CAH 21-9003-39398
Revisor ID No. R-4805

STATE OF MINNESOTA
COURT OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Rules Governing Cumulative Impacts Analysis for Permit Decisions in Environmental Justice Areas, Minn. R. ch. 7007.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

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This matter came before Administrative Law Judge Kimberly Middendorf for a rulemaking hearing conducted via WebEx on September 1, 2026. The record closed on September 28, 2026, at the end of the rebuttal comment period.

As explained below, the Minnesota Pollution Control Agency (Agency or MPCA) proposes to adopt rules addressing cumulative impacts analyses for air permit decisions in environmental justice (EJ) areas, as directed by Minn. Stat. § 116.065 (2024). The public hearing and this Report are part of a larger rulemaking process under the Minnesota Administrative Procedure Act.[1] The Minnesota Legislature designed this process to ensure that state agencies meet all requirements of law and rule in adopting and amending rules.

The public hearing was conducted to permit agency representatives and the Judge to hear public comments regarding the impact of the proposed rules, and any changes that might be appropriate. Further, the hearing process provides the public with an opportunity to review, discuss, and critique the proposed rules, and to ensure a fully developed rulemaking record. In addition to the comments received at the public hearings, the public was permitted to submit written comments into the record.

As described more extensively below, the agency must establish that the proposed rules are needed and reasonable; the rules are within the agency's statutory authority; the agency has fulfilled all procedural requirements; and that any modifications to the rule made after the proposed rules were initially published in the *State Register* are within the scope of the matter that was originally announced.

SUMMARY OF CONCLUSIONS

The MPCA established it has the statutory authority to adopt the proposed rules, it complied with all procedural requirements of law and rule, and the proposed rules are needed and reasonable. Therefore, the Judge **APPROVES** the proposed rules and recommends they be adopted with minor modifications where recommended.

[1] *See* Minn. Stat. §§ 14.05-.20 (2026).

Based upon the record, including the MPCA's exhibits, and the oral and written comments received, the Judge makes the following:

FINDINGS OF FACT

I. Background Regarding the Proposed Rules

1. The MPCA intends to amend its rules and proposes new rules governing how cumulative pollution impacts are considered when certain air permits are issued in environmental justice (EJ) areas. Specifically, the MPCA proposes amendments to Minn. R. Ch. 7007 (air permitting requirements) and new rules, Minn. R. 7007.6000 - .6120, to implement Minn. Stat. § 116.065 and establish a consistent process for MPCA permitting decisions (Cumulative Impacts Rule). The main purpose of this rulemaking is to establish the conditions that implement and govern cumulative impacts analyses and permit decisions in EJ areas.[2]

2. Minn. Stat. § 116.065 (2024) highlights the importance of, and need for, environmental justice in Minnesota. It defines environmental justice as:[3]

> (1) [T]he fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies; and (2) in all decisions that have the potential to affect the environment of an environmental justice area or the public health of its residents, due consideration is given to the history of the area's and its residents' cumulative exposure to pollutants and to any current socioeconomic conditions that could increase harm to those residents from additional exposure to pollutants.

3. The proposed rule creates a formal process for evaluating the combined effects of existing and proposed pollution in certain EJ areas, rather than considering only the emissions from an individual facility.[4]

4. Minn. Stat. § 116.065 defines EJ areas and requires the MPCA to adopt rules to address the cumulative impacts of pollution in such areas during the air permitting process. An EJ area is defined in statute as one or more census tracts (small, relatively permanent subdivisions of a county or city) meeting any of the following criteria: 40 percent or more of the population is nonwhite; 35 percent or more of the households have an income at or below 200 percent of the federal poverty level; 40 percent or more of the population over the age of five has limited English proficiency; or, is located within Indian Country.[5]

5. This rule applies to facilities located in or within one mile of an EJ area in

[2] Ex. D at 10-11.
[3] Minn. Stat. § 116.065.
[4] Ex. D at 10-11.
[5] Ex. D at 11-12.

the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, or Washington (Twin Cities seven-county metropolitan area) or in a city of the first class (currently only Duluth and Rochester are cities of the first class outside the Twin Cities seven-county metropolitan area). This rule applies only to facilities that have, or are seeking, certain air permits when that permit includes new construction, facility expansion, or the reissuance of an expiring permit. Minn. Stat. § 116.065, subd. 1(h), defines the type of air permit that will be subject to the Cumulative Impacts Rule. This rule will not apply to air permit types that are not listed in Minn. Stat. § 116.065, subd. 1(h), such as registration permits, capped permits, and general permits.[6]

6. The MPCA describes a cumulative impacts analysis (CIA) as a comprehensive examination of aggregate past and current pollution affecting an EJ area. Minn. Stat. § 116.065 and the proposed rules are intended to work together to establish a regulatory system that would shift certain Minnesota air-permitting decisions from considering a facility's emissions, largely in isolation, to considering existing environmental burdens, vulnerability factors, cumulative pollution, and community input in designated EJ areas.[7]

7. If the CIA determines that the facility would have a substantial adverse impact on the environment or health of the EJ area and its residents, then the owners and operators of the facility must enter into a community benefit agreement before they can obtain a permit.[8]

8. A community benefit agreement (CBA) is an agreement between the MPCA and the owners and operators of a facility to provide certain benefits to the impacted EJ area. The CBA process is intended to be a process that actively engages affected residents and encourages their participation, to solicit community benefit suggestions and gain community feedback on the draft CBA. In every CBA, the owners and operators of a facility agree to specific defined benefits that are unique to that neighborhood and its needs.[9]

9. While the cumulative impacts law is new to many companies in Minnesota, the MPCA notes that facilities located in parts of South Minneapolis have been required to conduct similar analyses under Minn. Stat. § 116.07, subd. 4a(c), since 2008, and other states have also recently required them. Similarly, the concept of a CBA has been used in redevelopment projects for some time.[10]

10. The MPCA explains that, where applicable, the new and revised rules will be submitted to the United States Environmental Protection Agency (EPA) for incorporation into Minnesota's State Implementation Plan (SIP). The SIP identifies the state rules, statutes, permits, orders, and other measures that demonstrate Minnesota's compliance with the federal Clean Air Act and its ability to attain and maintain the National

[6] Ex. D at 17-18.
[7] Ex. D at 9-13.
[8] Ex. D at 9.
[9] Ex. D at 9, 114-116.
[10] Ex. D at 10.

Ambient Air Quality Standards. Revisions to applicable rules or statutes must be submitted to the EPA for approval and incorporation into the SIP. Minnesota's SIP is codified in 40 C.F.R. part 52, subpart Y, and its approved provisions are federally enforceable.[11]

11. The MPCA intends the regulatory structure provided by the proposed rule to serve multiple purposes. The proposed rules seek to establish a clear and transparent methodology to evaluate the cumulative impacts of a range of projects that are required to obtain an air permit from the MPCA. The proposed rules are also intended to provide a consistent methodology to analyze and understand the potential environmental and health impacts of issuing a permit to a facility located in or within one mile of an EJ area. When an environmental or health impact is a substantial adverse impact, the proposed rules will enable the MPCA to require action by owners and operators of the facility to eliminate, minimize, or mitigate the potential environmental and health impacts or to provide benefits to residents of impacted EJ areas. In addition, the proposed rules seek to provide Minnesotans with the ability to meaningfully participate in the permitting process for air permits subject to the rule.[12]

12. According to the MPCA, the proposed rule reflects legislative and agency recognition that historical permitting and zoning decisions have contributed to disproportionate pollution burdens in some Minnesota communities. Residents of these communities may experience greater exposure to pollution and may be more vulnerable to its adverse health effects because of socioeconomic and other factors. Addressing these disparities is the stated purpose of the environmental justice framework established by Minn. Stat. § 116.065 and the proposed Cumulative Impacts Rules.[13]

13. Minnesota residents' quality of life often ranks among the best in the nation. The state boasts a robust and accessible park system, strong public school system, excellent healthcare and a strong job market alongside many public amenities. However, great disparities in accessing these benefits persist when taking race, ethnicity, and wealth into account. According to the MPCA's research, people of color, low-income, and indigenous residents often have a lower quality of life, despite Minnesota's high rankings. Minnesota has the second largest gap in home ownership rates between Americans of Color and White Americans; American Indians have a life expectancy 17 years below the state average; and Black American households had a median income roughly $33,000 less than that of White-Americans in 2021 Minnesota.[14]

14. Historically, residents of Minnesota's EJ areas have been subjected to disproportionately high environmental and public health stressors, including mobile sources of pollution, as well as numerous industrial, commercial, and governmental

[11] Ex. D at 10.
[12] Ex. D at 9-13, 63-64, 91-96.
[13] Ex. D at 11-13.
[14] Ex. D at 183 (citing *Minnesota Department of Employment and Economic Development, Black Minnesotans: An analysis of employment, educational and other economic trends and disparities related to the labor force* (January 2023) *mn.gov/deed/assets/black-african-american-data-report-acc_tcm1045-539222.pdf).*

stationary sources of pollution. Further compounding this inequity, Minnesota's EJ communities often lack important environmental benefits, such as quality green and open natural spaces, sufficient tree canopy, or adequate stormwater management. Established in 2015, and updated in 2022, the state's Environmental Justice Framework seeks to repair past harm and reduce the impact of environmental pollution in these overburdened communities.[15]

15. Although air quality across Minnesota currently meets federal standards, low and moderate levels of air pollution can contribute to serious illnesses and premature death. Understanding how pollution affects health and the environment across Minnesota helps identify actions that improve the health of all residents and the environment where they live, work, and gather. Improving air, water, and land quality can provide significant public health and environmental benefits. It is important that Minnesota continue to adopt programs and policies to proactively reduce pollution and increase health resilience because air, water, and land quality threats from events like wildfires and climate change are forecasted to get worse in Minnesota. There is growing evidence, including outcomes from the 2015 and 2022 *Life and Breath* studies, conducted by the Minnesota Department of Health (MDH) and the MPCA, for the Twin Cities seven-county metropolitan area, that there are disparate health impacts of air pollution on communities with higher populations of people of color, so improving air quality is important for reducing health inequities.[16]

16. The *Life and Breath* studies by the MPCA and the Minnesota Department of Health (MDH) found that, in 2015, air pollution played a role in:

- 10% of all deaths in the Twin Cities seven-county metropolitan area and in nearly 500 hospitalizations and emergency room visits for heart and lung problems;
- 8% of all deaths in Duluth;
- 10% of all deaths in Rochester; and
- 8% of all deaths in St. Cloud.[17]

17. Research has found that rates of air pollution-related illnesses and death are higher in communities with larger proportions of Indigenous people, people of color, low-income residents, uninsured individuals, and people with disabilities. Residents of these communities are more likely to experience elevated exposure to air pollution from high-traffic roads, residential wood smoke, and nearby industrial facilities. These exposures may compound existing social, economic, and health inequities, further increasing the burden on already disadvantaged populations. Other studies have similarly found that people of color and low-income communities experience disproportionate exposure to air pollution from motor vehicles and manufacturing, despite contributing less

[15] Ex. D at 168.
[16] Ex. D at 23.
[17] Ex. D at 23.

to emissions from these sources.[18]

18. Public health resilience also depends on advancing health equity. For example, seniors, people with pre-existing heart or lung conditions, and children with uncontrolled asthma experience more severe health impacts when there are subtle changes in air quality. Likewise, structural inequities, including lack of access to quality health care, economic and social opportunities, cumulative impacts from other exposures, and social stressors, all take a toll on health resilience and quality of life.[19]

19. The 2022 *Life and Breath* report identified gaps in the health impacts of air pollution based on race and other marginalizing factors that persist in Minnesota. Populations in areas with higher disease and death rates generally have aging residents and structural inequities, such as the impacts of past and present policies including racial covenants in residential deeds, redlining, zoning and permitting decisions, roadway placement, as well as facing housing insecurity, discrimination in health care, and other social and economic stressors, are all deemed social determinants of health. These factors all contribute to unequal health burdens of air pollution.[20]

20. The MPCA is required to provide the Minnesota Legislature with a biennial status report on toxic air pollutant and mercury emissions in Minnesota, including the Agency's strategies for reducing those emissions. This report, titled *The Air We Breathe*, examines trends in Minnesota's air quality. Although air quality has generally improved over time and meets applicable federal standards, continued efforts are necessary to address remaining pollution-related concerns.[21]

21. Like the *Life and Breath* reports, *The Air We Breathe* highlights disparities in pollution exposure, noting that certain populations are historically and statistically more likely to experience elevated exposure to pollution or multiple sources of pollution. These populations may also face greater risks of adverse health effects due to longstanding and systemic social, economic, and political inequities. In Minnesota, historical practices and policy decisions—including the construction of freeways through Black neighborhoods and redlining and zoning practices that concentrated communities of color near industrial pollution sources—have contributed to persistent environmental injustices.[22]

22. The MPCA's environmental justice initiatives seek to address these disparities by reducing the disproportionate pollution burdens experienced by Indigenous

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[18] Ex. D at 23 (citing *Life and Breath Studies* at *https://data.web.health.state.mn.us/life_and_breath;* International Journal of Environmental Research and Public Health, "Traffic, Air Pollution, Minority and Socio-Economic Status: Addressing Inequities in Exposure and Risk;" Pratt, Vidali, Kvale, and Ellickson; 19 May 2015, at *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4454972/*; and Proceedings of the National Academy of Sciences (PNAS), "Inequity in consumption of goods and services adds to racial–ethnic disparities in air pollution exposure;" Tessum et al; 11 March 2019, at *https://www.pnas.org/doi/10.1073/pnas.1818859116*).

[19] Ex. D at 23.

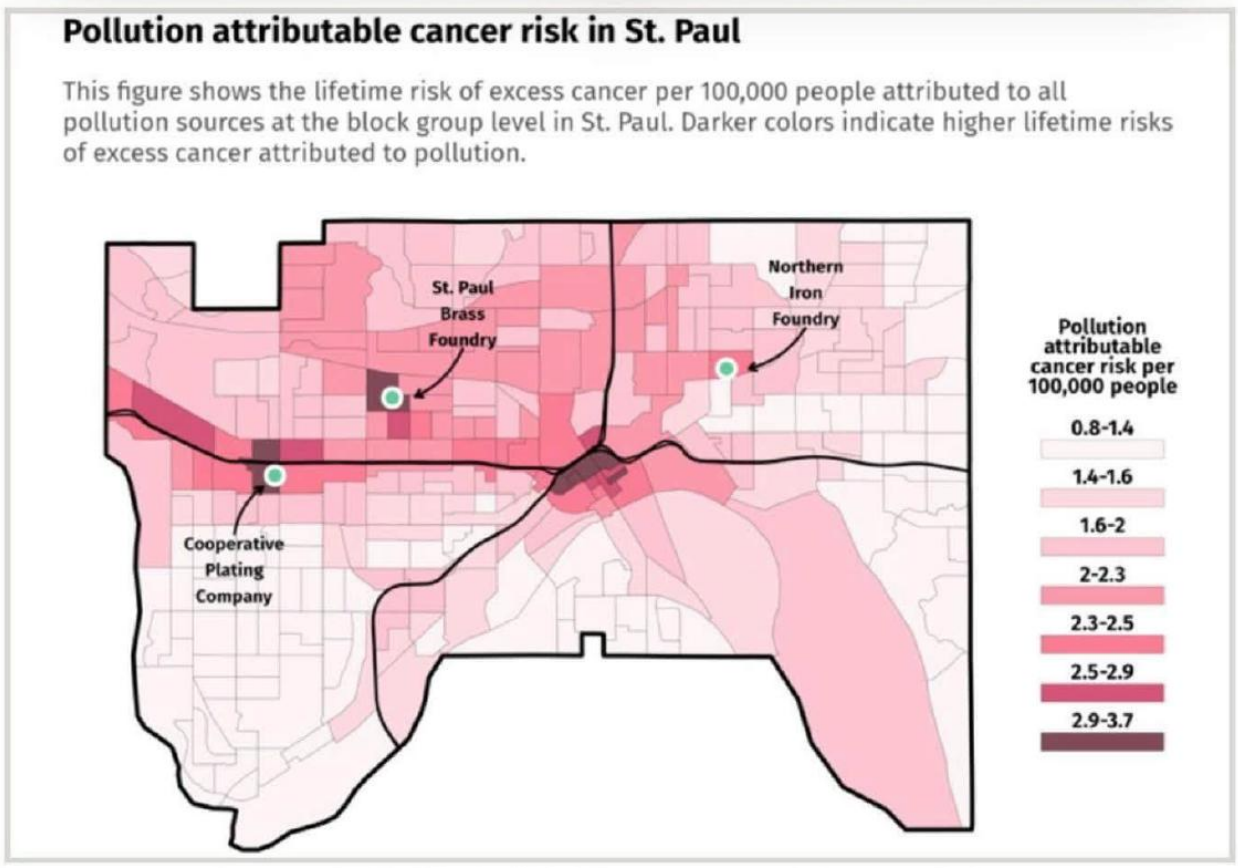
[20] Ex. D at 23 (citing *Life and Breath Studies* at *https://data.web.health.state.mn.us/life_and_breath*).

[21] Ex. D at 23-24.

[22] Ex. D at 23-24.

people, people of color, and low-income residents.

23. Community members noted the increased risk of cancer to people living near certain types of industrial facilities. For example, one St. Paul resident provided the following in support of her plea to adopt strong rules to address existing, as well as future, adverse impacts:[23]



Source: 2017 MPCA MNRISK (most recent data available)

24. The legislature recognized, and the MPCA agrees, that existing environmental regulations do not specifically require consideration of environmental stressors, the combined effects of pollutants from multiple sources, or the ways in which those pollutants and sources may interact to affect the environment and human health. Integrating information on health outcomes, social and environmental factors, demographic characteristics, and environmental conditions can help provide a more comprehensive understanding of the cumulative impacts experienced by communities across different geographic areas. The MPCA submits that the proposed rules are necessary to establish a consistent methodology for compiling and evaluating this information, enabling the MPCA, regulated parties, and the public to better understand

[23] Comments of Stephanie Hankerson (019).

the potential environmental and health impacts of a proposed permitting action.[24]

25. In developing the proposed rules, the MPCA conducted extensive public engagement, including public meetings, webinars, co-learning sessions, and working sessions, as described in the Public Participation and Stakeholder Involvement section of the Statement of Need and Reasonableness (SONAR). Through these efforts, the MPCA shared preliminary information and solicited input regarding environmental stressors that could help contextualize the potential health and environmental impacts of an emitting facility. This engagement contributed to the development of the MPCA's Cumulative Impacts Mapping and Analysis Platform (CI-MAP), which brings together multiple environmental stressors to help visualize and understand the conditions experienced by Minnesotans. The platform is intended to help identify circumstances in which residents of environmental justice areas may be more susceptible to harm from pollution exposure. CI-MAP displays 26 environmental stressors statewide, with a specific focus on the Twin Cities seven-county metropolitan area and cities of the first class.[25]

26. The MPCA developed CI-MAP to organize environmental and social information by census tract. CI-MAP is intended to be a resource to stakeholders and to guide Agency permitting decisions. The development of CI-MAP also supports the MPCA's statutory obligations under Minn. Stat. § 116.065. Specifically, Minn. Stat. § 116.065, subd. 5(f), requires the MPCA to maintain an updated database of identified environmental stressors in designated census tracts and make that database publicly accessible. Minn. Stat. § 116.065, subd. 6(c)(2), requires the MPCA to provide permit applicants with sources of publicly available information regarding environmental stressors present in an EJ area. Additionally, Minn. Stat. § 116.065, subd. 5(b), requires the MPCA to consider environmental stressors when deciding whether to issue or deny a permit. Although Minn. Stat. § 116.065 establishes these requirements, it does not prescribe how the information must be presented, nor does it establish a specific methodology for considering environmental stressors in permitting decisions. The proposed rules are intended to address this gap by providing a consistent framework for presenting, evaluating, and considering environmental stressor information in the permitting process.[26]

27. CI-MAP contains 26 environmental stressors. These include pollution-related factors, as well as conditions that can increase vulnerability to pollution, such as poverty, housing conditions, food insecurity, health-related indicators, lack of health insurance, impervious surfaces, lack of recreational space/tree canopy, and concentrations of regulated facilities. The MPCA states it will continue to update CI-MAP to increase its accuracy and sophistication as new data is made available.[27]

28. The proposed methodology evaluates individual stressors against a reference value or geographic comparison point. Stressors exceeding the comparison are classified as adverse environmental stressors. The number of adverse stressors is

[24] Ex. D at 13-15, 63-64.
[25] Ex. D at 13-15.
[26] Ex. D at 13-15.
[27] Ex. D at 13-14.

then combined to determine whether a census tract has adverse cumulative stressors.[28]

29. The MPCA analyzed facilities potentially subject to the rule and found that 86 of 89 permitted facilities were located in, or within one mile of, an EJ area that had adverse cumulative stressors above the 50th percentile used in the analysis.[29]

II. General Issues Regarding the Review of the Proposed Rules

27. This rulemaking has proceeded according to statutes and rules governing the process for the adoption or amendment of rules following a public hearing.[30] The process is intended to fulfill one of the purposes of the Minnesota Administrative Procedure Act, as identified by the legislature in Minn. Stat. § 14.001, which is to increase public participation in the formulation of administrative rules.[31] A rulemaking proceeding that includes one or more public hearings, in addition to a period for submission of written comments, offers an opportunity for members of the public to participate in the rulemaking process. In this matter, the MPCA engaged in extensive public outreach to members of the public and organizations with an interest in the outcome of this proceeding. Interested persons and organizations submitted comments for consideration, with both supporters and opponents calling for more clarity in the rules.[32]

28. The legislature has established in statute each step of the rulemaking process, the notices that must be made, and the legal standards to be applied. According to the legislature's directives and rules promulgated to effectuate those directives, the Administrative Law Judge must consider the legality of the rule, including whether the MPCA has authority to adopt the rule, whether the agency has fulfilled all procedural requirements, and whether the agency has established that the rule is needed and reasonable.[33] It is important to note that an administrative law judge's order approving a rule does not actually adopt a rule; rather, final adoption of a rule is undertaken by the agency following publication of a notice of adoption.[34]

29. Further, in some cases, rules undergo an additional review process beyond that conducted by an administrative law judge. For example, if an administrative law judge finds that a rule contains defects that prevent adoption, the matter is automatically subject to review by the Chief Administrative Law Judge.[35] If an agency wishes to adopt a rule without correcting identified defects, if may submit the proposed rule to the Legislative Coordinating Commission and the Minnesota house and senate committees with primary

[28] Ex. D at 14.
[29] Ex. D at 13-14, 16.
[30] Ex. D at 9; Minn. R. 1400.2000-.2240 (2025). In Minnesota, rules may be adopted without a public hearing, some rulemakings are exempted from the full rulemaking process, and some rules are authorized for adoption according to an expedited process. *See* Minn. Stat. §§ 14.22, .385, .389 (2026).
[31] Minn. Stat. § 14.001(5).
[32] *See generally* Ex. D at 121-145; Exs. I, L-N.
[33] Minn. Stat. 14.50-.51; Minn. R. 1400.2100 (2025).
[34] Minn. Stat. §§ 14.16, subd. 1, .18, subd. 1.
[35] Minn. Stat. § 14.15, subd. 3.

jurisdiction over state governmental operations to obtain advice and comment.[36] Additionally, the validity of a rule is subject to judicial review.[37]

30. Many commenters expressed concerns that the MPCA has not fully implemented the statutory mandate. These concerns are appropriately addressed to the MPCA and to Minnesota's elected officials. The legal review to be conducted in this case does not permit the Judge to opine on the MPCA's policy choices or substitute her judgment for the Agency's. Once an agency has made a choice to pursue rulemaking, the Administrative Law Judge's role is to ensure that the agency acts lawfully. The rulemaking review standards do not contemplate disapproval of a rule that falls within the MPCA's authority based upon its policy choices. However, based upon the Judge's review of the record, and the comments in particular, several recommendations are offered to strengthen or clarify the rule.

31. The Judge concludes that the MPCA has demonstrated statutory authority to adopt rules governing cumulative impacts analysis and permit decisions in EJ areas; a substantial need for rules implementing Minn. Stat. § 116.065; and the overall structure of the proposed rules is reasonable and appropriately directed toward the statutory purpose. Further, the Judge determines the SONAR substantially addresses the required elements of need and reasonableness.

32. For the reasons explained below, the Judge recommends that the MPCA retain the principal regulatory framework consisting of applicability, initial assessment, determination of need, cumulative impacts assessment (CIA), substantial adverse impact determination, community benefits agreements (CBA), and final permit decision. The Judge also recommends that the MPCA consider modifications to the proposed rule as urged by commenters. Consideration should be given to the following:

- **Recommendation 1**: Revise Minn. R. 7007.6100 to clarify that the Commissioner must consider existing environmental and health burdens, as well as the additional impacts of the proposed permit action, when determining whether a substantial adverse impact exists. The rule should clarify that quantitative thresholds are not the only basis for determining that a substantial adverse impact may occur.

- **Recommendation 2**: Clarify the standards guiding the Commissioner's discretion and strengthen consideration of disproportionate environmental and health burdens in affected communities.

- **Recommendation 3**: Clarify how the rules apply to existing facilities and permit reissuances.

- **Recommendation 4**: Clarify that community benefits are not intended to serve as an automatic offset for adverse environmental or health impacts.

[36] *Id.*, subd. 4.
[37] Minn. Stat. § 14.14.

- **Recommendation 5**: Ensure that the final rules establish sufficiently clear and objective standards to promote consistent and predictable decisions while allowing for the case-specific consideration required by Minn. Stat. § 116.065.

33. The recommendations and suggested modifications offered in this Report are intended to improve clarity and address commenter concerns. However, the proposed rules, as drafted, satisfy all legal requirements, reflect reasonable choices among competing interests, and may be adopted without modification.

III. Rulemaking Authority

34. In Minn. Stat. § 116.07, subd. 4, the Minnesota Legislature directed the MPCA to "adopt standards of air quality" to improve air quality, consistent with the "overall goal of reducing all forms of pollution" in Minnesota.

35. Minn. Stat. § 116.07, subd. 4(a) authorizes the MPCA to engage in rulemaking pursuant to Chapter 14 to adopt rules and standards "for the prevention, abatement, or control of air pollution." The statute further provides, as follows:

> Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to sources or emissions of air contamination or air pollution, to the quality or composition of such emissions, or to the quality of or composition of the ambient air or outdoor atmosphere or to any other matter relevant to the prevention, abatement, or control of air pollution.[38]

36. With the enactment of Minn. Stat. § 116.065, subd. 6(a), the Legislature directed MPCA to "adopt rules under chapter 14 to implement and govern the cumulative impacts analysis and issuance or denial of permits for facilities that impact environmental justice areas" as provided in Minn. Stat. § 116.065.

37. The legislature provided the following guidelines for these rules, as provided in Minn. Stat. § 116.065, subd. 6(c):

> (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 must provide sources of public information that an applicant can access regarding environmental stressors that are present in an environmental justice area;

[38] Minn. Stat. § 116.07, subd. 4(a).

(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 impacted environmental justice 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 environmental justice area; and

(iii) at least one public meeting held within the impacted environmental justice area;

(5) establish a petition process and form to be submitted to the Agency by environmental justice area residents to support the need for a cumulative impact analysis;

(6) establish a process by which a Tribal government can elect to apply this section to a permit application, as provided under Minn. Stat. § 116.065, subd. 2; and,

(7) establish methods for holding public meetings and handling public comments as required under Minn. Stat. § 116.065, subd. 4.

38. In addition, Minn. Stat. § 116.165, subd. 6(a), requires the MPCA to publish the notice of intent to adopt rules within 36 months of May 25, 2023, or the authority for the rules would expire. The MPCA timely published the Notice of Hearing in the *State Register* issued on May 18, 2026.[39]

39. The MPCA has the statutory authority to adopt the proposed rules under Minn. Stat. §§ 116.065, .07., 14.05.

IV. Procedural Requirements of Minn. Stat. Ch. 14 and Minn. R. Ch. 1400

A. Request for Comments

40. Minn. Stat. § 14.101 requires that an agency solicit comments from the public on the subject matter of a proposed rulemaking at least 60 days prior to the publication of a notice of intent to adopt rules or a notice of hearing. Such notice must be published in the *State Register*.[40]

41. After the Minnesota Legislature adopted Minn. Stat. § 116.065, the MPCA began the process of engaging with stakeholders and the public at large to notify and

[39] Ex. F.
[40] Minn. Stat. § 14.101.

inform the public and to obtain input that the MPCA later used to draft the proposed rules, as required by Minn. Stat. § 116.065, subd. 6(b).[41]

42. On July 24, 2023, the MPCA published in the *State Register* a Request for Comments seeking comments on its planned new rules governing development of new rules governing CIA for permit decisions in environmental justice areas (the Cumulative Impacts Rule).[42] The MPCA explained that it would be developing rules that involve the expansion of CIA for air permit projects, as required by the legislature in Minn. Stat. § 116.065.[43]

43. On April 21, 2025, the Agency published an updated Request for Comments, updating the scope of rule chapters potentially affected by the proposed rulemaking.[44]

44. The Request for Comments was published at least 60 days prior to the publication of the Notice of Intent to Adopt Rules, as discussed below. Approximately 50 interested individuals and organizations submitted comments in response.[45]

45. During the rule development period, the MPCA heard from thousands of Minnesotans. To increase accessibility and opportunity for feedback, the Agency created a webpage that displayed relevant information on this rulemaking process and provided the opportunity to make comments outside of the formal public comment periods required by the MAPA process. The webpage is still active.[46]

46. The MPCA used a variety of engagement methods, including public meetings throughout the state, tabling events, individual conversations, interviews with residents of EJ areas, focus groups, community events, webinars, surveys, and opportunities to submit written comments outside formal rulemaking comment periods. The Agency also convened five technical stakeholder meetings that were recorded and open to the public, coordinated a Community Benefit Agreement Panel, and discussed the proposed rule with the Environmental Justice Advisory Group seven times.[47]

47. To improve accessibility, the MPCA offered translated materials and translation services at some events, held meetings at different locations and times, and posted meeting recordings online when possible. The Agency also met with interested parties and used phone and email communications to answer questions, discuss proposed rule concepts, and solicit feedback on anticipated effects.[48]

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[41] *See generally* Ex. D at 26-50.
[42] Ex. A1.
[43] Ex. A1.
[44] Ex. A2.
[45] Ex. A2.
[46] *See* Ex. D at 13-15, 25-50; *see also https://www.pca.state.mn.us/get-engaged/cumulative-impacts-rulemaking*.
[47] *See* Ex. D at 13-15, 25-50.
[48] *See* Ex. D at 13-15, 25-50.

48. The MPCA also let interested parties know about the rulemaking through outreach conducted on a variety of social media platforms, including Facebook, Instagram, and Nextdoor. Impressions indicate the total number of times a piece of content is displayed to users. Views are the number of times the content has been looked at or engaged with by users. In 2024 and 2025, the MPCA's social media posts on the proposed rules received tens of thousands of impressions and thousands of views.[49]

49. The MPCA used a self-subscription service called GovDelivery to provide updates and public notices electronically (via email) to interested and affected parties on a wide range of topics, including administrative rulemakings. Any person may visit the GovDelivery subscription page to subscribe and choose the notifications they want to receive.[50] The MPCA uses GovDelivery to send new rule project alerts to anyone who has signed up to receive notice for all rulemakings, and bulletins about specific rulemaking projects to those who signed up to receive only notifications about those specific topics. Notification by U.S. Mail was also offered, although no one signed up for it. From 2023 to 2026, the MPCA used GovDelivery more than 100 times to alert interested parties to developments in the rulemaking.[51]

50. Members of the public who interacted with MPCA staff at tabling events or other outreach activities were contacted and invited to participate in further conversations throughout the rulemaking engagement and development process. These conversations involved approximately one to three people per conversation and often lasted for 45 to 90 minutes per conversation. The conversations had an expansive topic focus where people could discuss their living conditions, learn about the rule, and share their opinions on rule development. The MPCA had more than 85 community conversations related to cumulative impacts in the seven county metropolitan area.[52]

51. The record indicates that the MPCA satisfied the legislature's requirements for community outreach and engagement regarding the development of the rule, as set forth in Minn. Stat. § 116.065.

52. The MPCA complied with the requirements established by Minn. Stat. § 14.101.

B. Publication of Notice of Intent to Adopt Rules

53. Minn. Stat. § 14.14, subd. 1a(a) and Minn. R. 1400.2080, subp. 6, require that an agency publish in the *State Register* a notice of intent to adopt rules at least 30 days prior to the date of hearing and at least 30 days prior to the end of the comment period.

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[49] Ex. D at 29-30.
[50] *See* http://public.govdelivery.com/accounts/MNPCA/subscriber/new.
[51] Ex. D at 29-35.
[52] Ex. D at 39-42.

54. Minn. Stat. § 116.065, subd. 6, required the MPCA to publish notice of intent to adopt these rules within 36 months of May 25, 2023.

55. The MPCA requested approval of its Additional Notice Plan and Notice of Intent to Adopt Rules with a Hearing (Notice of Hearing) on April 22, 2026. The public hearing on the proposed rules was scheduled to take place on September 1, 2026.[53] The Judge approved the Additional Notice Plan and Notice of Hearing by order dated April 27, 2026.[54]

56. The MPCA published the Notice of Hearing in the *State Register* on May 18, 2026.[55]

57. The Notice of Hearing scheduled a hearing to take place by video conference on September 1, 2026. The Notice of Hearing provided information on how persons could submit comments on the proposed rules and how persons could join the hearing via the internet or telephone.[56]

58. The Notice of Hearing contained all the information required under Minn. R. 1400.2080 and was published more than 30 days before the hearing and the close of the comment period. The Notice of Hearing also was published within 36 months of May 25, 2023.[57]

59. The MPCA complied with Minn. Stat. § 14.14, subd. 1a(a) and Minn. R. 1400.2080, subp. 6.

C. Notice Requirements

1. Notice to Official Rulemaking List

60. Minn. Stat. § 14.14, subd. 1a, requires that each agency maintain a list of all persons who have registered with the agency for the purpose of receiving notice of rule proceedings.

61. On May 18, 2026, the MPCA emailed a copy of the Notice of Hearing to all persons and entities on its official rulemaking list.[58] The official rulemaking list was comprised of all persons and entities who requested to be placed on the MPCA's GovDelivery system for the purpose of receiving notice about the proposed rule.[59] The Notice of Hearing was emailed to 2,333 GovDelivery subscribers.[60]

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[53] Ex. A2.
[54] *See* Order on Request for Review and Approval of Additional Notice Plan and Notice of Hearing (Apr. 27, 2026).
[55] Ex. F.
[56] Ex. F.
[57] *See* Ex. F.
[58] Ex. G1.
[59] Ex. G1.
[60] Ex. G2.

62. The Notice of Hearing advised that the comment period would expire on September 21, 2026, 20 days following the hearing on September 1, 2026.[61]

63. Minn. Stat. § 14.14, subd. 1a, requires that an agency give notice of its intent to adopt rules by U.S. mail or electronic mail to all persons on its official rulemaking list at least 30 days before the date of the hearing.

64. Minn. R. 1400.2080, subp. 6, provides that a notice of hearing or notice of intent to adopt rules must be mailed at least 33 days before the end of the comment period or the date of the hearing.

65. The MPCA fulfilled the notice requirements established in Minn. Stat. § 14.14 and Minn. R. 1400.2080, subp. 6.

2. Additional Notice

66. Minn. Stat. § 14.14, subd. 1a(a), requires that an agency make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intent to adopt rules. Such notice may be made in newsletters, newspapers, or other publications, or through other means of communication.[62] This notice is referred to as "additional notice" and is detailed by an agency in its additional notice plan.

67. Minn. Stat. § 14.131 requires that an agency include in its SONAR a description of its efforts to provide additional notice. Alternatively, the agency must detail why additional notification efforts were not made.[63]

68. An agency may request approval of its additional notice plan by an administrative law judge prior to service.[64]

69. The MPCA requested and was granted approval of its Additional Notice Plan on April 27, 2026.[65]

70. On May 18, 2026, the MPCA provided notice according to its approved Additional Notice Plan, as follows:[66]

- Provided an extended comment period by scheduling a 60-day pre-hearing comment period on the proposed rule amendments;
- Held a public meeting during the 60-day comment period to provide information on the proposed rule amendments and take questions

[61] Ex. F.
[62] Minn. Stat. § 14.14, subd. 1a(a).
[63] Minn. Stat. § 14.131.
[64] Minn. R. 1400.2060 (2025).
[65] Order on Request for Review and Approval of Additional Notice Plan and Notice of Hearing (Apr. 27, 2026).
[66] Ex. H.

from stakeholders, and afterward posted the recording of the June 2, 2026, meeting in English, Spanish, and Somali on the MPCA website at https://www.pca.state.mn.us/events-and-meetings/cumulativeimpacts-rule-informational-webinar-2026-06-02;

- Posted information, updates, and reminders on the MPCA's social media accounts;

- Provided specific notice to Tribal authorities via email with a hyperlink to electronic copies of the SONAR and proposed rule text to designated contacts for the 11 federally recognized Tribes in Minnesota;

- Provided specific notice to permittees potentially affected by the proposed rule via email with a hyperlink to electronic copies of the Notice, SONAR, and proposed rule text;

- Provided specific notice via email to the professional associations, community organizations and other groups identified in the Additional Notice Plan with a hyperlink to electronic copies of the Notice, SONAR, and proposed rule text;

- Provided a bulletin in the May 28, 2026 edition of the MPCA's *Air Mail* newsletter with information on the open comment period and June 2 public meeting, including hyperlinks to the meeting details, Notice, SONAR, and proposed rule text; and

- Posted rulemaking updates and associated documents, including the Notice, SONAR, and proposed rule text, on the Cumulative Impacts rulemaking webpage at *https://www.pca.state.mn.us/get-engaged/cumulative-impacts-rulemaking*.

71. The MPCA complied with its Additional Notice Plan and fulfilled the additional notice requirements provided in Minn. Stat. §§ 14.14, subd. 1a(a) and 14.131.

3. Notice to Legislators

72. Under Minn. Stat. § 14.116, an agency is required to send a copy of the Notice of Intent to Adopt and the SONAR to certain legislators at the time it mails its Notice of Intent to Adopt to persons on its rulemaking list and pursuant to its additional notice plan.

73. On May 18, 2026, the MPCA submitted a copy of the Notice of Hearing, SONAR, and proposed rules to the chairs and ranking minority party members of the

legislative policy and budget committees with jurisdiction over the proposed rules, and to the Legislative Coordinating Commission.[67]

74. The MPCA fulfilled its notification responsibilities under Minn. Stat. § 14.116.

4. Notice to the Legislative Reference Library

75. Minn. Stat. § 14.131 and Minn. R. 1400.2070, subp. 3 (2025), require the agency to send a copy of the SONAR to the Legislative Reference Library when the Notice of Intent to Adopt is mailed.

76. On May 15, 2026, the MPCA emailed a copy of the SONAR to the Legislative Reference Library.[68]

77. The MPCA complied with Minn. Stat. § 14.131 and Minn. R. 1400.2070, subp. 3.

5. Notice to Commissioner of Agriculture

78. Minn. Stat. § 14.111 imposes additional notice requirements when the proposed rules affect farming operations. The statute requires that an agency provide a copy of any such changes to the Commissioner of Agriculture at least 30 days prior to publishing the proposed rules in the *State Register*.[69]

79. The MPCA's proposed rules do not impose restrictions or have an impact on farming operations. As a result, the MPCA was not required to notify the Commissioner of Agriculture.[70]

D. Rule Hearing and Submission of Written Comments

80. The Judge conducted a public rulemaking hearing on September 1, 2026, via WebEx.[71] The MPCA's panel at the hearing included: Maren Bardal, Senior Associate General Counsel; Hassan Bouchareb, Engineer; and Katie Izzo, Rule Coordinator.[72]

81. In support of its request for approval to adopt the proposed rules, the Agency offered the following documents into the record as exhibits, as required by Minn. Stat. § 14.14, subd. 2a and Minn. R. 1400.2220:

Ex. A: MPCA's Request for Comments as published in the *State Register* on July 24, 2023 (A1) and on April 21, 2025 (A2);

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[67] Ex. K2.
[68] Ex. E.
[69] Minn. Stat. § 14.111.
[70] *See* Ex. D at 190.
[71] *See* Ex. L.
[72] Ex. L.

Ex. C: Proposed rules dated April 6, 2026, including the Revisor's approval;

Ex. D: MPCA's SONAR, dated April 29, 2026;

Ex. E: Copy of transmittal letter mailing the SONAR to the Legislative Reference Library on May 15, 2026;

Ex. F: Notice of Hearing as published in the *State Register* on May 18, 2026;

Ex. G1: Certificate of Mailing the Notice of Hearing to the Agency's rulemaking mailing list on May 18, 2026;

Ex. G2: Agency's GovDelivery messaging with recipient count;

Ex. G3: Certificate of Accuracy of Mailing List;

Ex. H: Certificate of Giving Additional Notice Under the Additional Notice Plan on May 18, 2026;

Ex. I: Written comments on the proposed rules that the MPCA received during the pre-hearing comment periods, and the MPCA's response to the comments received during the pre-hearing comment period;

Ex. K1: Letter to Minnesota Management and Budget (MMB);

Ex. K2: Certificate of Sending Notice of Hearing and SONAR to Legislators and Legislative Coordinating Commission (LCC) on May 18, 2026;

Ex. L1: Copy of slides from MPCA's presentation at rulemaking hearing on September 1, 2026;

Ex. L2: Hearing Comments;

Ex. M: Written rulemaking comments and materials submitted during the post-hearing comment period; and

Ex. N: Written comments and materials submitted during the rebuttal period.

82. Bardal offered the MPCA's exhibits and addressed the procedural requirements for rulemaking.[73] Bouchareb presented the MPCA's positions as to the need for, and reasonableness of, the rule.[74]

83. Approximately 30 people attended the hearing on September 1, 2026. The hearing continued until all interested persons, groups, or associations had an opportunity to be heard concerning the proposed rules. Fifteen members of the public made

[73] Ex. L2. (The MPCA offered Exs. A, C-I, and K-L at the commencement of the rulemaking hearing on September 1, 2026. The MPCA offered Exs. M-N after the hearing. All exhibits were received into the record.).
[74] Ex. L2.

statements during the hearing. A Spanish language interpreter was present to assist individuals commenting in Spanish.[75]

84. After the hearing, the record remained open for the submission of public comments for another 20 calendar days – until September 21, 2026 – to permit interested persons and the Agency additional time to submit written comments.[76] During the post-hearing public comment period, approximately eight written comments were submitted by members of the public,[77] and the MPCA also submitted responsive comments.[78]

85. Following the initial comment period, the hearing record remained open an additional five business days to permit interested persons and the Agency to reply to the earlier submitted comments. Six rebuttal comments were filed, and the MPCA also submitted a comment in rebuttal. The rebuttal comment period closed on September 28, 2026, and the hearing record closed on that date.[79]

V. Statutory Requirements

A. Regulatory Factors

86. The Minnesota Administrative Procedure Act requires an agency adopting rules to address eight factors in its SONAR.[80] Those factors are:

> (1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
>
> (2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;
>
> (3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;
>
> (4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;
>
> (5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories

[75] *See* Ex. L.
[76] *See* Minn. Stat. § 14.15, subd. 1; *see also* Ex. L2.
[77] *See* Exs. M, N.
[78] *See* Ex. M.
[79] *See* Ex. N.
[80] Minn. Stat. § 14.131.

of affected parties, such as separate classes of governmental units, businesses, or individuals;

(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals;

(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference; and

(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule and reasonableness of each difference.[81]

87. Minn. Stat. § 116.07, subd. 6 and Minn. Stat. § 115.43, subd. 1, also require MPCA to consider compliance costs. Similarly, the MPCA maintains a number of policies implicated by the rulemaking which are likewise addressed below.

1. Classes of Persons Affected, Benefitted, or Bearing Costs of the Proposed Rule

88. The MPCA recognizes that a variety of classes may be affected by the proposed rule. The class that may bear direct costs consists of the permitted facilities in the Twin Cities seven-county metropolitan area and cities of the first class (currently only Duluth and Rochester) that are located within EJ areas or within one mile of an EJ area. Additionally, the MPCA, as the Minnesota state agency that has been directed by the Minnesota legislature to implement, administer, and enforce the proposed rule, will bear direct costs to fulfill these responsibilities.[82]

89. The primary classes that may directly benefit from the proposed rule are residents of the Twin Cities seven-county metropolitan area, Duluth, and Rochester who live in EJ areas. These Minnesotans may enjoy health and environmental benefits and generally enjoy improved amenities and find their communities become more livable. These communities have generally borne disproportionate burdens of pollution. Additionally, the MPCA expects that owners and operators of facilities needing to comply with the proposed rule will engage with consultants to assist them with their compliance steps. Thus, these consulting businesses may see upticks in demand and payment for their services and thus may also directly benefit from the proposed rule.[83]

[81] *Id.*
[82] Ex. D at 167.
[83] Ex. D at 167.

(a) Facilities in the Twin Cities Seven-County Metropolitan Area or in Minnesota Cities of the First Class Subject to Rule Compliance

90. Facilities in EJ areas are the only non-governmental entities that would be directly regulated by the proposed rule. Using the Minnesota Legislature's criteria for an EJ area and the types of air permits subject to the new cumulative impacts law, approximately 89 existing permitted facilities may need additional environmental analysis when seeking an amended or reissued air permit; 73 of these facilities are located in the Twin Cities. Rochester and Duluth each host eight facilities.[84]

91. Fifty of the 89 existing permitted facilities have permits that expire every five years and would be immediately affected once the proposed rule is adopted. The remaining 39 facilities have non-expiring permits and would only be required to possibly undergo additional environmental analysis if they proposed changes to their permit, the MPCA required changes because of an enforcement action, or the state or federal government required changes due to new regulations.

92. Affected facilities will also bear costs associated with the proposed rule, which are discussed below.[85]

(b) Minnesota State Agencies

93. The MPCA states it will be the primary Minnesota government agency responsible for implementing, administering, and enforcing the proposed rule. This is anticipated to require additional MPCA staff time from different programs within the Agency but no other significant agency resources. Those costs are discussed in the cost analysis below.

(c) Residents of the Twin Cities Seven-County Metropolitan Area, Duluth, and Rochester Living in Environmental Justice Areas

94. The class primarily benefitted by the rule includes the residents of EJ areas, historically subjected to a disproportionate share of pollutants. The rule's framework intends, during permitting, to afford stakeholders and the MPCA to identify and evaluate additional measures, beyond meeting established permit limits, to avoid and diminish impacts. This is the purpose of the proposed rule and points to the positive benefits it will bring to these overburdened communities.[86]

95. The MPCA expects the proposed rule to reduce impacts to the environment and the health of residents in EJ areas in the seven metropolitan counties and cities of the first class, leading to many improvements in air quality, public health, and amenities in these communities. Air quality improvements may include reductions in air

[84] Ex. D at 167.
[85] Ex. D at 167.
[86] Ex. D at 177.

concentrations of fine particulate matter ($PM_{2.5}$), ground level ozone, and air toxics. These air quality improvements can lead to several improved health outcomes, including reduced early deaths. The specific benefits that are expected to accrue to these communities are further described below in the discussion of costs of not adopting the rule.[87]

96. Additionally, the proposed rule will lead to greater community involvement and participation in EJ communities, for example, through the establishment of CBAs. The other main pillar of Minnesota's Environmental Justice Framework, besides reducing pollution impacts in overburdened communities, is to boost meaningful involvement of people in these communities to participate in decisions about activities that may affect their environment and/or health.[88] This benefit is also discussed below in the "Costs of Non-Adoption" section.

(d) Consulting Businesses That May Help Regulated Businesses Comply With the Proposed Rule

97. Several Minnesota environmental consulting firms provide environmental review and permitting services. To the extent there is an increase in demand for these firms' services, consultants and other third parties not directly regulated by the proposed rule, may see increased business or activity through engagement with permitted facilities that will be required to comply with the proposed rule, resulting in an economic benefit for these firms.[89]

(e) Other Classes of Persons Receiving Indirect Benefits or Bearing Indirect Costs

98. The MPCA notes that any environmental policy or rulemaking will likely have effects outside the directly intended impacts of the policy or rulemaking, so various other classes may receive indirect benefits or incur indirect costs as a result of the rulemaking. As noted above, the proposed rule may indirectly benefit businesses outside of EJ areas in the Twin Cities seven-county metropolitan area and cities of the first class, workers near regulated facilities within these areas, Minnesota communities and residents outside of the EJ areas where the proposed rule applies, and classes that could benefit from CBAs, including local governments, schools, parks, and natural services groups.[90]

99. In contrast, the proposed rule may incur indirect costs on employees of regulated facilities in EJ areas if there is any loss of jobs or decreased operations in regulated facilities, and communities and residents outside of regulated areas due to the displacement of pollution and environmental stressors to areas where compliance with the proposed rule is not required.[91]

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[87] Ex. D at 11-13, 178-179.
[88] Ex. D at 9, 26, 114-116, 147.
[89] Ex. D at 169.
[90] Ex. D at 114-116, 169.
[91] Ex. D at 169.

2. Probable Costs to the Agency and Other Agencies for Implementation and Enforcement and Effect on State Revenues

100. The primary state agency that will be tasked with implementing, administering, and enforcing the proposed rule is the MPCA. When the Minnesota Legislature enacted Minn. Stat. § 116.065 in 2023 and directed the MPCA to implement the proposed rule, it appropriated to the MPCA funding to support 11 full-time equivalent staff positions (FTEs). This funding aligns with MPCA's estimates of the number of FTEs that will be needed to fulfill its responsibilities related to the proposed rule. These FTEs cut across several MPCA programs and divisions, including the air quality permitting program, the compliance and enforcement program, risk assessors, community affairs, legal services, communications and outreach, the Office of Equity and Environmental Justice, and project managers. Each of these MPCA programs will require added staff time to fulfill the Agency's responsibilities related to the proposed rule.[92]

101. The MPCA calculates the current average annual cost for an FTE to the MPCA, including all overhead costs, is $175,000. The MPCA estimates that it will hire an additional 11 FTEs as a result of the proposed rule, at a yearly cost of $1.925 million. This amount is within the total amount appropriated to the MPCA for the proposed rule by the Minnesota Legislature when it enacted Minn. Stat. § 116.065 in 2023. The legislature appropriated $2,457,000 for rule development and an additional $2,457,000 for implementation of the proposed rules when the legislature directed the MPCA to adopt the proposed rule.[93]

102. The MPCA does not expect the proposed rule to affect state revenues. The rule does not require permit holders to pay fees as part of their compliance obligations; no other provisions are expected to result in revenue to the MPCA or expenditures from state funds. The proposed rule could indirectly affect city and county tax revenues if regulated businesses choose to relocate facilities outside EJ areas in the Twin Cities seven-county metropolitan area, Duluth, or Rochester, or decide not to establish operations in these areas to avoid potential compliance costs. However, the MPCA determined that facility siting decisions are based on a variety of factors and that it is unlikely a facility would make a siting decision solely to avoid the Cumulative Impacts Rule. Accordingly, any attempt to quantify potential shifts in local tax revenues resulting from such decisions would be speculative.[94]

3. Less Costly or Less Intrusive Methods for Achieving the Purpose of the Proposed Rule

103. The purpose of the proposed rule amendments is to fulfill the requirements set forth by Minn. Stat. § 116.065, which directs the Agency to adopt rules that establish the conditions that implement and govern CIAs and permit decisions in EJ areas in the Twin Cities seven-county metropolitan area and cities of the first class. This rule will allow

[92] Ex. D at 169.
[93] *See* Minn. Laws 2023, Ch. 60, Art. 1, § 2, subd.3(i).
[94] Ex. D at 169.

the MPCA to implement a CIA program in Minnesota, inform the public, and support the Agency's mission to protect human health and the environment.[95]

104. The MPCA considered other less costly methods of implementing a CIA program. One method would be to create voluntary programs to address cumulative impacts through different evaluations of impacts to health and the environment. The MPCA rejected this option as inconsistent with the legislature's requirements imposing mandatory duties on the MPCA to require CIAs under specific circumstances. In addition, the MPCA notes that it already has a voluntary program regarding cumulative impacts in EJ areas. While useful, many stationary sources opt out due to the voluntary nature of the program.[96]

105. Another method the MPCA considered is establishing policy or guidance-based programs to address cumulative impacts. Such programs could be created as an alternative to a rule-based process but raise the same concerns noted with voluntary programs. The MPCA points out that programs that are guidance or policy-based could be implemented inconsistently without rule language governing the specifics of what is required.[97]

106. The directive in Minn. Stat. § 116.065 is that the MPCA must adopt rules to implement and govern CIAs and permit decisions in EJ areas. The MPCA contends that there is no reasonable alternative to this rulemaking and the proposed changes could not be addressed through Agency policy or internal rule interpretation. Therefore, the MPCA maintains that there is no less costly or intrusive method to implement the legislature's mandate.[98]

4. Description of Alternative Methods for Achieving the Purpose of the Proposed Rule Considered by the Agency and Why Alternatives Were Rejected

107. In addition to voluntary programs and policy or guidance-based programs, the MCPA considered a third alternative to the proposed rule. The third and final method considered was creating a technology-based approach to addressing cumulative impacts, which involves setting standards based on data for various types of stationary sources and processes. The MPCA decided against this approach as it would require an unreasonable amount of data collection and analysis for the wide range of potential impacts across multiple existing and potentially new sources and the diverse communities and areas that surround those sources.[99]

[95] Ex. D at 171.
[96] Ex. D at 171.
[97] Ex. D at 171.
[98] Ex. D at 172.
[99] Ex. D at 172-173.

108. Because the MPCA must comply with the legislature's mandate to adopt rules to implement Minn. Stat. § 116.065, it contends that adopting the standards in this rule is the only appropriate mechanism available to reduce pollution in EJ areas.[100]

5. Probable Costs of Complying with Proposed Rules, Including the Portion of the Total Costs Borne by Identifiable Categories of Affected Parties

109. The MPCA has conducted an analysis of the costs and benefits of this proposed rule. Overall, the MPCA has found a net benefit will result from adopting the rule.[101]

110. As discussed above, the parties that will be most affected and will bear the costs associated with the proposed rule are permitted facilities in EJ areas in the seven metropolitan counties and Minnesota cities of the first class. The MPCA has compiled a list of 89 facilities, updated in August 2025, that could be required to comply with the proposed rule and incur costs in the process of doing so.[102]

111. The MPCA has two primary sources of information to estimate potential compliance costs for regulated facilities. First, the Agency conducted its own analysis of the expected costs of all the potential actions that regulated permittees may have to do to comply with the proposed rule. Second, to obtain further information and insight into how much the proposed rule may cost these facilities, the MPCA sought comments from regulated facilities during an informal comment period using an anonymous survey tool. At the time this request for information was sent out in September 2025, the MPCA had identified the following five possible steps to comply with the proposed rule, each of which could incur costs to a facility working towards compliance. The MPCA notes that, while some details of rule compliance have changed since then, these five steps still generally align with the structure of compliance with the proposed rule:

- **Step 1**: Initial assessment to evaluate benchmarks and impacts to the environment and public health in the EJ area to determine if a CIA is required.

- **Step 2**: Cumulative impacts analysis—Primary facility information. This applies to all permittees that are required to conduct a cumulative impacts analysis.

- **Step 3**: Cumulative impacts analysis—Additional information. Depending on the results of the primary facility information, some permittees may be required to provide additional information in one or more of the following areas: facility assessment, community assessment, environmental analysis, public health, and socioeconomic analysis.

[100] Ex. D at 173.
[101] Ex. D at 173.
[102] Ex. D at 173.

- **Step 4**: Additional pollution control measures if the CIA identifies potential substantial adverse impacts.

- **Step 5**: Community benefit agreement if the CIA identifies substantial adverse impacts.[103]

112. Each of the above compliance steps could impose costs for the regulated facility to collect data, to conduct analysis and modeling, to write technical reports to present data, analysis, and results, to hire consultant(s) to assist with any of the compliance steps, and to conduct community engagement, such as public meetings and other forms of outreach. Most facilities will not need to conduct all five compliance steps. It is expected that each successive step in the above list will apply to fewer and fewer regulated facilities as the use of the proposed rule gets underway. All regulated facilities may need to conduct an initial assessment to determine if a CIA is necessary. For some facilities, a CIA will be deemed unnecessary, so fewer facilities will need to conduct the next compliance step of compiling primary facility information as part of a CIA.[104]

113. Questions in the survey included: whether respondents anticipated they would need to conduct each of the compliance steps and, if so, what types of costs they expected to incur for each step; how many hours of internal staff or external consultants' time would be expected to complete each step; and the total financial cost the respondents expected to incur to complete each step. Thirteen potentially affected permittees responded to the survey with comments, although two did not include cost estimates and could not be factored into MPCA's cost analysis.[105]

114. The responses received did not form a large enough survey sample to extrapolate an estimate of the average compliance costs for the entire population of 89 facilities that could be affected by the proposed rule with a high degree of confidence and statistical significance. Furthermore, many respondents that did provide expectations of the financial cost of compliance also expressed high levels of uncertainty about these costs given uncertainty about exactly what would be required of them to comply with the proposed rule. Nonetheless, these survey responses are useful to draw some inferences about costs to comply with the proposed rule, especially when combined with MPCA's own analysis of compliance costs.[106]

115. The MPCA created a table of its survey responses, as set forth below:[107]

[103] Ex. D at 173-174.
[104] Ex. D at 174.
[105] Ex. D at 174.
[106] Ex. D at 174.
[107] Ex. D at 175.

Table 10. Economic survey response summary

	Step 1: Initial assessment	Step 2: CI analysis, primary facility information	Step 3: CI analysis, additional information	Step 4: Additional Pollution Control measures	Step 5: Community benefit agreement
Yes, expect to need to do	91% of respondents	91% of respondents	55% of respondents	27% of respondents	55% of respondents
No, don't expect to need to do	0% of respondents	0% of respondents	9% of respondents	9% of respondents	18% of respondents
Unsure if will need to do	9% of respondents	9% of respondents	36% of respondents	64% of respondents	55% of respondents
Average hours*	55 hours	74 hours	82 hours	76 hours**	**
Average costs*	$26,000	$35,000	$45,000	$45,000**	**

*Inferred average hours and costs were rounded to the nearest hour and thousand dollars to avoid giving a false sense of confidence in precision of estimates.

**Hours and costs estimates for Steps 4 and 5 are combined because the survey asked respondents the total time and cost expected to complete both of these steps combined into one question.

116. Should a regulated facility need to complete all of the above compliance steps, the survey responses suggest that the total investment required would be approximately 287 hours, totaling $151,000, the sum of all average hours and all costs from the survey respondents. This is a rough estimate of compliance with the proposed rule in the most costly instance where a regulated permittee is required to complete each compliance step. The MPCA expects that these costs will be spread over time as the process moves from one stage to the next, rather than one lump sum a facility must absorb.[108]

117. MPCA asserts the cost estimates from survey responses may be higher than incurred costs will be. For example, dividing the total compliance costs that survey respondents estimated by the time investment (in hours) respondents anticipate, results in a high cost-per-hour-of-work, averaging over $500 per hour. The hours invested in rule compliance will likely involve a combination of facility employees and paid consultants. It is expected that the hourly cost of this work, whether to internal staff or external consultants, will be less than $500 per hour. As a point of reference, the average $175,000 annual cost of an FTE working at the MPCA equates to less than $90 per hour worked. In the MPCA's analysis of the cost of work done by consultants, the Agency generally assumes a range of costs between $100 and $250 per hour that consultants would need to be paid to perform the work. The MPCA maintains that the cost of $100 per hour generally reflects the consultant cost of an entry level position, while $250 per hour reflects the cost of a high-level principal or senior level position in a consulting firm.[109]

118. The MPCA conducted its own analysis of the expected costs of all the potential actions that regulated permittees may have to complete to comply with the proposed rule, including performing an initial assessment, completing all the steps of a

[108] Ex. D at 174-175.
[109] Ex. D at 175.

CIA, conducting multiple public meetings, and completing a community benefits agreement. In the MPCA's analysis, for a facility that needs to complete all compliance steps, the total estimated hours required range from 530 to 1,300 hours. The largest contributor to this estimate is the CIA that the MPCA estimates will require between 400 and 1,000 hours of work for a permitted facility needing to conduct that analysis. The variance in these estimates reflects the large range of circumstances and other factors unique to each facility that will determine the costs of complying with the proposed rule. The MPCA assumed that, on average, 80% of the required work could be done by entry-level positions at an average estimated cost of $100 per hour and the remaining 20% of the work would require a senior or principal position at an average estimated cost of $250 per hour. Based on the total compliance estimates of 530 to 1,300 hours, and an allocation of those hours between lesser and greater per hour costs, the MPCA estimates a total compliance cost ranging from $69,000 to $170,000 per facility. This estimate assumes that all compliance steps will need to be conducted.[110]

119. Additional costs could include training and education of employees, altering workflow or operational processes, and installation of new or modified equipment. Altering workflow or operational processes and installing new or modified equipment have the potential to cost hundreds of thousands of dollars. It is possible a facility could elect options like those to achieve compliance, but because those business decisions are facility-specific, such costs are impossible to predict and could be offset to some extent by benefits to the facility. The proposed rule does not require the installation of any specific control equipment or limits on facility emissions. Nevertheless, facilities may choose to pursue one or both actions to avoid needing to conduct a CIA, avoid creating a substantial adverse impact, or to fulfill a CBA.[111]

120. The MPCA also notes that there may be indirect costs associated with the proposed rule. Those indirect costs could include higher costs for consumers of products produced by a facility, elimination of jobs to cover costs, and the potential to shift pollution from EJ areas to other areas in the state. These costs are even more difficult to estimate than direct costs, as is the likelihood of those events occurring.[112]

121. The MPCA has adequately considered and determined the costs of complying with the proposed rule and economic factors, as required by Minn. Stat. §§ 14.131, 116.07, subd. 6 and 115.43, subd. 1.

6. Probable Costs or Consequences of not Adopting the Proposed Rules, Including Costs Borne by Individual Categories of Affected Parties

122. The MPCA states that the probable costs or consequences of not adopting the proposed rule will be the loss of all the net benefits that the rule expects to provide.[113] The MPCA asserts that not adopting the rule will leave unfulfilled the legislature's

[110] Ex. D at 176.
[111] Ex. D at 176-177.
[112] Ex. D at 177.
[113] Ex. D at 178.

mandate to adopt rules to address the historic and disproportionate cumulative impacts of pollution in EJ areas.[114]

123. The MPCA concludes that the rule will have positive social and economic impacts in not only the seven metropolitan counties and cities of the first class, but throughout Minnesota. The rule provides a critical tool in the state's efforts to improve environmental and public health conditions in EJ areas, address historic inequities in the siting of pollution-generating facilities that have placed the burden of economic progress disproportionately on low-income and minority communities, and guaranteed opportunities for meaningful participation by members of EJ communities in the permitting process.[115]

124. The proposed rule is intended to help ensure that no community is disproportionately impacted by polluting facilities by limiting the future placement and expansion of such facilities in these communities and guaranteeing an opportunity for meaningful participation during the decision-making process. The statute and the proposed rule do not require the relocation of pollution from one community to another, but rather, the improvement of conditions for all by reducing negative impacts in communities where they are worst.[116]

125. The proposed rule is intended to deliver positive economic impacts by reducing environmental and health impacts, alongside environmental stressors, in EJ areas, which may reduce health costs throughout the state. Additionally, reducing stressors in EJ areas is expected to make them more attractive, both to potential new residents and investments that spur economic revitalization. Just as the costs are difficult to quantify, the benefits of the proposed rule are difficult to calculate. However, it is expected to improve the quality of life for those Minnesota residents currently impacted by the environmental stressors identified in Minn. Stat § 116.065 and addressed by this rule.[117]

126. The MPCA and supporters of the rule point to two broad categories of benefits of the proposed rule: improvements in human health and increased amenity values from things like additional greenspace. The MPCA cautions that considering only the health and amenity benefits likely underestimates the full benefits of the proposed rule as additional non-quantifiable benefits, such as improved information access, greater civil society representation, and reductions in inequity, are also likely outcomes resulting from the proposed rule.[118]

127. Many of the stressors, such as cancer risks, fine particulate matter, and asthma prevalence, addressed by the proposed rule adversely affect human health. Reducing exposure to these stressors is likely to yield long-term public health and economic benefits, including fewer premature deaths, reduced costs associated with the

[114] Ex. D at 178.
[115] Ex. D at 178.
[116] Ex. D at 178.
[117] Ex. D at 178.
[118] Ex. D at 179.

treatment of acute and chronic health conditions, and increased productivity resulting from fewer absences from work and school. Although the specific reductions in environmental stressors attributable to the proposed rule cannot be quantified in advance, the rule is likely to reduce associated adverse health outcomes over time, both in EJ areas and throughout Minnesota. As a result, the proposed rule may reduce human exposure to pollution generated by industrial processes, chemical manufacturing, and other sources of air pollution, decreasing human exposure to pollutants such as fine particulate matter ($PM_{2.5}$) and ground-level ozone.[119]

128. Because of their small size, $PM_{2.5}$ can move from the lungs into the bloodstream and even permeate the brain and other organs, producing both acute and chronic health impacts, including cardiovascular disease, respiratory disease, and mortality. As another example, ground-level ozone causes irritation and inflammation of lung tissue and can also cause or worsen short-term health effects such as respiratory irritation, reduced lung function, and aggravated asthma, as well as long-term health effects such as chronic respiratory disease and cardiovascular problems. Reducing exposure to these pollutants is expected to reduce incidences of cardiovascular diseases, respiratory diseases, and mortality throughout Minnesota.[120]

129. To provide an example of the economic value of improved health outcomes, EPA's Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool (COBRA) was used to model the estimated results of a very small reduction in air pollution. COBRA is a free, easy-to-use EPA tool for preliminary analysis of health impacts and monetized benefits from environmental policy changes. COBRA models the incidence rate and corresponding economic impact of more than a dozen health outcomes due to emissions of five different pollutants: $PM_{2.5}$, sulfur dioxide (SO_2), nitrogen oxide (NOX), ammonia, and volatile organic chemicals (VOCs). These pollutants lead to higher concentrations of $PM_{2.5}$ and ozone in Minnesota's air. After the user determines a possible scenario, COBRA estimates any potential increases or decreases in the annual incidences of several health endpoints, including mortality, infant mortality, nonfatal heart attacks, cardiovascular and respiratory hospital admissions, acute bronchitis, upper and lower respiratory symptoms, emergency room visits for respiratory conditions and asthma, asthma exacerbation, minor restricted activity days, work loss days, and school loss days.[121]

130. Using a two percent discount rate and limiting the analysis to the impacts on Minnesotans, COBRA was used to model the positive health impacts of 0.1 percent reductions (*i.e.*, a reduction by one thousandth) in NOX, a precursor to ground- level ozone, and in $PM_{2.5}$ in the seven counties of the Twin Cities seven-county metropolitan area, Duluth, and Rochester. COBRA estimates that the economic value of reduced health impacts from this slight change to be between $8 million to $15 million every year.

[119] Ex. D at 179.
[120] Ex. D at 179.
[121] Ex. D at 179.

A 0.1 percent reduction in overall emissions in the area was selected to provide a conservative estimate of the potential economic benefits of the proposed rule.[122]

131. Although this is an example of the potential economic benefits of reducing a single environmental stressor, the MPCA believes that the estimates from COBRA likely understate the overall economic benefits of the public health improvements of the proposed rule.[123]

132. The second broad category of benefits from the rule the Agency identified is improved amenities. The MPCA observes that the concentration of environmental stressors and regulated permittees in EJ areas is associated with multiple negative outcomes beyond direct human health impacts. Poor air quality and surface water quality limit residents' opportunities for outdoor activities. Outdoor activities provide positive health benefits that reduce health care costs, often at lower costs than substitutes, like gym memberships.[124]

133. Outdoor recreation also supports state and local economies. The U.S. Bureau of Economic Analysis reports that Minnesota's outdoor recreation economy generated $13.5 billion in value-added (direct contribution to gross domestic product) in 2023, supporting nearly 96,000 jobs. This economic impact highlights outdoor recreation's importance to Minnesotans and the state's economy. To the extent that low environmental quality reduces the demand for outdoor recreation in Minnesota's EJ areas, the activities of regulated permittees also prevent those communities from benefiting from participation in this subsector of Minnesota's economy.[125]

134. The negative relationship between environmental quality and property values has been long understood in environmental economics literature. It is generally agreed that decreases in environmental quality lower property values in areas surrounding facilities producing pollution. Conversely, it has been repeatedly found that reducing emissions or cleaning up polluted areas increases property values in the previously impacted communities. Improvements in environmental quality are also associated with rising incomes in such communities.[126]

135. In summary, the MPCA contends that not adopting the proposed rule leaves the Minnesota Legislature's mandate to further environmental justice unmet and forgoes improved health and environmental conditions in historically overburdened communities. The MPCA has satisfied its obligation to consider the costs of not adopting the rule.

7. Assessment of Differences Between Proposed Rules and Existing Federal Regulations

136. In addition to the requirements of Minn. Stat. § 14.131 regarding this factor, for a rulemaking relating to air quality standards, Minn. Stat. § 116.07, subd. 2(f), requires

[122] Ex. D at 179-180.
[123] Ex. D at 180.
[124] Ex. D at 180.
[125] Ex. D at 180.
[126] Ex. D at 180.

the MPCA to include in its SONAR an assessment of any differences between the proposed rule and federal standards, as well as similar standards in the states that border Minnesota and other states within EPA Region 5. The MPCA must provide specific analysis of the need and reasonableness for any difference in its proposed rule.

137. At the legislature's direction, Minnesota has taken a leadership role in addressing cumulative impacts in air permitting decisions. Minnesota would be the first state in EPA Region 5 to adopt rules requiring the considering of cumulative impacts in EJ areas. No bordering states have similar rules or laws. There is no similar federal regulation.[127]

138. In recent years, states outside the Midwest have begun to adopt similar laws and rules, most notably Massachusetts, New Jersey, New York, and Washington. The MPCA considered and assessed each of these regulatory frameworks for addressing cumulative impacts in EJ areas. To the extent that Minnesota's approach differs from that of other states addressing similar concerns, the differences are due to differences in the enabling statutes of each state.[128]

139. In 2021, Massachusetts passed a law requiring its Department of Environmental Protection (DEP) to assess impacts to EJ areas for Comprehensive Plan Applications. In 2024, the state promulgated rules in 310 CMR 7.00 to implement the legislation based upon DEP's assessment. While similar to Minnesota's proposed rule in most respects, the Massachusetts law and rule do not have a CBA component and do not require the DEP to deny permits based on the cumulative impact analysis.[129]

140. In 2020, New Jersey enacted , the Environmental Justice Law,[130] which requires the state's DEP to assess impacts to overburdened communities for certain facilities before certain permits can be issued. New Jersey's law applies to air, land, and water permits, and requires the agency to deny permits where a facility causes or contributes to adverse environmental outcomes. Minnesota's law and rules are narrower in scope geographically and topically. Minnesota's law and rules also include a CBA pathway for permit approval as opposed to New Jersey's mandatory denial.[131]

141. In 2022, New York enacted S8830 to regulate the siting of facilities in disadvantaged communities. Similar to Minnesota's law and proposed rule, the New York regulations require a report on existing burdens before any non-minor permit can be issued. New York's Department of Conservation cannot issue permits that will cause or contribute to disproportionate impacts in disadvantaged communities.[132]

142. In 2021, Washington enacted the Healthy Environment for All Act that requires covered state agencies to consider the cumulative environmental health impact before taking any significant agency action. Like the proposed Minnesota rules, the state

[127] Ex. D at 194.
[128] Ex. D at 194-195.
[129] Ex. D at 195.
[130] *See* N.J. Stat. Ann. §§ 13:1D-157 - 13:1D-161.
[131] Ex. D at 195.
[132] Ex. D at 195.

maintains a database of health impacts and overburdened communities to inform these assessments. Washington's statute also requires enhanced engagement with overburdened communities but, unlike Minnesota's statute, does not specifically provide for CBAs or mandate permit denials.[133]

143. The MPCA has met the requirements of Minn. Stat. § 116.07, subd. 2(f).

8. Cumulative Effect of the Rule with Other Federal and State Regulations

144. Minn. Stat. § 14.131 defines "cumulative effect" as "the impact that results from incremental impact of the proposed rule in addition to the other rules, regardless of what state or federal agency has adopted the other rules."

145. The MPCA states that the rule minimizes the cumulative effect of complying with new air pollution control programs by using regulatory programs already in place. The primary objective of this rule is to meet the statutory direction to add CIA to certain air permit processes. The proposed rule will add new requirements for analysis, public engagement, and potential pollution controls to certain air permits, but will also use existing information and processes where possible to reduce the cumulative effects on regulated parties.[134]

146. The MPCA has existing air permitting rules that consider an individual facility's emissions in comparison to the National Ambient Air Quality Standards (NAAQS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs). In some situations, including State Implementation Plan areas, permittees already must model nearby sources of air pollution. The MPCA maintains that the information and pollution controls required by state and federal air rules will provide important groundwork for reviewing potential cumulative impacts created by facilities because they quantify air emissions and compare them to standards. The proposed rules require the consideration of existing health and environmental stressors around a facility. No current state or federal permit rules require similar information outside of the portion of Minneapolis within the Cumulative Levels and Effects area identified in Minn. Stat. § 116.07, subd. 4a(c).[135]

147. As directed by Minn. Stat. § 116.065, the proposed rules require opportunities for public engagement. To reduce the cumulative effects of the rules for regulated parties, the proposed rule allows for combined public meetings for certain permit actions. The proposed rule also aligns with existing petition processes in environmental review to avoid confusion and reduce duplicate work.[136]

148. The MPCA has simultaneously proposed the Air Toxics Rules through a separate rulemaking process, which apply to certain facilities within the seven-county metropolitan area. Based on Agency records, approximately 73 facilities may be subject

[133] Ex. D at 195.
[134] Ex. D at 181.
[135] Ex. D at 181.
[136] Ex. D at 181.

to both the Air Toxics Rules and the Cumulative Impacts Rules. The two regulatory schemes have similar structures in that many facilities will only complete the first screening analysis and not face additional costs. Some facilities may have higher burdens under the two rules that lead to higher costs and longer permitting timelines. The legislature mandated the scope and timelines of these two rulemakings. The MPCA minimized the cumulative burden of the two proposed rules by offering combined public meetings where applicable.[137]

149. Once the standards are effective, the proposed rule amendments will align Minnesota's state air quality rules with rules that are already in effect. According to the MPCA, incorporating the requirements by reference ensures that the state rules do not overlap or add new requirements that could be considered cumulative with the existing requirements.[138]

B. Performance-Based Regulation

150. An agency is required to describe in its SONAR the manner in which the agency has considered and implemented the legislative policy supporting performance-based regulatory systems.[139] A performance-based rule is one that emphasizes superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.[140]

151. The MPCA states its goal is to create rules that offer clarity and adaptability, making compliance as straightforward as possible for regulated parties. The MPCA fulfills this requirement by employing various approaches designed to balance the need for effective regulation with flexibility in implementation. These approaches include structuring the rules to meet the objectives of the statutory language with maximum flexibility to regulated entities, including timelines that are extendable when necessary, providing environmental stressor information in a readily available format, and identifying clear benchmarks and decision-making criteria, among other things.[141]

152. Additionally, the MPCA patterned these rules after similar, existing Minnesota programs. The MPCA states that, where possible, the proposed rules parallel the requirements that exist in other Minnesota regulatory programs like environmental review. Using similar processes to evaluate environmental and health impacts provides for a common understanding of expectations and facilitates compliance. This approach can avoid duplicative work and provides regulated parties with the flexibility to use the same resources and analyses to satisfy other potentially applicable regulatory programs.[142]

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[137] Ex. D at 181.
[138] Ex. D at 181.
[139] Minn. Stat. §§ 14.002; .131.
[140] Minn. Stat. § 14.002.
[141] Ex. D at 193.
[142] Ex. D at 194.

153. The MPCA has described how it considered the legislative policy related to performance-based regulatory systems, in compliance with Minn. Stat. § 14.131.[143]

C. Consultation with the Commissioner of Minnesota Management and Budget

154. Minn. Stat. § 14.131 requires that agencies consult with the Commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on local units of government.

155. On April 6, 2026, the MPCA sent a letter to MMB's Commissioner, along with the proposed rules and SONAR, seeking the required consultation.[144]

156. On May 20, 2026, MMB determined the rule "would not have a material impact on any local unit of government in Minnesota and would define new requirements for permit applicants as required by [Minn. Stat. §] 116.065."[145]

D. Summary of Requirements Set Forth in Minn. Stat. § 14.131

157. The Administrative Law Judge finds that the Agency has met the requirements established by Minn. Stat. § 14.131 for assessing the impact of the proposed rules, including consideration and implementation of the legislative policy supporting performance-based regulatory systems, and the fiscal impact on units of local government.

E. Cost to Small Businesses and Cities under Minn. Stat. § 14.127

158. Minn. Stat. § 14.127, requires the Agency to "determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed $25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees." The Agency must make this determination before the close of the hearing record, and the Administrative Law Judge must review the determination and approve or disapprove it.[146]

159. The proposed rule regulates and imposes compliance obligations on facilities that are required to obtain air quality permits. The MPCA has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed $25,000 for any small business or small city. The MPCA's determination is based on the applicability and timelines set forth in the proposed rule, as well as the probable costs of complying with the proposed rules.[147]

160. The Agency analyzed facilities potentially affected by the proposed rule to identify if any meet the definition of a small business or small city under Minn. Stat.

[143] Minn. Stat. § 14.131.
[144] Ex. K1.
[145] Ex. K1.
[146] Minn. Stat. § 14.127, subds. 1 and 2.
[147] Ex. D at 196.

§ 14.127. Under this statute, a small business has fewer than 50 full-time employees and is an entity organized for profit or as a nonprofit, and includes an individual, partnership, corporation, joint venture, association, or cooperative; whereas a small city is defined as any one statutory or home rule charter city that has fewer than ten full-time employees.[148]

161. No small cities with an existing individual state or individual federal air permit were identified in the areas subject to the proposed rule.[149]

162. Publicly available data indicates that a small number of individual state and federal permittees may qualify as small businesses per Minn. Stat. § 14.127; however, these facilities are not expected to incur costs associated with the proposed rule during the first year after the rule's effective date.[150]

163. The Judge finds that the MPCA has made the determinations required by Minn. Stat. § 14.127 and approves those determinations.

F. Adoption or Amendment of Local Ordinances

164. Under Minn. Stat. § 14.128, an agency must determine whether a local unit of government will be required to adopt or amend an ordinance or other regulation to comply with a proposed rule. The agency must make this determination before the hearing record closes, and the Administrative Law Judge must review the determination and approve or disapprove it.[151]

165. The MPCA concluded that, because the state air quality standards are not implemented at the local level, no local government will be required to adopt or amend an ordinance or other regulation to comply with the proposed rules.[152]

166. The Judge finds that the MPCA has made the determination required by Minn. Stat. § 14.128 and approves that determination.

G. Consideration of Economic Factors

167. In addition to the evaluation of costs and parties likely to incur costs as a result of the proposed rule, as required in Minn. Stat. § 14.131, the MPCA is required by Minn. Stat. § 116.07, subd. 6 (2020), to give due consideration to:

> the establishment, maintenance, operation and expansion of business, commerce, trade industry, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which

[148] Ex. D at 196.
[149] Ex. D at 196.
[150] Ex. D at 196.
[151] Minn. Stat. § 14.128, subd. 1.
[152] Ex. D at 196.

may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

168. The Administrative Law Judge concludes that the MPCA has adequately considered the economic factors associated with the proposed rule and has met the requirements of this statute by providing the required analysis regarding the possible economic impacts of the proposed rule, as set forth above.

H. Environmental Justice Policy

169. The MPCA recognizes that every Minnesotan, regardless of income, race, ethnicity, color, or national origin, has the right to healthy air, sustainable lands, clean water, and a better climate. Yet, decades of government and private sector policies and decisions have resulted in disproportionate impacts of pollution and climate change. In recognition of this history and its continuing effect on some of Minnesota's communities, the MPCA has adopted a policy for environmental justice, which states:

> The MPCA expects the fair treatment and meaningful involvement of communities of color, Indigenous communities, and low-income communities in Agency actions and decisions that affect them. It is the policy of the MPCA that an outcome of its work, in addition to protecting and improving the environment and public health, must address environmental justice concerns.[153]

170. The MPCA states that in Minnesota, Black, Indigenous, and People of Color (BIPOC), as well as lower-income individuals, are exposed to higher levels of air pollution as a result of an ongoing history of structural racism and inequitable policies.[154] The MPCA notes that policies such as racial covenants, red lining, and the destruction of Black communities for public works projects, as well as zoning and permitting decisions that concentrate pollution sources in communities of color and under-resourced communities, continue to harm these communities.[155]

171. The MPCA asserts that these inequities are prevalent and readily evident in the distribution of exposure to air pollution in EJ areas.[156] The MPCA states that in this rulemaking it is dedicated to implementing a framework to advance environmental justice and ensure equitable benefits of pollution controls and reductions in Minnesota.[157]

172. To further implement the Agency's EJ policy, the MPCA evaluated how the proposed rule affects lower-income Minnesotans, people of color, and tribal communities.[158]

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[153] Ex. D at 182.
[154] Ex. D at 182.
[155] Ex. D at 182.
[156] Ex. D at 24, 182.
[157] Ex. D at 183.
[158] Ex. D at 183-184.

173. In developing the proposed rule, the MPCA states it sought meaningful involvement of communities of color and other under-resourced communities. As described in the Public Participation and Stakeholder Involvement section of the SONAR, the rulemaking process provided many opportunities for stakeholder involvement throughout the development of the proposed rules.[159]

174. The MPCA undertook a concerted and exhaustive initiative to engage individuals experiencing the disproportionate impact of pollution in Minnesota and the entities subject to the rule. Part of the MPCA's outreach focused on obtaining input from communities that are potentially impacted by the rule. MPCA's community engagement team conducted one-on-one conversations, interviews, focus groups, workshops, and other forms of engagement with Minnesota residents. MPCA staff also tabled and attended events within MPCA-defined EJ areas to hear from stakeholders about how the rule may impact them. In addition to outreach conducted in EJ areas, the MPCA made virtual informational sessions accessible through posting the recorded webinars on YouTube.[160]

175. The Administrative Law Judge concludes that the MPCA has complied with its environmental justice policy and federal law requiring such an analysis.[161]

I. Tribal Policy

176. Minn. Stat. § 10.65, requires the MPCA to consult with Minnesota Tribal governments in the development of policy on matters that have Tribal implications, including at least annual consultation, and as often as required to address various topics and matters of interest to Minnesota Tribal governments.

177. The MPCA also has a policy to coordinate and consult with Minnesota Tribal governments and offer opportunities for early input on actions taken by the MPCA. Specifically for this rulemaking, the MPCA conducted more informal consultation and communication with Tribes as part of the rule development process.[162]

178. Consistent with Minn. Stat. § 10.65 and MPCA policy, the Agency contacted Tribes in Minnesota to notify them of opportunities to comment on the rulemaking. The MPCA also included updates regarding the proposed rules in the monthly Tribal newsletters used to share broader updates with Tribes in Minnesota. In addition to providing notice to the tribal contacts who have registered to receive GovDelivery rulemaking notices, the MPCA provided specific notice throughout the rulemaking process to contacts identified by the tribes as liaisons for air quality issues. The MPCA also offered to meet with Tribes one-on-one regarding topics related to the Cumulative Impact Rule.[163]

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[159] Ex. D at 186.
[160] Ex. D at 186.
[161] *See* Ex. D at 182-186 (providing the full environmental justice analysis) and 26-50 (Public Participation and Stakeholder Involvement).
[162] Ex. D at 186.
[163] Ex. D at 186; *see also* Ex. D at 26-50 and 188-193.

179. The MPCA presented information regarding the Cumulative Impact Rule to Tribes at meetings of the Minnesota Tribal Environmental Committee (MNTEC). This committee is comprised of environmental staff from Tribal Nations and Treaty Authorities in Minnesota and meets regularly to discuss the concerns of Tribal environmental staff. The MNTEC has a process to request to attend and present at its meetings and the MPCA was accepted to present three times (in 2024 and 2025) during this rulemaking.[164]

VI. Rulemaking Legal Standards

180. A proceeding to adopt rules under the Minnesota Administrative Procedure Act (MAPA) must include the following inquiries: whether the agency has statutory authority to adopt the rule; whether the rule is unconstitutional or otherwise illegal; whether the agency has complied with the rule adoption procedures; whether the proposed rule grants undue discretion to government officials; whether the rule constitutes an undue delegation of authority to another entity; and whether the proposed language meets the definition of a rule.[165]

181. Under Minn. Stat. § 14.14, subd. 2, and Minn. R. 1400.2100, the agency must establish the need for, and reasonableness of, a proposed rule through an affirmative presentation of facts. In support of a rule, the agency may rely upon materials developed for the hearing record,[166] "legislative facts" (namely, general and well-established principles that are not related to the specifics of a particular case, but which guide the development of law and policy),[167] and the agency's interpretation of related statutes.[168]

182. A proposed rule is reasonable if the agency can "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken."[169]

183. By contrast, a proposed rule will be deemed arbitrary and capricious where the agency's choice is based upon whim or devoid of articulated reasons, or if it "represents its will and not its judgment."[170]

184. An important corollary to these standards is that, when proposing new rules, an agency is entitled to make choices between different possible regulatory approaches, so long as the alternative selected by the agency is a rational one. Thus, while reasonable minds might differ as to whether one or another particular approach represents "the best

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[164] Ex. D at 186-187.
[165] *See* Minn. R. 1400.2100.
[166] *See Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d 238, 240 (Minn. 1984); *Minnesota Chamber of Commerce v. Minnesota Pollution Control Agency*, 469 N.W.2d 100, 103 (Minn. Ct. App. 1991).
[167] *Compare generally United States* v. *Gould,* 536 F.2d 216, 220 (8th Cir. 1976).
[168] *See Mammenga v. Agency of Human Servs.*, 442 N.W.2d 786, 789-92 (Minn. 1989); *Manufactured Hous. Inst.*, 347 N.W.2d at 244.
[169] *Manufactured Hous. Inst.*, 347 N.W.2d at 244.
[170] *See Mammenga*, 442 N.W.2d at 789; *St. Paul Area Chamber of Commerce v. Minn. Pub. Serv. Comm'n,* 251 N.W.2d 350, 357-58 (Minn. 1977).

alternative," the agency's selection will be approved if it is one that a rational person could have made.[171]

185. The delegation of rulemaking authority is drawn from the Minnesota Legislature and is conferred upon the agency. A judge does not fashion requirements that the judge regards as best suited for the regulatory purpose. The legal review under the MAPA begins with this important premise.[172]

VII. General Analysis of Comments and MPCA Responses[173]

186. This rulemaking proceeding generated significant public interest both in favor of, and in opposition to, the proposed rule. The Judge commends each participant in this process for their energy and insight throughout this process. The Judge has read and considered all comments submitted, recognizing and appreciating the tremendous effort this rulemaking represents for communities, potentially affected owners and operators, and the MPCA.

187. This report does not discuss every comment received or issue identified but instead includes a discussion of representative comments that address issues of the most serious concern to commenters, which give rise to a genuine dispute about the reasonableness of the MPCA's regulatory choices or that require a closer look at a particular rule part.

188. Some of the comments address concerns that are the result of the statute, rather than MPCA's rulemaking choices. For example, some commenters objected to the limited geographical scope of the rule.[174] They believe all Minnesotans should have greater environmental protection for their communities. However, the legislature defined "environmental justice area" to certain areas of Minnesota it determined bear a disproportionate share of air pollution relative to the rest of the state. MPCA cannot adopt regulations contrary to the statute.

A. Discussion of Comments Favoring the Rule

189. Many commenters expressed support for adoption of the proposed rule. Among the supporters of the rule were numerous Minnesotans who have long advocated for environmental justice in communities historically overburdened by pollution. Commenters support the proposed rule as an important step toward addressing disproportionate pollution burdens and improving environmental conditions in

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[171] *Minnesota Chamber of Commerce*, 469 N.W.2d at 103; *Peterson v. Minn. Dep't of Labor & Indus.*, 591 N.W.2d 76, 78 (Minn. Ct. App. 1999).

[172] *See Manufactured Housing Institute, supra,* 347 N.W.2d at 244 (instructing that the state courts are to restrict the review of agency rulemaking to a "narrow area of responsibility, lest [the court] substitute its judgment for that of the agency").

[173] Comments specific to a section of the rule are discussed in the corresponding section in the rule-by-rule analysis.

[174] *See, e.g.* WaterLegacy (048-01), Frontline Communities Protection Coalition (045-139).

environmental justice communities.[175] Commenters maintained that CIA will allow the MPCA to consider existing environmental burdens and the combined effects of multiple pollution sources, rather than evaluating each source in isolation.[176]

190. The MPCA received a variety of comments expressing general support for the proposed cumulative impacts rule, its specific requirements, and its environmental justice and public health objectives, advocating for the most protective rule possible. Commenters emphasized the importance of protecting communities disproportionately affected by pollution, considering cumulative impacts from multiple sources and historical environmental burdens, and ensuring that public health and community perspectives meaningfully influence permitting decisions.[177]

191. For example, Michelle Garvey emphasized that CBAs should benefit impacted communities, particularly communities of color, Indigenous and low-income residents, and people with limited English proficiency.[178] Roxxanne O'Brien expressed concern that the rules had been weakened during development and urged the MPCA to address community recommendations and remain accountable for implementing the law.[179] Hannah Resendiz-Olson stressed prioritizing health and environmental protection to prevent further harm.[180] Marita Bujold highlighted the need for adequate state funding and staffing to support community participation, complete and review analyses, and implement outcomes.[181]

192. Commenters like Monserrat Perez Barrios acknowledged the MPCA's work but argued that identifying EJ areas through demographic data is insufficient without strong, mandatory protections.[182] Elena Gregoria Sut Rem emphasized the human right to a healthy environment, the cumulative nature of pollution impacts, the importance of community input, and the need to regulate industrial activities to protect public health and the environment.[183] The Frontline Communities Protection Coalition expressed appreciation for the rulemaking process while urging revisions to strengthen pollution protections and provide greater clarity.[184] Josefina Geronimo called for firm, community-centered rules without loopholes, prioritizing public health over industrial expansion and ensuring culturally responsive outreach, long-term community partnerships, and accountability.[185]

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[175] *See, e.g.*, Frontline Communities Protection Coalition (034, 045); Joanne Hill (014-01); Coming Clean Network (024).
[176] *See, e.g.*, Joanne Hill (014); Ex. L2 at 80 (Josefina Geronimo).
[177] *See e.g.,* Michelle Garvey (065-01); Roxxanne O'Brien (066-01); Hannah Resendiz-Olson (067-03); Monserrat Perez Barrios (069-01).
[178] Michelle Garvey (065-01).
[179] Roxxanne O'Brien (066-01).
[180] Hannah Resendiz-Olson (067-03).
[181] Marita Bujold (068-03).
[182] Monserrat Perez Barrios (069-01).
[183] Elena Gregoria Sut Rem (070-01).
[184] Frontline Communities Protection Coalition (073-01).
[185] Josefina Geronimo (075-03).

193. Overall, commenters supported the goals of the law while emphasizing that effective implementation requires meaningful community participation, stronger protections for disproportionately burdened communities, adequate agency resources, and clear, enforceable requirements. Some commenters also raised concerns or offered recommendations regarding specific provisions, which are addressed separately in the specific rule part responses.

194. Conservation Minnesota submitted a petition signed by 610 members supporting rules to improve air quality and reduce disproportionate exposure to harmful pollution.[186] The Coming Clean Network and Frontline Communities Protection Coalition also supported cumulative impacts policies but emphasized the need for effective implementation and meaningful reductions in pollution burdens.[187]

195. Several commenters maintained that the proposed rule would help address longstanding environmental injustices affecting low income communities and communities of color.[188] They expressed concerns about the health effects of pollution from industrial facilities, highways, and other sources, including respiratory illnesses and other adverse health outcomes.[189]

196. Other commenters supported the proposed rules but urged the MPCA to adopt stronger protections.[190] They emphasized the need for enforceable requirements, adequate agency resources, and meaningful community participation to achieve the legislation's environmental justice objectives.[191]

197. Many commenters supported greater community participation in environmental permitting decisions.[192] They maintained that residents of affected communities should have meaningful opportunities to participate in the permitting process, share their experiences, and influence decisions affecting their health and environment.[193]

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[186] Comments of Conservation Minnesota.
[187] Comments of Coming Clean Network, Comments of Frontline Communities Protection Coalition.
[188] *See, e.g.*, Comments of Stephaine Hankerson, Comments of Hannah Resendiz-Olson, Comments of Dr. Joanne Hill, Comments of Taisia Cleveland, Comments of Prairie Island Indian Community.
[189] *See, e.g.*, Comments of Conservation Minnesota, Comments of Justice Jones, Comments of Josefina Geronimo, Comments of April Graves, Chelsey Blanke (submitted by Frontline Communities Protection Coalition).
[190] *See, e.g.*, Comments of Stephanie Hankerson, Comments of Frontline Communities Protection Coalition.
[191] *See, e.g.*, Comments of Minnesota Public Health Association, Comments of Representative Fue Lee, Comments of Marita Bujold.
[192] *See, e.g.*, Comments of Diane Dobitz, Melissa Zimmerman (submitted by Frontline Communities Protection Coalition), Comments of Hamline Midway Coalition, Comments of Health Professionals for Healthy Climate.
[193] *See, e.g.*, Comments of Stephanie Hankerson, Comments of Michelle Garvey, Comments of Ben Karlgaard, Comments of Elena Gregoria Sut Rem, Comments of Michelle Garvey, Comments of Melissa Zimmerman (submitted by Frontline Communities Protection Coalition), Comments of Tishman Environment and Design Center, Comments of Monserrat Perez Barrios.

198. Several commenters supported CBAs as a means of addressing environmental burdens and providing benefits to affected residents.[194] They emphasized that CBAs should reflect the needs of environmental justice communities and prioritize residents experiencing disproportionate environmental impacts.[195]

B. Discussion of Comments Expressing Opposition to the Rule

199. Several commenters opposed or expressed concerns about the proposed rule.[196] Industry representatives questioned whether the rule established sufficiently clear and objective permitting standards.[197] They maintained that the proposed requirements would increase compliance costs, delay permitting decisions, and discourage economic development and investment.[198]

200. Environmental justice advocates supported the objectives of the proposed rules but questioned whether the requirements adequately protected communities already experiencing disproportionate pollution burdens.[199] They urged the MPCA to strengthen the CIA requirements, standards for determining substantial adverse impacts, and opportunities for community participation.[200]

201. State Representative Fue Lee, the House of Representatives author of the legislation establishing the cumulative impacts requirements, expressed concerns that the proposed rule does not adequately account for existing cumulative environmental impacts in EJ areas.[201] He contended that the MPCA should evaluate environmental stressors based on conditions within those areas, rather than comparisons to county or statewide conditions.[202] He further commented that the proposed rule improperly excludes certain facility modifications from CIA based on anticipated future emissions without adequately considering existing pollution burdens.[203] Representative Lee believes these limitations undermine the legislation's purpose of addressing historical and ongoing pollution in EJ areas.[204]

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[194] *See, e.g.*, Comments of Michelle Garvey, Comments of Josefina Geronimo, Comments of Lois Norrgard.
[195] *See, e.g.*, Comments of Michelle Garvey, Comments of Conservation Minnesota, Comments of Commissioner Mai Chong Xiong.
[196] *See, e.g.*, Comments of Minnesota Chamber of Commerce, Comments of Minnesota Building and Construction Trades, Comments of Metropolitan Airports Commission, Comments of Cordia Energy Center Minneapolis, Comments of LIUNA Minnesota and North Dakota.
[197] *See, e.g.*, Comments of Minnesota Chamber of Commerce, Comments of Cordia Energy Center Minneapolis.
[198] *See, e.g.*, Comments of Minnesota Chamber of Commerce, Comments of Minnesota Building and Construction Trades, Comments of Metropolitan Airports Commission, Comments of Cordia Energy Center Minneapolis, Comments of LIUNA Minnesota and North Dakota.
[199] *See, e.g.*, Comments of Comments of Frontline Communities Protection Coalition, Comments of Coming Clean Network, Comments of Stephanie Hankerson, Comments of Tishman Environment and Design Center, Comments of Minnesota Environmental Justice Table.
[200] *See, e.g.*, Comments of Frontline Communities Protection Coalition, Comments of Tishman Environment and Design Center.
[201] Comments of Representative Lee.
[202] Comments of Representative Lee.
[203] Comments of Representative Lee.
[204] Comments of Representative Lee.

202. The Frontline Communities Protection Coalition identified three principal concerns: the treatment of permit reissuances, the scope of CIAs, and the absence of criteria for rejecting community benefits agreements.[205]

203. WaterLegacy commented that the proposed rule does not adequately protect rural communities and Tribal members in northern Minnesota.[206] WaterLegacy maintained that the geographic limitations of the proposed rule exclude communities experiencing significant pollution burdens, including pollution associated with mining activities.[207]

204. The Minnesota Chamber of Commerce (Chamber) raised concerns shared by industry about the clarity, scope, and economic consequences of the proposed rule.[208] The Chamber commented that the rule lacks objective decision-making standards, relies excessively on MPCA discretion, and creates uncertainty for regulated facilities.[209]

205. The MPCA acknowledges concerns about the proposed rule and agrees it will affect regulated parties, nearby residents, and Minnesota broadly.[210] However, it disputes comments that the proposed rule fails to meet the requirements of Minn. Stat. § 116.065, subd. 6, exceeds the statute's scope, or is unreasonable.[211] The MPCA believes that the proposed rule meets statutory requirements, including the geographic limits imposed by the legislature, establishes appropriate tools and analyses for assessing cumulative impacts of regulated actions and projects while maintaining flexibility for regulated parties and affected communities, and provides a consistent methodology for the decision-making processes.[212]

206. Several commenters questioned whether the proposed rule establishes sufficiently clear and objective criteria for determining when additional analysis or permitting requirements are necessary.[213] They expressed concern that broad agency discretion could result in inconsistent permitting decisions and regulatory uncertainty.[214]

207. The MPCA disagrees that the proposed rule lacks standards for determining when a CIA is required or when a permit would substantially harm the environment or residents' health in an environment justice area.[215] The MPCA notes that decision standards, including required information and evaluation criteria for each decision point,

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[205] Comment of Frontline Communities Protection Coalition.
[206] Comments of WaterLegacy.
[207] Comments of WaterLegacy.
[208] Comments of Minnesota Chamber of Commerce.
[209] Comments of Minnesota Chamber of Commerce.
[210] MPCA Pre-hearing Response to Comments at 71.
[211] MPCA Pre-hearing Response to Comments at 71.
[212] MPCA Pre-hearing Response to Comments at 71.
[213] *See, e.g.*, Comments of Minnesota Chamber of Commerce, Comments of American Petroleum Institute, Comments of Perez Barrios.
[214] *See, e.g.*, Comments of Minnesota Chamber of Commerce, Comments of Metropolitan Airports Commission.
[215] MPCA Pre-hearing Response to Comments at 77.

are set by Minn. Stat. § 116.065 and the proposed rule, which establishes objective information and criteria to guide MPCA decisions.[216]

208. Industry representatives expressed concerns that the proposed rule could increase compliance costs and impose additional administrative burdens on regulated facilities.[217] They maintained that these additional requirements could delay projects, discourage investment, and adversely affect employment opportunities and economic development, including in communities the rule is intended to protect.[218]

209. The MCPA acknowledges that the proposed rules would impose additional costs on regulated parties, but the Agency claims it had very limited information from the regulated community to use to estimate likely compliance costs.[219] The MCPA also acknowledges a high level of uncertainty about the types and magnitude of costs regulated facilities may face if the proposed rule extends permitting timelines.[220] However, because implementation will create new processes for both the MPCA and the regulated community, the MPCA acknowledges that costs will be incurred by the regulated parties and are difficult to predict.[221]

210. Some commenters questioned the environmental stressors, data, and benchmarks used in the Cumulative Impacts Mapping and Analysis Platform (CI-MAP).[222] They maintained that the methodology should rely on scientifically supported measures and should better distinguish existing environmental burdens from socioeconomic conditions.[223]

211. The MPCA acknowledges concerns about the environmental stressors, data sources, and methodology used in CI-MAP.[224] MCPA is currently developing standard operating procedures for ongoing CI-Map updates and quality assurance/quality control (QA/QC).[225] The MPCA also recognizes the importance of clearly documenting the source, vintage, and methodology associated with each environmental stressor.[226] However, the MPCA notes that environmental stressor evaluations and CI-MAP results are only part of eligibility and permitting decisions.[227] In addition, the MPCA explained that the environmental stressor database is intended to help assess a facility's potential

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[216] MPCA Pre-hearing Response to Comments at 77.
[217] *See, e.g.*, Comments of Minnesota Chamber of Commerce, Comments of Metropolitan Airports Commission.
[218] *See, e.g.*, Comments of LIUNA Minnesota and North Dakota, Comments of Metropolitan Airports Commission.
[219] MPCA Pre-hearing Response to Comments at 85.
[220] MPCA Pre-hearing Response to Comments at 86.
[221] MPCA Pre-hearing Response to Comments at 86.
[222] *See, e.g.*, Comments of Elliana Duval, Comments of LIUNA Minnesota and North Dakota, Comments of American Petroleum Institute.
[223] *See, e.g.*, Comments of Jim Hoffenstein, Comments of Minnesota Environmental Justice Table, Comments of American Petroleum Institute.
[224] MPCA Pre-hearing Response to Comments at 88.
[225] MPCA Pre-hearing Response to Comments at 93.
[226] MPCA Pre-hearing Response to Comments at 95.
[227] MPCA Pre-hearing Response to Comments at 95.

impacts but is not a standalone measure for determining health risks or pollution burden.[228]

212. Several commenters expressed concerns about the time and resources necessary to comply with the proposed permitting requirements.[229] They requested clearer requirements and more predictable procedures to reduce unnecessary regulatory burdens.[230]

213. The MPCA recognizes that the proposed rule may lengthen processing times for some permit actions, and acknowledges commenters' concerns about uncertainty in project timelines and budgets.[231] To improve efficiency, the MPCA has committed to developing streamlined internal and external review procedures, along with guidance for owners, operators, community members, and staff to support timely permitting.[232] The MPCA commits to creating standard forms, e-services, templates, and other materials to ensure applications and supplemental materials are consistent and complete.[233]

214. Commenters questioned whether the proposed benchmarks appropriately identified environmental burdens warranting additional CIA.[234] Some maintained that the benchmarks placed excessive weight on socioeconomic factors without adequately establishing a relationship to environmental conditions.[235]

215. The MCPA acknowledges concerns about how the proposed rule evaluates and uses environmental stressors.[236] However, the MPCA clarified that the environmental stressors and information in CI-MAP provide context, not benchmarks, for assessing a facility's potential environmental and health impacts on environmental justice area residents.[237] Census tract stressor data alone does not trigger a CIA.[238] Instead, the MPCA explained that assessment evaluates environmental and resident health impacts in EJ areas and requires a site-specific review consistent with the legislature's direction.[239]

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[228] MPCA Pre-hearing Response to Comments at 95.
[229] *See, e.g.*, Comments of Mayo Clinic, Comments of Minnesota Chamber of Commerce, Comments of Metropolitan Airports Commission.
[230] *See, e.g.*, Comments of Minnesota Hospital Association, Comments of American Petroleum Institute, Comments of Metropolitan Airports Commission.
[231] MPCA Pre-hearing Response to Comments at 112.
[232] MPCA Pre-hearing Response to Comments at 112.
[233] MPCA Pre-hearing Response to Comments at 112.
[234] *See, e.g.*, Comments of Minnesota Building and Construction Trades Council, Comments of LIUNA Minnesota and North Dakota, Comments of Minnesota Chamber of Commerce.
[235] *See, e.g.*, Comments of Minnesota Building and Construction Trades Council, Comments of LIUNA Minnesota and North Dakota.
[236] MPCA Rebuttal Period Post-Hearing Response to Comments at 14; MPCA Post-Hearing Response to Comments; Ex. N at 12.
[237] MPCA Rebuttal Period Post-Hearing Response to Comments at 14.
[238] MPCA Rebuttal Period Post-Hearing Response to Comments at 14.
[239] MPCA Rebuttal Period Post-Hearing Response to Comments at 14.

216. Several commenters expressed concerns about the scope and methodology of CIA.[240] Industry representatives requested clearer guidance and scientifically supported methods to ensure consistent application of the rule.[241] They maintained that the analysis should reasonably relate to identified environmental impacts caused by the proposed permit action.[242]

217. Environmental justice advocates, by contrast, maintained that the proposed requirement did not adequately account for existing pollution burdens and the combined effects of multiple pollution sources.[243] They expressed concerns that limiting the analysis to specific permit actions or environment factors could underestimate cumulative impacts and weakened protections for environmental justice communities.[244]

218. The MPCA acknowledges industry representatives' comments with a preference to limit maximum modeled concentrations to EJ areas but disagrees with such an approach.[245] The MPCA explained that facilities may need multiple permits or approvals, such as under the Prevention of Significant Deterioration (PSD) program.[246] Restricting modeling to a specific boundary would require separate scenarios for each applicable statutory or rule requirement.[247] Therefore, the MPCA argues that the rule's approach is likely to ultimately save facilities time and money.[248]

219. Other commenters urged the MPCA to consider New Jersey's Environmental Justice Law as a model for strengthening Minnesota's cumulative impact analysis requirements.[249] They maintained that New Jersey's approach offered stronger protections for communities experiencing disproportionate environmental burdens.[250]

220. The MPCA responded that New Jersey's law differs from Minn. Stat. § 116.065 in scope, regulatory requirements, and philosophy.[251] New Jersey's law applies

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[240] *See, e.g.*, Comments of Minnesota Center for Environmental Advocacy, Comments of Elizabeth Bonin, Comments of American Petroleum Institute, Comments of Beth Shaw, Comments of Representative Lee, Comments of Tishman Environmental and Design Center.
[241] *See, e.g.*, Comments of American Petroleum Institute, Comments of LIUNA Minnesota and North Dakota.
[242] *See, e.g.*, Comments of Minnesota Chamber of Commerce, Comments of American Petroleum Institute.
[243] *See, e.g.*, Comments of Frontline Communities Protection Coalition, Comments of Tishman Environment and Design, Comments of Chelsey Blanke, Side Corridor Residents (submitted by Frontline Communities Protection Coalition).
[244] *See, e.g.*, Comment of Frontline Communities Protection Coalition, Comment of Tishman Environment and Design Center.
[245] MPCA Rebuttal Period Post-Hearing Response to Comments at 29.
[246] MPCA Rebuttal Period Post-Hearing Response to Comments at 29.
[247] MPCA Rebuttal Period Post-Hearing Response to Comments at 29.
[248] MPCA Rebuttal Period Post-Hearing Response to Comments at 29.
[249] *See, e.g.,* Comments of University of Minnesota, Comments of Frontline Communities Protection Coalition, Comments of Janette Dean, Susan Dragsten, Kris Acuña (submitted by Sierra Club North Star Chapter). The MPCA responded that New Jersey's law differs from Minn. Stat. § 116.065 in scope and regulatory requirements. *See* MPCA Pre-hearing Response to Comments at 261-62.
[250] *See, e.g.,* Comments of Sierra Club North Star Chapter, Comments of Phoenix Muchowski, Anne Doyle Smit, (submitted by Sierra Club North Star Chapter).
[251] MPCA Pre-hearing Response to Comments at 262.

statewide to permits across environmental media and assess "disproportionate impacts." In contrast, the proposed Minnesota rule targets air permits in EJ areas and assesses "substantial adverse impacts.[252] According to the MPCA, because the MPCA must define what constitutes a "substantial adverse impact," it cannot adopt New Jersey's approach.[253]

221. Commenters also expressed differing concerns about the standards governing determinations of substantial adverse impacts.[254] Industry representatives emphasized the need for objective criteria and a demonstrated relationship between a permit action and adverse impacts. Environmental justice advocates, on the other hand, sought clearer standards and stronger protection against additional pollution.[255]

222. The MPCA acknowledges requests for more objective standards to determine substantial adverse impacts but explains that cumulative impacts have no single quantifiable formula.[256] Evaluating substantial adverse impacts requires both quantitative and qualitative criteria.[257] Each permit application affects existing environmental stressors differently based on its emissions, location, and surrounding conditions.[258] A detailed framework with numerical thresholds is impractical given the diversity and complexity of potential project impacts.[259] Therefore, rather than setting thresholds for all potential substantial adverse impact outcomes, the MPCA proposed a general framework using qualitative and quantitative criteria across impact scenarios.[260] Integrating these qualitative, contextual factors into the final review allows the MPCA to weigh localized burdens and community feedback against competing industry interests, fulfilling its mandate to define substantial adverse impacts realistically.[261]

223. Many commenters expressed differing concerns about the proposed CBA process, including the extent of community participation and the standard governing permitting decisions.[262] Some sought stronger community protections, while others emphasized the need for regulatory certainty and requirements consistent with the statute.[263]

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[252] MPCA Pre-hearing Response to Comments at 262.
[253] MPCA Pre-hearing Response to Comments at 262.
[254] *See, e.g.*, Comments of Minnesota Chamber of Commerce, Comments of Margaret West, Comment of the Coming Clean Network, Comment of Frontline Communities and Protection Coalition.
[255] *See, e.g.,* Comments Minnesota Chamber of Commerce, Comment of Frontline Communities and Protection Coalition, Comments of Tishman Environment and Design Center.
[256] MPCA Pre-hearing Response to Comments at 262; *see also* MPCA Post-Hearing Response to Comments, Ex. N.
[257] MPCA Pre-hearing Response to Comments at 262.
[258] MPCA Pre-hearing Response to Comments at 262.
[259] MPCA Pre-hearing Response to Comments at 262.
[260] MPCA Pre-hearing Response to Comments at 262.
[261] MPCA Pre-hearing Response to Comments at 262.
[262] *See, e.g.*, Comments of Michelle Garvey, Comments of Tishman Environment and Design.
[263] *See, e.g.,* Comments of Frontline Communities and Protection Coalition, Comments of Minnesota Chamber of Commerce.

224. Environmental justice advocates expressed concerns that the proposed CBA process might not adequately protect communities expressing substantial adverse impacts.[264] They urged the MPCA to establish stronger standards for CBAs and ensure that the process meaningfully incorporates the interests of affected residents.[265]

225. Industry representatives, in contrast, emphasized the need to consider the economic benefits of industrial development when evaluating potential adverse impacts and associated permitting requirements.[266] They maintained that employment, wages, and access to retirement and health benefits also contribute to the well-being of residents in environmental justice communities and should not be overlooked in the regulatory process.[267]

226. The MPCA acknowledges concerns regarding community participation in developing community benefits agreements.[268] The MPCA explains that each CBA must reflect the communities it serves, the permitted project and its impacts, and residents' needs in the affected environmental justice area.[269] Therefore, the MPCA and owners or operators cannot presume which benefits those communities will find meaningful.[270]

227. The MPCA also highlights that the proposed rule does not prevent communities from advocating for benefits focused on pollution prevention, emissions reduction, adverse impacts, or proportional value.[271] If community advocates request economic benefits, such as jobs, donations, or grants, other noneconomic benefits must also be considered, prioritizing those that directly affect area residents.[272]

228. The MPCA noted that the proposed rule requires residents and the facility owner or operator to discuss proposed community benefits at public meetings.[273] There, residents can identify which benefits matter most for inclusion in the CBA.[274] The MPCA emphasized that it cannot enter into a CBA unless the agreement addresses issues raised in public comments and prioritizes benefits that directly affect residents of the impacted environmental justice area.[275]

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[264] *See, e.g.*, Comments Jenna Yeakle, Susan Dragsten, Shelby Capacio (submitted by Sierra Club North Star Club), Comments of Frontline Communities and Protection Coalition, Comments of Tishman Environment and Design.
[265] *See, e.g.*, Comments of David Derksen, Comments of Edward Cohen (submitted by Sierra Club North Star Club), Comments of Gaye Guyton, Comments of Frontline Communities and Protection Coalition, Comments of Saint Paul-Ramsey County Public Health.
[266] *See, e.g.*, Comments of Minnesota Building and Construction Trades, Comments of LIUNA Minnesota and North Dakota.
[267] *See, e.g.*, Comments of Minnesota Building and Construction Trades, Comments of LIUNA Minnesota and North Dakota.
[268] MPCA Pre-hearing Response to Comments at 316-21; MPCA Post-Hearing Response to Comments.
[269] MPCA Pre-hearing Response to Comments at 316.
[270] MPCA Pre-hearing Response to Comments at 316.
[271] MPCA Pre-hearing Response to Comments at 317.
[272] MPCA Pre-hearing Response to Comments at 317.
[273] MPCA Pre-hearing Response to Comments at 321.
[274] MPCA Pre-hearing Response to Comments at 321.
[275] MPCA Pre-hearing Response to Comments at 321.

VIII. Rule-by-Rule Analysis[276]

A. Introduction

229. The MPCA's proposed rule contains rule parts that define the scope of the rule, define key terms, and address the legislature's guidelines in Minn. Stat. § 116.065.

230. The purpose of the new rule is to implement the Minnesota Legislature's directives by establishing criteria for when a CIA is required and specifying the required contents of the analysis; defining when an environmental or health impact constitutes a substantial adverse impact; establishing the required contents of a community benefits agreement (CBA) and the process for negotiating and entering into such an agreement; creating a petition process through which residents of EJ areas may request a CIA; establishing a process for Tribal governments in Minnesota to elect to apply the statutory requirements to a permit application; and providing methods for meaningful public participation. The rule also seeks to ensure public access to information about factors that may increase an individual's susceptibility to harm from pollutant exposure, including potential health effects associated with pollutant exposure and relevant social and environmental conditions, such as poverty, substandard housing, food insecurity, elevated disease rates, and limited access to health insurance and medical care.[277]

231. The rules will apply to regulated entities with varying operations, proposed permit actions, and potential environmental and human health impacts. The nature of each proposed action, the location of the stationary source, the environmental conditions in the surrounding area, and the populations potentially affected create countless circumstances that the MPCA must evaluate. Because these circumstances vary, the MPCA determined it cannot reasonably enumerate every possible scenario or prescribe a specific response to each one in rule.[278]

232. Instead, the MPCA designed a consistent framework for the MPCA to evaluate the site-specific characteristics of regulated facilities and proposed permit actions while accounting for the environmental conditions and populations that may be affected. The MPCA believes this framework will provide uniform regulatory requirements, while recognizing that facilities and communities differ, particularly with respect to existing environmental burdens and potential vulnerabilities in EJ areas. Clear requirements for conducting and evaluating CIAs will help regulated entities understand their obligations and allow the MPCA to assess potential impacts through a systematic and informed process. By incorporating site-specific conditions and environmental justice considerations into its permitting review, the MPCA can more effectively evaluate the

[276] Comments in this section are cited to include the unique comment identifier assigned by the MPCA whenever possible. *See* MPCA Response to Pre-Hearing Comments at 7-9, MPCA Response to Post-Hearing Comments at 3, and MPCA Response to Rebuttal Comments (Ex. N) at 4.
[277] Ex. D at 51.
[278] Ex. D at 51.

potential effects of proposed permit actions on affected communities and make decisions consistent with the legislature's intent to protect human health and the environment.[279]

233. These rules are drafted to be consistent with existing Minnesota regulatory programs, including environmental review under Minn. R. 4410.0200 to 4410.6500 and Minn. Stat. ch. 116D, and the cumulative levels and effects (CL&E) process under Minn. Stat. § 116.07, subd. 4a. Aligning the cumulative impacts requirements with these established programs is reasonable because it promotes consistency in evaluating environmental and human health impacts, minimizes unnecessary duplication of regulatory requirements, and provides regulated entities with greater clarity regarding the information and analyses necessary for compliance. This approach also allows the MPCA to build upon established regulatory processes while accounting for the site-specific circumstances of proposed permit actions and their potential effects on affected communities, including EJ areas. By drawing upon existing regulatory frameworks, the MPCA seeks to promote a coordinated and transparent approach to evaluating cumulative impacts, while preserving the distinct requirements and objectives of the proposed rules.[280]

234. The proposed rules also consider approaches implemented in other states, particularly New Jersey's Environmental Justice Rule, codified at N.J.A.C. Title 7, Chapter 1C. New Jersey's framework provides a comparative example of how regulatory requirements can address environmental and human health impacts in communities experiencing existing environmental burdens. Although the MPCA considered this framework when developing Minnesota's rule, the proposed rule is specifically designed to implement the requirements and objectives of Minn. Stat. § 116.065 and reflect Minnesota's distinct statutory and regulatory framework. The MPCA considers other states' approaches a useful resource for evaluating methods of assessing cumulative impacts and incorporating environmental justice considerations into permitting decisions. However, Minnesota's rules are not intended to replicate another state's regulatory program. Rather, they establish requirements tailored to the legislature's directives, including Minnesota's criteria for determining when a CIA is required, the content of that analysis, the process for determining whether a proposed permit action may result in a substantial adverse impact, the community benefits agreement process, and opportunities for public and Tribal participation. Accordingly, while approaches used in other jurisdictions may inform the development of the rules, Minnesota's statutory requirements, environmental conditions, and community circumstances govern the rule's scope, application, and implementation.[281]

235. The proposed rules are set forth primarily in Minn. R. 7007.6000 through 7007.6120 and apply to stationary sources that meet the applicability criteria established in Minn. R. 7007.6020. The proposed rules make compliance with applicable cumulative impacts requirements a prerequisite to permit issuance. Accordingly, applicants subject to the rules must identify in their permit applications whether the proposed permit action is subject to cumulative impacts review. The requirements apply to qualifying permit

[279] Ex. D at 51.
[280] Ex. D at 51.
[281] Ex. D at 51-52.

actions in designated environmental justice areas and are intended to supplement, rather than replace, existing air permitting requirements.[282]

236. The proposed rule is designed to follow this general sequence:

(1) Permit application;

(2) MPCA determines whether Minn. R. 7007.6000 to .6120 apply;

(3) Applicant prepares Initial Assessment under Minn. R. 7007.6050;

(4) MPCA determines whether CIA is required by benchmark trigger, substantial potential impact trigger, discretionary/material evidence trigger, or petition under Minn. R. 7007.6070;

(5) Public participation and CIA pursuant to Minn. R.7007.6080 and .6090;

(6) MPCA determines substantial adverse impact under Minn. R. 7007.6100;

(7) If no substantial adverse impact is identified, the permit application proceeds toward ordinary permit decision. If there is a substantial adverse impact, the applicant must complete the CBA process under Minn. R. 7007.6110; and

(8) The MPCA makes a final permit decision under Minn. R. 7007.6120.[283]

237. The MPCA has demonstrated that adopting the proposed rules is reasonable and necessary because they establish the information regulated entities must provide, the procedures for submitting and reviewing CIAs, and the framework the Agency will use to make permitting decisions. Codifying these requirements promotes consistency, transparency, and fairness by providing regulated entities with clear expectations and ensuring that the MPCA evaluates qualifying permit applications according to established standards and procedures. A defined regulatory process also provides greater certainty regarding compliance obligations and the information necessary for the Agency to evaluate proposed permit actions. In addition, the rules advance environmental justice objectives by establishing a transparent framework for evaluating the potential cumulative environmental and human health impacts of permitted facilities on surrounding communities, particularly environmental justice areas. By specifying how these impacts will be assessed and considered in permitting decisions, the rules provide the public with greater understanding of the MPCA's decision-making process and how the environmental conditions and circumstances of potentially affected communities will inform the Agency's review.

[282] Ex. D at 52.
[283] Ex. C.

238. This Report focuses its most extensive analysis on the portions of the proposed rules where there are genuine disputes as to the reasonableness of the MPCA's regulatory choice or that otherwise require closer examination.

B. Minn. R. ch. 7007 Amendments

239. The MPCA proposes to amend several of its existing air permitting rules, including Minn. R. 7007.0050, .0100, .0150, .0500, .0750, .0850, .1000, .1300, and .1450.[284] These rule amendments make changes in Minn. R. ch. 7007 to clarify where the Cumulative Impacts Rules intersect with existing air permitting rules. Amendments to these rule chapters will provide consistency and clarity, and make the rules easier for interested parties to understand. These amendments are primarily housekeeping in nature, to ensure the existing rules comply with the requirements of Minn. Stat. § 116.065.[285]

240. Several commenters requested clarification from the MPCA regarding the amendments to existing Rule Part 7007, which the MPCA provided.[286]

241. The Administrative Law Judge determines the MPCA established the amendments are needed and reasonable. The amendments are approved.

C. Minn. R. 7007.6000 — Scope

242. This is the introductory provision of the Cumulative Impacts Rules, applying Parts 7007.6000 through 7007.6120 to owners and operators of stationary sources that meet the applicability requirements in Part 7007.6020. This part is needed to make clear that the new rules do not limit the Commissioner's or MPCA's existing authority under Minn. Stat. § 116.065 or other law. In practical terms, this section establishes that the Cumulative Impacts Rules are an additional layer of Minnesota air permitting requirements, not a replacement for the ordinary Chapter 7007 permitting rules.[287]

243. Some commenters requested clarification of the scope of the new cumulative impacts framework and how it interacts with existing chapter 7007 permit requirements.[288]

244. The MPCA explained that the rules implement Minn. Stat. § 116.065 and operate alongside existing permitting requirements. The SONAR discusses the scope and statutory limits. The amendments to existing air permitting rules establish how existing chapter 7007 requirements are affected by the new rules.[289]

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[284] *See* Ex. C; Ex. D at 52-7.
[285] Ex. D at 52.
[286] *See* MPCA Pre-hearing Response to Comments at 122-125.
[287] Ex. C; Ex. D at 58.
[288] *See e.g.,* Comment of Beth Shaw; Comments of Minnesota Chamber of Commerce; Comment of Metropolitan Airport Commission.
[289] MPCA Pre-hearing Response to Comments at 122.

245. The Administrative Law Judge concludes that Part 7007.6000 is needed and reasonable. The rule maximizes the scope of regulation established by Minn. Stat. § 116.065. Based upon the record, the MPCA has articulated the need for the proposed rule and has made a reasonable choice from the available policy alternatives within the scope of authority granted by the legislature. This rule part is therefore approved.

D. Minn. R. 7007.6010 — Definitions

246. In this proposed rule part, the MPCA establishes definitions to aid it in regulating under the rule. This part includes subparts for 42 defined terms, many of which are highly technical. Among the defined terms are definitions for:

- "adverse environmental stressor" ("an environmental stressor in an EJ area that is higher than its specified reference value or geographic comparison");
- "combined stressor total" ("the sum of adverse environmental stressors in an EJ area");
- "community benefit" ("a program, service, action, project, or resource providing a tangible health, environmental, social, economic, or other benefit to an EJ area and its residents");
- "community benefit agreement" ("an enforceable agreement between the commissioner and the stationary-source owner/operator establishing benefits the owner or operator agrees to provide to residents of impacted EJ areas");
- "cumulative impacts" (given the meaning in Minn. Stat. §116.065); and
- "economic benefit" ("benefits measurable financially, including examples such as targeted and local hiring, living-wage requirements, affordable housing, and direct financial assistance").

Definitions concerning cancer risk, chronic/acute health endpoints, inhalation risk, and other technical risk concepts are also established.[290]

247. An important structural point to note is that the rule does not define cumulative impacts as the amount of pollution emitted by the proposed project. Instead, the definitions establish a framework of terms used to assess the existing environmental conditions in the EJ area and the proposed facility's contribution to them. The MPCA maintains that, in general, it is reasonable to provide definitions for new terms to clarify

[290] Ex. C; Ex. D at 58-71.

the terms as they are used throughout Minn. R. 7007.6000 to 7007.6120, and to create a shared understanding of their meaning.[291]

248. Fourteen commenters addressed "facility expansion" under the proposed definition and whether certain changes or emissions increases trigger a CIA. Some commenters argued that the definition includes too many facilities; other commenters contend that the definition improperly excludes some facilities.[292]

249. "Facility expansion" means a modification, as defined under Rule 7007.0100, subp. 14, at an existing permitted stationary source that will cause an increase in emissions of an air pollutant or makes the stationary source subject to the requirement to obtain an individual state or federal permit. Facility expansion does not include any change to permit conditions that is allowed under Part 7007.1250 for insignificant modifications, any modification at a permitted stationary source that is allowed under Part 7007.1350 for changes that contravene permit terms, administrative amendment changes under Part 7007.1400, or any minor permit amendment under Part 7007.1450.[293]

250. The MPCA acknowledges the concerns related to the definition of "facility expansion" and, in particular, the applicability of small changes such as adding an emergency generator or small boiler, especially when occurring at a hospital. The MPCA agrees that there are permit actions and situations where the proposed rules should not apply. To address this concern, the MPCA points to certain other rule provisions that address such situations. For example, Minn. R. 7007.6010, subp. 19(B) expressly excludes insignificant modifications under part 7007.1250, changes allowed under part 7007.1350, administrative amendments under part 7007.1400, and any changes requiring a minor permit amendment under part 7007.1450.[294]

251. The MPCA also addressed the proposed definition of "facility expansion" and the competing interpretations. The Agency noted that many of the concerns regarding the definition are addressed by other rule parts. It explained that a facility needing to install an emergency generator or boiler has options to reduce an emissions increase and qualify for a minor amendment that is not subject to the proposed rules. The MPCA disagreed with comments that reissuance permits should be exempted like small changes are, or that small changes should be subject to the rule because they are like a reissuance. The Agency responded that the facility-wide scope of a five-year permit term, which is considered during a reissuance application, is distinctly different than an administrative amendment or an amendment with a small, negative, or zero emissions

[291] *See* Ex. D at 58-71.
[292] *See e.g.* Minnesota Chamber of Commerce (027-56); University of Minnesota (030-32), (030-33), (030-34), (030-35); Minnesota Building and Construction Trades Council (041-05), (041-02); Cordia Energy Center Minneapolis (049-17); Minnesota Hospital Association (051-02), (051-05), (051-13), (051-22); Minnesota Chamber of Commerce (027-04); Representative Lee (033-07); Michelle Garvey (065-02).
[293] Ex. D at 63.
[294] Ex. D at 63.

increase. The MPCA concluded that reissuance permits are a reauthorization of existing operations that may have impacts unrelated to the introduction of new emissions.[295]

252. The Judge concludes that the MPCA has evaluated competing concerns of commenters regarding this definition and its draft reflects a reasonable policy choice.

253. Subpart 25 defines the term "health endpoint." A health endpoint is the observable adverse biological effect from a chemical exposure used to group chemicals for the purpose of evaluating risks from multiple chemicals. Examples of a health endpoint include increased risks for various cancers; harm to body organs such as heart, brain, liver, or kidneys; harm to systems, such as respiratory, immune, nervous, endocrine, cardiovascular, and reproductive; and developmental effects, such as lowered birth weight and birth defects. The MPCA posits it is reasonable to define health endpoint as it is one of the acceptable risks. This term is consistent with one way risk is assessed through risk assessments and it is a common term used in risk assessments.[296]

254. Some commenters asked MPCA to revise the definition of "health endpoints" to specify those which may be considered in the assessment. Commenters note that health endpoints affect the breadth and scientific relevance of health-risk analysis.[297] Frontline Communities Protection Coalition (Frontline) expressed concerns over the use of the term "observable" in this definition, because it believes the current definition could be challenged as someone might claim that they need to see a significant signal in a community of a health impact, through an epidemiological study or the like. This is an extremely high burden of proof in Frontline's view. Accordingly, Frontline recommends replacing the word "observable" with the word "specific."[298]

255. The MPCA responded to the commenters' concerns and addressed the scope and technical use of "health endpoints." The Agency states that the definition for this term is consistent with one-way risk, is commonly assessed through risk assessments, and it is a term often used in risk assessments. Health endpoints are adverse effects from exposure to a particular contaminant that have been identified through the evaluation of toxicological and/or epidemiology studies. These studies are used in the development of inhalation health benchmarks. Contaminants can be grouped by their health endpoints to help assess risk. The MPCA notes that an observable effect in a specific population (e.g., an effect observable within a specific community located around a facility) to describe a potential health risk is not determinative of the rule's applicability.[299]

256. The MPCA has evaluated competing concerns of commenters regarding the definition of "health endpoint" and the proposed rule reflects a reasonable policy choice.

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[295] MPCA Pre-hearing Response to Comments at 127–132.
[296] Ex. D at 66-67.
[297] Frontline Communities Protection Coalition (034-02); University of Minnesota (030-23), (030-25), (030-26); Metropolitan Airports Commission (055-04).
[298] Frontline Communities Protection Coalition (034-02).
[299] MPCA Pre-hearing Response to Comments at 133–135.

257. Subpart 26 defines the term "impacted environmental justice area." This term describes the EJ areas that are relevant to the requested permit action and stationary source, including the EJ areas that the stationary source is located in, in whole or in part, and those within one mile of the property boundary of a stationary source, in whole or in part. This definition is needed to clarify terms used in Minn. Stat. § 116.065 and the proposed rules, to describe:

- Who is eligible to sign a petition requesting the MPCA require a CIA;
- The area where public meetings must be held when a CIA is required;
- The area where physical signage must be posted in advance of the required public meetings; and
- The area where active outreach is required during the process of entering into a CBA.[300]

258. While Minn. Stat. § 116.065 defines "environmental justice area," it does not define the term "impacted environmental justice area" or similar terms and phrases such as "environmental justice area impacted by the facility," "environmental justice area affected by the facility," "facilities that impact environmental justice areas," "a facility located in or affecting and environmental justice area," and other similar phrases used within the statute.[301]

259. The MPCA proposes this definition as a plain reading of these terms based on the applicability criteria included in Minn. Stat. § 116.065, subd. 2, which states that the rules apply when a stationary source is located in or within one mile of a census tract that is part of an EJ area. The proposed definition is also consistent with Minn. Stat. § 116.065, subd. 3(e)(2), which refers to petitions. The MPCA maintains it is reasonable to define "impacted environmental justice area" to mean the EJ areas that are in, or within one mile of, the property boundary of the stationary source because that is the maximum reach of the proposed rules under the applicability criteria established in Minn. Stat. § 116.065.[302]

260. Four commenters submitted comments on the definition of "impacted environmental justice area."[303] Commenters questioned whether geographic proximity alone accurately captures the communities affected by pollution.[304]

261. The Metropolitan Airport Commission (MAC) recommended that an EJ area should be within one mile of a proposed permit action rather than the property boundary

[300] Ex. D at 67.
[301] Ex. D at 67.
[302] Ex. D at 67.
[303] Frontline Communities Protection Coalition (034-02); University of Minnesota (030-23), (030-25), (030-26); Metropolitan Airports Commission (055-04).
[304] Frontline Communities Protection Coalition (034-02); University of Minnesota (030-23), (030-25), (030-26); Metropolitan Airports Commission (055-04).

of a stationary source.[305] The MAC explained that the term "impacted environmental justice area" is defined too broadly, without consideration of which communities may be most impacted by a proposed permit action. The MAC argues the definition 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. The MAC offers Minneapolis-St. Paul International Airport (MSP Airport) as an example to provide a sense of scale for some facility boundaries. The MSP Airport neighbors several different environmental justice communities with different needs. The MSP Airport is approximately 2.5 miles across, and a permit action in the southwest corner would impact different communities than one in the northeast corner. The MAC opposes the definition of "impacted environmental justice area" as an environmental justice area that is "within one mile of the property boundary of a stationary source." The MAC believes the analysis should account for whether *a change* to an existing stationary source, such as the types of facility expansion projects that bring economic development to the MSP Airport, is within one mile of an environmental justice area.[306]

262. The University of Minnesota (University) has similar concerns regarding the reach of the rule for entities with extensive property boundaries. To illustrate, the University provided the following map:[307]

[305] Metropolitan Airports Commission (082-04).
[306] Metropolitan Airports Commission (082-04).
[307] University of Minnesota (030-01).

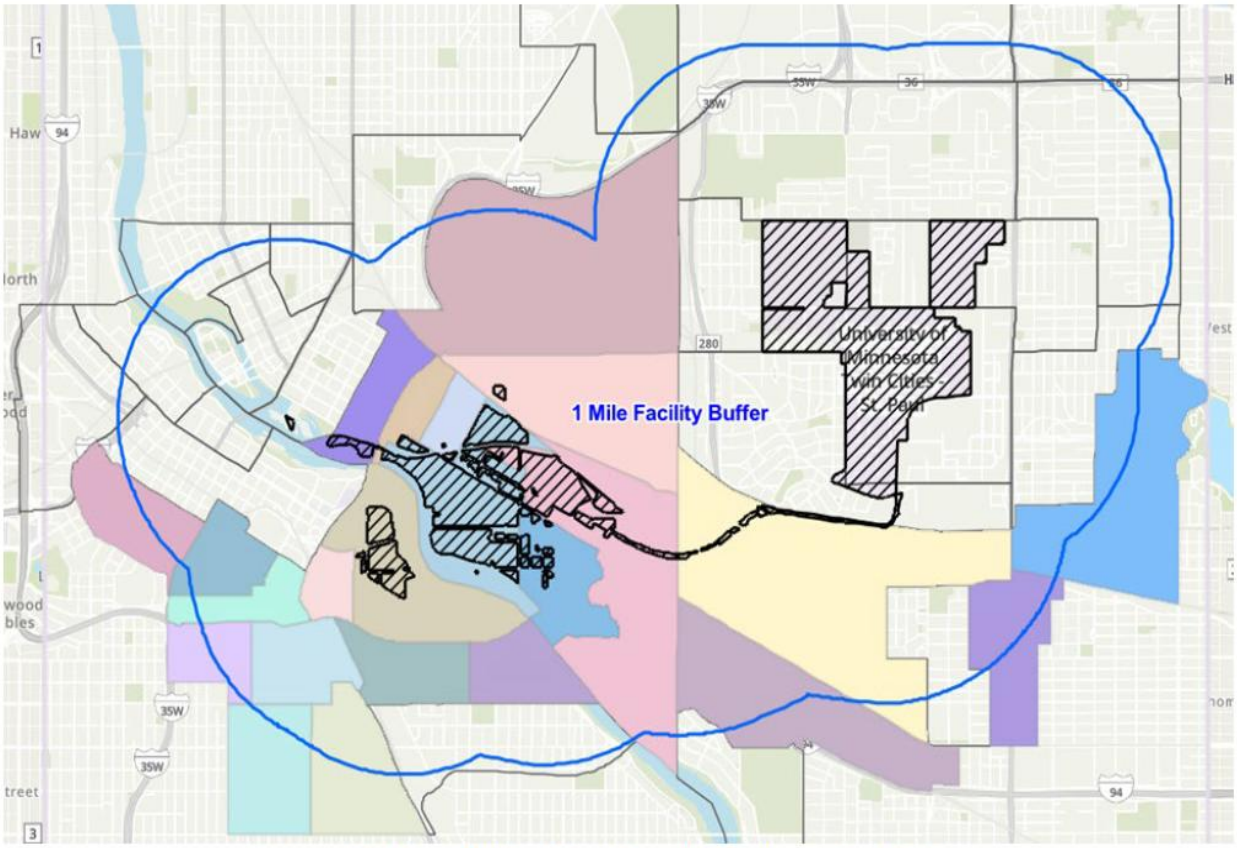


Figure 1: Area Subject to Cumulative Impacts Review
(Designated "Environmental Justice" census tracts within a 1-mile buffer of the UMTC campus)

263. The MPCA responded to the proposed geographic definition and related requests. The MPCA opposes revising the definition of an impacted environmental justice area because the existing one-mile measurement criterion is consistent with Minn. Stat. § 116.065 and provides a clear, uniform basis for determining the applicability of the rules. Measuring from the stationary source's property boundary aligns with air permitting practices and accounts for potential impacts across the entire facility, including situations in which construction or modifications in one area affect operations elsewhere. This approach also promotes consistent and equitable application of the rules by avoiding disputes over measurement points that may change or vary depending on the type and location of emissions sources.[308]

264. The MPCA further explains that environmental justice assessments must consider cumulative pollutant exposure and existing socioeconomic conditions when a permit application is submitted. Although facilities may provide information about anticipated positive socioeconomic impacts, such as economic development or future residential development, those benefits must be considered alongside potential adverse environmental and public health effects.[309]

[308] MPCA Pre-hearing Response to Comments at 135.
[309] MPCA Pre-hearing Response to Comments at 135-6.

265. Subpart 39 defines the term "socioeconomic impact."[310] The MPCA states the term is needed to help clarify the scope of the information that regulated parties need to provide as part of a CIA. This term is also needed to clarify the information the MPCA will evaluate as part of determining whether to issue or deny a permit as required under Minn. Stat § 116.065, subd. 5(b). Socioeconomics refers to how economic activity and social behaviors influence and interact with each other, focusing on how factors like income, education, occupation, and social standing impact quality of life and opportunities. Socioeconomics is an examination of the intersection of societal structures, cultural values, and economic outcomes, and is often used to inform policy, actions, decisions. It is reasonable to define this term to provide additional clarity regarding the information that is provided and evaluated as part of a CIA.[311]

266. Commenters question the MPCA's proposed definition of "socioeconomic impact." Multiple commenters requested the Agency clarify or broaden the socioeconomic conditions and impacts considered in the rule. Frontline and Health Professionals for a Healthy Climate proposed the use of modeling, such as the Social Return on Investment, Cost Benefit Analysis, and Subjective Social Status models.[312]

267. The MPCA addressed the comments on this definition and the scope of socioeconomic considerations.[313] The MPCA appreciates the commenters' recommendations but does not believe it is necessary to expand the definition to reference specific models or best practices for measuring socioeconomic impacts. The MPCA understands socioeconomics to broadly encompass the interactions between economic activity and social behavior, including how various factors affect quality of life and opportunities. The MPCA anticipates that the socioeconomic impacts of actions or policies associated with a requested permit will vary depending on the nature of the proposed and existing stationary source operations, the source's location, and the circumstances of residents in the surrounding area.[314]

268. The MPCA also acknowledges the commenters' input regarding methods for evaluating socioeconomic impacts. As discussed in the Regulatory Analysis section of the SONAR, the MPCA considered the anticipated costs and benefits of the proposed rule, including potential socioeconomic effects, using concepts consistent with cost-benefit analysis and return-on-investment methodologies. These considerations were particularly relevant to the Costs of Non-Adoption subsection, which identifies potential benefits of the proposed rule, including improved public health and enhanced community amenities. The MPCA also employed tools to estimate certain benefits in monetary terms, including the U.S. Environmental Protection Agency's Co-Benefits Risk Assessment Health Screening and Mapping Tool (COBRA). However, the MPCA recognizes that accurately quantifying the anticipated health, community amenity, and

[310] Ex. C.
[311] Ex. D at 70.
[312] Frontline Communities Protection Coalition (034-03), (034-28); Health Professionals for a Healthy Climate (038-19) (citing *https://www.resonanceglobal.com/blog/measuring-social-impact-approaches-challenges-and-best-practices*).
[313] *See* MPCA Pre-hearing Response to Comments at 137.
[314] MPCA Pre-hearing Response to Comments at 137.

broader socioeconomic benefits of the proposed rule presents significant challenges. As a result, the available information did not allow the MPCA to conduct a comprehensive socioeconomic assessment using methodologies, such as cost-benefit analysis or social return on investment, to fully quantify these impacts.[315]

269. As the rule is implemented, the MPCA states it will develop guidance for facility owners and operators, community members, and agency staff addressing various aspects of the rule. Implementation will also include the development of standard forms, templates, and other materials to support requirements such as documenting and evaluating socioeconomic impacts. The MPCA anticipates that these materials will provide examples of socioeconomic impacts and will identify methods and practices for documenting and assessing them.[316]

270. The MPCA has adequately considered and justified the definition of "socioeconomic impact."

271. Representative Fue Lee proposed adding a definition of "air toxics" to the rules to ensure consistent application.[317]

272. The MPCA considered the request but disagreed that a separate definition is necessary. The MPCA noted that the term "air toxics" is already defined in Minn. R. 7005.0100, subp. 2c, and the proposed rule relies on that definition as identified in Minn. R. 7007.6010, subp. 1, which provides, "the definitions used in parts 7000.0100, 7005.0100, and 7007.0100 apply to parts 7007.6000 to 7007.6120 unless a term is otherwise defined in this part." Minn. R. 7005.0100, subp. 2c, defines air toxics as "pollutants, except for criteria pollutants, that are known or suspected to cause cancer or other serious health effects or adverse environmental and ecological effects. Air toxics includes the pollutants listed under part 7019.3110, subpart 2."[318]

273. The MPCA has sufficiently justified its determination that a separate definition for "air toxics" is not necessary.

274. Some commenters proposed that the MPCA add a definition of "community" to clearly identify whose experiences and interests are relevant to the analysis.[319] The Minnesota Chamber of Commerce and Cordia Energy Center proposed limiting "community" to "individuals who reside or own property in the impacted environmental justice area."[320]

[315] MPCA Pre-hearing Response to Comments at 137.
[316] MPCA Pre-hearing Response to Comments at 137.
[317] Representative Lee (033-08).
[318] MPCA Pre-hearing Response to Comments at 137-138.
[319] Minnesota Chamber of Commerce (027-26); Cordia Energy Center Minneapolis (049-20); Michelle Garvey (065-02).
[320] Minnesota Chamber of Commerce (027-26); Cordia Energy Center Minneapolis (049-20).

275. The MPCA addressed the proposed definition and the commenters' concerns.[321] The MPCA does not believe it is necessary to define "community" or restrict participation in the CIA, including input on CBAs, to individuals who reside or own property within an EJ area. Although Minn. Stat. § 116.065, subd. 3(c), and Minn. R. 7007.6060, subp. 1(A), establish specific signatory requirements for petitions, the statute does not impose similar restrictions on participation in other aspects of the rule. Moreover, Minn. Stat. § 116.065, subd. 4(d)(2), expressly requires acceptance of written and oral comments from "any interested party" at designated public meetings. The MPCA cannot use administrative rulemaking to restrict participation beyond the requirements established by the legislature.[322]

276. Regarding CBAs, Minn. R. 7007.6110, subp. 4(A)(1) and (2), allow a broad range of interested parties to suggest potential benefits, providing a wider range of options for consideration. At the same time, subitem (2) requires discussions between residents of the impacted EJ area and the facility owner or operator to identify and inform the benefits that may be included in the agreement. The MPCA maintains this approach encourages broad participation while ensuring that residents have an opportunity to collaborate directly with the owner or operator in determining appropriate community benefits.[323]

277. The MPCA has sufficiently justified its determination that a separate definition for "community" is not necessary.

278. Part 7007.6010 is necessary to articulate definitions used under the rule and to facilitate implementation of Minn. Stat. § 116.065. The MPCA has shown that each subpart in Minn. R. 7007.6010 is needed and reasonable, and Part 7007.6010 is approved.

E. Minn. R. 7007.6020 — Applicability and Procedures

279. Part 7007.6020 establishes when the cumulative impacts process applies. The basic statutory and rule framework covers qualifying stationary sources associated with an air permit action when the source is in or within the statutory one-mile range of an environmental justice area.[324]

280. The rule addresses: which permit actions are covered; exclusions from the process; how applicability is determined when circumstances or information change; the role of the EJ area information supplied by the MPCA; what happens after the MPCA determines that a CIA is required; and what happens after the Agency determines that there is a substantial adverse impact.[325]

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[321] MPCA Pre-hearing Response to Comments at 138–139; MPCA Post-Hearing Response to Comments at 11.
[322] MPCA Pre-hearing Response to Comments at 138.
[323] MPCA Pre-hearing Response to Comments at 138–139.
[324] Ex. C; Ex. D at 71.
[325] Ex. D at 71-75; *see* Ex. C.

281. Once a CIA is required, the owner and operator must comply with the public participation requirements and prepare the CIA. If the MPCA determines that the permit would cause a substantial adverse impact, the owner or operator must proceed to the CBA requirements.[326]

282. The proposed amendments to existing provisions of Minn. R. ch. 7007 also tie the new process into the existing chapter 7007 permitting rules. For example, an application in an EJ area must state whether the cumulative impacts requirements apply and, if they do, include the initial assessment.[327]

283. The MPCA submits this part is reasonable and necessary. The purpose of this part is to clarify how the MPCA will implement and apply Minn. R. 7007.6000 to .6120. Although Minn. Stat. § 116.065, subd. 6(a), broadly requires the Commissioner to adopt rules governing CIAs and permit decisions for affected regulated parties, the MPCA determined that additional provisions were necessary to clarify how specific statutory requirements are implemented.

284. Minn. R. 7007.6020 establishes the applicability of the cumulative impacts rules, including exemptions and the procedures owners and operators must follow when information relevant to applicability changes. It also addresses the frequency of environmental justice area updates, the environmental stressor information the MPCA will provide, and an overview of the rule's procedures. These provisions promote clarity, consistency, and a framework regarding the implementation and application of the rules.[328]

285. Commenters urged that existing facilities and permit renewals be covered by the Cumulative Impacts Rule, opposed grandfathering and broad exemptions, and questioned reliance on recent enforcement actions to trigger analysis.[329]

286. The MPCA discussed statutory applicability, the proposed reissuance trigger, and the exemption for certain reissuance applications.[330] Existing and new facilities may be required to conduct a CIA when the applicability criteria in Minn. R. 7007.6020 are met. The rules apply to requested permit actions, as defined in part 7007.6010, subp. 35, including applications for new construction, facility expansion, or reissuance of an expiring permit. New construction includes new stationary sources and changes to existing unpermitted sources that trigger permitting requirements. Facility expansion includes modifications that increase air pollutant emissions or trigger permitting requirements, while reissuance occurs when a permit is renewed at the end of its term.[331]

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[326] Ex. D at 71-75.
[327] Ex. D at 72.
[328] Ex. D at 71.
[329] Sarah Horner (001-01); Amy Caucutt (016-03); Stephanie Hankerson (019-06); Leah Dunlevy (026-02); Jeanne Norrgard (029-02); Frontline Communities Protection Coalition (034-04); Lois Norrgard (040-01).
[330] MPCA Pre-hearing Response to Comments at 142-143.
[331] MPCA Pre-hearing Response to Comments at 142-143.

287. When the rules apply, the owner or operator must submit an initial assessment under part 7007.6050, subp. 1. The MPCA considers this assessment and other information identified in part 7007.6070, subp. 3, item A, to determine whether a CIA is required under part 7007.6070, subp. 1 or 2. Under part 7007.6070, subp. 1, the MPCA must require a CIA when specified criteria are met, including benchmarks established in part 7007.6050, subp. 4. Examples include an existing facility applying for permit reissuance after receiving an enforcement action within the preceding three years, a facility expansion with potential emissions exceeding specified pollutant thresholds, or a permit application involving new construction.[332]

288. Under part 7007.6070, subp. 1, the MPCA must also require a CIA when it determines, under subp. 4, that issuing a requested permit may substantially affect the environment or the health of residents in an impacted environmental justice (EJ) area. In making this determination, the MPCA considers the permit action, the initial assessment, material evidence submitted with a petition or otherwise known to the commissioner, and other relevant information. The MPCA evaluates this information using the criteria in subp. 4 to determine whether the proposed permit action may cause substantial impacts.[333]

289. Under part 7007.6070, subp. 2, the MPCA may require a CIA based on material evidence known to the commissioner of the MPCA, evidence submitted through a petition under part 7007.6060, or a voluntary request by the owner or operator. In evaluating a petition, the Commissioner must consider the evidence and other information specified in part 7007.6060, subp. 5, item C, and apply the criteria in part 7007.6070, subp. 4. These provisions will allow the MPCA to require an analysis of existing facilities seeking expansion or permit reissuance when the available information supports it.[334]

290. Regarding exemptions for certain permit reissuance applications, the MPCA explains that the temporary exemption is intended to afford regulated parties sufficient time to prepare applications that comply with the new requirements. Reissuance applications generally must be submitted at least 180 days before the existing permit expires under part 7007.0400, subp. 2. This means some applications would be due shortly after the rules take effect, leaving facilities insufficient time to comply with requirements that were not yet adopted or known during rule development. Future reissuance applications from facilities subject to the rules must be evaluated for applicability, and the MPCA must determine whether a CIA is required.[335]

291. Seven commenters raised concerns about the geographic applicability of various provisions of the proposed rules, including the initial assessment under part 7007.6050, the CIA under part 7007.6090, and CBAs under part 7007.6110. They

[332] MPCA Pre-hearing Response to Comments at 142.
[333] MPCA Pre-hearing Response to Comments at 142.
[334] MPCA Pre-hearing Response to Comments at 143.
[335] MPCA Pre-hearing Response to Comments at 143; *see* Ex. D at 72.

recommended various alternative distance thresholds and, in some instances, expanding the geographic areas in Minnesota where the rules would apply.[336]

292. The MPCA addressed statutory geographic and permit type limits and how the proposed rules apply to covered actions in response to the comments.[337] The MPCA concluded these requirements are established by Minn. Stat. § 116.065, subds. 1 and 2, and are reflected in proposed Minn. R. 7007.6010 and 7007.6020, subp. 1. MPCA believes these provisions are necessary to clarify when the rules apply and promote a common understanding among interested parties.[338]

293. The MPCA recognizes the importance of environmental justice statewide and incorporates environmental justice considerations into its broader policies and practices[339] However, the proposed rules' applicability is limited to the geographic areas specified in Minn. Stat. § 116.065, subd. 2. The MPCA cannot expand those areas or modify the statutory one-mile distance or geographic applicability criteria through administrative rulemaking.[340]

294. The MPCA also clarifies that initial applicability is determined by geographic proximity, permit type, and permit action. Benchmark exceedances, the Commissioner's discretionary authority, and petition authority are considered later when determining whether a facility must conduct a CIA. Recognizing that proximity alone does not capture the full complexity of a facility's potential impacts, the MPCA proposed the initial assessment requirements in Minn. R. 7007.6050 to gather information supporting that determination.[341]

295. Three commenters questioned how the rules apply to large or geographically expansive stationary sources, such as a university campus or an airport where a simple distance measurement may not reflect affected communities.[342]

296. The MPCA addressed application of the geographic requirements to expansive facilities. The MPCA acknowledges that the size and complexity of an expansive institution like the University of Minnesota or MSP Airport presents unique permitting challenges, especially when considering the broad scope of cumulative impacts. Minn. Stat. § 116.065, subd. 2(a) establishes that "[t]his section applies to an application for a permit by a facility." Additionally, Minn. Stat. § 116.065, subd. 1(h) defines permit to mean, "a major source air permit, as defined in Minn. R. 7007.02200, or a state air permit required under Minnesota Rules, part 7007.0250, subpart 5 or 6." As such, the

[336] Minnesota Building and Construction Trades Council (041-04); American Petroleum Institute (042-02); WaterLegacy (048-01), (048-04); Prairie Island Indian Community (052-02).
[337] MPCA Pre-hearing Response to Comments at 148-149.
[338] MPCA Pre-hearing Response to Comments at 148.
[339] *See* Ex. D at 181-186.
[340] MPCA Pre-hearing Response to Comments at 149.
[341] MPCA Pre-hearing Response to Comments at 149.
[342] University of Minnesota (030-02), (030-05); Minnesota Chamber of Commerce (027-52).

MPCA maintains the rule applies to everything included in the major source or state air permit as determined by the legislature.[343]

297. Four commenters addressed the use of environmental stressors throughout the rule. These commenters urged the MPCA to ensure environmental stressors are considered consistently across applicability, analysis, and decision stages.[344]

298. The MPCA addressed how stressors are used throughout the proposed regulatory framework.[345] The MPCA states it appreciates the commenters' suggestions and concerns but believes they stem from a misunderstanding of how the proposed rules require facilities to address environmental stressors and how the MPCA considers this information in its decision-making.[346]

299. Under proposed part 7007.6050, subp. 3, items F and G, owners and operators must include the environmental stressor information provided by the MPCA in the initial assessment and consider how those stressors may affect the environmental and public health impacts of the requested permit action. In the MPCA's view, Minn. Stat. § 116.065, subd. 3(a) focuses the assessment on impacts to the environment and the health of residents in EJ areas, rather than a facility's contribution to environmental stressors. The MPCA considers this assessment alongside other relevant information when determining whether a CIA is required under part 7007.6070, subp. 3, and whether issuing a permit would result in a substantial adverse impact under part 7007.6100, subp. 1. Environmental stressors are one component of the overall evaluation, not the sole basis for these determinations.[347]

300. The MPCA also disagreed that defining "environmental stressor" changes the statutory meaning of "adverse" under Minn. Stat. § 116.065. The rule's definitions establish objective measures for the environmental stressor information the MPCA must provide through its database under Minn. Stat. § 116.065, subd. 5(f). The MPCA contends that these definitions clarify how it will implement and administer the statute without altering its meaning.[348]

301. Finally, providing standardized environmental stressor information does not require the MPCA to treat all levels of a stressor equally. Under Minn. R. 7007.6050, subp. 3, item G, subitem (4), this information helps identify how existing stressors may increase the adverse effects of a facility's proposed activities on the environment or public health. Similarly, part 7007.6100, subp. 2, item E, provides for consideration of how environmental stressors may increase the magnitude of adverse impacts when determining whether an impact is substantial. Although the database facilitates comparisons across census tracts, counties, and the state, the Agency may consider

[343] MPCA Pre-hearing Response to Comments at 151.
[344] Minnesota Chamber of Commerce (027-45); Representative Lee (033-03), (033-06); Cordia Energy Center Minneapolis (049-21).
[345] MPCA Pre-hearing Response to Comments at 151-153.
[346] MPCA Pre-hearing Response to Comments at 153.
[347] MPCA Pre-hearing Response to Comments at 153.
[348] MPCA Pre-hearing Response to Comments at 153.

differences in stressor levels when conducting the initial assessment, evaluating a CIA, and making determinations under the proposed rules.[349]

302. The MPCA did not believe that a change in the rule language was necessary to address these issues and has sufficiently justified its choices.[350] The MPCA has shown that this rule part is needed and reasonable, and it is approved.

F. Minn. R. 7007.6030 — Tribal Considerations

303. In proposed part 7007.6030, the MPCA addresses the legislature's direction regarding consideration for cumulative impacts in Indian Country, recognizing the important interests of Tribal sovereignty, government-to-government consultation, and culturally significant resources.[351]

304. The purpose of this part is to fulfill the requirements of Minn. Stat. § 116.065, subd. 6(c)(6), which directs the MPCA to establish a process through which a Tribal government may elect to apply the statute to a permit application, as provided under Minn. Stat. § 116.065, subd. 2. Part 7007.6030 also establishes Tribal-specific requirements for the content of a CIA, consistent with Minn. Stat. § 116.065, subd. 6(c)(2). Although these rules do not impose obligations on Tribal governments, they are intended to provide Tribes with opportunities to submit relevant information and to clarify for regulated parties when that information must be incorporated into a CIA.[352]

305. Part 7007.6030 first establishes procedures for consultation and coordination between Tribal governments in Minnesota and the MPCA in implementing the cumulative impacts rules. Specifically, this part provides a process through which a Tribal government may elect to apply the rules to a permit application for a stationary source located in Indian Country. It also identifies additional information that must be included in a CIA when a Minnesota Tribal government identifies impacts from a stationary source to areas or resources of importance to that government. In addition, this part establishes how the MPCA will communicate information regarding Tribal concerns to facility owners and operators for consideration and inclusion in the CIA.[353]

306. The MPCA asserts that establishing these requirements by rule is reasonable and necessary to implement the statutory obligations imposed by Minn. Stat. § 116.065. The additional procedural requirements also provide clarity and support the effective implementation of those statutory obligations.[354]

307. Providing specific opportunities for Minnesota Tribal governments to participate in the CIA process is also reasonable, in recognition of the unique government-to-government relationship between the State of Minnesota and the federally recognized Tribal Nations within the state. Establishing clear procedures for

[349] MPCA Pre-hearing Response to Comments at 153.
[350] MPCA Pre-hearing Response to Comments at 153.
[351] Ex. D at 75.
[352] Ex. D at 75-76.
[353] Ex. D at 76.
[354] Ex. D at 75; *see* Ex. C.

communicating Tribal concerns and identifying when facility owners and operators must incorporate relevant information into a CIA is intended to promote transparency, support meaningful Tribal participation, and clarify the responsibilities of regulated parties.[355]

308. Under proposed part 7007.6030, when a stationary source is or will be located in Indian Country, a Minnesota Tribal government can request consultation with the Commissioner. Following consultation, the Tribal government with jurisdiction over the applicable EJ area can elect to have the cumulative impacts requirements applied to the permit action. The Tribal government must notify the commissioner of that election in writing.[356]

309. For sources outside Indian Country, the MPCA must notify an applicable Minnesota Tribal government when the source is in a county identified as being of interest to that Tribe. The notice must offer opportunities to: receive information about the permit; review the project schedule; review the initial assessment; review a CIA, if required; review a CBA, if required; visit the facility; participate in public meetings; participate during public comment periods; and provide information concerning Tribal concerns about natural resources, cultural resources, geographic areas, and past, current, and future uses.[357]

310. Tribal supplement to the CIA is permitted by subpart 4 of proposed Rule 7007.6130. If a Tribe provides relevant information, the owner or operator must supplement the CIA with information about the geographic area of Tribal interest, natural and cultural resources, traditional practices, locations or areas significant to the Tribe, and impacts from current and proposed operations, including construction and installation.[358]

311. The MPCA received two comments, from Prairie Island Indian Community and Frontline, expressing general support for the involvement of Tribes and other affected environmental justice communities in the overall CIA process. They offered several suggestions for the MPCA's consideration, including ensuring the process meaningfully considers Tribal interests and input, and including timelines for Tribal notification and input.[359]

312. The MPCA described the statutory and rule-based Tribal consultation framework and declined the suggestion to include timelines. The MPCA has historically conducted stationary source site visits during the permitting process to better understand a facility's existing and proposed operations, including through on-site tours. The MPCA has also invited Tribes to participate in site visits when reviewing permit applications of

[355] Ex. D at 75-76.
[356] Ex. D at 76-78.
[357] Ex. D at 76-78; *see* Ex. C.
[358] Ex. D at 78; *see* Ex. C.
[359] Frontline Communities Protection Coalition (034-10), (034-09); Prairie Island Indian Community (052-07), (052-08), (052-10).

interest to them. The site visit requirement in part. 7007.6030, subp. 3, item B, subitem (4), is intended to continue this established practice.[360]

313. The MPCA did not believe additional notification timeframes for Tribes were necessary. Under its existing practices and policies, the MPCA generally notifies Tribes about air permit applications when a permit engineer is assigned to review the requested permit action. Communication between the MPCA and Tribes often continues throughout the review process.[361]

314. The MPCA has established that this proposed rule part is needed and reasonable. Part 7007.6030 is approved.

G. Minn. R. 7007.6040 — General Requirements

315. Part 7007.6040 is the proposed rule's administrative and compliance backbone.[362] The MPCA intends to strike a balance between ensuring complete, reliable information for decision-making and establishing clear compliance duties. The purpose of this part is to establish and clarify general requirements to implement the proposed rules. The MPCA determined that additional rule language was necessary to identify and clarify the provisions implementing specific requirements of Minn. Stat. § 116.065, as well as to establish requirements that support the consistent and effective implementation of parts 7007.6000 to 7007.6120.[363] The central concept is that information used in this process becomes part of the regulated permitting record through certification and recordkeeping obligations.[364]

316. Part 7007.6040 establishes general requirements applicable to owners and operators of stationary sources subject to parts 7007.6000 to .6120. These requirements address the certification, accuracy, and completeness of submitted information; responses to information requests; recordkeeping; and the obligation to supplement or correct previously submitted information, when necessary. This part also establishes a process by which owners and operators may request consolidation of public meetings under part 7007.6080. In addition, it addresses the incorporation of permit conditions for measures relied upon in implementing the Cumulative Impacts Rules and provides further requirements concerning in-person meetings that the MPCA may require facility owners and operators to conduct.[365]

317. The MPCA contends that establishing these general requirements is reasonable and necessary to promote the effective administration of the proposed rules. Requiring facility owners and operators to certify that submitted information is true, accurate, and complete promotes accountability and supports the reliability of the information. Similarly, establishing requirements governing information requests,

[360] MPCA Pre-hearing Response to Comments at 154-155.
[361] MPCA Pre-hearing Response to Comments at 154-155.
[362] Ex. C; *see* Ex. D at 79.
[363] Ex. D at 79-82.
[364] Ex. D at 79-82; *see also* Ex. C.
[365] Ex. D at 79; Ex. C.

recordkeeping, corrections, public meetings, and permit conditions clarifies the responsibilities of regulated parties and supports consistent implementation. Expressly stating these requirements in rule is intended to provide transparency and a common understanding among the MPCA, owners and operators, and other interested persons regarding the procedures and obligations applicable under parts 7007.6000 to .6120.[366]

318. Of particular importance, part 7007.6040 requires a responsible official to certify submissions to the MPCA as true, accurate, and complete after reasonable inquiry. Both facility owners and facility operators have responsibilities, even if they are separate legal entities.[367] The MPCA can require information or reports by a specified deadline to implement the rules, determine violations, evaluate potential impacts of facility processes or products, and review required records.[368] The rule part also provides for recordkeeping, correcting or supplementing information, incorporation of assumed mitigation measures into permit conditions, procedures for consolidating certain public meetings, and circumstances in which MPCA can require in-person meetings.[369]

319. Two comments addressed a permit applicant's duty to supplement or correct submissions. They sought clarification of when owners or operators must supplement or correct an initial assessment or CIA.[370]

320. The MPCA addressed the commenters' concerns by explaining that if an owner or operator identifies relevant facts missing from application materials or incorrect information in application materials, part 7007.6040, subp. 5 requires that they submit the supplementary facts or corrected information "promptly." Because this information will vary from one facility to another, there is no way of anticipating how much time is reasonable to gather and submit the information. Accordingly, the MPCA determined it would be impractical to specify a deadline in rule.[371]

321. Commenters addressed the issue of application completeness, advocating for the establishment of clearer completeness standards, timelines, and limits on subsequent information requests. Advocates contend that greater clarity will increase predictability for applicants and ensure the Agency has adequate information for decisions.[372] The Minnesota Hospital Association requested the MPCA include a completeness review process for both the initial assessment and the CIA submittals required by the proposed rule.[373]

322. The initial assessment must be submitted with the permit application and will be reviewed for completeness within the applicable permit application review timeframes. The rule specifies the information required for supplemental submissions, including CIAs. Additionally, the MPCA will develop guidance, forms, templates, and other

[366] Ex. D at 79-82.
[367] Ex. C; Ex. D at 79.
[368] Ex. C; Ex. D at 79-80.
[369] Ex. C; Ex. D at 80-81.
[370] Frontline Communities Protection Coalition (034-11); Minnesota Hospital Association (051-18).
[371] MPCA Pre-hearing Response to Comments at 155.
[372] Frontline Communities Protection Coalition (034-11); Minnesota Hospital Association (051-18).
[373] Minnesota Hospital Association (051-18).

materials to help owners and operators prepare complete submissions. The MPCA does not consider additional rule requirements for completeness determinations necessary.[374]

323. The MPCA has established that part 7007.6040 is needed and reasonable. Part 7007.6040 is approved.

H. Minn. R. 7007.6050 — Initial Assessment

324. Part 7007.6050 is the first substantive analysis a permit applicant must undertake under the Cumulative Impact Rule. Part 7007.6050 requires an applicant to prepare an initial assessment as part of the permit application. This part establishes the information that owners and operators must provide to the MPCA to aid in determining if a CIA is necessary. The rule identifies when it applies to owners and operators, when owners and operators must submit the initial assessment, and the information owners and operators must include in the initial assessment submittal. This part also establishes the benchmarks the MPCA will use for determining when a CIA is required.[375]

325. A key feature is that meeting a benchmark is not the only basis upon which a CIA is required. The separate determination-of-need process in part 7007.6070 may require one even when the implicated benchmark is not met.[376]

326. The proposed rule establishes benchmarks to assist the Commissioner in determining whether a cumulative impacts analysis is necessary. Subpart 4 establishes benchmark triggers for different types of permit actions. The proposed benchmarks include categories for new construction, facility expansion, and permit reissuance, including certain enforcement history criteria. The MPCA proposes to adopt hazardous air pollutant thresholds as benchmarks for certain facility expansions, while distinguishing those benchmarks from existing insignificant activity thresholds used for other permitting purposes.[377]

327. The initial assessment incorporates information concerning the proposed permit action, potential environmental and health impacts, and existing environmental stressors and community conditions. The assessment includes: an executive summary; information about the proposed permit action, the stationary source, and potential environmental and health impacts; information necessary to evaluate the applicable benchmarks and other pollution sources; environmental stressor information supplied through MPCA's CI-MAP system; and the applicant's consideration of how those stressors could increase adverse effects from the proposed facility.[378]

328. Representative Lee commented on the applicability and scope of benchmarks, noting a primary concern that the proposed rules, in several respects, diminish the role of the CIA in permitting decisions affecting EJ areas, contrary to the

[374] MPCA Pre-hearing Response to Comments at 155.
[375] Ex. D at 82-90; Ex. C.
[376] *See* Ex. C, Ex. D at 97.
[377] Ex. D at 87-90.
[378] Ex. C; Ex. D at 84-87.

statute's apparent intent and requirements. The proposed rules exempt certain facility expansions that the MPCA considers to have minor environmental consequences, suggesting to Representative Lee an unduly narrow interpretation of the statute's scope. Representative Lee argued Minn. Stat § 116.065 addresses not only permits for new construction and facility expansions affecting EJ areas, but also the reissuance of existing facility permits upon expiration. Representative Lee maintained that, by expressly including all three categories in the statute, the legislature established a framework requiring permitting decisions to be reconsidered through the lens of cumulative impacts. Representative Lee further requested that the MPCA clarify which benchmarks apply, how they are selected, and whether benchmark-based screening captures cumulative or disproportionate burdens.[379]

329. The MPCA explained the role of the proposed benchmarks in initial screening and how they fit into the larger assessment process. The MPCA acknowledged the desire to require CIAs for all permit actions but disagreed that Minn. Stat. § 116.065 applies broadly to every permit type and action. The statute identifies two covered permit types: major source air permits, as defined in Minn. R. 7007.0200; and state air permits, as defined in Minn. R. 7007.0250, subparts 5 and 6. Within those permit types, the statute identifies three specific permit actions subject to its requirements: new construction, facility expansion, and permit reissuance. The MPCA concluded the legal effect of adding these specific categories is to limit the statute's scope of applicability accordingly.[380]

330. The MPCA also disagreed that the proposed rules categorically exclude permit reissuances and minor facility expansions from a CIA. According to the MPCA, every permit reissuance will require an initial assessment, and based on that assessment, the MPCA will determine whether a CIA is required.[381]

331. The MPCA acknowledged that the proposed definition of "facility expansion" excludes certain minor changes that will not trigger a CIA. These exclusions reflect the statutory framework and the anticipated environmental and health effects of the changes. Some minor changes do not require a permit amendment application, consistent with Minn. Stat. § 116.065, subd. 2(a). Other changes are expected to have comparatively limited impacts and are unlikely to substantially affect the environment or human health, consistent with Minn. Stat. § 116.065, subd. 3(a)(1). Although minor permit amendments require an application, they generally involve lower potential emissions and more limited changes to permit conditions. In addition, existing law allows applicants to implement such changes seven working days after the application is received, before the MPCA completes its review and issues the amended permit. The MPCA submits that these characteristics support the Agency's determination that such minor amendments do not warrant the same cumulative impacts review as permit actions with greater potential environmental or health consequences.[382]

[379] Representative Lee (033-02), (033-11), (033-12).
[380] MPCA Pre-hearing Response to Comments at 157.
[381] MPCA Pre-hearing Response to Comments at 157.
[382] MPCA Pre-hearing Response to Comments at 157.

332. The MPCA received approximately 50 comments concerning the benchmarks for permit reissuances. Many commenters expressed concern that the enforcement action benchmarks would not adequately ensure that existing facilities undergo a CIA, and they recommended additional benchmarks or pathways for requiring such analyses. Commenters emphasized the importance of evaluating existing facilities in light of environmental and health conditions in surrounding communities and the facilities' actual pollution impacts. Several commenters also argued that enforcement history is an inadequate measure of a facility's potential cumulative impacts and that the proposed three-year lookback period is too short. Many commenters noted this is a high-priority issue for already overburdened communities and legacy facilities.[383]

333. Conversely, some commenters considered the enforcement action trigger overly broad and unreasonable. They expressed concern that the rule would encompass enforcement actions unrelated to air pollution, apply even to resolved enforcement matters, and potentially cause nearly every air permit reissuance to trigger a CIA because of the inclusion of minor enforcement actions.[384]

334. For permit reissuances, the proposed rule uses a three-year enforcement history period as one mandatory CIA trigger. The MPCA explained that minor enforcement matters, such as warnings and notices of violation, were not intended to constitute the benchmark.[385]

335. Many commenters called for more robust or automatic analyses for existing facilities and renewals.[386] The Minnesota Environmental Justice Table (MEJT) expressed the following, shared by many other commenters who believe the proposed rule is too narrow to capture existing sources of pollution:[387]

> We are deeply concerned that the rules as drafted would allow the [Hennepin Energy Recovery Center (HERC)] to skip the CIA because it is an existing facility that has not had a violation listed in 7007.6050, Subpart 4, Item C. This is not fair treatment of the EJ communities near North Minneapolis, and we strongly urge the MPCA to reconsider this portion of the rules in particular.

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[383] *See e.g.*, Stephanie Hankerson (019-07); Elizabeth Bonin (025-03); Minnesota Environmental Justice Table (031-05); Minnesota Center for Environmental Advocacy (032-02); Frontline Communities Protection Coalition (034-13).
[384] *See e.g.,* Minnesota Chamber of Commerce (027-11); University of Minnesota (030-38).
[385] MPCA Pre-hearing Response to Comments at 157.
[386] Stephanie Hankerson (019-07); Elizabeth Bonin (025-03); Minnesota Chamber of Commerce (027-11); University of Minnesota (030-38), (030-39); Minnesota Environmental Justice Table (031-02), (031-05); Minnesota Center for Environmental Advocacy (032-02); Frontline Communities Protection Coalition (034-13), (034-14), (034-15); Minnesota Public Health Association (035-03); Health Professionals for a Healthy Climate (038-03); Lois Norrgard (040-06); Cordia Energy Center Minneapolis (049-18); Minnesota Hospital Association (051-14); Prairie Island Indian Community (052-11); Mary Gorfine (061-02).
[387] Minnesota Environmental Justice Table (031-05).

To address such concerns, the MEJT recommended that part 7007.6050, subp. 4, item C be replaced with one of the following three options for existing facilities undergoing permit reissuances:[388]

- Existing facilities are required to conduct a CIA upon their first permit reissuance after the rules take effect;

- Facilities that are already emitting above certain thresholds, or facilities located in communities with a high number of existing adverse stressors, are required to conduct a CIA upon their first permit reissuance.

- Allow community members the opportunity to petition for a CIA for existing facilities.

336. Similarly, Frontline stated:[389]

> This law was passed in large part because environmental justice communities in Minnesota are already facing a cumulative impacts burden. The only way we can begin to reduce this burden is by requiring an analysis for existing facilities based on their emissions and how overburdened the community is. **We strongly recommend having the benchmarks for permit expansions and permit reissuances be the same: specifically, the MPCA should set a benchmark that considers total emissions from the stationary source and any proposed expansion, as well as the existing environmental and health stressors in the community.** Under this proposal, a facility will be required to conduct a cumulative impacts analysis if their emissions exceed pollution-based benchmarks or if the community is experiencing an adverse cumulative stressor. These benchmarks should be designed to require a cumulative impacts analysis of at least some permit reissuances. This will ensure that these rules can begin addressing the existing cumulative impacts burden.

337. The MPCA addressed the statutory reissuance criteria and proposed benchmark triggers raised by commenters.[390] The MPCA acknowledged the substantial feedback received regarding the benchmarks for permit reissuances and appreciated the varied perspectives provided by commenters. The MPCA stated that it continues to evaluate the benchmarks and other considerations used to determine when CIA is required for existing facilities seeking permit reissuance.[391]

338. The MPCA clarified that the enforcement action benchmarks in part 7007.6050, subp. 4, are not the sole basis for requiring existing facilities to conduct a CIA

[388] Minnesota Environmental Justice Table (031-05).
[389] Frontline Communities Protection Coalition (034-13) (emphasis in original).
[390] *See* MPCA Pre-hearing Response to Comments at 158–172; *see also* MPCA Post-Hearing Response to Comments, Ex. N.
[391] MPCA Pre-hearing Response to Comments at 170-172.

upon permit reissuance. The process for determining whether a CIA is required is established in part 7007.6070. Under subparts 1 and 2 of the proposed rule, a CIA may be required on either a mandatory or discretionary basis. The enforcement action benchmarks in part 7007.6050, subp. 4, item C, establish when an analysis is mandatory under part 7007.6070, subp. 1, item A. These benchmarks are intended to provide specific, readily verifiable criteria that trigger an analysis without requiring further consideration of the circumstances.[392]

339. The MPCA pointed to other provisions of the proposed rule that provide additional information relevant to determining whether a CIA is necessary. For example, part 7007.6050, subp. 3, item F, requires environmental stressor information, which the MPCA considers when determining whether an analysis is required under part 7007.6070, subp. 3, item A, subitem (2). Accordingly, the enforcement action benchmarks are only one component of the broader decision-making framework and do not limit the MPCA's consideration of other relevant factors.[393]

340. Even when the enforcement action benchmarks in part 7007.6070, subp. 1, item A, are not met, the MPCA may still be required to conduct a CIA under the separate mandatory criteria in subpart 1, item B, or may require an analysis on a discretionary basis under subpart 2. Thus, failure to meet the enforcement action benchmarks does not necessarily preclude a CIA for an existing facility seeking permit reissuance.[394]

341. Summarizing the determination of need process, the MPCA stated that:[395]

> a cumulative impacts analysis for a reissuance permit can be required based on: benchmarks, information contained in the application and initial assessment, an evaluation of impacts on environment and health, material evidence otherwise known to the MPCA, any other information and data the MPCA deems relevant, petitions, insufficient information, or because it was voluntary.

342. The Judge urges the MPCA to consider modifying part 7007.6050 to plainly indicate that enforcement history is not the only trigger for an existing facility to conduct a CIA. While the MPCA considers its draft sufficiently clear to communicate its intent, the volume of comments voicing the common misperception that the proposed rule applies only to existing facilities with a recent enforcement history, suggests Part 7007.6050 could be made clearer.

343. The MPCA received four comments regarding the benchmarks for facility expansion permits and their relationship to minor, moderate, and major permit amendments. The commenters questioned how incremental emissions from expansions are evaluated against existing pollution.[396] Some commenters expressed concern that

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[392] MPCA Pre-hearing Response to Comments at 170-171; *see* Ex. D at 97-101.
[393] MPCA Pre-hearing Response to Comments at 170-171.
[394] MPCA Pre-hearing Response to Comments at 170-171.
[395] MPCA Pre-hearing Response to Comments at 171-172.
[396] Minnesota Chamber of Commerce (027-48); University of Minnesota-030-36), (030-37); Minnesota Environmental Justice Table (031-05).

the proposed benchmarks are too restrictive and recommended raising them.[397] Other commenters supported more stringent benchmarks and advocated for consistent treatment of facility expansions, permit reissuances, and new construction. Several commenters requested that the MPCA clarify whether the additional pollution burden is measured against existing conditions.[398]

344. The MPCA acknowledged that moderate and major permit amendments that result in emissions increases exceeding the mandatory benchmarks established in part 7007.6050, subp. 4, item B, will require a CIA. However, the MPCA disagreed that all moderate and major permit amendments will trigger such an analysis.[399]

345. The MPCA notes that, under part 7007.6050, subp. 4, item B, emissions increases must be calculated in accordance with part 7007.1200, subp. 3. This established methodology is already used by facilities to determine the appropriate type of permit amendment. It compares potential emissions before and after a proposed change and, under certain circumstances, accounts for applicable emission limits and decreases. Accordingly, a major permit amendment may include proposed limits, controls, or other changes that reduce the calculated emissions increase below the applicable benchmarks, in which case a CIA would not be mandatory.[400]

346. A facility expansion must involve a "modification," as defined in part 7007.0100, subp. 14. A modification involves an increase in a regulated air pollutant and is determined using the calculation methodology in part 7007.1200. Therefore, major permit amendments that do not involve a "modification," such as changes to monitoring requirements or changes that decrease emissions, do not meet the definition of facility expansion and would not be subject to the proposed rules on that basis.[401]

347. The MPCA received a comment from the American Petroleum Institute requesting that permit applications for new construction not automatically require a CIA. The commenter contended that the appropriate regulatory question is not whether a facility is new, but whether the requested permit action has a reasonable potential to materially increase cumulative environmental or health impacts.[402]

348. The MPCA respectfully disagrees with the American Petroleum Institute and maintains that new construction permits do have a reasonable potential to cause impacts that should be further assessed by a CIA.[403]

349. The Minnesota Chamber of Commerce also sought clarification of the benchmarks for new construction and whether the benchmarks adequately account for

[397] Minnesota Chamber of Commerce (027-48); University of Minnesota (030-36), (030-37).
[398] Minnesota Chamber of Commerce (027-48); University of Minnesota (030-37); Minnesota Environmental Justice Table-031-05.
[399] MPCA Pre-hearing Response to Comments at 172–175.
[400] MPCA Pre-hearing Response to Comments at 174.
[401] MPCA Pre-hearing Response to Comments at 174; *see also* Ex. D at 63-64.
[402] American Petroleum Institute (042-03).
[403] MPCA Pre-hearing Response to Comments at 176.

existing community conditions.[404] Because an emissions increase at a facility, does not, in and of itself, represent a health impact, the Chamber believes that the MPCA should evaluate the impacts of a facility's emissions on the health of receptors.[405]

350. The MPCA also addressed the new construction benchmarks and their nexus to health impacts.[406] As explained in the response to comments regarding the benchmarks for permit reissuances, the benchmarks are intended to establish specific, readily verifiable criteria for determining when a CIA is required, without further consideration of the circumstances. This approach is consistent with Minn. Stat. § 116.065, subd. 3, which provides that the MPCA is responsible for determining whether a proposed permit action may substantially impact the environment or the health of residents of an EJ area. The statutory threshold is whether a permit action *may substantially impact* the environment or health. This inquiry is distinct from, and does not require a determination of, an actual health impact.[407]

351. The MPCA considers the emissions increase benchmarks to be indicators of potential impacts because changes involving small or no increases in emissions have been excluded, as discussed in the response to comments concerning exemptions from the definition of "facility expansion." However, the benchmarks are only one factor in determining whether a CIA is required. If the benchmarks are not met, an analysis may still be required on a mandatory basis under part 7007.6070, subp. 1, item B, or on a discretionary basis under subpart 2.[408]

352. Under these provisions, the MPCA must consider the initial assessment, including information from the Cumulative Impacts Mapping Tool (CI-map) required by part 7007.6050, subp. 3, item F. The tool incorporates Minnesota Risk Screening (MNRISKS) data, which informs the assessment of environmental and health impacts required under part 7007.6050, subp. 3, item G. This broader framework is expected to allow the MPCA to consider relevant environmental stressors and potential impacts even when the specified emissions benchmarks are not met.[409]

353. The MPCA received four comments related to the initial assessment screening process, requesting clarification of how the initial assessment screening process works and when results require further review.[410]

354. The MPCA described the proposed screening sequence and the Agency's role in reviewing results.[411] The MPCA supports using the initial assessment as a screening mechanism before requiring a full CIA and disagrees that the proposed rules will require analyses for nearly every affected facility. Exemptions for small changes and

[404] Minnesota Chamber of Commerce (027-10).
[405] Minnesota Chamber of Commerce (027-10).
[406] MPCA Pre-hearing Response to Comments at 176.
[407] MPCA Pre-hearing Response to Comments at 177.
[408] MPCA Pre-hearing Response to Comments at 177.
[409] MPCA Pre-hearing Response to Comments at 177.
[410] Minnesota Chamber of Commerce (027-02); American Petroleum Institute (042-10); Cordia Energy Center Minneapolis (049-02); Minnesota Hospital Association (051-03).
[411] MPCA Pre-hearing Response to Comments at 177-180.

changes that do not require permit amendments, together with the emissions calculation methodology under part 7007.1200, subp. 3, allow facilities to account for emissions reductions and may reduce the number of required analyses. The proposed rules also allow applicants to request a voluntary CIA under part 7007.6070, subp. 2, item C, enabling them to proceed more directly to the public meeting and analysis stages.[412]

355. The MPCA clarified that Minn. Stat. § 116.065, subd. 6(c)(3), concerning the criteria for determining a substantial adverse impact, applies to the later determination required under part 7007.6100. The initial screening stage addresses whether a proposed permit action may substantially impact the environment or health of EJ area residents, as provided in Minn. Stat. § 116.065, subd. 3(a)(1). That statute directs the MPCA to review the permit application and applicant's assessment, evaluate whether emissions benchmarks are exceeded, and consider other relevant information, including evidence submitted with a petition. Accordingly, the MPCA designed the initial assessment as a tiered screening process incorporating both focused and broader information to fulfill these statutory responsibilities.[413]

356. The MPCA received two comments regarding the review of the information contained within an initial assessment. These commenters sought clarification of how the Agency reviews an initial assessment, what discretion it retains, and how its determinations are explained. Both commenters recommended the MPCA create a publicly available, searchable database of the information it gathers through this process.[414]

357. The MPCA described its review role and the proposed decision process. The Agency acknowledges concerns about the accuracy and completeness of initial assessments, but emphasizes that submissions must be certified as true, accurate, and complete under part 7007.6040. When available information is insufficient to make a determination under part 7007.6070, subp. 5, the MPCA may request additional information.[415]

358. Because applicants may have information about surrounding communities that is not readily available to the MPCA, the rules require applicants to assess potential environmental and health impacts. The MPCA will review submitted information and rely on previously approved analyses and the public petition process to identify relevant community information that may otherwise be overlooked. The agency expects its understanding of cumulative impacts and affected communities to improve over time.[416]

359. The MPCA must provide public notice when it receives an initial assessment and inform the public of the opportunity to petition for a CIA. The Agency is also exploring

[412] MPCA Pre-hearing Response to Comments at 179-180.
[413] MPCA Pre-hearing Response to Comments at 180.
[414] Minnesota Environmental Justice Table (031-03); Frontline Communities Protection Coalition (045-148).
[415] MPCA Pre-hearing Response to Comments at 184-185.
[416] MPCA Pre-hearing Response to Comments at 184-185.

additional notification methods, including using its existing email alert systems, to better inform interested parties.[417]

360. The MPCA has established part 7007.6050 is reasonable and necessary. The Agency has adequately explained its reasoning and responded appropriately to comments it received about this part.

361. Although part 7007.6050 is approved, the Judge recommends the MPCA consider modifying the part to plainly indicate that enforcement history is not the only trigger for an existing facility to conduct a CIA. The volume of comments expressing a common misperception that the proposed rule applies only to existing facilities with a recent enforcement history, suggests the rule language could be improved and made more clear, to prevent future challenges.

I. Minn. R. 7007.6060 — Petition for Cumulative Impacts Analysis

362. Part 7007.6060 creates the mechanism for residents to petition MPCA to require a CIA for a permit application. Minn. Stat. § 116.065 provides that a CIA can be required when the MPCA receives a petition, signed by at least 100 people who either reside or own property in the impacted EJ area, along with material evidence demonstrating a potential adverse cumulative impact if the permit is issued. This proposed rule part identifies the information that a petition must include, how petitioners must file the petition, and how the MPCA will review and decide whether to grant or deny the petition. This part also identifies when the Agency must post documents related to the petition process.[418]

363. The MPCA must evaluate whether the petition complies with the rule before considering it in the determination-of-need process. The statute expressly establishes this 100-person petition mechanism.[419] The petition does not itself automatically produce a CIA. Rather, a qualifying petition and its supporting information become evidence the MPCA must consider when deciding whether a CIA is required.[420] In general, these requirements parallel the requirements for the petition process established in existing rules for environmental review in Minn. R. 4410.1100. In general, it is reasonable to establish new requirements that define the necessary content of a petition to provide consistency in the information provided to the MPCA and to ensure the inclusion of adequate information to enable prompt action on the petition from the MPCA when the petition is submitted.[421]

364. The content requirements of a petition to request a CIA are designed to align with the petition content requirements in Minn. R. 4410.1100, subp. 2. The MPCA believes using similar processes to evaluate petitions provides for a common

[417] MPCA Pre-hearing Response to Comments at 184-185.
[418] *See* Ex. D at 90-91.
[419] Ex. C; Ex. D at 90.
[420] *See* Minn. R. 7007.6060, subp. 5, Minn. R. 7007.6070, subps. 1-3; *see also*, MPCA Pre-Hearing Response to Comments at 196-200.
[421] Ex. D at 91-92.

understanding of what is expected and facilitates compliance. It is reasonable to provide consistency across similar requirements; subpart 2, item A, subitems (1) to (6) establish what a petition must include.[422]

365. Part 7007.6060 generated significant public comment. Among them, the MPCA received multiple comments requesting clarification of the "material evidence" standard and what residents must submit to petition for a CIA, without placing an unreasonable burden on communities or affected facilities.[423]

366. The Hamline Midway Coalition and Frontline argued that the requirements could place an excessive burden on petitioners, particularly EJ communities that lack the technical expertise, funding, and resources needed to gather supporting evidence. The commenters recommended maintaining flexibility in the evidentiary standard, allowing citations to publicly available initial assessment materials, and recognizing lived experience and community testimony as important forms of evidence. Some commenters further recommended that the MPCA assist residents in obtaining relevant agency records, provide technical assistance and accessible public data, and consider reducing the petition signature threshold.[424]

367. In contrast, the American Petroleum Institute (API) supported meaningful public participation but recommended defining "material evidence" and establishing clear evidentiary standards directly related to the requested permit action. API proposed identifying acceptable forms of evidence, including environmental monitoring, validated exposure information, peer-reviewed scientific literature, site-specific emissions information, and demonstrated exposure pathways. It also recommended clarifying that generalized concerns unrelated to permitted emissions would be insufficient to require a CIA.[425]

368. Overall, these comments highlighted the need to balance clear, technically-supported evidentiary standards with an accessible petition process that allows affected communities to raise concerns about potential cumulative environmental and health impacts without being disadvantaged by limited resources or technical expertise.

369. The MPCA acknowledged commenters' concerns regarding the definition, collection, submission, and evaluation of "material evidence" required to petition for a CIA. The MPCA addressed these concerns in the SONAR.[426]

370. Under part 7007.6060, subpart 2, items A(5) and A(6), a petition must describe the potential environmental or health impacts of the requested permit action and provide material evidence demonstrating that issuing the permit may substantially affect

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[422] Ex. D at 91-92.
[423] *See e.g.,* Hamline Midway Coalition (003-05), (003-06); Frontline Communities Protection Coalition (034-16); Beth Shaw (036-10); American Petroleum Institute (042-11).
[424] *See* Beth Shaw (036-10); Frontline Communities Protection Coalition (045-201).
[425] American Petroleum Institute (042-11).
[426] *See* Ex. D at 27, 91–93 (addressing part 7007.6060, subpart 2) and 95–96, (discussing subpart 5).

the environment or the health of residents in the impacted environmental justice area.[427] The MPCA explained that petitioners must identify the potential impacts they anticipate and provide supporting information that enables the Agency to determine whether a CIA may be warranted. According to the MPCA, the material evidence requirement is not intended to require petitioners to conduct a comprehensive scientific analysis, but rather, to bring credible concerns to the MPCA's attention.[428]

371. The MPCA further explained that its evaluation of a petition is not limited to the evidence submitted by petitioners. Under part 7007.6060, subpart 5, items C and D, the MPCA must consider additional material evidence and information, and follow specified procedures to evaluate the potential impacts of the requested permit action. These provisions establish the information and criteria the MPCA will use to determine whether to grant or deny a petition.[429]

372. Finally, the MPCA stated that implementation of the rule will include developing guidance, standard forms, templates, and other materials for permit applicants, community members, and agency staff. As required by Minn. Stat. § 116.065, subd. 6(c)(5), the MPCA must also develop a petition form for residents of EJ areas. The MPCA anticipates that the form and related guidance will include examples of material evidence that petitioners may submit to provide guidance relevant to the requirements and facilitate participation in the petition process.[430]

373. Another topic multiple commenters addressed is the petition decision process and the MPCA's evaluation of petitions and related evidence. In general, these commenters support petition determinations that are transparent, timely, and based on clear criteria. Commenters offered differing recommendations regarding the evaluation of petitions for a CIA under part 7007.6060, subpart 5.[431]

374. The Minnesota Hospital Association recommended requiring material and scientifically supportable evidence demonstrating a reasonable likelihood that emissions from the requested permit action would cause significant environmental or health impacts that existing permitting requirements could not adequately evaluate. The Association argued that this standard would ensure objective decision-making and prevent unnecessary delays to critical health care infrastructure projects.[432]

375. Saint Paul–Ramsey County Public Health supported the proposed community engagement requirements but recommended establishing a process to reconcile multiple petitions submitted by residents.[433]

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[427] *See* Ex. C.
[428] MPCA Pre-hearing Response to Comments at 186-187.
[429] MPCA Pre-hearing Response to Comments at 186-187.
[430] MPCA Pre-hearing Response to Comments at 187.
[431] *See* Minnesota Hospital Association (051-21); Saint Paul-Ramsey County Public Health (054-02); Frontline Communities Protection Coalition (045-153).
[432] Minnesota Hospital Association (051-21).
[433] Saint Paul-Ramsey County Public Health (054-02).

376. The Side Corridor Residents of Owatonna East, represented in the Frontline Communities Protection Coalition's compiled comments, emphasized that petitions should provide a meaningful opportunity for residents to demonstrate when a CIA is warranted. They recommended that the MPCA fully evaluate credible evidence of material omissions, inaccuracies, or potential environmental and public health impacts, and require relevant information to be corrected, supplemented, or expanded before the Agency makes a determination. They also recommended that the MPCA evaluate petitions for eligibility and evidentiary sufficiency, while the responsible governmental unit verifies signatures. Once a petition is deemed valid and the required signatures are verified, they argued that a CIA should be required.[434]

377. The MPCA responded, first, that the petition evaluation process established in part 7007.6060, subp. 5, provides an objective framework for it to consider available evidence and information from multiple sources, including petitioners, facility owners or operators, other interested persons, and the Commissioner. This information may include evidence that potential environmental or health impacts are adequately addressed through existing permitting requirements, as suggested by one commenter. The MPCA declined to develop an exhaustive list of specific evidence that must be considered when evaluating a petition for a CIA because the relevant evidence will vary depending on the facility, the requested permit action, the pollutants involved, and the potential environmental and health impacts.[435]

378. Next, under the proposed framework in parts 7007.6060 and .6070, the MPCA must evaluate available evidence using established criteria rather than rely on a fixed list of evidence that may not be appropriate in every case. Part 7007.6060, subpart 5, item C, identifies the evidence and information the MPCA must consider, while item D establishes the process for evaluating the potential impacts of the requested permit action. Together, these provisions establish the framework for determining whether to grant or deny a petition based on specified information and criteria.[436]

379. Under part 7007.6060, subpart 5, item D, the MPCA must apply the criteria in part 7007.6070, subpart 4, to evaluate the anticipated environmental and health impacts of the requested permit action. This evaluation includes considering available information regarding existing and proposed permit conditions and other regulatory requirements, as well as evidence submitted through multiple petitions. The criteria in part 7007.6070, subp. 4, provide a consistent methodology for evaluating the available information and reaching a reasoned decision on whether to grant or deny a petition or multiple petitions concerning the same requested permit action.[437]

380. The MPCA received several comments regarding participation in the petition process. Commenters provided suggestions for how the MPCA could make information available to enable communities to participate. Commenters also provided suggestions regarding what information should and should not be posted as part of

[434] Frontline Communities Protection Coalition (045-153).
[435] MPCA Pre-hearing Response to Comments at 188.
[436] MPCA Pre-hearing Response to Comments at 188.
[437] MPCA Pre-hearing Response to Comments at 188.

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. Commenters raised concerns regarding the petition deadline, public notice, and accessibility of the petition process under part 7007.6060, subpart 1, item B.[438]

381. The Minnesota Chamber of Commerce and Cordia Energy Center Minneapolis recommended limiting the petition period to 60 days after the MPCA provides notice of receipt of an initial assessment. They argued that allowing petitions through the end of the draft permit comment period could create uncertainty for applicants and delay projects after the MPCA has completed its initial review and prepared a draft permit. They recommended that the MPCA continue processing permit applications during the 60-day period unless a petition is received.[439]

382. In contrast, the Minnesota Environmental Justice Table requested that the MPCA make information about permitting timelines publicly available so communities can adequately prepare to participate, noting that timelines vary by permit type. Aubree Derksen, in comments compiled by Frontline, recommended removing the petition deadline restriction and allowing petitions at any point in the permitting process, including when a CIA has already been completed. Derksen argued that the existing deadline could limit communities' ability to raise concerns about potential pollution impacts.[440]

383. The Side Corridor Residents of Owatonna East recommended providing written notice to all residents and property owners within one mile of a proposed project at least 45 days before the petition deadline. They also recommended that notices include project and permit information, relevant deadlines, public meeting dates, public comment periods, eligibility and signature requirements, instructions for obtaining petition forms, and a plain-language explanation of the petition process. Beth Shaw additionally recommended protecting personal addresses from unnecessary disclosure.[441]

384. The MPCA acknowledged commenters' concerns regarding community participation and the petition timeframe, but maintained that the proposed rules provide a reasonable period for submitting petitions. Under part 7007.6050, subpart 5, the MPCA must post notice on its website when it receives an initial assessment, giving interested persons early notice and time to gather information and prepare a petition. The notice identifies the requested permit action and provides information about publicly available

[438] *See* Minnesota Environmental Justice Table (031-04); Beth Shaw (036-10); Minnesota Building and Construction Trades Council (041-14); Prairie Island Indian Community (052-09); Minnesota Chamber of Commerce (027-17); Cordia Energy Center Minneapolis (049-08); Frontline Communities Protection Coalition (045-153).
[439] Minnesota Chamber of Commerce (027-17); Cordia Energy Center Minneapolis (049-08); Minnesota Environmental Justice Table (031-04).
[440] Frontline Communities Protection Coalition (045-153); Minnesota Environmental Justice Table (031-04).
[441] Frontline Communities Protection Coalition (045-153); Beth Shaw (036-01).

resources. Part 7007.6060, subpart 6, requires additional notice when the MPCA receives a petition.[442]

385. The MPCA explained that the petition deadline establishes a clear timeframe for both community members and regulated parties. Allowing petitions through the end of the draft permit's public comment period ensures that interested persons have access to the draft permit and technical support document, when the MPCA generally has the most comprehensive information available to evaluate the requested permit action.[443]

386. Commenters raised concerns about the statutory requirements governing the petition process under Minn. Stat. § 116.065, particularly the 100-signature threshold, evidentiary requirements, and eligibility to submit petitions.[444]

387. Several commenters recommended reducing or allowing flexibility in the signature requirement, accepting electronic signatures, permitting recognized community and Tribal organizations to petition, and providing technical assistance to residents. The Minnesota Environmental Justice Table and Frontline argued that the requirement for 100 signatures from residents or property owners within one mile of a facility could disproportionately disadvantage rural and less densely populated communities. Suggested alternatives included scaling the threshold to the affected population or allowing signatures from residents of the county and adjacent counties.[445]

388. Several commenters also emphasized the burden of requiring residents to gather material evidence and organize petitions, recommending a simpler process that recognizes community knowledge and provides access to technical assistance and public information. The Prairie Island Indian Community specifically recommended allowing a formal request from a Tribal government to initiate a petition without requiring 100 resident signatures. Other commenters suggested allowing community members, including those outside designated EJ areas, to request a CIA.[446]

389. In contrast, the Minnesota Building and Construction Trades Council opposed the petition process out of apprehension the process could be used to oppose or delay industrial facilities. The union recommended limiting petitions involving existing facilities to cases involving proposed expansions or substantial exceedances of permitted emissions that have not been resolved through prior agency action.[447]

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[442] MPCA Pre-hearing Response to Comments at 190.
[443] MPCA Pre-hearing Response to Comments at 190-191.
[444] *See* Minnesota Environmental Justice Table (031-04); Beth Shaw (036-01); Minnesota Building and Construction Trades Council (041-14).
[445] *See* Minnesota Environmental Justice Table (031-04); Beth Shaw (036-01); Minnesota Building and Construction Trades Council (041-14); Frontline Communities Protection Coalition (045-07), (045-08), (045-141), (045-150), (045-201); Prairie Island Indian Community (052-09).
[446] *See* Prairie Island Indian Community (052-09); Frontline Communities Protection Coalition (045-150).
[447] Minnesota Building and Construction Trades Council (041-14).

390. In response, the MPCA explained that statutory requirements constrain the Agency's ability to change petition eligibility or signature rules.[448] The MPCA acknowledged commenters' suggestions regarding the petition signature and material evidence requirements but explained that because these requirements are established by Minn. Stat. § 116.065, subd. 3(c), they cannot be changed through administrative rulemaking. The MPCA intends Part 7007.6060, subpart 1, item A, to clarify the statutory requirements to ensure a consistent understanding of the petition process. The MPCA also explained that the statutory applicability criteria, reflected in part 7007.6020, determine which permit applications are subject to the rules, including certain facility expansions and permit reissuances.[449]

391. The MPCA stated that part 7007.6060 fulfills its statutory obligation to establish a petition process, including procedures for evaluating petitions and determining whether a CIA is warranted. The MPCA concluded it cannot establish an alternative petition process for formal requests from Tribal governments because doing so would conflict with statutory signature requirements. However, part 7007.6030 establishes Tribal consultation and coordination processes that allow Minnesota Tribal governments to share information throughout the CIA process, including during the initial assessment stage, which the MPCA may consider when determining whether to require an analysis.[450]

392. The MPCA received four comments regarding how the MPCA will review information provided as part of a petition. Commenters included suggestions regarding the completeness review process and verification of signatures under part 7007.6060, subpart 4.[451]

393. The Minnesota Chamber of Commerce and Cordia Energy Center Minneapolis requested clarification on whether the MPCA would verify that at least 100 petition signatories reside or own property in the impacted environmental justice area.[452]

394. Beth Shaw recommended that the MPCA require a CIA whenever "credible evidence" indicates potential harm, even if the petition contains a procedural defect. The Side Corridor Residents of Owatonna East similarly argued that petitions should not be rejected as incomplete when required information has not been made reasonably available to the public. They recommended that the MPCA require permit applicants to provide missing information and allow the petition process to continue rather than penalize residents for circumstances beyond their control.[453]

395. Part 7007.6060, subpart 4, establishes the process for determining whether a petition contains all required information. Under this provision, the Commissioner must determine whether the petition complies with subparts 1 through 3, including whether it contains the required signatures and sufficient information to verify that signatories meet

[448] MPCA Pre-hearing Response to Comments at 193–194.
[449] MPCA Pre-hearing Response to Comments at 194.
[450] MPCA Pre-hearing Response to Comments at 194.
[451] Minnesota Chamber of Commerce (027-28); Beth Shaw (036-01); Frontline Communities Protection Coalition (045-151); Cordia Energy Center Minneapolis (049-25).
[452] Minnesota Chamber of Commerce (027-28); Cordia Energy Center Minneapolis (049-25).
[453] Beth Shaw (036-01); Frontline Communities Protection Coalition (045-151).

the eligibility requirements established by Minn. Stat. § 116.065, subd. 3(c), and part 7007.6060, subpart 1, item A.[454]

396. The MPCA explains the rationale for the petition completeness review process in the SONAR. Although a petition may be determined to be incomplete, petitioners have an opportunity to correct identified deficiencies so that the MPCA can consider the petition.[455]

397. As the proposed rule is drafted, petitioners are not required to submit information that is unavailable to them. Rather, the petition process is intended to allow petitioners to provide the MPCA with information they believe is relevant to determining whether a facility should be required to conduct a CIA.[456]

398. The MPCA received multiple comments concerning the timeframe for correcting incomplete petitions. Commenters supported allowing petitioners to revise incomplete petitions and suggested that the MPCA consider a correction period different from the 15 calendar days specified in part 7007.6060, subpart 4, item D, subitem (4).[457]

399. The Hamline Midway Coalition recommended extending the deadline to 60 days, citing the limited capacity and volunteer-based structure of many community organizations. The Minnesota Environmental Justice Table requested flexibility, particularly for communities engaging with the MPCA for the first time. Frontline recommended a 45-day deadline to allow time to obtain resources and address technical deficiencies, while Beth Shaw recommended at least 30 days. The Side Corridor Residents, Owatonna East, emphasized that petitioners should have an opportunity to correct or supplement incomplete petitions when sufficient time remains before the close of the public comment period. Overall, commenters urged the MPCA to prioritize meaningful community participation over rigid procedural requirements that could prevent valid concerns from being considered.[458]

400. In response to these comments, the MPCA explained the completeness review established in part 7007.6060, subpart 4, is intended to be a procedural evaluation to ensure that a petition contains the information required under subparts 1 through 3, rather than a substantive evaluation of the petition's merits.[459]

401. 839. The MPCA's rationale for the 15-calendar-day correction period is discussed in the SONAR.[460] The MPCA added that part 7007.6060, subpart 4, item D, subitem (3), requires the MPCA to explain how petitioners may correct identified deficiencies, thereby providing guidance on addressing problems with a petition.

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[454] MPCA Pre-hearing Response to Comments at 195; Ex. C.
[455] *See* Ex. D at 94–95; MPCA Pre-hearing Response to Comments at 195.
[456] MPCA Pre-hearing Response to Comments at 195.
[457] *See* Hamline Midway Coalition (003-04); Minnesota Environmental Justice Table (031-04); Frontline Communities Protection Coalition (034-17), (045-152); Beth Shaw (036-01).
[458] *See* Hamline Midway Coalition (003-04); Minnesota Environmental Justice Table (031-04); Frontline Communities Protection Coalition (034-17), (045-152); Beth Shaw (036-01).
[459] MPCA Pre-hearing Response to Comments at 196; *see* Ex. C.
[460] *See* Ex. D at 94-5.

Petitioners may also submit a new or revised petition at any time before the deadline established in part 7007.6060, subpart 1, item B. This provides an additional opportunity to address deficiencies. Combined with the notice of receipt of an initial assessment required under part 7007.6050, subpart 5, the MPCA concluded these provisions provide petitioners time to prepare, revise, and submit a petition.[461]

402. In summary, the comments on part 7007.6060 reflect that various stakeholders have differing priorities regarding the petition process. Some commenters emphasized timely resolution and certainty for permit applicants, while others stressed the need for accessible information, adequate notice, privacy protections, and sufficient opportunities for affected communities to participate. The comments also reflect differing views on how to balance meaningful community participation and equitable access to the petition process with safeguards against unnecessary delays or inappropriate use of the process. The MPCA has thoroughly considered these competing interests and made reasonable policy choices, particularly in view of the parameters established by Minn. Stat. § 116.065.

403. The MPCA has established Part 7007.6060 is reasonable and necessary. Part 7007.6060 is approved.

J. Minn. R. 7007.6070 — Determination of Need for a CIA

404. Part 7007.6070 is arguably the central decision point in the Cumulative Impacts Rule. It establishes when the MPCA must, may, or need not require a CIA. The purpose of this part is to clarify the procedures and criteria the Commissioner must apply when determining whether a CIA is required. Although Minn. Stat. § 116.065, subd. 3(c), identifies the information the Commissioner must review and assess in making that determination, the MPCA determined that additional rule provisions were necessary to clearly identify the requirements implementing the various provisions of Minn. Stat. § 116.065, and to establish a consistent framework for making determinations regarding the need for a CIA.[462]

405. Part 7007.6070 establishes the requirements governing the MPCA's determination of whether a CIA is necessary for a requested permit action. This part specifies the circumstances under which the Commissioner must require an owner or operator to conduct a CIA and the circumstances under which the Commissioner may require one. It also establishes the information, standards, and criteria the Commissioner must consider when determining whether the requested permit action may substantially impact the environment or the health of residents of an impacted EJ area. In addition, this part addresses situations in which the available information is insufficient to determine whether a CIA is required and establishes requirements for posting documents related to the determination of need.[463]

[461] MPCA Pre-hearing Response to Comments at 196.
[462] Ex. D at 97.
[463] Ex. C.

406. The first mechanism that may trigger a mandatory CIA is based on benchmarks. If the permit action meets or exceeds one of the applicable part 7007.6050 benchmarks, the MPCA must require a CIA.[464] A second mechanism is based upon the finding of a substantial potential impact. Even if a benchmark is not triggered, the MPCA must nonetheless require a CIA if it determines that issuing the permit may "substantially impact" the environment or health of residents of an EJ area.[465] The final mechanism is a discretionary one. The MPCA may require a CIA even below the benchmark triggers if it determines one is necessary, there is material evidence supporting that conclusion, or a qualifying resident or property-owner petition provides the required material evidence.[466]

407. The proposed rule requires consideration of the permit application, the initial assessment, applicable benchmarks, petitions, material evidence otherwise known to the MPCA, other information and data the MPCA considers relevant, and expected impacts using the criteria in part 7007.6050, subp. 4. The impact criteria include the type, extent and reversibility of impacts; cumulative potential impacts; the facility's contribution in combination with other contributions; proposed mitigation; existing regulatory mitigation; and available environmental/health studies.[467]

408. The proposed rule provides that if the MPCA lacks information necessary to make the determination, it can either require the applicant to obtain the missing information as part of a CIA, or give the applicant a written notice specifying the missing information and deadline for submitting it.[468]

409. Under part 7007.6050, the MPCA must also prepare a written explanation of its determination, describe what information it considered and how it weighed that information, post its decision on its website, and notify the owner or operator within 30 calendar days.[469]

410. The MPCA states that establishing these requirements in rule is reasonable and necessary to implement the statutory obligations imposed by Minn. Stat. § 116.065. The rule provisions clarify the circumstances in which a CIA must or may be required, identify the information and criteria relevant to the Commissioner's determination, and provide procedures for addressing uncertainty or insufficient information. These requirements promote transparency and consistency in the administration of the Cumulative Impacts Rule and provide regulated parties and other interested persons with a clearer understanding of how the MPCA will determine whether a CIA is required.[470]

411. The MPCA received three comments regarding transparency in decision-making regarding the determination of need established in part 7007.6070. Commenters emphasized the need for greater transparency and accountability in

[464] Ex. C; Ex. D at 97-98.
[465] Ex. C; Ex. D at 98.
[466] Ex. C, Ex. D at 98-99.
[467] Ex. C, Ex. D at 99-101.
[468] Ex. C, Ex. D at 101.
[469] Ex. C, Ex. D at 101.
[470] Ex. D at 97.

cumulative impacts decision-making. The Side Corridor Residents, Owatonna East recommended: (1) requiring written explanations whenever the Commissioner grants or denies a discretionary CIA; and (2) making the assumptions, modeling inputs, methodologies, background data, emissions estimates, and other supporting information publicly available with the draft analysis. Saint Paul–Ramsey County Public Health supported requirements to publish decision documents explaining determinations on the need for a CIA and substantial adverse impacts. It also recommended developing additional quantitative methods that incorporate the 26 environmental stressors identified in the initial assessment to evaluate whether facility activities worsen existing stressors or increase them beyond relevant reference values.[471]

412. The MPCA addressed transparency by noting that Minn. Stat. § 116.065, subd. 3(f), requires the commissioner to prepare and publish a decision document explaining whether a CIA is required. The Agency stated the decision document will identify the applicable statutory or rule provisions, the information and methodologies considered, the basis for the Commissioner's determination, and any subsequent steps or actions resulting from that determination. The proposed rules implement this statutory requirement by establishing decision-document requirements in part 7007.6070, subpart 6, and part 7007.6100, subpart 4.[472]

413. In response to recommendations for additional quantitative methods, Saint Paul–Ramsey County Public Health suggested using the 26 environmental stressors identified in the initial assessment to evaluate whether facility activities worsen existing stressors or exceed relevant reference values. The MPCA explained that the proposed rules allow various approaches to evaluating environmental and health impacts beyond air emissions risk analyses and air quality modeling. Although the proposed rules do not prescribe specific quantitative methods, they do not prohibit their use. The MPCA explained that it chose broader, primarily nonnumerical criteria to accommodate the range of potential impacts that may arise.[473]

414. The MPCA also emphasized that the proposed rules require owners and operators to include the MPCA-provided environmental stressor information in initial assessments and consider those stressors when evaluating the impacts of a requested permit action, citing part 7007.6050, subpart 3, items F and G. Consistent with Minn. Stat. § 116.065, subd. 3(a), the MPCA concluded that this assessment focuses on potential impacts to the environment and the health of residents in EJ areas.[474]

415. The MPCA stressed that environmental stressors are one of several sources of information the MPCA considers when determining whether a CIA is required under part 7007.6070, subp. 3, and whether issuing a permit would cause a substantial adverse impact under part 7007.6100, subp. 1. The MPCA's determinations are not

[471] *See* Frontline Communities Protection Coalition (045-142), (045-166); Saint Paul-Ramsey County Public Health (054-05); Madonna Ohse (050-02).
[472] MPCA Pre-hearing Response to Comments at 198.
[473] MPCA Pre-hearing Response to Comments at 198-199.
[474] MPCA Pre-hearing Response to Comments at 198-199.

based solely on environmental stressors, but the Agency considers them alongside other relevant information.[475]

416. Frontline recommended that the Commissioner consider the likelihood of potential impacts being reversed, rather than reversibility alone, when determining whether a CIA is required. Frontline also requested clarification of part 7007.6070 to ensure that emissions or impacts from a proposed permit action are recognized as potentially increasing the overall effects of existing pollution sources, consistent with the concept of cumulative impacts.[476]

417. The MPCA agreed that the likelihood of reversing potential impacts is relevant to determining whether a permit may substantially affect the environment or the health of residents in an environmental justice area. The MPCA believes the proposed rule allows for this consideration by evaluating the type, extent, and reversibility of impacts, including the persistence and potential accumulation of chemical stressors.[477]

418. Regarding part 7007.6070, the MPCA acknowledges that potential impacts may be evaluated in different ways, including consideration of how a proposed permit action may contribute to existing environmental or health impacts. However, the MPCA does not believe revisions to the proposed rule language are necessary. According to the MPCA, the rule provides a framework for evaluating cumulative potential impacts in context, considering contributions from other stationary sources, roadways, construction, and other activities, that may contribute to environmental or health impacts in the same area.[478]

419. The MPCA has established that part 7007.6070 is needed and reasonable. The Agency has adequately considered and addressed the competing concerns of the commenters, and its policy choices reflect a reasonable approach. Part 7007.6070 is therefore approved.

K. Minn. R. 7007.6080 — Public Participation

420. Part 7007.6080 establishes detailed public engagement processes intended to fulfill the requirements of Minn. Stat. § 116.065, subd. 6(c)(7), which directs the MPCA to establish methods for conducting public meetings and receiving and addressing public comments. Under Minn. Stat. § 116.065, subd. 4, public meetings must provide opportunities for robust public and Tribal engagement. This part also supports the requirements of Minn. Stat. § 116.065, subd. 6(c)(4)(i), which directs the MPCA to establish procedures for active outreach to residents of an impacted EJ area designed to achieve significant community participation in the CBA process. It applies when an owner or operator is required to conduct either a CIA or a CBA.[479]

[475] MPCA Pre-hearing Response to Comments at 199.
[476] Frontline Communities Protection Coalition (034-19).
[477] MPCA Pre-hearing Response to Comments at 199-200.
[478] MPCA Pre-hearing Response to Comments at 200.
[479] Ex. D at 101-102.

421. Part 7007.6080 establishes requirements governing public participation in the cumulative impacts process, including outreach to, and engagement with, residents of impacted EJ areas, the conduct of public meetings, and the receipt and consideration of public comments. Specifically, this part establishes requirements for public participation plans; identifies the circumstances under which public meetings are required; prescribes requirements for conducting those meetings and providing notice; and establishes procedures for public comment periods, the acceptance and consideration of comments, and responses to comments. This part also specifies when owners and operators must provide materials relevant to the public participation process and when the MPCA must make those materials publicly available. In addition, it imposes recordkeeping requirements while allowing owners and operators to conduct additional outreach and engagement beyond the minimum requirements specified in the rule.[480]

422. The MPCA states that because public engagement is a central component of the Cumulative Impacts Rule, it is reasonable and necessary to describe the expectations for engagement in sufficient detail to clarify how owners and operators can comply with the applicable statutory and regulatory requirements. Outreach generally involves providing information to the public, whereas engagement entails meaningful interaction through dialogue, discussion, or collaboration. The Minnesota Department of Administration describes public engagement as "an intentional effort to facilitate meaningful dialogue with the public and specific communities in policy and program work." Similarly, descriptions of civic and public engagement by the United Nations emphasize dialogue and communication, while the Minnesota Department of Education identifies collaboration as a key element. These descriptions underscore that meaningful engagement requires more than simply disseminating information; it involves opportunities for community members to participate and have their perspectives considered.[481]

423. Consistent with these principles, part 7007.6080 includes requirements intended to promote meaningful public engagement, such as responding to public comments and explaining how those comments informed the CIA and any CBA. These requirements support the statutory objectives of robust public and Tribal engagement under Minn. Stat. § 116.065, subd. 4(c), and active outreach and significant community participation in the CBA process under Minn. Stat. § 116.065, subd. 6(c)(4).[482]

424. The MPCA determined that establishing these requirements in rule is reasonable and necessary to implement the obligations imposed by Minn. Stat. § 116.065. The rule clarifies the responsibilities of owners and operators, establishes procedures for public participation, and promotes transparency in how community input is received, considered, and incorporated into the cumulative impacts process. Additional requirements that support these statutory objectives provide greater clarity and

[480] *See generally*, Ex. D at 101-128.
[481] Ex D at 101-102.
[482] Ex D at 102.

consistency in implementation and help ensure that public participation is meaningful rather than merely procedural.[483]

425. The MPCA received significant comment regarding part 7007.6080. Commenters emphasized that CIAs are essential to health equity and environmental justice, and that affected communities should have a meaningful role in decisions affecting their health and well-being. One commenter urged the MPCA to consider places where people regularly attend school, church, and work, rather than focusing solely on where people reside.[484]

426. The MPCA agreed that public participation is essential and explained that part 7007.6080 is intended to establish a framework for robust public and Tribal engagement. Although the statute limits the rule's application to designated environmental justice census tracts and focuses on affected residents, public meetings and comment periods are open to all interested parties. Information about impacts on schools, churches, parks, workplaces, and other regularly visited locations may be submitted and considered in the commissioner's determinations.[485]

427. Several commenters addressed the adequacy of the public participation process. The Hamline Midway Coalition stated that the proposed rule fell short in certain areas of community involvement. Coming Clean Network questioned whether facility-led outreach would be effective because facilities may lack trusted relationships with environmental justice communities. A Frontline commenter expressed concern that the commissioner retains substantial decision-making authority and recommended a stronger partnership between affected residents and the MPCA.[486]

428. The MPCA acknowledged the concerns regarding trust, meaningful participation, and community influence. It maintained that the proposed rule increases transparency and provides opportunities for public engagement. Facilities must submit public participation plans for MPCA review and correct identified deficiencies before beginning outreach. Facilities may also hire third parties to assist with engagement. The MPCA concluded that these requirements provide an appropriate balance between effective participation and flexibility for different communities.[487]

429. Health Professionals for a Healthy Climate recommended that the MPCA dedicate staff and resources to maintaining long-term relationships with environmental justice communities. The organization emphasized that ongoing engagement would help the Agency understand residents' experiences, concerns, and priorities regarding air quality, recreation, property values, economic opportunities, and community health.[488]

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[483] Ex D at 101-102.
[484] *See e.g.*, Health Professionals for a Healthy Climate (046-41); Amy Caucutt (016-06).
[485] MPCA Pre-hearing Response to Comments at 201.
[486] Hamline Midway Coalition (003-11); Coming Clean Network (024-07); Frontline Communities Protection Coalition (045-28).
[487] MPCA Pre-hearing Response to Comments at 202-203.
[488] Health Professionals for a Healthy Climate (038-15).

430. The MPCA agreed that maintaining relationships with affected communities is important. Part 7007.6080 requires MPCA staff to attend the required public meetings, allowing staff to hear directly from residents and regulated parties. The Agency also stated that its Office of Equity and Environmental Justice, Community Affairs Department, and other staff would continue building relationships with residents and community organizations.[489]

431. The MPCA received approximately 10 comments regarding public input and the establishment of community councils.[490] Several commenters recommended establishing community councils or similar representative bodies to advise the MPCA, communicate residents' concerns, engage with facilities, and make recommendations concerning permits and CBAs.[491] Other commenters, including the Minnesota Chamber of Commerce and Cordia Energy Center Minneapolis, emphasized the need to make technical information understandable; they cautioned against assuming that a small group of engaged residents necessarily represents the broader community.[492]

432. The MPCA considered but declined to require community councils in the proposed rules. It explained that the Commissioner's statutory authority governs determinations concerning CIAs and substantial adverse impacts, while the statute specifies the parties responsible for CBAs. The MPCA concluded that the rule provides adequate public access to information, meetings, and comment periods. It also explained that requiring facilities to consult with particular organizations could create enforcement difficulties and questions about which organizations should represent each community. Existing community councils and organizations may nevertheless review materials and participate in the process.[493]

433. Addressing timelines for public participation, the Minnesota Chamber of Commerce and Cordia Energy Center Minneapolis expressed concern that the required meetings, advance notices, comment periods, and responses could extend the permitting process by approximately 14 months. The Chamber suggested allowing facilities to combine the meeting following the CIA with the meeting preceding development of a CBA when a CBA is likely to be required.[494]

434. In response to commenter concerns, the MPCA acknowledged that the process could take more than a year, but explained that some activities can occur concurrently and that facilities need not use the full time allowed for each task. The Agency rejected the suggestion to combine the meetings because residents need time to review the CIA and provide informed input before a draft CBA is developed. The MPCA

[489] MPCA Pre-hearing Response to Comments at 203-204.
[490] Amy Caucutt (016-02); Minnesota Chamber of Commerce (027-24), (027-25); Frontline Communities Protection Coalition (045-20), (045-69), (045-72), (045-93); Saint Paul–Ramsey County Public Health (054-05); Richa Bisht (059-03); Cordia Energy Center Minneapolis (049-19).
[491] Amy Caucutt (016-02); Frontline Communities Protection Coalition (045-20), (045-69), (045-72), (045-93); Saint Paul–Ramsey County Public Health (054); Richa Bisht (059-03).
[492] Minnesota Chamber of Commerce (027-24), (027-25); Cordia Energy Center Minneapolis (049-19).
[493] MPCA Pre-hearing Response to Comments at 205-207.
[494] Minnesota Chamber of Commerce (027-18); Cordia Energy Center Minneapolis (049-10).

concluded that the timelines are necessary to provide meaningful participation and comply with statutory requirements.[495]

435. Several commenters addressed specific requirements the rule includes for public meetings.[496] The Chamber recommended requiring centrally located, accessible meeting venues and questioned whether recording the entire meeting was necessary.[497] Frontline supported requiring explanations of how comments informed the CIA and draft CBAs.[498] Side Corridor Residents, Owatonna East supported the requirement to hold two meetings during the CIA process and two additional meetings when a CBA is required.[499]

436. The MPCA considered these comments, concluding it is necessary to retain the requirement that meetings be held at locations convenient to expected participants, rather than requiring centrally located venues, because suitable locations vary among communities. The MPCA also retained the requirement to record the entire meeting because discussions beyond the formal presentation may contain information important to residents who cannot attend.[500]

437. The MPCA received multiple comments concerning the rule's public comment periods and how comments will be reviewed. The commenters supported opportunities to submit public comments but argued that merely requiring facilities to respond does not ensure meaningful participation. They recommended that substantive comments identifying omissions, inaccuracies, or additional cumulative impacts be evaluated and incorporated into the CIA or CBA when warranted. They also requested that facilities explain the factual and technical basis for declining to make requested revisions.[501]

438. The MPCA agreed that public comments must be meaningfully considered. The rule requires facilities to respond to comments and explain how the comments informed the CIA and CBA. The Commissioner must consider public comments and facility responses when determining whether substantial adverse impacts exist and whether to enter into a CBA. Decision documents must explain how public input was considered, providing transparency and accountability.[502]

439. Commenters also raised concerns about pollution-related health effects, inadequate public awareness of meetings, insufficient community involvement in developing public participation plans, and limited time to review technical materials. The Minnesota Environmental Justice Table recommended allowing affected communities to review draft public participation plans and provide feedback. Melissa Zimmerman and Side Corridor Residents, Owatonna East requested advance publication of meeting

[495] MPCA Pre-hearing Response to Comments at 208-209.
[496] Minnesota Chamber of Commerce (027-31), (027-32); Frontline Communities Protection Coalition (034-22), (045-154), (045-158).
[497] Minnesota Chamber of Commerce (027-31), (027-32).
[498] Frontline Communities Protection Coalition (034-22).
[499] Frontline Communities Protection Coalition (045-154), (045-158).
[500] MPCA Pre-hearing Response to Comments at 209-210.
[501] Frontline Communities Protection Coalition (045-129), (045-157), (045-162), (045-163), (045-165).
[502] MPCA Pre-hearing Response to Comments at 211-212.

materials and draft analyses so residents could prepare informed comments. Zimmerman also recommended fair and accessible mechanisms for challenging decisions when credible evidence or community concerns are not adequately considered.[503]

440. The MPCA acknowledged the importance of community health, transparency, and meaningful participation. After considering these comments, the MPCA explained why it declined to impose additional prescriptive requirements on public participation plans. The Agency noted that the rule provides multiple notification methods, including newspaper notices, physical signage, electronic mailing lists, and notices to local governmental units. It also confirmed that relevant documents, including CIAs and draft CBAs, must be posted on its website at least 30 days before applicable public meetings. The MPCA pointed out that the public may comment on these documents before the Commissioner makes the relevant determinations. The MPCA further explained that the rule requires consideration of public comments in substantial adverse impact determinations and CBA decisions, with decision documents describing how public input was considered.[504]

441. The MPCA received many comments emphasizing the importance of involving existing community organizations in developing public participation plans, conducting outreach and engagement, and providing recommendations to the Commissioner regarding determinations and decisions under the rule. Commenters highlighted these organizations' ability to support effective outreach, identify appropriate languages for materials and communications, and improve the accessibility of public meetings.[505]

442. These commenters generally recommended requiring facilities to collaborate with trusted neighborhood associations, churches, nonprofits, health systems, community health workers, and other local organizations. They argued that these organizations could improve outreach, identify appropriate languages and meeting locations, build trust, and help residents participate. Frontline and other commenters also recommended funding community organizations, compensating residents for their participation, and providing independent facilitation, translation, childcare, transportation, and technical assistance.[506]

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[503] Amanda (004-02); Eva Peña (007-02); Margaret West (011-02); Elizabeth Bonin (025-04); Minnesota Chamber of Commerce (027-23); Minnesota Environmental Justice Table (031-06); Frontline Communities Protection Coalition (045-128), (045-130), (045-156), (045-159).

[504] MPCA Pre-hearing Response to Comments at 213-215.

[505] See Hamline Midway Coalition (003-07), (003-08); Sam (012-01); Joanne Hill (014-04); Stephanie (020-02); Coming Clean Network (024-03), (024-11); Leah Dunlevy (026-03); Frontline Communities Protection Coalition (034-23), (045-09), (045-17), (045-65), (045-181); Health Professionals for a Healthy Climate (038-12), (046-03); Saint Paul–Ramsey County Public Health (054-03); Commissioner Xiong (056-05).

[506] Hamline Midway Coalition (003-07), (003-08); Sam (012-01); Joanne Hill (014-04); Stephanie (020-02); Coming Clean Network (024-03), (024-11); Leah Dunlevy (026-03); Frontline Communities Protection Coalition (034-23), (045-09), (045-17), (045-65), (045-181); Health Professionals for a Healthy Climate (038-12), (046-03); Saint Paul–Ramsey County Public Health (054-03); Commissioner Xiong (056-05).

443. The MPCA recognized the importance of trust and effective community engagement but declined to require facilities to work with specific community organizations. It explained that EJ areas vary in population, available organizations, organizational capacity, and community preferences. The MPCA also noted that it could not require independent organizations to participate in consultations or readily enforce agreements between facilities and those organizations.[507]

444. Instead, the MPCA retained flexible requirements allowing facilities to hire third parties to assist with public participation plans and outreach. The rule also requires multilingual notices, interpretation and translation services as needed, advance publication of meeting materials, and support for reasonable participation expenses, such as food and childcare. The MPCA concluded that these provisions provide flexibility to address community-specific needs while meeting statutory engagement requirements.[508]

445. Commenters offered comments and suggestions related to notice, public participation, and community engagement under this rule part.[509] The Chamber and Cordia Energy Center Minneapolis argued that requiring at least four physical signs in each affected environmental justice area was excessive.[510] The University of Minnesota requested a provision stating that a good-faith attempt to comply with notice requirements would prevent minor notice defects from invalidating proceedings.[511] Side Corridor Residents, Owatonna East requested written notice to residents and property owners within one mile of the impact area.[512] Healthy Professionals for a Healthy Climate recommended larger, accessible signage and placement in prominent areas with substantial pedestrian traffic.[513]

446. After considering this group of comments, the MPCA retained the physical signage requirements, explaining that state law requires physical signage and that signs help reach residents who may not receive electronic notifications or follow community organizations. The MPCA declined the University's proposed good-faith exception because it could undermine compliance with mandatory notice requirements and make it more difficult to verify that the public was properly informed. The MPCA maintained the combination of newspaper notices, physical signage, electronic mailing lists, and advance document publication. It also retained the minimum sign size of 8.5 by 11 inches to allow signs to be posted in frequently visited indoor locations, while allowing larger signs where needed. The Commissioner may review submitted notices to ensure that they are legible and accurately communicate the required information.[514]

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[507] MPCA Pre-hearing Response to Comments at 219-221.
[508] MPCA Pre-hearing Response to Comments at 219-221.
[509] Minnesota Chamber of Commerce (027-30), (027-34); University of Minnesota (030-11), (030-21); Frontline Communities Protection Coalition (045-138), (045-155); Cordia Energy Center Minneapolis (049-27); Healthy Professionals for a Healthy Climate (038-13).
[510] Minnesota Chamber of Commerce (027-30), (027-34); Cordia Energy Center Minneapolis (049-27).
[511] University of Minnesota (030-11), (030-21).
[512] Frontline Communities Protection Coalition (045-138), (045-155).
[513] Healthy Professionals for a Healthy Climate (038-13).
[514] MPCA Pre-hearing Response to Comments at 223-225.

447. In summary, the comments on part 7007.6080 reflect a tension between meaningful community participation and maintaining a flexible, administratively workable permitting process. The MPCA agreed that meaningful participation and transparency are important. It retained requirements for public participation plans, public meetings, comment periods, advance publication of materials, responses to public comments, and decision documents explaining how public input was considered. However, the MPCA generally declined to require community councils, mandatory partnerships with designated organizations, additional notice procedures, shorter timelines, combined meetings, or exceptions to public notice requirements. The Agency concluded that the proposed framework fulfills statutory requirements while allowing outreach to be tailored to the differing circumstances of environmental justice communities.

448. The MPCA has established that part 7007.6080 is needed and reasonable. The Agency considered the public comments and explained its rationale for its approaches. Part 7007.6080 is therefore approved.

L. Minn. R. 7007.6090 — Cumulative Impacts Analysis

449. Once the MPCA determines that a CIA is required, part 7007.6090 requires the owner or operator to conduct and submit the analysis.[515] The CIA must include: the initial assessment; the specified CIA contents; an air-quality modeling analysis; an air-emissions risk analysis; the Tribal supplement, if applicable; the owner's/operator's determination of whether the permit would create a substantial adverse impact; and the data supporting that determination. The MPCA can require additional information when needed to evaluate impacts identified during the determination-of-need process; impacts identified by a petition; impacts identified through public comments; or other relevant issues.[516]

450. Part 7007.6090 implements Minn. Stat. § 116.065, subd. 6(c)(2), by establishing the requirements for CIAs, including when they must be submitted, the information they must contain, and the public information sources applicants must consider. The part provides a consistent framework for evaluating whether a proposed permit action would have a substantial adverse impact on the environment or the health of residents in an impacted EJ area.[517]

451. Subpart 1 establishes when a CIA is required and requires submission in a Commissioner-specified format. The MPCA explained that standardized submissions promote consistency, facilitate agency review, reduce unnecessary variations, and support efficient permitting decisions.[518]

452. Subpart 2 establishes the CIA submission deadlines and the required information. The initial assessment/CI-MAP component includes information concerning environmental stressors involving areas such as air pollution, water pollution, land

[515] Ex. C.
[516] Ex. C; *see* Ex. D at 128-137.
[517] Ex. D at 128.
[518] Ex. D at 128-129.

pollution, traffic, public health, social factors, and neighborhood factors. The rule also requires consideration of how existing stressors interact with the proposed source. Applicants must submit the CIA at least 45 days before the mandatory public meeting, consistent with statutory requirements, thereby allowing time for public access and review. The subpart also authorizes the Commissioner to request additional information necessary to evaluate potential environmental and health impacts, including information addressing concerns raised through public participation.[519]

453. Subpart 3 specifies the required contents of a CIA, including site mapping and environmental features, existing contamination, localized climate impacts, traffic, stormwater management, odor, dust and noise impacts, proposed mitigation measures, public comments, and socioeconomic impacts. The MPCA proposed these requirements to provide the Commissioner with sufficient information to evaluate potential effects on the environment and community health.[520]

454. Subpart 4 requires air quality modeling to assess whether the proposed permit action would cause or contribute to an exceedance of state or federal ambient air quality standards. The Agency proposed air quality modeling requirements to establish a consistent process for evaluating whether a proposed permit action may affect compliance with the Minnesota Ambient Air Quality Standards and National Ambient Air Quality Standards. The analysis must follow a protocol approved by the Commissioner and evaluate applicable pollutants, modeling methods, and inputs to ensure the analysis is complete and consistent with state and federal requirements. The MPCA concluded these requirements are reasonable because air dispersion modeling is an established component of state and federal permitting programs and provides the MPCA with information necessary to evaluate potential environmental and human health impacts, verify compliance with applicable air quality standards, and make informed permitting decisions consistent with Minn. Stat. § 116.065. The MPCA asserted the Commissioner-approved protocols promote consistent modeling methods and reliable results.[521]

455. Subpart 5 requires an air emissions risk analysis (AERA) to evaluate potential human health risks from facility emissions. The proposed air emissions risk analysis requirements establish a process for evaluating the potential human health risks associated with pollutants emitted by a stationary source. The analysis considers chemical-specific and cumulative risks based on factors such as pollutant concentrations, atmospheric dispersion, facility and emissions characteristics, and established health benchmarks. Owners and operators must conduct the analysis, providing the information necessary for the MPCA to review the methodology, assumptions, and inputs. The rule also establishes acceptable risk levels for evaluating potential cancer and noncancer health effects, including acute and chronic exposures. Owners and operators must document the results and identify whether the stationary source would cause or contribute to an exceedance. The MPCA asserted these requirements are reasonable because they rely on established state and federal risk assessment practices and provide it with scientific information necessary to evaluate potential human health impacts and

[519] Ex. D at 129-130; *see* Ex. C.
[520] Ex. D at 130-133.
[521] Ex. D at 133-134.

determine whether a proposed permit action may result in a substantial adverse impact on the environment or health of residents of an impacted EJ area, consistent with Minn. Stat. § 116.065.[522]

456. Overall, the MPCA proposes to adopt part 7007.6090 to establish standardized, comprehensive CIA requirements to ensure that the Agency receives sufficient information to evaluate environmental and health impacts, consider community concerns, and make informed permit decisions consistent with Minn. Stat. § 116.065. [523]

457. The MPCA received multiple comments regarding the preparation and review of the CIA.[524] Representative Lee questioned whether permit applicants could objectively assess how existing environmental stressors amplify the effects of a facility's emissions, given potential conflicts of interest and limitations in expertise.[525] Frontline supported an executive summary for public understanding but recommended focusing the initial assessment on the information needed to determine whether a full CIA is required.[526] Beth Shaw and Side Corridor Residents argued that applicants have too much control over the process, including the technical analysis, community outreach, public meetings, comment responses, and proposed CBA.[527]

458. The MPCA declined to shift responsibility for preparing the CIA from the applicant to the MPCA or an MPCA-designated third party. The MPCA explained that it interprets Minn. Stat. § 116.065 as assigning preparation responsibilities to the applicant. The MPCA emphasized that the applicant's responsible official must certify the accuracy and completeness of submitted information, the MPCA must evaluate the submission, and the Commissioner may determine that information is incomplete or inadequate and require additional information. Facilities must also correct or supplement information that is inaccurate.[528]

459. The MPCA received comments questioning the scope of the required CIA.[529] The University of Minnesota argued that a CIA should focus on the stationary source, emissions facility, or emissions unit involved in the permit action rather than requiring information about an entire large campus or complex. The University cited the burden of collecting extensive information about contamination, traffic, land use, community vulnerability, environmental conditions, and public-health indicators across geographically separated areas.[530] The Minnesota Hospital Association recommended limiting required analyses to impacts reasonably related to the permit action, supported

[522] Ex. D at 134-137.
[523] Ex. D at 128.
[524] Representative Lee (033-10); Frontline Communities Protection Coalition (034-12), (045-134); Beth Shaw (036-09).
[525] Representative Lee (033-10).
[526] Frontline Communities Protection Coalition (034-12).
[527] Beth Shaw (036-09); Frontline Communities Protection Coalition (045-134).
[528] MPCA Pre-hearing Response to Comments at 226.
[529] University of Minnesota (030-14), (030-24); Minnesota Hospital Association (051-06), (051-17).
[530] University of Minnesota (030-14), (030-24).

by scientific evidence, and attributable to the facility. It opposed requiring applicants to evaluate or mitigate conditions beyond their operational control.[531]

460. The MPCA declined to narrow the CIA to the proposed permit action or air emissions alone. The Agency explained that the statutory definition of "cumulative impacts" includes aggregated past and current air, water, and land pollution affecting residents in a defined geographic area. Environmental stressors and other contextual information are necessary to assess whether a permit action could cause a substantial adverse impact. The statute requires consideration of the additional pollution a proposed permit would contribute to existing pollution in EJ areas. The MPCA maintained that the proposed information requirements are necessary to satisfy Minn. Stat. § 116.065 and are justified in the SONAR.[532]

461. A number of commenters addressed the CIA general content requirements. These comments emphasized that facilities should be evaluated in the context of existing pollution from highways, diesel traffic, industrial facilities, waste incineration, and other environmental stressors. Opinions varied as to how pollution risks should be calculated.[533] Several supported mitigation and management measures but recommended that these measures be incorporated directly into permits to ensure implementation.[534]

462. For example, the Side Corridor Residents requested broader consideration of noise, vibration, odor, light pollution, truck traffic, water resources, habitat impacts, and reasonably foreseeable future development. Commenters also recommended updating the CIA when material changes occur in facility design, emissions, operations, surrounding development, environmental conditions, or scientific information.[535] The American Petroleum Institute, on the other hand, urged the MPCA to account for pollution reductions achieved through existing regulatory programs and federally enforceable controls, which it contended is necessary to avoid double-counting risks.[536]

463. The MPCA responded to these comments, maintaining that the CIA must evaluate air, land, and water pollution, environmental stressors, and other information necessary for informed permit decisions. The Agency acknowledged requests to consider foreseeable future conditions and pointed to the commissioner's authority under part 7007.6090, subpart 2, item C, to require additional information or analyses when needed to evaluate potential impacts. The MPCA did not incorporate the broader requested changes concerning mandatory updates, incorporation of all mitigation measures into permits, or a specific method for crediting existing regulatory controls.[537]

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[531] Minnesota Hospital Association (051-06), (051-17).
[532] MPCA Pre-hearing Response to Comments at 228.
[533] Joanne Hill (014-03); Amy Caucutt (016-04); Frontline Communities Protection Coalition (034-27), (045-143), (045-167), (045-168), (045-169), (045-171); American Petroleum Institute (042-16).
[534] *See e.g.*, Frontline Communities Protection Coalition (034-27).
[535] Frontline Communities Protection Coalition (045-143), (045-167), (045-168), (045-169), (045-171).
[536] American Petroleum Institute (042-16).
[537] MPCA Pre-hearing Response to Comments at 229-230.

464. The University also addressed contamination and remediation history in the context of the CIA. The University argued that the requirement to provide information about contamination could require review of extensive historical records for sites that had been remediated and administratively closed. It proposed limiting the rule to the property associated with the permit action and situations involving potential migration of contamination beyond the stationary-source boundary.[538]

465. Responding to the University's argument, the MPCA rejected the proposed limitation. The Agency explained that contamination information is necessary because historical contamination may affect health and the environment or migrate to adjacent land and water, regardless of whether the permitted facility caused it. The MPCA also stated that the rule addresses both the existence and absence of contamination, because applicants must provide comprehensive information about site conditions.[539]

466. Commenters also spoke to the issue of climate change impacts as part of the CIA.[540] Community and public health organizations supported evaluating localized climate impacts and including mitigation, adaptation, and resilience measures. Health Professionals for a Healthy Climate requested guidance on reliable data sources and scientifically sound methods for forecasting climate risks.[541] Saint Paul–Ramsey County Public Health recommended standardized climate assessment procedures, reliance on the best available science, updates as projections change, and consideration of facility closure or decommissioning.[542]

467. The American Petroleum Institute argued that climate impacts are complex and uncertain and that the CIA should be limited to considering impacts attributable to the permitted activity.[543]

468. The MPCA retained the rule's climate-related requirements, explaining facility greenhouse gas emissions and localized climate conditions can affect the environment and health of residents in EJ areas. The Agency noted that the analysis may also identify benefits and actions a facility is taking to address climate vulnerabilities. The MPCA stated that implementation guidance would be developed to help applicants approach climate change information, like guidance used in other environmental review programs.[544]

469. Speaking to the proposed rule's requirement regarding traffic, the University claimed that collecting traffic volumes, peak-hour data, levels of service, and average daily trips would be difficult for a large urban campus where public roads, transit,

[538] University of Minnesota (030-09), (030-17).
[539] MPCA Pre-hearing Response to Comments at 230-231.
[540] *See* Frontline Communities Protection Coalition (034-25); Minnesota Public Health Association (035-07); Health Professionals for a Healthy Climate (038-05), (038-16); American Petroleum Institute (042-06); Saint Paul–Ramsey County Public Health (054-04).
[541] Health Professionals for a Healthy Climate (038-05), (038-16).
[542] Saint Paul–Ramsey County Public Health (054-04).
[543] American Petroleum Institute (042-06).
[544] MPCA Pre-hearing Response to Comments at 233.

university operations, and third-party travel overlap. It proposed focusing on greenhouse gas and vehicle emissions attributable to traffic increases caused by the permit action.[545]

470. In response to the University's concern, the MPCA explained that traffic metrics are used in other established programs, including environmental review. The Agency stated that the scope of the traffic study can be tailored to the permit action: a permit covering an entire complex may require broader information, while a permit for one building may justify a narrower analysis. The MPCA declined to limit the analysis to traffic increases because the statute also requires consideration of past and current conditions and existing health impacts, which necessarily includes traffic.[546]

471. Some commenters questioned how the MPCA will consider public participation and community lived experiences in the context of the CIA.[547] The Chamber stated that facilities should have discretion not to respond to input outside the scope of the project or analysis, noting that personal experiences can be difficult to verify or connect to causation.[548] Chelsey Blanke of Frontline emphasized that CIAs should prioritize the experiences and needs of communities that have historically been overburdened by pollution.[549]

472. The MPCA responded to these comments, explaining it interpreted the statutory requirement for robust public and Tribal engagement to include responding to input from interested parties. The proposed rules require facilities to consider comments and provide written responses, while allowing flexibility in how responses are prepared. The MPCA also stated that it would develop guidance, forms, and templates to support documentation and evaluation of public comments.[550]

473. Part 7007.6090's environmental and public-health stressors treatment also generated significant public comment.[551]

474. Community and public-health commenters supported comprehensive evaluation of environmental and public health stressors, and urged MPCA to more directly assess how facilities contribute to existing burdens.[552] Ryann Geldner requested explicit consideration of airborne agricultural chemicals, alum lake treatments, macroinvertebrate decline, nutrient deposition, regenerative farming practices, and nature-based watershed solutions.[553] Several commenters proposed an approach more closely modeled on New Jersey's rules, under which applicants would evaluate identified stressors and the

[545] University of Minnesota (030-08), (030-17).
[546] MPCA Pre-hearing Response to Comments at 234.
[547] Minnesota Chamber of Commerce (027-27); Frontline Communities Protection Coalition (045-123).
[548] Minnesota Chamber of Commerce (027-27).
[549] Frontline Communities Protection Coalition (045-123).
[550] MPCA Pre-hearing Response to Comments at 235-236.
[551] Coming Clean Network (024-04); Ryann Geldner (028-01), (028-02), (028-03), (028-05); Frontline Communities Protection Coalition (034-24), (045-14), (045-19), (045-43), (045-48), (045-89), (045-170); Health Professionals for a Healthy Climate (038-04); Lois Norrgard (040-04); American Petroleum Institute (042-05), (042-13), (042-14), (042-15).
[552] *See e.g.,* Coming Clean Network (024-04); Ryann Geldner (028-01); Frontline Communities Protection Coalition (034-24); Health Professionals for a Healthy Climate (038-04).
[553] Ryann Geldner (028-01), (028-02), (028-03), (028-05).

facility's contribution to them, potentially providing a more objective basis for determining substantial adverse impact.[554]

475. The API argued that current scientific methods do not reliably quantify how social conditions, such as poverty, housing quality, food insecurity, and access to health care, modify health risks from a specific facility's emissions. It recommended distinguishing qualitative community context from quantitative risk assessment, and focusing on scientifically plausible exposure pathways and modifiable stressors.[555]

476. The MPCA replied that the statute expressly includes social and environmental factors that may make residents of EJ areas more susceptible to harm from pollution. The Agency emphasized that the statutory list of stressors is nonexclusive and that stressor information is used in both the initial assessment and the CIA. The MPCA explained that the initial assessment helps the Commissioner decide whether a CIA is necessary; the stressor assessment is one part of that decision, not the sole basis for it. For these reasons, the MPCA declined to tailor its rules to be more like the New Jersey rule or limit stressors to those caused or controlled by the applicant.[556]

477. The MPCA received multiple comments regarding the treatment of air emissions risk analyses (AERAs) and insignificant activities.[557] The Chamber requested clarification on whether insignificant activities must be included in an AERA.[558] Similarly, the University argued that modeling thousands of insignificant activities, including laboratory equipment and fume hoods, would impose a significant administrative burden. It proposed an exemption for activities serving a compelling public benefit. The University also proposed a definition of "compelling public benefit" for certain government activities.[559] Health Professionals for a Healthy Climate recommended including emergency generator emissions in AERAs.[560]

478. Considering these comments, the MPCA rejected a blanket exclusion for insignificant activities. The Agency explained that such sources must initially be included in the AERA so their risk can be demonstrated; sources presenting little or no risk may then be excluded through the iterative assessment process. The MPCA similarly stated that emergency generators must initially be included, even if later analysis supports excluding them.[561]

479. Several commenters addressed acceptable risk levels under this rule part.[562] The Side Corridor Residents supported analyzing cancer risks and other health-

[554] *See, e.g.,* Lois Norrgard (040-04).
[555] American Petroleum Institute (042-05), (042-13), (042-14), (042-15).
[556] MPCA Pre-hearing Response to Comments at 240-241.
[557] Minnesota Chamber of Commerce (027-40); University of Minnesota (030-10), (030-18), (030-19), (030-20); Health Professionals for a Healthy Climate (038-08).
[558] Minnesota Chamber of Commerce (027-40).
[559] University of Minnesota (030-10), (030-18), (030-19), (030-20).
[560] Health Professionals for a Healthy Climate (038-08).
[561] MPCA Pre-hearing Response to Comments at 242.
[562] Frontline Communities Protection Coalition (045-172), (034-30).

based hazard measures.[563] Frontline questioned the proposed cancer risk threshold of one additional cancer case per 100,000 people, arguing that it could fail to identify facilities contributing to cumulative risks in already overburdened communities.[564] Frontline proposed considering both the existing cancer risk in the census tract and the facility's contribution to that risk.[565]

480. The MPCA defended the one-in-100,000 cancer risk level as a widely used and health-protective benchmark. It agreed, in part, that the facility's contribution and broader sources of cancer-causing compounds should be considered, and it noted its authority to request information on nearby sources. However, the MPCA rejected a sliding scale threshold based on baseline community risk, reasoning that such a scale could produce thresholds higher than established EPA and MPCA risk assessment methodologies.[566]

481. The MEJT addressed risk assessment screening, recommending standardized tools or trusted data sources to improve consistency and reduce the risk that applicants would submit incomplete or inaccurate analyses. It also expressed concern that some spreadsheet cells containing toxicity values were not protected against alteration and that particulate matter was not included in the risk assessment screening spreadsheet.[567]

482. The MPCA stated that it would consider protecting the relevant spreadsheet cells in future updates. It explained that particulate matter was not included because there is no applicable inhalation health benchmark for particulate matter generally, while diesel particulate matter does have such a benchmark and is included.[568]

483. Comments also addressed various aspects of air-quality modeling.[569]

484. The Chamber and Cordia Energy Center Minneapolis argued that air quality modeling and risk determinations should focus on receptors within the impacted environmental justice area, rather than locations outside that area where the highest modeled concentrations may occur.[570] The Chamber questioned whether modeling requirements were too broad for some expansion projects and challenged the threshold requiring a substantial adverse impact determination when modeled pollution concentrations reach at least 50 percent of an ambient air quality standard.[571]

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[563] Frontline Communities Protection Coalition (045-172).
[564] Frontline Communities Protection Coalition (034-30).
[565] Frontline Communities Protection Coalition (034-30).
[566] MPCA Pre-hearing Response to Comments at 243-244; *see* Ex. D at 134-137.
[567] The Minnesota Environmental Justice Table (031-07).
[568] MPCA Pre-hearing Response to Comments at 244.
[569] Minnesota Chamber of Commerce (027-35), (027-36), (027-37), (027-38); Frontline Communities Protection Coalition (034-29); Health Professionals for a Healthy Climate (038-06), (038-07); Cordia Energy Center Minneapolis (049-23), (049-28).
[570] Minnesota Chamber of Commerce (027-35), (027-36), (027-37), (027-38); Cordia Energy Center Minneapolis (049-23), (049-28).
[571] Minnesota Chamber of Commerce (027-35), (027-36), (027-37), (027-38).

485. Health Professionals for a Healthy Climate supported commissioner review of modeling protocols but requested consideration of more protective emissions thresholds and public reporting of actual versus modeled emissions.[572] Frontline supported commissioner approval of modeling protocols and recommended informing affected communities about emissions and compliance.[573]

486. The MPCA responded that air modeling is an established component of air permitting and is necessary to fulfill statutory requirements. It rejected limiting the modeling results considered to EJ areas alone because air emissions can affect areas outside those boundaries. The MPCA stated that the maximum modeled concentration beyond the ambient air boundary should be identified regardless of the receptor's location. However, the Agency qualified that it would consider clarifying how modeling results are used in the substantial adverse impact determination and would develop implementation guidance and templates.[574]

487. The MPCA received seven comments pertaining to the relationship between environmental review and cumulative levels and effects requirements.[575]

488. The Chamber and Cordia Energy argued that the CIA duplicates information required by environmental assessment worksheets, environmental impact statements, and new source review. They requested exemptions for projects already undergoing environmental review or, alternatively, permission to reuse or waive analyses completed within the previous five years.[576]

489. The University sought clarification on how the proposed rule interacts with the existing cumulative levels and effects requirements for South and Southeast Minneapolis.[577] Other commenters emphasized that CIA should prioritize human health and evaluate combined effects even when a project meets individual regulatory standards.[578]

490. The MPCA provided detailed responses to these comments. The Agency explained that the cumulative impacts rule, the environmental review program, and the cumulative levels and effects statute have distinct legal requirements. Some information may be shared across programs, but the MPCA stated it cannot guarantee that one program's analysis satisfies the requirements of another. The MPCA may use existing

[572] Health Professionals for a Healthy Climate (038-06), (038-07).
[573] Frontline Communities Protection Coalition (034-29).
[574] MPCA Pre-hearing Response to Comments at 244.
[575] Minnesota Chamber of Commerce (027-50); University of Minnesota (030-40), (030-41); Health Professionals for a Healthy Climate (038-17), (038-18); Frontline Communities Protection Coalition (045-135); Cordia Energy Center Minneapolis (049-13).
[576] Minnesota Chamber of Commerce (027-50); Cordia Energy Center Minneapolis (049-13).
[577] University of Minnesota (030-40), (030-41).
[578] Health Professionals for a Healthy Climate (038-17), (038-18); Frontline Communities Protection Coalition (045-135).

information where appropriate but retains authority to request updated information when needed.[579]

491. Several comments addressed the MPCA's proposed Air Toxics Rule. Commenters argued that the proposed Air Toxics Rule and the Cumulative Impacts Rule could be read to require duplicate AERAs. They requested presumptive exclusion of air toxics from the CIA or recognition of an AERA completed within the previous five years under the separate Air Toxics Rule. They also suggested that an AERA determined unnecessary under the Air Toxics Rule should not be required under the Cumulative Impacts Rule.[580]

492. In response, the MPCA explained that the Cumulative Impacts Rule and the Air Toxics Rule arise from separate statutory authorities and have different requirements and purposes. The Agency agreed that information may be transferable between the programs and stated that the rules were developed concurrently to minimize differences in AERA information requirements and thresholds. However, the MPCA rejected a blanket rule that an analysis prepared for one program automatically satisfies the requirements of the other. Whether existing information can be reused will depend on factors such as changes to the facility and the time that has elapsed since the earlier analysis.[581]

493. In summary, the MPCA's responses generally preserve the proposed rule's comprehensive approach to evaluating cumulative impacts. The Agency relies on Minn. Stat. § 116.065 to support its consideration of historical and current pollution, community vulnerability, and environmental stressors beyond those directly attributable to the permit action. The MPCA generally defended the proposed rule's breadth and statutory foundation while indicating that implementation guidance and case-specific flexibility would help address concerns about burden, consistency, and practical application.

494. The MPCA has established that part 7007.6090 is reasonable and necessary; this rule part is approved.

M. Minn. R. 7007.6100 — Substantial Adverse Impacts

495. Minn. R. 7007.6100 contains the second major MPCA decision point under the Cumulative Impacts Rule. After the CIA has been completed, the MPCA must determine whether issuing the permit would produce a "substantial adverse impact" (SAI) on the environment or health of residents of the impacted EJ area.[582]

496. The rule establishes three principal circumstances for finding a SAI: the air quality modeling trigger, the air-risk trigger, and the broader risk determination. First, the air quality modeling trigger is reached when the facility's contribution to modeled criteria pollutant concentrations is at least 50% of an applicable National Ambient Air Quality

[579] MPCA Pre-hearing Response to Comments at 248.
[580] Minnesota Chamber of Commerce (027-13), (027-39); Cordia Energy Center Minneapolis (049-16).
[581] MPCA Pre-hearing Response to Comments at 250-251.
[582] Ex. C; Ex. D at 137-138.

Standard (NAAQS) at a modeled receptor. The second basis, the air risk trigger, is based on the results of the required AERA and the applicable risk thresholds. Last, the rule also permits a SAI determination based on the broader environmental/health analysis.[583]

497. To make a SAI determination, the MPCA must consider: the type, extent and reversibility of potential impacts; the cumulative potential impacts; the significance of the facility's contribution when viewed with other contributions; measures proposed to eliminate/minimize/mitigate impacts; actions the owner/operator is taking to reduce its contribution; the extent to which existing regulatory authority can mitigate the impacts; and existing environmental and health studies. The proposed rule allows the MPCA to consider mitigation and control measures, but the measures must be sufficiently specific and supported by regulatory authority.[584]

498. The MPCA asserts that part 7007.6100 is necessary to implement Minn. Stat. § 116.065, subd. 6(c)(3), which directs the MPCA to establish the conditions, criteria, and circumstances under which an environmental or health impact constitutes a SAI. Part 7007.6100 establishes the framework the Agency must use to determine whether issuing a permit would result in a SAI on the environment or health of residents of an EJ area. This determination informs the Agency's permitting decision, including whether to issue or deny the permit and whether a CBA is required. The part also identifies the information and criteria the MPCA must consider when making a SAI determination, establishes procedures for addressing situations in which insufficient information is available to make that determination, and specifies when documents related to the determination must be made publicly available. Establishing these requirements in rule is reasonable because it provides a defined and transparent process for implementing the MPCA's statutory responsibilities under Minn. Stat. § 116.065.[585]

499. The MPCA received many comments regarding the use of environmental stressors in the SAI determination. In general, these commenters requested the MPCA make environmental stressors an explicit and meaningful factor in determining SAI. The principal concern for commenters was that the proposed rules identify three methods for determining SAI but do not establish a separate method to assess the total number of adverse environmental and public health stressors to which a facility contributes to a community. Many commenters recommended adding a fourth method that evaluates a facility's contribution to cumulative stressors and establishes a numerical threshold for determining SAI. Commenters argued that this approach would better reflect existing community burdens, improve objectivity and transparency, provide greater certainty for communities and facility owners, and reduce the risk of legal challenges.[586]

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[583] Ex. C; Ex. D at 139-140.
[584] Ex. C; Ex. D at 140-142.
[585] Ex. D at 137-138.
[586] Amanda (004-03); Margaret West (011-01); Charity Burns (018-02); Coming Clean Network (024-08), (024-12); Minnesota Public Health Association (035-04); Health Professionals for a Healthy Climate (038-10); Madonna Ohse (050-01); Lynn Reuvers (057-02); Frontline Communities Protection Coalition (045-44), (045-92), (045-96), (045-107), (045-115).

500. The MPCA responded by first explaining that Minnesota's approach to determining a SAI differs from New Jersey's approach to determining a "disproportionate impact." Minnesota's law applies to air permits in EJ areas and requires a comprehensive assessment of environmental and health impacts, including socioeconomic vulnerabilities. In contrast, New Jersey's law covers multiple environmental media and uses a more quantitative comparison of pollution and health indicators. The MPCA maintained that a rigid numerical threshold or count of adverse stressors would not adequately account for differences in stressor severity, available benchmarks, and the ways environmental conditions and socioeconomic vulnerabilities interact.[587]

501. The MPCA then explained that it intentionally structured the proposed rules to establish a structured, data-driven screening process using the initial assessment, environmental stressor database, and information required in part 7007.6090 to identify existing community burdens and determine whether a CIA is necessary. For facilities that proceed through the process, the MPCA will consider air quality modeling and air emissions risk analysis alongside existing environmental stressors, community health conditions, and socioeconomic vulnerabilities under part 7007.6100.[588]

502. The MPCA concluded that a flexible, integrated assessment is better suited than a fixed checklist or numerical threshold to evaluate the localized and compounding effects of a proposed permit action. This approach, the MPCA asserted, allows it to consider the facility's potential contributions to existing burdens and fulfills its statutory responsibility under Minn. Stat. § 116.065 to define and evaluate substantial adverse impacts.[589]

503. The MPCA received two comments from Coming Clean Network (Network) requesting that the rules establish clear, health-based benchmarks for determining whether a proposed permit action may cause a SAI. The Network emphasized that these benchmarks should reflect actual community health and environmental conditions, including the cumulative pollution burden of the facility, rather than rely solely on air quality modeling thresholds.[590]

504. The MPCA addressed whether and how stressors are incorporated into the proposed determination criteria.[591] The proposed rule establishes an integrated framework for evaluating potential SAI by combining comprehensive environmental screening with established scientific methods. Under part 7007.6100, subp. 1, item B, subitem (3), the MPCA considers environmental stressors present in the community when determining whether a SAI may occur. Information about existing community health and environmental conditions is obtained through the initial assessment under part 7007.6020, subp. 6, which draws on the environmental stressors database described in part 7007.6020, subp. 5, and the CIA requirements in part 7007.6090, subp. 3. This

[587] MPCA Pre-hearing Response to Comments at 255-256.
[588] MPCA Pre-hearing Response to Comments at 255–256.
[589] MPCA Pre-hearing Response to Comments at 256.
[590] Coming Clean Network (024-06), (024-13).
[591] MPCA Pre-hearing Response to Comments at 256-257.

process helps identify permit actions in communities experiencing significant existing environmental burdens for further cumulative impacts review.[592]

505. The MPCA asserted that the information required under part 7007.6090, subps. 3 to 5, provides an adequate basis for evaluating community health and environmental conditions and determining whether a proposed permit action may result in a SAI. The MPCA also recognizes that many non-air stressors lack established numerical benchmarks and that available benchmarks may change as scientific knowledge advances. Because the proposed rules address air emission permits, the MPCA must evaluate the potential effects of proposed air emissions on community health and environmental conditions while also considering other health and environmental impacts associated with the facility.[593]

506. The MPCA determined that air pollutant modeling and air toxics risk assessments are the most reliable methods currently available for evaluating the potential risks of air emissions. The thresholds established in part 7007.6100, subp. 1, item A, subitems (1) and (2), are based on scientifically supported, health-protective values. By combining community-specific environmental stressor information with ambient air modeling and health-protective assessment criteria, the proposed rule provides a comprehensive, scientifically grounded framework for determining whether a substantial adverse impact may occur.[594]

507. The Minnesota Hospital Association submitted two comments requesting that the MPCA expressly consider the public health benefits of hospitals and other essential healthcare facilities when determining whether a proposed permit action may cause a substantial adverse impact. The Association emphasized hospitals' essential community role during emergencies and recommended amending part 7007.6100, subp. 2, to add an item requiring consideration of impacts on patient care, healthcare access, emergency preparedness, continuity of medical services, public health resilience, and community health outcomes. The Association argued that the proposed rule addresses socioeconomic impacts but does not adequately account for the public health benefits facilities provide.[595]

508. In response to comments requesting a specific provision requiring consideration of the public health benefits of facilities, the MPCA explained that the proposed rule already provides for consideration of community health benefits. During the initial assessment, permit applicants may identify critical community benefits and public services provided by the facility under part 7007.6050, subp. 3, items G and I, subitem (2), which become part of the administrative record. Applicants may also address these benefits in the socioeconomic impacts section of the CIA under part 7007.6090, subp. 3, item I.[596]

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[592] MPCA Pre-hearing Response to Comments at 256-257.
[593] MPCA Pre-hearing Response to Comments at 256-257.
[594] MPCA Pre-hearing Response to Comments at 257.
[595] Minnesota Hospital Association (051-11), (051-16).
[596] MPCA Pre-hearing Response to Comments at 258.

509. Under part 7007.6100, subp. 1, item B, subitem (2), the MPCA considers information and supporting materials submitted as part of the CIA when determining the potential environmental or health impacts of a proposed permit action. Accordingly, the MPCA maintains that the rule, as drafted, allows consideration of hospitals' and health systems' contributions to community health, emergency preparedness, continuity of essential medical services, and healthcare access. The MPCA, therefore, concludes that a separate, facility-specific provision is unnecessary because these public health benefits may already be considered under the proposed rule's existing requirements.[597]

510. The MPCA received comments expressing concern that the proposed rule relies too heavily on qualitative criteria and Commissioner discretion when determining whether a SAI exists. Commenters, including the American Petroleum Institute, Frontline, Cordia Energy, and the Minnesota Hospital Association, requested clearer, objective, and scientifically-supported standards to improve consistency, transparency, predictability, and fairness in permitting decisions.[598]

511. Several commenters recommended establishing binding quantitative benchmarks, defining how environmental stressors and a facility's contribution to those stressors should be evaluated, and providing lower thresholds for communities already experiencing adverse cumulative stressors.[599] Others emphasized that determinations should be based on measurable health and environmental impacts directly attributable to the proposed permit action.[600] Commenters also expressed concern that the lack of defined weighting, prioritization, and outcome thresholds creates uncertainty for applicants and communities, and increases the potential for litigation and inconsistent decisions.[601]

512. The MPCA responded that cumulative impacts cannot be evaluated through a single quantitative formula because each permit action involves unique emissions, locations, and existing environmental stressors. Many non-air stressors lack established numerical benchmarks, making it necessary to consider both quantitative and qualitative factors, including community conditions and public comments. The MPCA maintained that part 7007.6100, subp. 1, items A and B, satisfies Minn. Stat. § 116.065, subd. 6(c)(3), by establishing a framework for determining substantial adverse impacts that accounts for both measurable criteria and localized conditions.[602]

513. To address concerns about Commissioner discretion, the MPCA emphasized that part 7007.6100, subp. 4, requires a written decision document explaining the determination, the information considered, and how that information was

[597] MPCA Pre-hearing Response to Comments at 258.
[598] American Petroleum Institute (042-19); Frontline Communities Protection Coalition (034-33), (045-200); Cordia Energy Center Minneapolis (049-22); Minnesota Hospital Association (051-04), (051-15).
[599] *See, e.g.,* Frontline Communities Protection Coalition (034-33), (045-200).
[600] *See, e.g.,* Cordia Energy Center Minneapolis (049-22).
[601] Minnesota Hospital Association (051-04).
[602] MPCA Pre-hearing Response to Comments at 260.

weighed. The MPCA stated that these documentation requirements promote consistency, transparency, accountability, and fairness in permitting decisions.[603]

514. Six comments expressed concern that the proposed rules lack clear methods for evaluating environmental stressors and incorporating community input into SAI determinations. Commenters, including Skye, the Sierra Club North Star Chapter, and Frontline, emphasized that communities affected by cumulative pollution burdens should have meaningful opportunities to participate in permitting decisions.[604]

515. Commenters recommended establishing clear criteria and measurable thresholds for SAI that account for environmental, social, and public health stressors, including the combined effects of pollution, limited economic opportunities, and inadequate recreational resources. Several commenters urged the MPCA to model the rules after New Jersey's cumulative impacts framework, strengthen public participation and community outreach, and require engagement with local organizations. Commenters also raised concerns about the ability of communities to influence permit denial decisions and CBAs, requesting clearer criteria and adequate opportunities for public comment.[605]

516. The MPCA again explained that Minn. Stat. § 116.065 differs from New Jersey's Environmental Justice Law, N.J.S.A. 13:1D-157, in its scope, regulatory requirements, and approach to evaluating environmental and health impacts. New Jersey's law applies to permits across multiple environmental media, including air, water, and land, and evaluates whether a facility may cause a "disproportionate impact." Minnesota's law focuses on specified air permit actions in EJ areas and requires the MPCA to determine whether those actions may result in a SAI. Under Minn. Stat. § 116.065, subd. 6(c)(3), the MPCA must define the conditions, criteria, or circumstances that establish an environmental or health impact as a SAI.[606]

517. The MPCA maintains that a rigid, numerical approach modeled on New Jersey's framework would not adequately account for the complex and varied circumstances of Minnesota communities. Environmental stressors and socioeconomic vulnerabilities do not necessarily establish a SAI simply because their values exceed a particular statistical benchmark. Rather, the determination must consider how proposed air emissions may interact with existing environmental conditions and community vulnerabilities. The MPCA determined that the proposed rule should adopt a flexible, comprehensive framework that considers both measurable impacts and the broader circumstances affecting community health and the environment.[607]

518. The proposed rule establishes a baseline assessment process to identify existing environmental burdens and determine when further review is warranted. Under parts 7007.6020, subps. 5 and 6, the MPCA uses environmental stressor data and

[603] MPCA Pre-hearing Response to Comments at 260.
[604] Skye (013-02); Sierra Club North Star Chapter (037-22), (037-31), (047-03), (047-06); Frontline Communities Protection Coalition (045-118).
[605] *See* Skye (013-02); Sierra Club North Star Chapter (037-22), (037-31), (047-03), (047-06); Frontline Communities Protection Coalition (045-118).
[606] MPCA Pre-hearing Response to Comments at 262.
[607] MPCA Pre-hearing Response to Comments at 262.

information from the initial assessment to evaluate community conditions. The CIA requirements in part 7007.6090, subps. 3 to 5, provide additional information about existing health and environmental conditions and the potential effects of the proposed permit action. The MPCA maintains that this combination of screening and detailed analysis provides an adequate foundation for determining whether a SAI may occur.[608]

519. The MPCA also explains that each permit action presents unique circumstances based on its emissions, location, and surrounding environmental stressors, making a single methodology for all potential impacts impractical. Many non-air environmental and socioeconomic stressors lack established numerical benchmarks. Accordingly, the proposed rule combines consideration of these broader factors with criteria air pollutant modeling and air toxics risk assessments to evaluate the potential risks associated with proposed air emissions.[609]

520. Finally, part 7007.6100, subp. 1, item B, subitem (4), requires the MPCA to consider public comments when evaluating potential environmental or health impacts. Neighborhood associations, religious organizations, healthcare systems, nonprofits, and community coalitions may participate through public meetings and comment periods. The MPCA maintains that this requirement ensures community perspectives inform the Agency's determinations alongside scientific assessments and environmental stressor data. Together, these provisions establish a framework intended to account for both measurable risks and the lived experiences of communities affected by cumulative environmental burdens.[610]

521. The Minnesota Environmental Justice Table commented on the use of air quality modeling and air toxics risk assessments in determining whether a permit action would result in a SAI. The commenter expressed concern that these quantitative methods evaluate facility-level impacts without adequately accounting for existing cumulative environmental stressors in the surrounding community. The commenter requested that the MPCA jointly consider air quality modeling, air toxics risk assessment results, and CI-MAP data, potentially through combined quantitative metrics or additional criteria that account for the number and types of existing adverse stressors. The commenter also recommended clarifying the consequences when proposed controls or other mitigation measures would not adequately prevent a substantial adverse impact, including denying the permit when those measures are insufficient.[611]

522. In response to this comment, the MPCA clarified that although part 7007.6100, subp. 1, item A, establishes thresholds for evaluating individual air quality modeling and air toxics risk assessment (AERA) results, those results must also be considered alongside other environmental and health impacts under subpart 1, item B. The MPCA explained that CIAs, existing environmental stressors, and the criteria in part 7007.6100, subp. 2, are evaluated together when determining whether a SAI exists. CI-MAP data, available off-site emissions information, and monitoring data also inform

[608] MPCA Pre-hearing Response to Comments at 262.
[609] MPCA Pre-hearing Response to Comments at 262-263.
[610] MPCA Pre-hearing Response to Comments at 263.
[611] Minnesota Environmental Justice Table (031-09).

the modeling and risk assessments. The MPCA further clarified that, under part 7007.6120, subp. 1, item C, the Commissioner must deny the requested permit action if proposed control measures fail to prevent a SAI, unless the Commissioner enters into a CBA under part 7007.6110.[612]

523. The MPCA received several comments regarding the proposed air quality modeling threshold of 50 percent of the National or Minnesota Ambient Air Quality Standards (NAAQS or MAAQS) for determining substantial adverse impacts.[613] Frontline recommended that the threshold account for background air concentrations, emissions from nearby sources, and the facility's full contribution to pollution to better reflect cumulative impacts.[614] The American Petroleum Institute questioned the scientific basis for the 50 percent threshold, arguing that ambient air standards already incorporate health protective margins and that the proposed threshold may function primarily as a policy trigger rather than a scientifically validated indicator of SAI. The American Petroleum Institute argued stronger scientific justification for the threshold is necessary and greater weight should be given to compliance with applicable ambient air standards unless additional site-specific evidence demonstrates otherwise.[615]

524. In response to these comments, the MPCA defended the proposed 50 percent threshold, explaining that compliance with existing NNAAQS and MAAQS alone may not adequately protect communities already experiencing significant pollution. Under part 7007.6100, subp. 1, item A, subitem (1), an individual facility's contribution must remain below 50 percent of the applicable ambient standard, while overall air quality modeling must also account for background concentrations and emissions from off-site sources. The MPCA selected the threshold as a reasonable, health-protective safeguard to prevent a single facility from contributing a disproportionate share of allowable air pollution concentrations, although it acknowledged that the 50 percent level is not necessarily tied to a specific toxicity endpoint.[616]

525. The MPCA clarified that exceeding the threshold does not automatically result in permit denial. Facilities may pursue measures to eliminate, minimize, or mitigate their contributions or, where permitted by the rules, enter into a CBA to address the SAI. The MPCA further explained that the 50 percent threshold applies to the individual facility's contribution, not total cumulative concentrations, because existing air quality modeling already accounts for background pollution and off-site sources. The facility-specific threshold supplements, rather than replaces, the applicable ambient air standards, and modeling and air toxics risk assessment results are considered alongside other environmental and health factors in the final determination.[617]

[612] MPCA Pre-hearing Response to Comments at 263-264.
[613] Frontline Communities Protection Coalition (034-31); American Petroleum Institute (042-04), (042-17).
[614] Frontline Communities Protection Coalition (034-31).
[615] American Petroleum Institute (042-04), (042-17).
[616] MPCA Pre-hearing Response to Comments at 265-266.
[617] MPCA Pre-hearing Response to Comments at 265-266.

526. Commenters shared concerns that the proposed rules do not clearly define the conditions, criteria, or circumstances constituting a substantial adverse impact.[618] The University argued that relying on existing environmental stressors and public comments gives the Commissioner broad discretion and may not satisfy the statutory requirement to define SAIs.[619] Commenters with Frontline similarly expressed concern that the lack of objective standards creates uncertainty for facility owner/operators and communities, and increases the potential for legal challenges.[620]

527. Most commenters recommended adopting a more objective framework modeled on New Jersey's environmental justice law. They urged the MPCA to evaluate existing environmental and public health stressors and determine how a facility would contribute to those burdens. Several suggested that a facility's contribution to a specified number of adverse stressors, or any additional pollution in a community already experiencing substantial environmental burdens, should establish a SAI. Commenters maintained that clearer, measurable criteria would improve consistency, transparency, and predictability in permitting decisions.[621]

528. The MPCA responded to these comments, explaining that Minn. Stat. § 116.065, subd. 6(c)(3), requires it to define the conditions, criteria, or circumstances establishing a SAI, rather than provide a single, explicit definition. The MPCA maintains that parts 7007.6100, subp. 1, items A and B, satisfy this requirement through a structured, multi-factor evaluation. Existing environmental stressors and public comments provide necessary context but are not independently determinative of impacts.[622]

529. Again, the MPCA declined to adopt New Jersey's more rigid, percentile-based approach because it concluded many environmental and social stressors lack established numerical benchmarks, and exceeding a geographic median does not necessarily establish an adverse impact. Instead, the proposed rule allows the MPCA to evaluate how a facility's air emissions interact with existing environmental conditions and community vulnerabilities. The MPCA contends that this flexible framework promotes consideration of each community's circumstances while avoiding reliance on arbitrary, standalone measures.[623]

530. The Chamber argued that the rule must expressly require the MPCA to consider the likelihood and probable significance of potential impacts when determining whether a permit would cause a SAI.[624] The MPCA responded that the proposed rule already addresses likelihood through requirements to evaluate the type, extent, reversibility, and significance of impacts, as well as the extent to which impacts can be anticipated and controlled. The MPCA explained that assigning precise probabilities to

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[618] University of Minnesota (030-42); Frontline Communities Protection Coalition (045-31), (045-49), (045-57), (045-66), (045-76), (045-81), (045-85), (045-122), (045-185).
[619] University of Minnesota (030-42).
[620] Frontline Communities Protection Coalition (045-31), (045-49), (045-57), (045-66), (045-76), (045-81), (045-85), (045-122), (045-185).
[621] *See e.g.,* Frontline Communities Protection Coalition (045-31).
[622] MPCA Pre-hearing Response to Comments at 269.
[623] MPCA Pre-hearing Response to Comments at 269.
[624] Minnesota Chamber of Commerce (027-09).

cumulative impacts is difficult because risks vary with the interactions of stressors and site-specific conditions. It also maintained that the rule's reliance on empirical air modeling and verified baseline data limits consideration to reasonably anticipated impacts, excluding speculative or highly improbable scenarios. For these reasons, the MPCA concluded that adding a separate likelihood criterion would be redundant and unnecessary.[625]

531. Ellen Rozek expressed concern about worsening air quality from wildfire smoke and the disproportionate pollution burden experienced by the Twin Cities and underserved communities. She urged the MPCA to adopt a clear definition of SAI and model its cumulative impacts framework on New Jersey's approach to better protect public health particularly as to wildfire events.[626]

532. The MPCA acknowledged that wildfire smoke contributes to cumulative impacts but explained that its proposed rule addresses additional industrial pollution through a requirement that individual facility emissions remain below 50 percent of applicable ambient air quality standards, combined with a broader, multi-factor review under part 7007.6100. The MPCA further maintained that a single, fixed definition of substantial adverse impact could limit its ability to account for differences in local environmental stressors, emissions, and community health conditions. Citing Minn. Stat. § 116.065, subd. 6(c)(3), the MPCA concluded that the proposed criteria provide the required framework, while allowing determinations to reflect each community's circumstances.[627]

533. The MPCA received two comments expressing concern about how avoidance and mitigation measures are considered when determining whether a permit action would cause a SAI.[628] Rep. Lee argued that the proposed criteria rely on the possibility of regulatory mitigation rather than enforceable commitments by the facility owner or operator. He recommended requiring the Commissioner to consider only mitigation measures the owner or operator commits to implement in writing.[629]

534. Side Corridor Residents supported effective mitigation but urged the MPCA to require a hierarchy of avoidance, minimization, and then mitigation. They recommended requiring credible evidence that proposed measures would reduce impacts, independent MPCA evaluation, and monitoring and reporting to verify effectiveness. The commenter also urged the Commissioner to retain authority to require corrective action if mitigation measures fail, ensuring that unsupported mitigation claims do not allow projects to avoid CBA requirements.[630]

535. The MPCA responded to these comments by explaining that parts 7007.6100, subp. 2, items C and D, require mitigation measures to be legally enforceable,

[625] MPCA Pre-hearing Response to Comments at 269-270.
[626] Sierra Club North Star Chapter (037-02).
[627] MPCA Pre-hearing Response to Comments at 270-271.
[628] Representative Lee (033-13); Frontline Communities Protection Coalition (045-174).
[629] Representative Lee (033-13).
[630] Frontline Communities Protection Coalition (045-174).

technologically feasible, and supported by scientific evidence and public health or environmental literature. Effective measures must be incorporated into the permit application as binding conditions before they can be used to avoid a SAI determination. If the facility does not commit to the measures in writing, the determination remains in place, and the permit cannot be issued unless the owner/operator enters the CBA process under part 7007.6110.[631]

536. In response to calls for a formal mitigation hierarchy and stronger verification, the MPCA maintained that the existing rule provides independent technical review and allows enforceable monitoring, recordkeeping, and reporting requirements to verify ongoing compliance. The MPCA concluded that these provisions prevent reliance on speculative mitigation claims and adequately protect against using unproven measures to bypass CBA requirements, making additional rule amendments unnecessary.[632]

537. The MPCA received two comments urging clear, strong rules defining SAI to prevent regulatory loopholes and ensure that pollution-related harms are adequately addressed.[633] One commenter also expressed concern that environmental harms involving water and soil pollution have been historically overlooked.[634]

538. The MPCA responded that Minn. Stat. § 116.065 limits the rulemaking to specified air quality permit actions in or near EJ areas. The Agency explained that a single, fixed definition of SAI could fail to capture the varied and compounding effects of different projects and local environmental conditions. Instead, the MPCA maintained that the multi-factor criteria in part 7007.6100, subp. 2, items A to E, satisfy the statutory requirement by considering environmental stressors, baseline conditions, public comments, and other relevant factors. The MPCA concluded that this flexible framework better accommodates complex cumulative impacts, while water and soil pollution remain subject to separate regulatory frameworks.[635]

539. Frontline supported considering qualitative factors and broader community conditions in substantial adverse impact determinations but requested clearer standards for weighing the initial assessment, CIA, public comments, mitigation measures, and existing environmental stressors. Frontline emphasized that written decisions should explain how each factor influenced the outcome to promote consistency, transparency, and public confidence.[636]

540. The MPCA responded that the proposed rule establishes a uniform, systematic review process while preserving flexibility to account for project-specific circumstances and impacts that lack numerical benchmarks. The MPCA maintained that part 7007.6100, subp. 2, items A to E, provides the required evaluation framework.

[631] MPCA Pre-hearing Response to Comments at 272.
[632] MPCA Pre-hearing Response to Comments at 272-273.
[633] Sierra Club North Star Chapter (037-30); Lois Norrgard (040-03).
[634] Lois Norrgard (040-03).
[635] MPCA Pre-hearing Response to Comments at 273-274.
[636] Frontline Communities Protection Coalition (045-173).

Additionally, part 7007.6100, subp. 4, requires a written decision document explaining the determination, the information considered, and how that information was weighed. The MPCA concluded that these requirements support consistent, transparent, and reviewable decisions without imposing rigid mathematical weighting criteria.[637]

541. The MPCA has established that part 7007.6100 is needed and reasonable. Part 7007.6100 is approved.

N. Minn. R. 7007.6110 — Community Benefit Agreements

542. Part 7007.6110 governs the CBA process when the MPCA finds a SAI. A CBA is an enforceable agreement between the MPCA and the facility owner or operator. The rule requires the proposed CBA to prioritize benefits that directly affect residents of the impacted EJ area. Benefits can be economic, environmental, health-related, social, or otherwise tangible.[638]

543. The rule's provisions require an owner or operator to develop a proposed CBA. The CBA must be crafted using community input, the CIA, the SIA determination, public meetings, and public comments. The process includes a draft CBA that is made publicly available before the second CBA meeting. The Commissioner must consider, at a minimum, the same factors. The MPCA enters into the CBA only if the proposed agreement satisfies the rule's requirements, including addressing issues raised during public participation and giving priority to benefits directly affecting EJ area residents.[639]

544. A finding of SAI does not automatically end the permitting process. Under the proposed rule, the permit must be denied unless the Commissioner enters into a CBA with the owner or operator. If a CBA is entered into, the permit may proceed subject to conditions designed to protect health and the environment.[640]

545. The MPCA stated the purpose of this part is to implement Minn. Stat. § 116.065, subd. 6(c)(4)(i) through (iii), which direct the MPCA to establish the required contents of a CBA)and the procedures for entering into such an agreement, including outreach and engagement with residents of the impacted EJ area and consideration of community benefits. Part 7007.6110 establishes the requirements governing CBA contents and the process for negotiating and entering into an agreement. A proposed CBA that does not satisfy these requirements cannot be accepted by the Commissioner as meeting the rule's requirements.[641]

546. Part 7007.6110 identifies the outreach and engagement procedures applicable to CBAs, in conjunction with the public participation requirements established in part 7007.6080. It also specifies when owners and operators must submit a proposed CBA, how the MPCA will determine whether to enter into an agreement with a stationary

[637] MPCA Pre-hearing Response to Comments at 275.
[638] Ex. C; *see* Ex. D at 143-158.
[639] Ex. C; Ex. D at 154-157.
[640] Ex. C; Ex. D at 156.
[641] Ex. D at 143-144.

source owner or operator, the procedures for addressing insufficient information to make that determination, and the requirements for publicly posting documents related to the Agency's decision. Establishing these requirements in rule is reasonable because it provides a defined process for developing and evaluating CBAs and fulfills the statutory directives established in Minn. Stat. § 116.065.

547. The MPCA received multiple comments regarding the CBA process under part 7007.6110.[642] Commenters emphasized the need for meaningful community participation, ongoing communication with affected residents, and greater clarity regarding the Commissioner's authority to reject a CBA or deny a permit.[643]

548. Several commenters expressed concern that the proposed rules place primary responsibility for developing the CBA on the facility owner or operator, while giving community members limited influence over the final agreement.[644] Commenters recommended establishing clear criteria for denying CBAs and permits, holding multiple community meetings with opportunities for virtual participation, and ensuring residents can shape agreements from the outset rather than merely comment on completed drafts. Other recommendations included consulting experienced CBA practitioners, Frontline members, local governments, and attorneys, as well as providing affected communities with independent technical assistance and other resources to participate effectively.[645] Ramsey County Commissioner Mai Chong Xiong further emphasized that residents of EJ areas should have meaningful decision-making authority over agreements intended to address adverse environmental and health impacts, rather than simply being consulted about benefits proposed by facility owners or operators.[646]

549. To these commenters, the MPCA explained that part 7007.6080 requires early and ongoing engagement with affected communities, beginning when a CIA is required and continuing through the preliminary CBA determination. Owners or operators must develop a public participation plan addressing public meetings, notices, public comments, and disclosure of information. The MPCA must review and approve the plan, attend required public meetings, and post information on its website to ensure public accessibility.[647]

550. The MPCA further noted that owners or operators must maintain an electronic mailing list for interested persons and that the Agency must post the CBA public participation plan at least 30 calendar days before the required pre-drafting public meeting. This advance notice allows residents and community organizations to review the plan, provide feedback, and prepare for participation. To help community members understand potentially technical information, the rules specify information that must be presented at public meetings and require fact sheets to be posted at least 30 days before

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[642] Elizabeth Bonin (025-02); Frontline Communities Protection Coalition (045-104), (045-121), (045-131), (045-161), (045-182); Commissioner Xiong (056-01).
[643] *See* Elizabeth Bonin (025-02); Frontline Communities Protection Coalition (045-104), (045-121), (045-131), (045-161), (045-182); Commissioner Xiong (056-01).
[644] *See* Frontline Communities Protection Coalition (045-104), (045-121), (045-131), (045-161), (045-182).
[645] *See, e.g.,* Frontline Communities Protection Coalition (045-131).
[646] Commissioner Xiong (056-01).
[647] MPCA Pre-hearing Response to Comments at 278-279.

each meeting. In addition, an MPCA representative must attend meetings to answer questions about the CBA process.[648]

551. Finally, the MPCA stated that the proposed public participation and CBA requirements were informed by extensive outreach to universities, consultants, local governments, environmental justice communities, industry representatives, and environmental and community advocacy groups. The agency acknowledged that the program is new and expressed its willingness to learn from implementation and receive feedback on how to improve outreach, engagement, and community support.[649]

552. The MPCA received three comments regarding opportunities for public comment and how comments would be considered when approving or denying a CBA. The Hamline Midway Coalition, Stephanie Hankerson, and Ramsey County Commissioner Xiong expressed concern that the proposed rules do not clearly establish how public input will influence the final agreement or provide a defined process for resolving disagreements.[650]

553. The Hamline Midway Coalition questioned whether the process could result in endless revisions without a clear pathway to permit denial if meaningful community benefits could not be achieved.[651] Hankerson recommended establishing a clear opportunity for public comment before CBA approval, transparent revision procedures with defined deadlines, and an explicit process for denying a permit if an acceptable agreement cannot be reached.[652]

554. Commissioner Xiong emphasized that affected residents currently have limited authority because facility owners or operators develop the agreements and are required to consider, but are not expressly required to prioritize or adopt, community recommendations. She urged the MPCA to provide residents with meaningful decision-making power over agreements intended to address adverse environmental and health impacts.[653] Commenters requested greater transparency and accountability in the CBA approval process, including clearly defined public comment opportunities, revision deadlines, criteria for resolving unacceptable agreements, and a pathway for permit denial when meaningful community benefits cannot be secured.[654]

555. Regarding the various questions and concerns about resident bargaining power in the CBA process, the MPCA reiterated that part 7007.6080 requires owners or operators to provide at least 30 calendar days for public comment before and after preparation of a draft CBA, with each comment period remaining open for at least 15

[648] MPCA Pre-hearing Response to Comments at 278.
[649] MPCA Pre-hearing Response to Comments at 279.
[650] Hamline Midway Coalition (003-09); Stephanie Hankerson (019-04); Commissioner Xiong (056-01).
[651] Hamline Midway Coalition (003-09).
[652] Stephanie Hankerson (019-04).
[653] Commissioner Xiong (056-01).
[654] Hamline Midway Coalition (003-09); Stephanie Hankerson (019-04); Commissioner Xiong (056-01).

calendar days after the associated public meeting. These opportunities allow the public to submit comments before the MPCA makes its preliminary determination on the CBA.[655]

556. Under part 7007.6110, the MPCA noted it must consider public comments and the owner's or operator's responses when deciding whether to enter into a CBA. The Agency may approve an agreement only if the CBA and the responses address issues raised in public comments. The MPCA must also document how it weighed this information and make its determination publicly available within 30 calendar days. If the preliminary determination is to enter into the CBA, the public may submit additional comments during the draft permit's public notice and comment period.[656]

557. The MPCA stated that, because comments will vary depending on the permit application and proposed CBA, it concluded it would not be feasible to establish an exhaustive list of how every comment will be considered and weighed. Instead, the rules require the Agency to evaluate whether the proposed CBA and the owner's or operator's responses address the concerns raised. The basis for these decisions must be documented to promote transparency and accountability.[657]

558. The MPCA received a significant number of comments regarding whether affected communities should be able to oppose or reject a CBA. Commenters expressed concern that the proposed rules do not clearly allow community members to advocate against a CBA or establish specific criteria for the Commissioner to reject an agreement. They argued that gathering public input without allowing residents to express opposition to a CBA could limit meaningful community participation and undermine the purpose of the 2023 Cumulative Impacts law.[658]

559. Frontline submitted comments urging the MPCA to establish clear criteria for rejecting CBAs and to provide a meaningful way for communities to express that an agreement is unwanted. Frontline argued that the rules should clarify when permits must be denied if an acceptable a CBA cannot be reached, consistent with statutory requirements.[659]

560. Members of the Sierra Club also requested a clear process for community members to oppose a CBA.[660] Lois Norrgard similarly called for explicit rejection criteria and emphasized that communities should be able to reject agreements when the proposed benefits do not justify the additional pollution burden.[661]

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[655] MPCA Pre-hearing Response to Comments at 280.
[656] MPCA Pre-hearing Response to Comments at 280.
[657] MPCA Pre-hearing Response to Comments at 280-281.
[658] Sierra Club North Star Chapter (037-15), (047-06); Lois Norrgard (040-05); Frontline Communities Protection Coalition (034-40), (045-04), (045-10), (045-34), (045-62), (045-67), (045-78), (045-82), (045-95), (045-186), (045-194).
[659] Frontline Communities Protection Coalition (034-40), (045-04), (045-10), (045-34), (045-62), (045-67), (045-78), (045-82), (045-95), (045-186), (045-194).
[660] Sierra Club North Star Chapter (037-15), (047-06).
[661] Lois Norrgard (040-05).

561. Several commenters recommended establishing a community council composed of community organizations and local leaders. The proposed council would conduct outreach, represent affected residents, participate in negotiations with facility owners or operators, and recommend whether a CBA should be approved or rejected. Commenters also recommended requiring the Commissioner to respond to the council's recommendations and explain the reasons for the Agency's decision.[662]

562. Additional concerns included the need for meaningful community influence over permitting decisions, stronger protections for environmental justice communities, and clear standards to prevent repeated CBA revisions without resolution. Commenters also recommended requiring community benefits beyond employment opportunities and establishing deadlines for resolving unacceptable agreements.[663]

563. The MPCA responded that parts 7007.6080 and 7007.6110 require multiple public meetings and comment periods to provide community members opportunities to express support for or opposition to a CBA and recommend changes. Owners or operators must accept written and oral comments, provide meeting recordings, and conduct public comment periods, with an MPCA representative attending required meetings.[664]

564. The MPCA reiterated that it must consider public comments and the CIA when deciding whether to enter into a CBA. If the proposed agreement and the owner's or operator's responses do not address issues raised in public comments, the MPCA cannot enter into the agreement. However, the MPCA declined to establish a process allowing communities to formally approve or reject a CBA. It explained that doing so would impermissibly delegate the Agency's permitting authority to outside parties under Minn. R. 1400.2100. The MPCA also noted that Minn. Stat. § 116.065, subd. 5, establishes the CBA as an agreement between the Agency and the facility owner or operator, not the community.[665]

565. Like Sierra Club and Frontline, the Minnesota Environmental Justice Table recommended that communities be allowed to advise the MPCA on whether a CBA is appropriate and that the Commissioner consider those recommendations when making permit decisions.[666] The MPCA responded that parts 7007.6080 and 7007.6110 provide opportunities for public input before a CBA is reviewed, including at least 30 calendar days for public comment before and after the draft CBA is prepared. The MPCA must consider public comments and the owner's or operator's responses when deciding whether to enter into a CBA, and may do so only if the agreement and responses address issues raised in those comments. The MPCA must also document how it weighed this information and make its determination publicly available within 30 calendar days. If the

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[662] *See* Sierra Club North Star Chapter (037-15), (047-06); Lois Norrgard (040-05); Frontline Communities Protection Coalition (034-40), (045-04), (045-10), (045-34), (045-62), (045-67), (045-78), (045-82), (045-95), (045-186), (045-194).
[663] *See, e.g.,* Lois Norrgard (040-05); Frontline Communities Protection Coalition (034-40).
[664] MPCA Pre-hearing Response to Comments at 285.
[665] MPCA Pre-hearing Response to Comments at 285.
[666] Minnesota Environmental Justice Table (031-10).

MPCA's preliminary determination is to enter into a CBA, the public may submit additional comments during the draft permit's public notice and comment period.[667]

566. The MPCA received nine comments requesting a formal process for community members to influence permit approval or denial decisions involving CBAs. Commenters argued that the proposed rules did not provide a clear way for communities to oppose a CBA or request permit denial, potentially limiting meaningful participation and weakening communities' ability to negotiate protections against cumulative pollution and health impacts.[668]

567. Several commenters recommended establishing representative community councils composed of local organizations and leaders. These councils would participate in outreach and CBA negotiations, recommend whether a CBA should be approved or rejected, and receive a written explanation from the Commissioner addressing the recommendation. Other commenters emphasized the need for clear permit denial criteria and a meaningful ability for communities to say no to pollution they believe would harm health and the environment.[669]

568. In response to comments on community involvement in permit decisions, the MPCA explained that Minn. Stat. § 116.065, subd. 5(b), requires permit denial when a CIA determines that a proposed permit action would cause a SAI on an EJ area and its residents, unless the Commissioner enters into a CBA with the facility owner or operator. The Cumulative Impact Rule requires that MPCA assess potential impacts using information about existing environmental stressors and community conditions, CIA requirements, criteria pollutant modeling, and air toxics risk assessments. As previously discussed, the rules do not establish numerical thresholds for every non-air stressor because appropriate benchmarks may be unavailable or change as scientific knowledge develops.[670]

569. The MPCA clarified that the rules apply to major source air permits and state air permits involving new construction, facility expansions, and certain permit reissuances. If a SAI is identified, the owner or operator must develop a CBA through the required public participation process. The MPCA must consider public comments and determine whether the agreement and the owner's or operator's responses address the issues raised. If the requirements are not met, the owner or operator must provide additional information or revise the agreement. If the deficiencies are not addressed, the MPCA cannot enter into the CBA and must deny the permit.[671]

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[667] MPCA Pre-hearing Response to Comments at 285-286.
[668] Jeanne Norrgard (029-03); Frontline Communities Protection Coalition (034-40), (045-78), (045-95), (045-186); Health Professionals for a Healthy Climate (046-47); Sierra Club North Star Chapter (047-03); Madonna Ohse (050-03); Ivan (058-02).
[669] *See* Jeanne Norrgard (029-03); Frontline Communities Protection Coalition (034-40), (045-78), (045-95), (045-186); Health Professionals for a Healthy Climate (046-47); Sierra Club North Star Chapter (047-03); Madonna Ohse (050-03); Ivan (058-02).
[670] MPCA Pre-hearing Response to Comments at 288.
[671] MPCA Pre-hearing Response to Comments at 289.

570. The MPCA concluded that communities cannot be given formal authority to approve or deny permits because that would impermissibly delegate the Agency's permitting authority under Minn. R. 1400.2100. The rules require early and ongoing community engagement through public participation plans, meetings, notices, comment periods, and accessible information, including language and translation requirements. The MPCA must document how it weighed the information and public comments in deciding whether to enter into a CBA and make that document publicly available within 30 calendar days. Additional public comments may also be submitted during the draft permit's public notice and comment period.[672]

571. The MPCA received many comments regarding CBA revisions and permit denial. These commenters expressed concern that the proposed rules allowed facility owners or operators to repeatedly revise and resubmit a CBA until it is approved, without clear deadlines, defined denial criteria, or a meaningful process for communities to oppose an agreement and seek permit denial.[673]

572. Commenters requested clear standards identifying when the Commissioner must deny a CBA or permit, along with a transparent revision process and limits on repeated revisions. Several recommended a "two-strike" rule or other deadlines to prevent indefinite negotiations. Others emphasized the need for public comment opportunities throughout the revision process and for the Commissioner to explain how community concerns influenced the decision.[674]

573. Many commenters recommended establishing representative community councils composed of local organizations and residents to participate in CBA negotiations, recommend approval or rejection, and receive a reasoned response from the Commissioner. Commenters also stressed that CBAs should provide meaningful benefits beyond employment, address existing environmental and health burdens, and protect communities from additional pollution. Frontline additionally called for clear enforcement procedures for CBA violations, including potential permit revocation for continued noncompliance.[675]

574. In response, the MPCA explained that Minn. Stat. § 116.065, subd. 5(b), and part 7007.1000, subp. 2, item H, require permit denial if the Commissioner does not enter into a CBA when the statutory conditions apply. Under part 7007.6110, subp. 9, a CBA must address issues raised during public notice and comment periods, and prioritize benefits that directly affect residents of the impacted EJ area. If these requirements are not met, the owner or operator must provide additional information or revise the proposed

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[672] MPCA Pre-hearing Response to Comments at 289.

[673] Hamline Midway Coalition (003-09); Ben Karlgaard (005-02); Jan Johnson (008-01); Stephanie Hankerson (019-04); Coming Clean Network (024-05); Elizabeth Bonin (025-02); Frontline Communities Protection Coalition (034-41), (045-104); Minnesota Public Health Association (035-05); Health Professionals for a Health Climate (038-11), (046-08), (046-12), (046-16), (046-20), (046-24), (046-28), (046-32), (046-36), (046-40), (046-45); Lois Norrgard (040-05); Richa Bisht (059-02).

[674] *See, e.g.,* Hamline Midway Coalition (003-09); Elizabeth Bonin (025-02); Frontline Communities Protection Coalition (034-41).

[675] *See, e.g.,* Hamline Midway Coalition (003-10); Frontline Communities Protection Coalition (034-35); Minnesota Public Health Association (035-05).

CBA. If the deficiencies remain unaddressed, the MPCA cannot enter into the agreement and must deny the permit.[676]

575. The MPCA must document how it weighed the relevant information when deciding whether to enter into a CBA and make that document publicly available within 30 calendar days of its determination. If the preliminary determination is to enter into a CBA, the public may submit additional comments during the draft permit's public notice and comment period.[677]

576. These requirements apply to major source air permits and qualifying state air permits involving new construction, facility expansions, or permit reissuances when the CIA identifies a substantial adverse impact. General, registration, and capped permits are excluded because they are not included in the statutory definition of a permit subject to the proposed rules.[678]

577. The MPCA further explained that Minn. Stat. § 116.065, subd. 6(c)(4), requires rules establishing CBA content and procedures, including active community outreach and prioritization of benefits that directly affect impacted residents. The MPCA considers revisions an important part of an iterative process that allows facility owners or operators, the Agency, and communities to develop agreements that meet regulatory requirements and address local needs. Because each CBA is specific to the affected community, the MPCA declined to establish a universal deadline or limit on revisions, reasoning that such restrictions could prevent agreements from adequately addressing community needs.[679]

578. The MPCA received approximately 33 comments recommending that the rules establish a community advisory council or similar representative body to strengthen community involvement in CBA development and negotiations. Commenters argued that public meetings and comment periods alone do not provide sufficient community influence over decisions affecting EJ areas. The commenters sought a formal, community-centered process that would give affected residents a stronger role in shaping CBAs, communicating local priorities, and informing the Commissioner's decisions, rather than limiting participation to providing comments on agreements developed primarily by facility owners or operators.[680]

579. The MPCA explained that it did not establish a community advisory council for each CBA or give community councils authority to approve or deny CBAs because it concluded doing so would impermissibly delegate its permitting authority, contrary to

[676] MPCA Pre-hearing Response to Comments at 295.
[677] MPCA Pre-hearing Response to Comments at 296.
[678] MPCA Pre-hearing Response to Comments at 296.
[679] MPCA Pre-hearing Response to Comments at 296.
[680] Hamline Midway Coalition (003-10); Ben Johnson (008-01); Stephanie Hankerson (019-05); Coming Clean Network (024-09); Frontline Communities Protection Coalition (034-35), (045-04), (045-10), (045-32), (045-34), (045-39), (045-50), (045-62), (045-67), (045-78), (045-82), (045-86), (045-95), (045-186), (045-194); Minnesota Public Health Association (035-05); Lois Norrgard (040-05); Health Professionals for a Healthy Climate (038-11), (046-08), (046-12), (046-16), (046-20), (046-24), (046-28), (046-32), (046-36), (046-40), (046-45); Madonna Ohse (050-03).

Minn. R. 1400.2100. Because a CBA is required before a permit is issued when a CIA identifies a SAI, granting approval or denial authority to a community council would improperly transfer permitting authority to external parties. The MPCA also noted that CBAs are agreements between the facility and the Agency under Minn. Stat. § 116.065, subd. 5, and are subject to the MPCA's enforcement authority. The Agency could not enforce an agreement between a facility and a community. In addition, public engagement revealed widely differing views about advisory councils and concerns about member selection, adequate representation, the time needed to establish councils, and placing responsibility for consequential decisions on a small number of residents.[681]

580. Although community members do not vote on CBAs, the MPCA contends that the proposed rules establish multiple opportunities for meaningful participation. Part 7007.6080 requires early and ongoing engagement through public participation plans, public meetings, notices, public comments, and access to relevant information. Owners or operators must hold at least two public meetings for the CIA and two for the CBA, accept written and oral comments, provide meeting recordings, and include an MPCA representative at required meetings. The MPCA must review and approve public participation plans and post relevant information on its website. Owners or operators must also maintain an electronic mailing list so interested residents and community organizations can receive and share notices.[682]

581. The MPCA further explained that public participation plans must be posted at least 30 calendar days before the meeting preceding CBA development, allowing residents and organizations to review proposed outreach activities and provide feedback. The rules do not prevent communities from forming their own advisory groups, and owners or operators may hire third parties to assist with outreach and engagement.[683]

582. When deciding whether to enter into a CBA, the MPCA must consider public comments and the owner's or operator's responses and document how it weighed the information. The determination must be made publicly available within 30 calendar days, and additional comments may be submitted during the draft permit's public notice and comment period. The MPCA concluded that these requirements implement the statutory mandate for active outreach and significant community participation under Minn. Stat. § 116.065, subd. 6(c)(4)(i), while acknowledging that the program is new and that implementation may identify ways to improve community engagement.[684]

583. Several commenters recommended allowing community members and organizations to participate directly in negotiations with facility owners or operators.[685] Frontline proposed establishing an ad hoc neighborhood advisory council composed of community leaders, organizations, and interested residents. The council would assist with public participation, negotiate CBA terms, recommend approval, modification, or denial,

[681] MPCA Pre-hearing Response to Comments at 304.
[682] MPCA Pre-hearing Response to Comments at 305.
[683] MPCA Pre-hearing Response to Comments at 305.
[684] MPCA Pre-hearing Response to Comments at 305-306.
[685] Stephanie Hankerson (019-03); Representative Lee (033-04), (033-14); Frontline Communities Protection Coalition (034-35), (045-32), (045-178).

and receive a written response from the Commissioner explaining the Agency's decision.[686]

584. Commenters also expressed concern that the rules do not clearly establish a pathway for denying a permit when an adequate CBA cannot be reached. They emphasized that meaningful community involvement and enforceable permit denial provisions are necessary to ensure that CBAs address local concerns and fulfill the legislature's intent to strengthen protections for environmental justice communities.[687]

585. In answer, the MPCA notes that Minn. Stat. § 116.065, subd. 5(b), provides that the Commissioner must deny a permit for a facility in an EJ area if the CIA determines that the proposed permit, combined with existing environmental stressors, would cause a SAI on the environment or residents' health, unless the Commissioner enters into a CBA with the facility owner or operator. The statute requires a CBA to be between the MPCA and the owner or operator. The MPCA believes this requirement reflects its responsibility as the regulatory authority to make permitting decisions, which cannot be delegated.[688]

586. The MPCA points out that the proposed rules establish multiple opportunities for residents of an impacted EJ area to participate in the CBA development process. Part 7007.6080, subp. 4, item B, establishes public meeting requirements, while part 7007.6110, subp. 4, item A, allows residents to propose community benefits for discussion with the owner or operator at CBA public meetings. Benefits that directly affect residents of the impacted EJ area must be prioritized under part 7007.6110, subp. 4, item C.[689]

587. The MPCA stated the rules also require the owner or operator to develop a CBA public participation plan under part 7007.6080, subpart 3. The plan must establish outreach methods tailored to the requirements of part 7007.6080, and encourage community participation and engagement. Part 7007.6080, subp. 5, establishes public meeting requirements to facilitate participation, including advance meeting notices, opportunities to submit comments, accessible meeting locations and times, meeting recordings, interpretation and translation services, and the provision of relevant information. Subpart 6, items C and D, establish additional requirements for the two CBA-specific public meetings, including opportunities to review and discuss information concerning the draft CBA, ask questions, submit comments, and propose benefits. Subpart 11 allows additional outreach and engagement, providing flexibility for owners or operators to expand their efforts and for community members to request additional engagement.[690]

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[686] Frontline Communities Protection Coalition (034-35).
[687] *See, e.g.,* Stephanie Hankerson (019-03); Frontline Communities Protection Coalition (034-35), (045-32), (045-178).
[688] MPCA Pre-hearing Response to Comments at 308; *see* Minn. R. 1400.2100(F).
[689] MPCA Pre-hearing Response to Comments at 308.
[690] MPCA Pre-hearing Response to Comments at 308.

588. The MPCA noted that public input must be considered throughout the CBA development process. Under part 7007.6110, subp. 6, item A, subitem (2), the owner or operator must consider comments received during the public meeting and comment period before drafting the CBA. Part 7007.6080, subp. 9, item E, subitem (2), requires the MPCA to post the draft CBA on its website at least 30 calendar days before the subsequent public meeting, allowing community members and organizations time to review the draft and provide informed feedback. The owner or operator must also consider comments received during the public meeting and comment period following publication of the draft CBA, as required by part 7007.6110, subp. 7, item B, subitem (2). These requirements ensure that community input informs multiple stages of CBA development.[691]

589. Before entering into a CBA, the MPCA must consider the CIA and public comments under part 7007.6110, subp. 9, item B, subitems (2) and (5), and determine whether the proposed CBA addresses issues raised during public notice and comment periods under subpart 9, item A, subitem (4). If these requirements are not met, subpart 9, item C, requires the owner or operator to provide additional information or revise the CBA. If the deficiencies remain unresolved, the MPCA cannot enter into the agreement, and the permit must be denied under Minn. Stat. § 116.065, subdivision 5(b), as reflected in the language in part 7007.1000, subp. 2, item H.[692]

590. The MPCA maintains that these provisions provide multiple opportunities for community members and organizations to participate and have their comments considered by both the owner or operator and the MPCA, consistent with the statutory requirements. While the CBA is a two-party agreement between the MPCA and the owner or operator, community input informs its development and the MPCA's decision whether to enter into it. If a CBA is revised following an initial determination that it does not satisfy the rule requirements, and the MPCA preliminarily determines that the revised agreement is acceptable, the public has the right to submit additional comments on the revised CBA during the public notice and comment period for the draft permit.[693]

591. The MPCA received one comment requesting that regenerative farming practices be identified as eligible community benefits under part 7007.6110, and that cumulative impact findings be allowed to limit large agribusiness expansion in EJ areas with existing high burdens. Ryann Geldner cited regenerative farming practices' potential to reduce chemical drift and nutrient runoff and protect air, water, and biodiversity.[694] The MPCA responded that the proposed rule does not preclude these practices or expansion limitations from being included as community benefits. The rule does not prescribe an exhaustive list of benefits because each CBA must be tailored to the needs of the community, and the MPCA believes this flexibility allows for a broader range of potential benefits.[695]

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[691] MPCA Pre-hearing Response to Comments at 308; *see* Ex. D at 153.
[692] MPCA Pre-hearing Response to Comments at 309.
[693] MPCA Pre-hearing Response to Comments at 309.
[694] Ryann Geldner (028-04).
[695] MPCA Pre-hearing Response to Comments at 309-10; *see* Ex. D at 150.

592. The MPCA received six comments from potential permit applicants recommending additional criteria and modifications to community benefit requirements under part 7007.6110.[696]

593. The University of Minnesota requested clearer standards for acceptable benefits, proportionality to the proposed project's environmental and health impacts, consideration of positive and negative impacts, and safeguards against requiring technically infeasible alternatives that could compromise critical infrastructure. It also recommended recognizing existing community investments and programs to avoid uncertainty and duplication.[697]

594. The American Petroleum Institute recommended that benefits be proportional to demonstrated impacts, technically feasible, within the applicant's authority, and reasonably connected to the permitted activity, rather than addressing unrelated socioeconomic conditions.[698]

595. The Minnesota Hospital Association argued that CBAs should be directly tied to project-related impacts and should not be a prerequisite for permits when hospitals meet applicable environmental requirements. It also requested that existing hospital contributions, including charity care, community health programs, workforce development, and other community investments, be recognized as satisfying some or all CBA obligations in consideration of the significant public health benefits nonprofit hospitals provide to their communities.[699]

596. In response, the MPCA explained that establishing monetary values or proportionality requirements for community benefits is infeasible because permit actions, environmental stressors, cumulative impacts, and community needs vary widely. Requiring benefits to be directly proportional to project impacts could overly restrict CBAs and prevent communities from prioritizing benefits that best address their needs. Accordingly, part 7007.6110, subp. 4, provides flexibility for communities and owners or operators to identify appropriate and feasible benefits, consistent with Minn. Stat. § 116.056, subd. 6(c)(4)(ii), which prioritizes benefits that directly affect EJ area residents.[700]

597. The MPCA agreed with these commenters that community benefits must be feasible and within the owner's or operator's ability to provide. Benefits that are infeasible or could compromise critical safety functions or infrastructure should not be included in a draft or proposed CBA. Existing community benefits must also be disclosed in the initial assessment under part 7007.6050, subp. 3, item C, subitem (2), and considered when determining whether a CIA is required. If a CIA is conducted, it must describe the facility's socioeconomic impacts on EJ area residents under part 7007.6090,

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[696] *See* University of Minnesota (030-43), (030-44); American Petroleum Institute (042-08), (042-20); Minnesota Hospital Association (051-09), (051-20).
[697] University of Minnesota (030-43), 030-44).
[698] American Petroleum Institute (042-08), (042-20).
[699] Minnesota Hospital Association (051-09), (051-20).
[700] MPCA Pre-hearing Response to Comments at 312.

subp. 3, item I. This information helps the MPCA evaluate the facility's effects on community health and wellbeing when determining whether SAI would result and whether to enter into a CBA. Existing benefits may therefore inform the MPCA's decisions throughout the permitting and CBA processes.[701]

598. The MPCA received nine comments regarding substantial adverse impacts, community benefits, and the CBA process that recommended revisions to part 7007.6110. These commenters urged the MPCA to ensure that CBAs provide enforceable, community-driven protections, rather than serving as substitutes for pollution prevention or meaningful environmental and health safeguards.[702]

599. Commenters expressed concern that CBAs could allow permits to be issued despite SAI without adequately preventing or mitigating harm.[703] Beth Shaw argued that pollution prevention and emissions reduction should take priority over unrelated benefits, and recommended measurable outcomes, enforceable protections, community approval, and remedies for noncompliance.[704] Lois Norrgard recommended establishing a community council to represent residents, provide recommendations on proposed CBAs, and allow communities to reject agreements.[705] Aubree Derksen called for a complete rewrite of the rules, to be developed with Frontline members and attorneys. Derksen cited her concerns about enforceability, inadequate community involvement, the relationship between CBAs and local zoning authority, impacts extending beyond the one-mile boundary, and the need to address new facilities, such as hyperscale data centers.[706]

600. The Prairie Island Indian Community recommended requiring tangible, measurable, and enforceable benefits that directly address identified cumulative burdens and improve community health and environmental conditions.[707] Ramsey County Commissioner Xiong recommended meaningful community approval, potential independent oversight, and benefits directly connected to harms identified in the CIA. Suggested benefits included emissions reductions, air filtration, health screenings, environmental monitoring, lead remediation, and green buffers. Commissioner Xiong also emphasized long-term, community-controlled investments; protections against displacement; transparency in decision-making; and clear procedures for resolving disagreements, modifying agreements, reporting concerns, and providing remedies when promised benefits are not delivered.[708]

601. The MPCA responded that each CBA must be tailored to the proposed permit action, its impacts, and the needs of residents in the impacted EJ area. Because

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[701] MPCA Pre-hearing Response to Comments at 312-313.
[702] Beth Shaw (036-11); Lois Norrgard (040-05); Frontline Communities Protection Coalition (045-06), (045-204); Prairie Island Indian Community (052-05), Commissioner Xiong (056-02), (056-03), (056-08), (056-09).
[703] *See e.g.,* Beth Shaw (036-11); Lois Norrgard (040-05); Frontline Communities Protection Coalition (045-06), (045-204).
[704] Beth Shaw (036-11).
[705] Lois Norrgard (040-05).
[706] Aubree Derksen (045-06), (045-204).
[707] Prairie Island Indian Community (052-05).
[708] Commissioner Xiong (056-02), (056-03), (056-08), (056-09).

these factors vary, the MPCA determined that prescribing specific benefits or requiring benefits to be proportional to project impacts would be overly restrictive. Minn. Stat. § 116.065, subd. 6(c)(4)(ii), and part 7007.6110, subp. 4, instead require consideration of non-economic benefits and prioritize benefits that directly affect EJ area residents. The rule, however, does not prevent communities from requesting benefits that address pollution prevention, emissions reduction, or identified adverse impacts.[709]

602. In its response to these comments, the MPCA emphasized that residents may propose benefits and discuss their priorities and the feasibility of proposed benefits with owners or operators during required public meetings. Residents may also submit comments during public notice and comment periods, which owners or operators must address. Before entering into a CBA, the MPCA must determine whether the agreement addresses issues raised in public comments and whether it prioritizes benefits that directly affect EJ area residents. If these requirements are not satisfied, the owner or operator must provide additional information or revise the agreement; otherwise, the MPCA cannot enter into the CBA and must deny the permit when required by Minn. Stat. § 116.065, subd. 5(b).[710]

603. The MPCA declined to require community approval or establish a community advisory board with authority to approve or reject CBAs. It explained that permitting authority cannot be delegated to external parties under Minn. R. 1400.2100, and that a CBA is a legally enforceable agreement between the MPCA and the facility owner or operator. The MPCA also cited widely differing community views and practical concerns about selecting representative advisory board members and assigning them responsibility for decisions with significant consequences.[711]

604. Instead, the MPCA highlighted that the rules provide multiple opportunities for community participation throughout the CBA development process. These include a required public participation plan, public meetings, public comment periods, advance publication of relevant materials, an electronic mailing list, and opportunities for additional outreach. The MPCA must document how it weighed the information considered in deciding whether to enter into a CBA and make that information publicly available within 30 calendar days of its determination. If the MPCA preliminarily decides to enter into an agreement, the public may submit additional comments during the draft permit's public notice and comment period. The rules also permit owners or operators to establish community bodies or hire third parties to assist with outreach and engagement.[712]

605. Finally, the MPCA clarified that the CBA requirements apply to covered major source and state air permits involving new construction, facility expansion, or reissuance when the CIA identifies a SAI. CBAs must include implementation timelines, completion criteria, reporting, and notification requirements. The MPCA may pursue enforcement for violations under Minn. Stat. §§ 115.071 and 116.07, subd. 9, and community members may report suspected noncompliance. The MPCA acknowledged

[709] MPCA Pre-hearing Response to Comments at 316.
[710] MPCA Pre-hearing Response to Comments at 316-317.
[711] MPCA Pre-hearing Response to Comments at 317.
[712] MPCA Pre-hearing Response to Comments at 317-320.

that implementation will provide opportunities to learn from experience and improve community outreach and engagement.[713]

606. The MPCA received two comments requesting that community benefits proposed by residents of impacted EJ areas receive priority in the CBA process.[714] Frontline recommended prioritizing resident-proposed benefits and developing a non-exhaustive list of examples categorized as economic, health, and environmental benefits.[715] Ramsey County Commissioner Xiong stressed the importance of community control over long-term investments and recommended considering potential displacement of existing residents and local businesses.[716]

607. The MPCA responded that part 7007.6110, subp. 4, item A, subitem (2), requires proposed benefits to be discussed by residents and owners or operators at CBA public meetings, allowing residents to identify their priorities. Residents may also suggest benefits and provide feedback during required public comment periods, which owners or operators must address. The MPCA declined to require prioritization of benefits proposed by specific parties because some suggestions may be infeasible due to economic, technological, or other constraints. However, the MPCA cannot enter into a CBA unless the agreement addresses issues raised in public comments and prioritizes benefits that directly affect residents of the impacted EJ area, as required by part 7007.6110, subp. 9, item A.[717]

608. Frontline recommended that the MPCA develop a non-exhaustive list of example community benefits and categorize them as economic, health, or environmental benefits to help communities identify potential benefits and ensure consideration of non-economic benefits. Frontline also recommended prioritizing benefits proposed by residents of the impacted environmental justice area to ensure that CBAs reflect community needs and priorities.[718]

609. The MPCA explained that part 7007.6080, subp. 6, item C, subitem (4), requires the owner or operator to present examples of potential CBA benefits at the public meeting held before a CBA is drafted. These examples are intended to encourage discussion and meaningful community participation, consistent with Minn. Stat. § 116.065, subd. 6(c)(4)(ii). The MPCA indicated that each CBA must be tailored to the needs of the community; including a prescribed list of examples in the rule could unintentionally limit the benefits proposed. However, the MPCA stated it remains open to developing an illustrative list during implementation and welcomes feedback on potential benefits and appropriate categories.[719]

610. The MPCA received one comment requesting that the rule expressly state that community benefits must be in addition to, and may not replace, existing legal,

[713] MPCA Pre-hearing Response to Comments at 320.
[714] Frontline Communities Protection Coalition (034-36), Commissioner Xiong (056-08).
[715] Frontline Communities Protection Coalition (034-36).
[716] Commissioner Xiong (056-08).
[717] MPCA Pre-hearing Response to Comments at 321.
[718] Frontline Communities Protection Coalition (034-36).
[719] MPCA Pre-hearing Response to Comments at 321-322.

permitting, enforcement, pollution-control, remediation, or compliance obligations.[720] Ramsey County Commissioner Xiong emphasized that facilities should not be allowed to substitute community benefits for pollution prevention or corrective measures. She recommended clear accountability and enforcement provisions, including deadlines, reporting, corrective actions, consequences for noncompliance, and avenues for legal relief for affected residents.[721]

611. Responding to Commissioner Xiong's concern, the MPCA noted that although the proposed rule does not expressly state that community benefits cannot replace existing obligations, CBA requirements are additional to existing regulatory requirements, as reflected in part 7007.0050, subp. E and part 7007.0100, subp. 7, item Y. When a CBA is required, its provisions supplement the facility's air emissions permit and cannot replace minimum permit requirements for emission limits, emission controls, or demonstrations of compliance.[722]

612. The MPCA received a request from the Chamber for permittees to bypass the initial assessment, determinations regarding the need for a CIA, and the SAI determination and, instead, proceed directly to the CBA process.[723]

613. The MPCA rejected the Chamber's request, explaining that Minn. Stat. § 116.065 requires it to determine whether a CIA is necessary and, when required, to conduct the analysis before determining whether a SAI would result. A CBA is required only when the CIA identifies a SAI. The MPCA stated that bypassing these steps would conflict with statutory requirements, eliminate opportunities to reduce adverse impacts and avoid an unnecessary CBA, and deprive the parties of information needed to develop meaningful community benefits. Accordingly, the MPCA clarified that a CBA is not a substitute for evaluating and addressing potential cumulative impacts.[724]

614. The MPCA received one comment requesting clarification of the term "consider" in part 7007.6110, subp. 6, item A, subitem (2). Frontline recommended clarifying the term to ensure that the draft CBA reflects community input and is meaningfully shaped by feedback received during public outreach.[725] The MPCA explained that it uses "consider" consistent with the Merriam-Webster definition, meaning "to think about carefully" or "take into account." The term also maintains consistency with the language of Minn. Stat. § 116.065, subd. 5, which requires the Commissioner to "consider" the CIA, testimony presented, and comments submitted at public meetings.[726]

[720] Commissioner Xiong (056-04).
[721] Commissioner Xiong (056-04).
[722] MPCA Pre-hearing Response to Comments at 322.
[723] Minnesota Chamber of Commerce (027-49).
[724] MPCA Pre-hearing Response to Comments at 323.
[725] Frontline Communities Protection Coalition (034-37).
[726] MPCA Pre-hearing Response to Comments at 324.

615. Frontline also requested that the commissioner be allowed to extend the deadline for submitting a proposed CBA when additional negotiations are needed to resolve outstanding community concerns.[727]

616. The MPCA responded that the public meetings and comment periods are minimum requirements and do not prevent owners or operators from conducting additional outreach or holding further meetings. Although part 7007.6110, subp. 7, item A, requires submission of a proposed CBA within 45 days after the applicable public comment period closes, the deadline is intended to prevent unnecessary delays and additional burdens on the parties. The MPCA may exercise discretion when an owner or operator requests additional outreach that could result in changes to the proposed CBA. After reviewing public comments, the MPCA may delay its preliminary determination and allow a revised CBA to be submitted.[728]

617. Another concern for Frontline is ensuring that feedback from residents of the impacted EJ area receive priority when developing a CBA.[729] The MPCA explained that owners and operators must accept and respond to public meeting feedback and consider comments received during required public meetings and comment periods when preparing both draft and proposed CBAs, ensuring that community input informs the process. Additional outreach is also permitted, and records of comments must be maintained. However, the MPCA declined to require prioritization based on who submitted a comment, explaining that some community requests may be infeasible due to economic, technological, or other constraints.[730]

618. The MPCA received five comments requesting clearer requirements for monitoring and enforcing CBAs, including procedures for addressing noncompliance.[731]

619. Frontline raised concerns about repeated CBA revisions without meaningful community input, unclear permit denial criteria, and the consequences of CBA violations. It recommended incorporating CBAs into permits and establishing an enforcement protocol that allows corrective action or modification but provides for permit revocation when necessary.[732] Melissa Zimmerman called for measurable commitments, implementation timelines, reporting, ongoing monitoring, and clear enforcement mechanisms.[733]

620. The Prairie Island Indian Community emphasized that CBAs should contain tangible, measurable, and enforceable outcomes that directly address cumulative burdens and improve community health and environmental conditions.[734] Commissioner Xiong requested clear accountability measures, including deadlines,

[727] Frontline Communities Protection Coalition (034-38).
[728] MPCA Pre-hearing Response to Comments at 324-325.
[729] Frontline Communities Protection Coalition (034-39).
[730] MPCA Pre-hearing Response to Comments at 325.
[731] Frontline Communities Protection Coalition (034-41); Melissa Zimmerman (045-132); Commissioner Xiong (056-04), (056-06); Prairie Island Indian Community (052-05).
[732] Frontline Communities Protection Coalition (034-41).
[733] Melissa Zimmerman (045-132).
[734] Prairie Island Indian Community (052-05).

reporting, corrective actions, meaningful consequences for noncompliance, resident complaint and enforcement processes, and accessible progress reports. Commissioner Xiong also stressed that CBA benefits must supplement existing pollution control, regulatory compliance, enforcement, and remediation obligations.[735]

621. In response, the MPCA reiterated that CBAs are enforceable two-party agreements between the Commissioner and facility owner or operator under Minn. Stat. § 116.065, subd. 5. To ensure accountability, CBAs must specify implementation timelines, completion criteria, reporting and notification requirements, and ownership and maintenance responsibilities for permanent physical benefits. Owners and operators must provide notices regarding the start and completion of benefits, as well as periodic progress reports to the MPCA and interested parties.[736]

622. The MPCA went on to explain that if an owner or operator is suspected of violating a CBA, the MPCA may pursue enforcement under Minn. Stat. §§ 115.071 and 116.07, subd. 9. Enforcement actions may include penalties and corrective actions based on the severity or recurrence of violations. The MPCA declined to establish separate resident enforcement rights because it believes delegating enforcement authority to community members would violate Minn. R. 1400.2100(F). However, members of the public may report suspected noncompliance, and covered facilities remain subject to routine MPCA compliance inspections and investigation of complaints.[737]

623. The MPCA received a comment from Shelby Capacio, a member of the Sierra Club, emphasizing the disproportionate pollution and health burdens experienced by communities of color and low-income communities. The commenter urged stronger pollution monitoring, health monitoring to assess cumulative industrial impacts, and a CBA process that places community consent and participation at its center.[738]

624. The MPCA responded that Minn. Stat. § 116.065, subd. 6(c)(4), requires active outreach designed to achieve significant community participation, which the proposed rules implement through parts 7007.6080 and 7007.6110. Facilities subject to the rules must monitor air pollutants as required by their permits, and the MPCA monitors compliance. Regarding health monitoring or biomonitoring, the MPCA explained that collecting such data at the proposed scale would require coordination with the Minnesota Department of Health (MDH), which has the relevant statutory authority. The legislature did not provide the MPCA with the funding or authority to conduct this level of biomonitoring under Minn. Stat. § 116.065. The statute instead identifies existing biomonitoring data from MDH, the Center for Disease Control, and scientific or medical publications as potential sources of information for CIAs.[739]

625. The MPCA received a comment asserting that limiting CIAs and CBAs to the impacted EJ area is too narrow, particularly for employment benefits. The commenter

[735] Commissioner Xiong (056-04), (056-06).
[736] MPCA Pre-hearing Response to Comments at 327-328.
[737] MPCA Pre-hearing Response to Comments at 327-328.
[738] Sierra Club North Star Chapter (037-05).
[739] MPCA Pre-hearing Response to Comments at 328-329.

recommended considering broader community impacts and benefits, including workers who live in nearby EJ areas.[740] The MPCA explained that the rules cover EJ census tracts located within one mile of a stationary source's property boundary, including tracts that are only partially within that distance. The entire census tract must be considered in the CIA and CBA, and benefits that directly affect residents of the impacted EJ area must be prioritized.[741]

626. The MPCA also received a comment requesting that a draft CBA remain open for revision after the second CBA public meeting so that additional community concerns and priorities can be addressed.[742] The MPCA explained that owners and operators must consider public comments at multiple stages of CBA development, and the MPCA must evaluate those comments when determining whether to enter into the agreement. The draft CBA must be posted at least 30 days before the required public meeting, and the public has another opportunity to comment during the draft permit notice-and-comment period before the CBA is finalized.[743]

627. David Derksen recommended that CBAs be drafted by a citizen commission representing the affected community to ensure meaningful local participation.[744] The MPCA responded that owners and operators are responsible for preparing proposed CBAs because they must identify benefits they can feasibly provide. However, the rules require active community outreach and multiple opportunities for residents to provide input. The MPCA must consider public comments and determine whether the proposed CBA addresses the issues raised; if the owner or operator fails to provide sufficient information or revise a noncompliant agreement, the MPCA cannot enter into the CBA.[745]

628. The MPCA has established that part 7007.6110 is reasonable and necessary. Part 7007.6110 is approved.

O. Minn. R. 7007.6115 — Modifying Community Benefit Agreements

629. Part 7007.6115 governs changes to an approved CBA. It establishes a formal process for requesting a modification, notifying affected parties, receiving public comments where required, obtaining owner/operator responses, MPCA review, and modification of a CBA.[746]

630. The Commissioner must consider the modification request, applicable notice, public comments, and the owner's or operator's responses. A requested modification cannot be implemented unilaterally; the proposed rule requires MPCA approval and a modified agreement.[747]

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[740] Minnesota Building and Construction Trades Council (041-13).
[741] MPCA Pre-hearing Response to Comments at 329-330.
[742] Frontline Communities Protection Coalition (045-160).
[743] MPCA Pre-hearing Response to Comments at 330.
[744] Frontline Communities Protection Coalition (045-197).
[745] MPCA Pre-hearing Response to Comments at 331-332.
[746] Ex. D at 158; Ex. C.
[747] Ex. D at 158; Ex. C.

631. The MPCA justified the need for, and reasonableness of, this position, contending it clarifies the procedures by which an owner or operator may modify a CBA previously entered into under part 7007.6110. Although Minn. Stat. § 116.065, subd. 6(c)(4), directs the MPCA to establish procedures for entering into a CBA, the MPCA determined that additional rule requirements are necessary to address circumstances in which an existing agreement requires modification. These provisions provide a defined process for modifying a CBA while ensuring that the agreement continues to comply with applicable rule requirements.[748]

632. Two commenters requested stronger public participation requirements and additional review of the process for modifying CBAs. Frontline recommended extending the notice period from 15 to 45 days, requiring at least one public meeting for proposed modifications, and requiring significant changes to undergo the full CBA process again.[749] Commissioner Xiong similarly recommended public notice, comment, and community review before an agreement could be modified or terminated, particularly when changes could reduce previously agreed-upon benefits.[750]

633. Responding to these comments, the MPCA explained that the 15-calendar-day notice requirement under part 7007.6115, subp. 2, item D, is consistent with the notice requirements for other public comment periods under part 7007.6080. The CBA modification process provides a 45-day public comment period, and notice is sent directly to individuals who previously submitted comments during the CBA process. The MPCA considers this period sufficient for public participation.[751]

634. The MPCA further explained that part 7007.6115 is intended to provide flexibility when unforeseen circumstances arise, rather than to authorize significant changes to an approved CBA. Although a public meeting is not required for modifications, the Commissioner must consider the modification request, comments received, and the owner's or operator's responses. A modified CBA may be approved only if the request complies with the rule, and the modified agreement and responses address issues raised during the comment period. The rule does not prevent community members from requesting, or owners and operators from holding, an additional public meeting to discuss a modification.[752]

635. The MPCA has established that part 7007.6110 is reasonable, necessary, and should be approved. Therefore, part 7007.6110 is approved.

P. Minn. R. 7007.6120 — Permit Decisions

636. The purpose of part 7007.6120 is to clarify the process by which the MPCA makes permitting decisions for regulated entities subject to parts 7007.6000 through .6120. Although Minn. Stat. § 116.065, subd. 5, identifies the factors the MPCA must

[748] Ex. D at 158.
[749] Frontline Communities Protection Coalition (034-42).
[750] Commissioner Xiong (056-07).
[751] MPCA Pre-hearing Response to Comments at 332-333.
[752] MPCA Pre-hearing Response to Comments at 332-333.

consider when determining whether to issue or deny a permit, and the circumstances under which a permit may be issued, the MPCA determined that additional rule provisions are necessary to clarify how the statutory requirements are implemented. Part 7007.6120 establishes the requirements governing the MPCA's decision to issue or deny a permit for a stationary source subject to cumulative impacts review.[753]

637. Specifically, this part identifies the information the Agency must consider in making its permitting decision, and establishes that construction and operation of the stationary source or modification may not begin until the MPCA has completed the applicable cumulative impacts review requirements. These requirements include determining whether a CIA is necessary based on the initial assessment or a petition, determining whether the proposed permit action would result in a SAI, and, when required, entering into a CBA. Establishing these requirements in rule is reasonable because it clarifies the sequence of review and permitting decisions, and ensures that regulated entities, affected communities, and other interested persons have a common understanding of the requirements that must be satisfied before construction and operation may proceed.[754]

638. The MPCA received seven comments requesting clearer criteria specifying when permits must be denied. These commenters expressed concern that the proposed rules lacked sufficiently clear denial criteria, potentially allowing permits to be issued despite community concerns.[755] Some commenters also requested greater community decision-making authority and clearer explanations of permit denials and corrective actions.[756]

639. The MPCA explained that permit issuance and denial are governed by Minn. Stat. § 116.065, subd. 5, proposed part 7007.6120, and amendments to existing part 7007.1000. Under Minn. Stat. § 116.065, subd. 5, the Commissioner must deny a covered permit if the CIA determines that the proposed permit, combined with existing environmental stressors and considering the facility's socioeconomic impacts, would cause a SAI on the environment or health of residents of the impacted EJ area, unless the Commissioner enters into a CBA with the facility owner or operator.[757]

640. Part 7007.6120 establishes the steps and information the Commissioner must consider when deciding whether to issue or deny a permit, including whether a CIA is required, whether the proposed permit would cause a SAI, and whether a CBA is appropriate. Part 7007.1000, subpart 1, requires all applicable statutory and rule requirements to be satisfied before a permit may be issued. Subpart 2 identifies grounds for denial, including circumstances in which the MPCA cannot make the required determinations or the applicant fails to enter into a required CBA.[758]

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[753] Ex. D at 163-164; *see* Ex. C.
[754] Ex. C; Ex. D at 163-164.
[755] Amy Caucutt (016-01); Ben Gorman (021-01); Camry Kelly (022-01); Coming Clean Network (024-10); Jeanne Norrgard (029-04); Kathleen Stuebner (045-180); Mary Gorfine (061-03).
[756] *See e.g.,* Coming Clean Network (024-10).
[757] MPCA Pre-hearing Response to Comments at 334.
[758] MPCA Pre-hearing Response to Comments at 334.

641. The MPCA concluded that these statutory and regulatory provisions establish the criteria for permit decisions and require consideration of facility-specific information, CIAs, public comments and testimony, and the owner's or operator's responses. The MPCA believes these requirements provide ample opportunities for community input throughout the process and clearly establish when a permit must be denied in accordance with Minn. Stat. § 116.065.[759]

642. The MPCA received five comments regarding the information the Commissioner should consider when determining whether to issue or deny a permit underpart 7007.6120. Commenters offered recommendations concerning the weight given to cumulative health impacts, the consideration of existing environmental and health burdens, the role of scientific evidence and regulatory compliance, and the circumstances under which a permit should be denied.[760]

643. Joanne Hill, a public health nurse , urged the MPCA to strengthen the rule by requiring cumulative health impacts to carry significant weight in permit decisions, rather than merely being documented. Hill described North Minneapolis as an example of cumulative environmental injustice resulting from historic redlining, industrial zoning, and the construction of Interstate 94, which concentrated pollution in predominantly Black, Brown, Indigenous, and low-income communities. Hill expressed concern that emissions from the HERC facility add to existing pollution burdens, including fine particulate matter, nitrogen oxides, sulfur dioxide, heavy metals, and dioxins. Citing public health research and her experience as a health care professional, Hill identified associations between air pollution and asthma, cardiovascular disease, stroke, lung disease, cancer, and premature death. She emphasized that public resources are spent treating preventable pollution-related illnesses and recommended that pollution prevention become a measurable outcome of the cumulative impacts policy.[761]

644. The American Petroleum Institute argued that permit decisions must remain grounded in scientific evidence, exposure assessments, risk characterization, and applicable regulatory standards. The Institute urged the MPCA to determine that compliance with enforceable emission limits, successful implementation of permit conditions, and completion of required mitigation will weigh heavily in favor of permit issuance. It further recommended permit denial should be limited to circumstances in which SAIs cannot reasonably be avoided or mitigated.[762]

645. Frontline member Anne Englert emphasized that many environmental justice communities already experience cumulative impacts resulting from decades of pollution from existing facilities. Englert recommended that the rules help facilitate facility closures or significant reductions in pollution levels. She also urged the MPCA to ensure that permit reissuance decisions account for existing health and environmental stressors

[759] MPCA Pre-hearing Response to Comments at 335.
[760] Joanne Hill (014-02); Frontline Communities Protection Coalition (034-43); American Petroleum Institute (042-21); the Frontline Communities Protection Coalition (045-193); Prairie Island Indian Community (052-04).
[761] Joanne Hill (014-02).
[762] American Petroleum Institute (042-21).

in impacted communities, as well as toxic emissions from the facilities seeking renewed permits.[763]

646. The Prairie Island Indian Community acknowledged that CBAs are a positive step toward addressing inequities but argued that the rules must do more to prevent new or modified permits from worsening existing cumulative impacts. The Community recommended explicitly requiring permit denial when additional emissions would exacerbate significant cumulative impacts in EJ areas, particularly when baseline environmental conditions exceed state or health-based benchmarks. It also urged the MPCA to define "substantial adverse impact" using clear, objective, science-based criteria, measurable thresholds, and transparent methodologies to promote consistent, defensible decisions that adequately protect public health.[764]

647. The MPCA noted its appreciation for the commenters' recommendations regarding the types of information and impacts that should be considered when determining whether to issue or deny a permit. The Agency explained that the information the Commissioner must consider is established by Minn. Stat. § 116.065, subd. 5, and proposed part 7007.6120. The statute identifies the information relevant to permit decisions, the circumstances requiring permit denial, and options for imposing conditions on facility construction and operation to protect public health and the environment.[765]

648. Part 7007.6120, subp. 1, item A, establishes the steps the Commissioner must take when making a permit decision, including determining whether a CIA is required, whether issuing the permit would cause a SAI, and whether to enter into a CBA if a SAI is identified. Items B through D identify additional information the Commissioner must consider, and provide that the permit must be denied when issuing it would cause a SAI and the Commissioner does not enter into a CBA with the facility.[766]

649. The proposed rules also require consideration of a broad range of information throughout the CIA process. Under part 7007.6070, the Commissioner determines whether a CIA is required based on information submitted in the initial assessment under part 7007.6050 and, when applicable, a petition under part 7007.6060. The information gathered through this process also informs the determination under part 7007.6100 of whether issuing the permit would cause a SAI on the environment or the health of residents of an EJ area.[767]

650. The initial assessment and CIA requirements are designed to provide information necessary to support these determinations. For example, part 7007.6050, subp. 3, requires information about the facility's current and proposed operations and the measures taken to avoid, minimize, or reduce their impacts (item C, subitem (4)); environmental stressors in the area and how they may increase adverse effects on the environment or residents' health (item G, subitem (4)); and current and proposed

[763] Frontline Communities Protection Coalition (045-193).
[764] Prairie Island Indian Community (052-04).
[765] MPCA Pre-hearing Response to Comments at 336.
[766] MPCA Pre-hearing Response to Comments at 336-337.
[767] MPCA Pre-hearing Response to Comments at 336-337.

measures to reduce negative impacts or provide environmental or health benefits to residents of the impacted EJ area (item I). Part 7007.6090, subps. 4 and 5, also requires air quality modeling and air emissions risk analyses to assess impacts that can be quantified through those methods.[768]

651. Taken together, the statute and proposed rules require the MPCA to consider facility-specific information, existing environmental stressors, potential health and environmental impacts, proposed mitigation and benefits, and relevant air quality modeling, and risk analyses. The Commissioner must also consider public comments and testimony received during the rule's public participation process, as well as the owner's or operator's responses to those comments. This framework provides a basis for making permit decisions that account for the circumstances of the proposed action, the facility's location, and the environmental and health conditions of the affected community.[769]

652. The MPCA established part 7007.6120 is reasonable and necessary. Part 7007.6120 is approved.

Based upon the Findings of Fact and the contents of the rulemaking record, the Judge makes the following:

CONCLUSIONS

1. The Judge has authority and jurisdiction to review these rules under Minn. Stat. §§ 14.14, .15, .50 (2026), and Minn. R. 1400.2100 (2025).

2. The MPCA gave notice to interested persons in this matter and fulfilled its additional notice requirements.

3. The MPCA fulfilled the procedural requirements of Minn. Stat. § 14.14 and all other procedural requirements of law and rule.

4. The MPCA demonstrated it has statutory authority to adopt the proposed rules, and it fulfilled all other substantive requirements of law and rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, and 14.50(i), (ii).

5. The Notice of Hearing, the proposed rules, and the SONAR complied with Minn. Stat. § 14.131 and Minn. R. 1400.2080.

6. The MPCA has demonstrated the need for and reasonableness of its proposed rules by an affirmative presentation of facts in the record, as required by Minn. Stat. §§ 14.14 and 14.50(iii).

7. The record does not establish a basis for disapproval of the rules under Minn. R. 1400.2100.

[768] MPCA Pre-hearing Response to Comments at 336-337.
[769] MPCA Pre-hearing Response to Comments at 336-337.

8. As part of the public comment process, a number of stakeholders urged the MPCA to adopt revisions to the proposed rules. In each instance, MPCA's rationale in declining to make the requested revisions to its rules was grounded in the record and was reasonable.

9. A finding or conclusion of need and reasonableness with regard to any particular rule does not preclude, and should not discourage, the MPCA from further modification of the proposed rules, provided that the rule finally adopted is not "substantially different" (under Minn. Stat. § 14.05, subd. 2) and is based upon facts in the rulemaking record.

10. The MPCA is expressly recommended to reconsider its decisions to not include non-exhaustive factors to guide the Agency's exercise of discretion, as urged by many commenters, including supporters and opponents of the Cumulative Impacts Rule. While the record establishes the need to consider the unique circumstances of each implicated permit and community, it is likely possible to provide greater clarity and guidance to stakeholders, and preserve the MPCA's ability to respond to community and industry initiatives and concerns with flexibility. For example, the following language could provide more structure to the CBA process, and also be adapted to various parts of the rule to address the common concerns cited by commenters:

> Eligible activities include, but are not limited to, the following examples: air quality improvements, public health infrastructure, urban canopy and green space expansion, or other benefits expected to improve conditions in the EJ area. The examples enumerated in this subsection do not constitute an exhaustive or restrictive list of compliant activities, and the omission of a specific category of project or benefit does not preclude its consideration or approval, provided it satisfies the primary criteria established in [Section X] of this Rule.

Based upon the foregoing Conclusions, the Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the proposed rules be **ADOPTED**.

Dated: November 6, 2026



KIMBERLY MIDDENDORF
Administrative Law Judge

NOTICE

This Report must be available for review to all affected individuals upon request for at least five working days before the agency takes any further action on the rules. The Agency may then adopt the final rules or modify or withdraw its proposed rules. If the Agency makes any changes in the rules, it must submit the rules to the Chief

Administrative Law Judge for a review of the changes prior to final adoption. Upon adoption of final rules, the Agency must submit a copy of the Order Adopting Rules to the Chief Administrative Law Judge. After the rules' adoption, the Office of Administrative Hearings will file certified copies of the rules with the Secretary of State. At that time, the Agency must give notice to all persons who requested to be informed when the rules are adopted and filed with the Secretary of State.