

Minnesota Pollution Control Agency

SECOND REQUEST FOR COMMENTS

Planned New Rules Governing Cumulative Impacts Analysis for Permit Decisions in Environmental Justice Areas, *Minnesota Rules*, chapters 7001, 7002, 7005, 7007, 7011, 7017, and 7019; Revisor's ID Number R04805

Overview. The Minnesota Pollution Control Agency (MPCA) is requesting comments on legislatively mandated amendments to air rules, *Minnesota Rules*, ch. 7001, 7002, 7005, 7007, 7011, 7017, and 7019. This rulemaking is referred to as the Cumulative Impacts rule. The MPCA is required to undertake this rulemaking to comply with [Minnesota Statutes, section 116.065](#) and the scope of this rulemaking is limited to that purpose.

In a previous Request for Comments (RFC) published in the *State Register* on July 24, 2023, the MPCA asked for comments on the development of new rules governing cumulative impacts analysis for permit decisions in environmental justice (EJ) areas of concern in the Twin Cities metropolitan area, Duluth, and Rochester, and listed *Minnesota Rules* ch. 7001 as the placement for the new/amended rule text. After consideration, MPCA staff determined that existing rule wording in chapters 7002, 7005, 7007, 7011, 7017, and 7019 will also need to be updated to reflect the changes required by this law. Publishing this RFC is how the MPCA gives legal notice of its plan to include those additional chapters in the project. Nothing about the substance or subject of the rulemaking has changed, and if you already submitted comments in response to the 2023 RFC, they will still be considered and weighed equally with the responses to this second RFC. You do not need to resubmit comments.

Subject of Rules. The MPCA requests comments on new rules governing cumulative impacts analysis for permit decisions in EJ areas. As required by statute, the rules would apply as follows:

(a) This section applies to an application for a permit by a facility that:

(1) is located in or within one mile of a census tract that is part of an EJ area; and

(2) is located:

(i) in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, or Washington; or

(ii) in a city of the first class.

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

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

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

Elements of this rulemaking may change before the agency proposes formal rule text, based on comments received or other information. This rulemaking is needed to enact the cumulative impacts analysis requirements as directed by Minnesota Session Law 2023, which include rules that will:

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

In addition, the MPCA encourages comments on additional engagement methods for the rulemaking that would actively incorporate input from community and stakeholders, including but not limited to establishing the community benefit agreement and petition processes. The MPCA also requests any information pertaining to the cumulative effect of the rule amendments with other federal and state regulations related to the specific purpose of the rule. Cumulative effect means the impact that results from incremental effects of the proposed rule in addition to other rules, regardless of which state or federal agency has adopted the other rules.

MPCA welcomes all other relevant comment on cumulative impacts analysis.

Parties Affected. The new rules would be most likely to affect residents of the EJ areas defined by the legislation, and potential new or expiring permit applicants in those areas. The MPCA does not anticipate that the rules will require a local government to adopt or amend an ordinance or other regulation under *Minnesota Statutes* section, 14.128; local governments may submit written information to the contrary.

Comments. Interested parties may submit written comments or information on these possible rules until **4:30 p.m. on May 21, 2025**, by the following methods:

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

2) by mail to OAH attn: William Moore, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620; or

3) by fax at 651-539-0310.

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

Comments received are public and will be available for review at the OAH Rulemaking eComments website at <https://minnesotaoah.granicusideas.com/discussions> and at the OAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620.

NOTE: The MPCA will carefully consider all comments received in response to this RFC as well as the one issued in July 2023. However, these comments will not necessarily be included in the formal rulemaking record submitted to the Administrative Law Judge (ALJ) if and when a proceeding to adopt rules is started. The MPCA is required to submit to the ALJ only those written comments received in response to the proposed rule text after it is published with a Notice of Intent. If you submit comments during the RFC stage of rule development and want to ensure that the ALJ reviews them, you must resubmit your comments after the rules are formally proposed with a Notice of Intent. The MPCA will not publish a Notice of Intent to adopt the rules until more than 60 days have elapsed from the date of this RFC.

Agency Contact Person. Questions about this RFC and the rulemaking process should be directed to Rule Coordinator Katie Izzo at the MPCA, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194; email katie.izzo@state.mn.us; or telephone 651-757-2595. Questions on the technical subject matter should be directed to Hassan Bouchareb at Hassan.Bouchareb@state.mn.us or 651-757-2653. You may also call the MPCA at 651-296-6300 or 1-800-657-3864 using your preferred relay service. Again, please note that you may not submit rulemaking comments by phone or email.

Rule Drafts. The MPCA has not yet drafted the new rule amendments. Parties interested in being notified when a draft of the rules is available and of other activities relating to this rulemaking are encouraged to register at http://public.govdelivery.com/accounts/MNP/CA/subscriber/new?topic_id=MNP/CA_523 (MPCA GovDelivery—Rulemaking: Cumulative Impacts)

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact Rule Coordinator Katie Izzo as listed above.

Statutory Authority. *Minnesota Statutes*, section 115.03, assigns the MPCA the authority to adopt rules regarding the discharge of pollutants, and [Minnesota Statutes, section 116.065](#), requires the Commissioner of the MPCA to adopt rules to implement cumulative impacts analysis for permit decisions in EJ areas. The content of the rule is specified in the law.



Katrina Kessler, Commissioner
Minnesota Pollution Control Agency

April 1, 2025
Date