

Jeff Udd

What other things should we consider in a community benefit agreement?

These comments are submitted by the Duluth Seaway Port Authority (DSPA), which is an independent public agency created by the Minnesota State Legislature with the mission to bring business to the port, economic development to the region, and advocate for maritime, transportation, and industrial interests.

The MPCA has defined a Community Benefit Agreement (CBA) as a legal and enforceable contract between the MPCA and a company. CBAs may be required if a facility imposes a “substantial adverse impact on the environment or health of residents” in a specific environmental justice area. If a substantial adverse impact is determined through a cumulative impact analysis, then no permit can be issued until a CBA is signed. The MPCA also states that CBAs will be developed with active community input and participation.

The DSPA provides a few aspects of the CBA that MPCA should consider in the rulemaking process:

• The MPCA needs to better define the “community” that is expected to participate and provide input. An environmental justice community can be just as diverse in opinion and background as any other community within a city or region. Specifically in Duluth, much of the city is either considered, or within 1 mile of, an environmental justice community. To expect broad agreement or consensus while gathering input on a CBA is unrealistic. Specifics regarding who speaks for the community and the role the community plays in the process is a critical need. The most established path is for an appropriate elected official (city councilor, mayor, county commissioner, etc.) to advocate on behalf of the community.

• The MPCA should consider an expiration date for CBAs and limit the scope of required actions. If a CBA is part of a final permit decision, then the CBA should have an end date corresponding to the permit expiration date. The requirements within a CBA should be scoped for a finite timeframe and not include actions that could extend in perpetuity, such as long-term maintenance of infrastructure. The scope should be limited to addressing the specific environmental or health impact directly associated with the permit action for a facility.

• The MPCA should define the CBA process, from the time of initial determination of need for a CBA through the time one is ultimately signed. The steps and the expected timelines associated with each step - when are the opportunities for community engagement, who speaks on behalf of the community, and who is the final decision-maker – should be included. It is too vague to say that the process will take as long as it needs or that a slow process must be a good one. The current regulatory process is already cumbersome and slow, resulting in lost opportunities for new economic development in the state as highlighted in the recent Minnesota Chamber Foundation report “Streamlining Minnesota’s Environmental Permitting Process” dated February 2024. Additional uncertainty in the regulatory process, particularly if it can be used as a means to delay final permitting decisions, could result in further impacts to the tax base needed for core local government services within the same environmental justice communities a CBA is designed to protect.

Thank you for the opportunity to comment.
