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Cumulative Impacts Analysis Requirements

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 of Duluth-Superior, economic development to the region, and advocate for maritime, transportation, and industrial interests.

How should the MPCA know when to require a mandatory cumulative impacts analysis?

The benchmarks or thresholds used to require a mandatory cumulative impacts analysis should be easily identifiable by both the regulated community and the public, measurable, and based on science. The following could be used as a basis for determining the type of permit action and available health data that could trigger a mandatory cumulative impacts analysis:

- Major air permit amendment for an existing facility, or a new facility with emissions above the threshold to trigger mandatory environmental review, for the permit type defined in the 2023 cumulative impact law ; and
- Air pollution score >2 within the census tract block where the facility is located ([Understanding Environmental Justice in MN \(arcgis.com\)](#)); and
- Health benchmarks have been exceeded for one or more pollutants in the census tract block where the facility is located

This approach would focus the cumulative impact analysis on high priority facilities – those that may contribute to a high risk of health impacts from air pollution within an already stressed neighborhood – where additional analysis is warranted. The cumulative impact analysis could work in conjunction with the Air Emission Risk Analysis (AERA) and/or the environmental review process, both of which are established processes with either required or generally accepted thresholds.

Focusing on these high priority facilities would meet the intent of the 2023 cumulative impacts law, improve the health risks from air pollution in stressed EJ neighborhoods, and provide the MPCA with the ability to manage an air permitting program with the finite permitting resources available.

We caution against using other social/environmental inequities that are not related to air quality in the criteria for a mandatory cumulative impact analysis. Since the cumulative impacts rulemaking is premised on specific facilities with certain types of air quality permits, limiting the benchmark thresholds to metrics based on air quality is both reasonable and supported by the legislation. Expanding beyond air quality-based metrics presents too much uncertainty to the regulated community, would be difficult to define and support with science, and is well beyond the regulatory scope of air permit requirements.

How should the MPCA know when to require a discretionary cumulative impacts analysis?

Given the robust air permitting process already established in both state and federal rule, the determination to require a discretionary cumulative impact analysis, or granting a petition to conduct one, should be extremely rare. The rule states that any discretionary determination be supported by “material evidence.” Material evidence could include information on a pollutant or chemical, not previously reported or known, emitted from a facility with direct health impacts to the surrounding

community. In this scenario, the MPCA has existing enforcement authorities that could be invoked to assess and remedy the situation rather than requiring a cumulative impacts analysis.

Again, we caution against using other social/environmental inequities that are not related to air quality in the determination for a discretionary, or petition generated, cumulative impact analysis.

The Duluth Seaway Port Authority appreciates the opportunity to comment on this important rulemaking effort and looks forward to the next steps in the process.