

Tony Kwilas



September 18, 2024

Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, Minnesota 55125-4194

On behalf of the Minnesota Chamber of Commerce (Chamber), a statewide organization representing 6,300 businesses and more than a half million employees throughout Minnesota, we appreciate the opportunity to submit this letter in response to the Minnesota Pollution Control Agency's (MPCA or Agency) request for comments regarding Minn. Stat. 116.065, subd. 6(c)(4) which requires the MPCA to enter into rulemaking to establish requirements for cumulative impacts analyses. These analyses may include community benefit agreements (CBAs) and the rule must:

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.

MPCA held a public meeting to collect public input on community benefits agreements on August 14, 2024. The Minnesota Chamber of Commerce offers the following comments on rulemaking related to CBAs.

MPCA's written materials covered three aspects of CBA development: benefits, elements, and engagement. We will offer general comments and specific comments on these aspects.

In general, the Chamber encourages MPCA to focus on elements required by the enabling legislation: required content of a CBA (e.g., minimum elements or structure), procedures for entering or exiting from a CBA, minimum or specific requirements for outreach and public meetings, and defined considerations. CBA details will likely differ from place to place depending on the unique aspects of a community. Clear process elements and decision criteria will enable flexibility in the content and predictability in timelines. MPCA has said that a CBA will be an agreement between MPCA and a private party. The rule should be clear about related requirements not contained in the legislation.

Several ideas or examples listed in the benefits documents were framed in concerning ways. The Chamber encourages MPCA to avoid language in the rule assuming that individual medical conditions

may be causally linked to specific pollutants or sources. The Minnesota Department of Health and other public health experts should weigh in on any such rule language.

Many Chamber members have good relationships with their neighbors and may offer facility tours and information on operations. However, compliance inspections of an industrial facility by members of the public would raise potential security, safety, and effectiveness concerns.

MPCA's document includes a reference to "guaranteeing jobs." It is not clear what a job guarantee would mean in practice. Generally, it would be most appropriate for CBAs to include defined actions or contributions rather than a guaranteed outcome that is outside the control of the signatories to the CBA.

MPCA's elements document does not include details of projects or initiatives. A CBA should include specific descriptions of what the company and community will each do, along with metrics for completion and expectations post-project. "Community satisfaction" would require additional description before its use of a metric for success. A CBA should also specify any reopening or modification processes.

The questions in the engagement document are important. Participants in CBA development should include broad representation from local communities and diverse perspectives on potential projects. The process for community recommendations to MPCA on CBA approval should be clear, given that broad consensus may not always be achieved.

One last area of concern is the possibility of multiple community benefit agreements within an environmental justice area. In establishing rules for CBA's, the MPCA should consider how best to handle instances where one or more CBA's exist in the same EJ area, e.g., how to avoid repeating efforts/wasting resources? Can Company A reserve the right to renegotiate its CBA obligations in light of Company B's? How will multiple CBAs in the same area be negotiated and how will that process protect one company from having to bear a disproportionate share of the economic outlay? How will the MPCA decide how to spread that burden equitably across two or more companies in a given area?

The Chamber appreciates the opportunity to comment on this important stage of the rulemaking development.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Kwilas". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

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