative" impacts, nuances and synergistic qualities of pollutants that the rigid mathematical benchmarks might miss. Combinations of environmental, socioeconomic and community vulnerabilities are highly unique to each community. Because science is currently limited in its ability to establish objective benchmarks for multi-pollutant interactions, a rigid numeric approach would inadvertently fail to account for unique localized community burdens. Granting the Commissioner discretion allows the agency the ability to evaluate the totality of non-chemical stressors, community health disparities, and synergistic risks of multi-pollutant exposures on a case-by-case basis.
180. The MPCA contends that the proposed rule, taken as a whole, creates a comprehensive net of protection for communities. The current state of science is limited in capturing the impacts of complex, synergistic multi-pollutant exposures. Therefore, the proposed framework relies on a combination of established numeric benchmarks alongside qualitative discretionary authority to ensure that communities experiencing high burdens will receive a rigorous and holistic evaluation before new air permits are issued.

Adequacy of air quality modeling analysis and risk assessment to evaluate cumulative impacts

181. The MPCA received two comments related to the ability of air quality modeling and air toxics risk assessment to evaluate cumulative impacts.
182. **Tishman Environment and Design Center-080-03:** The Tishman Environment and Design Center stated, "'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 quality standard." 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." 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, 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.”

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 evaluations has been scarce.” Thus, regardless of the percentage used (50 percent or something else), the approach of part 7007.6100, subpart 1, item A, subitem (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.”

183. **Tishman Environment and Design Center-080-04:** The Tishman Environment and Design Center stated: ““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.” 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.” 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.”

MPCA Response

184. The MPCA appreciates the commenter’s feedback regarding the limitations of both ambient air quality standards and air emissions risk analysis (AERA) parameters in capturing cumulative environmental stressors. The agency agrees that the National and Minnesota Ambient Air Quality

Standards (NAAQS/MAAQS), as well as individual toxicological risk thresholds, were not defined with cumulative impact considerations and do not fully account for compounding socioeconomic factors, non-chemical stressors, or synergistic chemical interactions and would thus be insufficient on their own to fully evaluate cumulative impacts. However, the MPCA disagrees that the inclusion of the 50 percent ambient standard threshold or the utilization of individual AERA risk benchmarks renders the rule's approach inadequate. Air quality modeling and facility-specific risk assessment are not the sole criteria used to determine a substantial adverse impact but rather serve as critical health-protective thresholds within a comprehensive review process.

185. Establishing a threshold at 50 percent of the NAAQS/MAAQS ensures that individual stationary sources cannot consume a disproportionate share of an area's available air quality capacity, while utilizing standard AERA parameters prevents individual facilities from introducing unacceptable localized baseline risks. These criteria represent initial pathways within an interconnected set of evaluation criteria designed to evaluate a substantial adverse impact, functioning as early and quantitative triggers. The proposed rule requires a holistic evaluation that moves beyond traditional individual pollutant metrics to specifically examine the health disparities and community-specific vulnerabilities in environmental justice areas. Where standard toxicological evaluations fall short, other pathways within the rule actively incorporate the exact social, economic, and compounding stressors highlighted in the literature cited by the commenter. Ultimately, air quality modeling and AERA criteria are tools to understand and analyze localized industrial emissions while the broader elements of the rule address cumulative impacts in a community.

Concern over proposed methodology and use of commissioner discretion to determine substantial adverse impacts

186. The MPCA received one comment concerning the methodology and reliance on commissioner discretion in evaluating substantial adverse impacts.
187. **Tishman Environment and Design Center-080-05:** The Tishman Environment and Design Center stated: "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 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."

MPCA Response

188. The MPCA acknowledges the commenter's concerns regarding transparency, predictability, and the desire for a highly structured, replicable cumulative impact assessment methodology for determining substantial adverse impacts. The MPCA contends that the framework proposed in part 7007.6100, subpart 1, item A, subitem (3) and part 7007.6100, subpart 2 is legally sufficient, fully justified within the agency's Statement of Need and Reasonableness (SONAR), and provided adequate accountability. The statutory mandate under Minn. Stat. § 116.065, subd. 6(c)(3) requires the agency to define the "conditions, criteria, or circumstances" that establish an environmental or health impact as a substantial adverse impact. By explicitly requiring the Commissioner to evaluate the specific qualitative and quantitative factors enumerated in part 7007.6100, subpart 2 the proposed rule establishes the circumstances under which a substantial adverse impact determination must be made.

189. The proposed rule intentionally avoids a rigid mathematical calculation or static checklist in this third pathway because the current state of environmental health science cannot provide a universally accepted approach capable of assessing multi-pollutant exposure risk or weighing diverse, non-chemical stressors directly against chemical concentration metrics. Determining cumulative risk involves highly non-linear, multi-variable relationships with highly localized confounding factors (such as baseline health disparities and socioeconomic vulnerabilities) that cannot be accurately captured via an additive mathematical algorithm. This discretionary framework provides a necessary and deliberate regulatory tool to ensure that complex, localized community burdens are not minimized by a simplified numeric tally or an inflexible risk-modeling assumption. Accountability and transparency are maintained because any decision made by the Commissioner under this subpart must be fully documented in a written administrative record. This record must explicitly address each of the required evaluation criteria, providing a rational nexus between the localized data and the ultimate agency decision, and is subject to public review, comment, and judicial oversight. This structured discretion provides the administrative flexibility needed to achieve true cumulative impact assessments where single-pollutant metrics fail.

PART 7007.6110 COMMUNITY BENEFIT AGREEMENTS

Community advocating to deny a CBA

190. The MPCA received one comment regarding community feedback on CBAs that requests an option for community members to advocate for a CBA to be rejected or to have the ability to reject a CBA.

191. **Tishman Environment and Design Center-080-11:** The Tishman Environment and Design Center

stated, **“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.” 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.

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. 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.

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. 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. This is indispensable when the history of CBAs has shown that procedural justice is absolutely crucial to their ability to achieve meaningful community outcomes. Historically marginalized communities can easily be disadvantaged in these contractual agreements due to unequal bargaining power, access to information, and resources. 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.”

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.”

MPCA RESPONSE

192. This comment is similar to comments identified in paragraphs 1261 to 1274, under the “Community advocating to deny a CBA” subheading in the MPCA response to notice comments (aq-rule2-25af).
193. Please see the MPCA's response to comments regarding community advocating to deny a CBA in paragraphs 1275 to 1277 in the MPCA response to notice comments (aq-rule2-25af).
194. This comment is also similar to the comment identified in paragraph 1279, under the “Community recommendations on CBA and permit decisions” subheading in the MPCA response to notice comments (aq-rule2-25af).
195. Please see the MPCA's response to the comment regarding community recommendations on CBA and permit decisions in paragraphs 1280 to 1282 in the MPCA response to notice comments (aq-rule2-25af).
196. Additionally, this comment is similar to comments identified in paragraphs 1284 to 1292, under the “Community involvement in permit decisions” subheading in the MPCA response to notice comments (aq-rule2-25af).
197. Please see the MPCA's response to comments regarding community involvement in permit decisions in paragraphs 1293 to 1300 in the MPCA response to notice comments (aq-rule2-25af).
198. The MPCA disagrees that the approval or denial of a CBA is not part of the MPCA's permitting authority to grant or deny a permit. The MPCA cannot provide a process in rule that allows the community to either approve or deny a CBA or to direct the MPCA to approve or deny a CBA because this decision will result in the issuance or denial of a permit which constitutes an impermissible delegation of the MPCA's powers under Minn. R. 1400.2100. Additionally, the MPCA disagrees with the commenters statement that the agency has interpreted the “community's say” on a CBA as part of its “permitting” authority. To clarify, the MPCA does not believe community input in the public participation process is a delegation of its permitting authority. The proposed rule encourages and requires MPCA to consider community input on a CBA through the CBA public comment and participation process. However, if communities were given the authority to make decisions, such as denying a CBA, that goes beyond community input or community say. The ability to approve or deny a CBA is a permitting decision, which as described above is an impermissible delegation of MPCA's power. As described above, the proposed rule does require the MPCA to consider community members' position on a CBA, voiced through public comments, and whether issues raised in public comments are addressed by the CBA and the owner's or operator's responses to comments. This information will be considered in MPCA's decision of whether to enter into a CBA, as explained in the SONAR (p. 156-157).

Community benefits and the CBA process

199. The MPCA received one comment regarding CBA progress reports.

200. **Minneapolis Health Department-078-15:** The Minneapolis Health Department stated, “7007.6110 Subpart 5(C): We support the requirement of a mid-year progress report for the community benefits agreement. We recommend that MPCA specifies whether this progress report is required to be submitted twice per year indefinitely, or if there is an event triggering the end of mid-year progress report requirements. We recommend consideration of scenarios where a community benefit agreement could include establishment of a long-term asset like a community center. Would a mid-year progress report be required for the entire lifespan of operation of that community center?”

MPCA RESPONSE

201. This comment is similar to comments identified in paragraphs 1406 to 1414, under the “Community benefits and the CBA process” subheading in the MPCA response to notice comments (aq-rule2-25af).
202. Please see the MPCA’s response to comments regarding community benefits and the CBA process in paragraphs 1415 to 1432 in the MPCA response to notice comments (aq-rule2-25af).
203. Additionally, part 7007.6110, subpart 5, item A, subitem (2) specifies that the periodic progress reports summarizing the status of each community benefit agreement must be submitted at a frequency specified in the CBA, but at least semiannually. Part 7007.6110, subpart 3, item F requires the CBA to include timelines for completing construction or implementation on community benefits and the duration of each community benefit. Therefore, it is reasonable for an owner or operator to submit periodic progress according to the frequency specified in that CBA until all community benefits included in the CBA have reach completion of construction or implementation.