

**SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION**

S.F. No. 466

(SENATE AUTHORS: CHAMPION)

DATE	D-PG	OFFICIAL STATUS
01/19/2023	305	Introduction and first reading
		Referred to Environment, Climate, and Legacy
03/09/2023		Comm report: To pass as amended and re-refer to State and Local Government and Veterans

1.1 A bill for an act

1.2 relating to environment; modifying requirement to analyze and consider cumulative

1.3 pollution before issuing air quality permit; providing for identification of

1.4 environmental justice areas; requiring demographic analysis in certain

1.5 environmental permitting and review; making technical corrections; amending

1.6 Minnesota Statutes 2022, sections 116.06, by adding subdivisions; 116.07, by

1.7 adding subdivisions.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2022, section 116.06, is amended by adding a subdivision

1.10 to read:

1.11 Subd. 6a. **Commissioner.** "Commissioner" means the commissioner of the Pollution

1.12 Control Agency.

1.13 **EFFECTIVE DATE.** This section is effective the day following final enactment.

1.14 Sec. 2. Minnesota Statutes 2022, section 116.06, is amended by adding a subdivision to

1.15 read:

1.16 Subd. 6b. **Compelling public interest.** "Compelling public interest" means one that

1.17 primarily serves an essential environmental, health, or safety need of members of the

1.18 environmental justice area, is necessary to serve that need, and no other reasonably available

1.19 means exist to meet that need.

1.20 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.1 Sec. 3. Minnesota Statutes 2022, section 116.06, is amended by adding a subdivision to
2.2 read:

2.3 Subd. 6c. **Cumulative impacts.** "Cumulative impacts" means the potential public health
2.4 and environmental impacts from combined pollutant exposures and risks, incorporating the
2.5 context of community vulnerabilities, assessed from publicly accessible data based on the
2.6 past, present, and reasonably foreseeable future levels, emissions, and discharges affecting
2.7 the geographical area.

2.8 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.9 Sec. 4. Minnesota Statutes 2022, section 116.06, is amended by adding a subdivision to
2.10 read:

2.11 Subd. 10a. **Environmental and public health stressors.** "Environmental and public
2.12 health stressors" means sources of environmental pollution, including but not limited to
2.13 concentrated areas of air pollution, mobile sources of air pollution, contaminated sites,
2.14 transfer stations or other solid waste facilities, recycling facilities, scrap yards, and point
2.15 sources of water pollution, including but not limited to water pollution from facilities or
2.16 combined sewer overflows; or conditions that may cause potential public health impacts,
2.17 including but not limited to asthma, cancer, elevated blood lead levels, cardiovascular
2.18 disease, and developmental problems in the overburdened community.

2.19 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.20 Sec. 5. Minnesota Statutes 2022, section 116.06, is amended by adding a subdivision to
2.21 read:

2.22 Subd. 10b. **Environmental justice.** "Environmental justice" means that nonwhite
2.23 communities, Indigenous communities, low-income communities, and communities with
2.24 limited English proficiency have a healthy environment and are treated fairly when
2.25 environmental statutes, rules, and policies are developed, adopted, implemented, and
2.26 enforced.

2.27 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.28 Sec. 6. Minnesota Statutes 2022, section 116.06, is amended by adding a subdivision to
2.29 read:

2.30 Subd. 10c. **Environmental justice area.** "Environmental justice area" means one or
2.31 more census tracts in Minnesota where:

3.1 (1) 40 percent or more of the population is nonwhite;

3.2 (2) 35 percent or more of the households have an income level at or below 200 percent
 3.3 of the federal poverty level;

3.4 (3) 40 percent or more of the population over five have limited English proficiency; or

3.5 (4) the tract or tracts are located within Indian country, as defined in United States Code,
 3.6 title 18, section 1151.

3.7 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.8 Sec. 7. Minnesota Statutes 2022, section 116.06, is amended by adding a subdivision to
 3.9 read:

3.10 Subd. 14a. **Major source.** "Major source" means a major source of air pollution as
 3.11 defined by the federal Clean Air Act, United States Code, title 42, section 7401 et seq.

3.12 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.13 Sec. 8. Minnesota Statutes 2022, section 116.07, is amended by adding a subdivision to
 3.14 read:

3.15 Subd. 4m. **Environmental justice area permits; generally.** (a) When a new facility or
 3.16 a proposed expansion of an existing facility requires a permit under chapter 115 or 116 and
 3.17 is located within an environmental justice area, the commissioner may require the permit
 3.18 applicant or permit holder to conduct an analysis of the cumulative impacts that the new
 3.19 facility or proposed expansion would cause or contribute to the environmental justice area.

3.20 (b) The commissioner must require the permit applicant or permit holder to conduct a
 3.21 cumulative impacts analysis, as defined by rulemaking, if:

3.22 (1) the facility or proposed expansion exceeds the benchmarks to protect public health,
 3.23 as established in rulemaking; or

3.24 (2) a petition is signed by at least 100 individuals who reside or own property in
 3.25 Minnesota or by at least 25 individuals in the environmental justice area of the facility, is
 3.26 supported by material evidence that demonstrates a potential adverse cumulative impact to
 3.27 the community caused or contributed to by the new facility or proposed expansion, and is
 3.28 submitted to the agency before the permitting decision is made.

3.29 (c) When a proposed or an existing facility within an environmental justice area applies
 3.30 for a major source permit or requires reissuance of a major source permit, the commissioner
 3.31 must require the permit applicant or permit holder to conduct a cumulative impacts analysis.

4.1 The permit applicant or permit holder must follow the public meeting requirements under
4.2 subdivision 4n.

4.3 (d) When a proposed facility or an existing facility requires a permit or major permit
4.4 amendment under chapter 115 or 116 and is located within ten miles of an environmental
4.5 justice area, the commissioner must require the permit applicant or permit holder to conduct
4.6 a cumulative impacts analysis if a petition is signed by at least 100 individuals in Minnesota
4.7 or 25 individuals who reside or own property in the environmental justice area, is supported
4.8 by material evidence that demonstrates a potential adverse cumulative impact to the
4.9 community caused or contributed to by the new facility or proposed amendment, and is
4.10 submitted to the agency before the permitting decision is made.

4.11 **EFFECTIVE DATE.** This section is effective the day following final enactment and
4.12 applies to an application for a new permit, permit renewal, or major permit amendment filed
4.13 with the commissioner on or after that date.

4.14 Sec. 9. Minnesota Statutes 2022, section 116.07, is amended by adding a subdivision to
4.15 read:

4.16 Subd. 4n. **Environmental justice area permits; public notice requirements.** (a) Any
4.17 permit applicant or permit holder required to conduct a cumulative impacts analysis under
4.18 subdivision 4m must hold at least one public meeting in the environmental justice area
4.19 impacted by the facility before the commissioner issues or denies a permit.

4.20 (b) The permit applicant or permit holder must publish notice in a newspaper of general
4.21 circulation within the environmental justice area at least 30 days before the meeting. In
4.22 addition to the newspaper notice, the applicant or permit holder must post physical signage
4.23 in the environmental justice area impacted, as directed by the commissioner. The notice
4.24 must contain the date, time, and location of the public meeting, as well as a brief description
4.25 of the permit or project.

4.26 (c) The permit applicant or permit holder must provide the commissioner with notice
4.27 of the public meeting and a copy of the cumulative impacts analysis at least 45 days before
4.28 the public meeting. The commissioner must post the notice and cumulative impacts analysis
4.29 on the agency website at least 30 days before the public meeting.

4.30 (d) The permit applicant or permit holder must accept written and oral comments, as
4.31 directed by the commissioner, from any interested party and must provide an opportunity
4.32 for robust public and Tribal engagement at the meeting. The permit applicant or permit

5.1 holder must provide an electronic copy of all written comments and a transcript of oral
5.2 comments to the agency within 30 days of the public meeting.

5.3 (e) If the permit applicant or permit holder is applying for more than one permit for a
5.4 proposed new or expanded facility or project, in the same environmental justice area, the
5.5 permit applicant or permit holder may request that the commissioner require that they only
5.6 comply with the provisions of this section once. The commissioner may approve or deny
5.7 this request.

5.8 (f) The commissioner must consider the testimony presented and comments submitted
5.9 in determining whether to issue or deny a permit. The commissioner must wait 30 days after
5.10 the public meeting before issuing or denying a permit.

5.11 (g) In addition to the required public meeting, the commissioner may require a permitted
5.12 facility located in an environmental justice area to hold in-person, recurring meetings with
5.13 neighbors to share information and discuss community concerns. The commissioner may
5.14 set the number and frequency of required meetings as permit conditions.

5.15 **EFFECTIVE DATE.** This section is effective the day following final enactment and
5.16 applies to an application for a new permit, permit renewal, or major permit amendment filed
5.17 with the commissioner on or after that date.

5.18 Sec. 10. Minnesota Statutes 2022, section 116.07, is amended by adding a subdivision to
5.19 read:

5.20 Subd. 4o. **Environmental justice area permits; permit decisions.** (a) The commissioner
5.21 must deny a new permit application, major amendment, permit expansion, or renewal of a
5.22 major source permit under chapter 115 or 116 for a facility in an environmental justice area
5.23 if the commissioner finds that granting the permit, amendment, or expansion would contribute
5.24 to adverse cumulative environmental or public health stressors in the environmental justice
5.25 area as defined in rulemaking, unless:

5.26 (1) the applicant and community-based organizations representing resident interests
5.27 enter into a community benefit agreement; and

5.28 (2) there is a compelling public interest as determined by the commissioner based on
5.29 criteria established in rulemaking.

5.30 (b) If the commissioner determines a compelling public interest exists and the applicant
5.31 enters into a community benefit agreement with the community, the agency may grant a
5.32 permit that imposes conditions on the construction and operation of the facility to protect
5.33 public health and the environment.

6.1 (c) If a major source permit is renewed under this section, the permit must include a
 6.2 requirement that the facility must provide information to the community outlining the health
 6.3 risks that their facility poses.

6.4 (d) A community benefit agreement must be signed on or before the date a new permit
 6.5 or major permit amendment is issued in an environmental justice area.

6.6 (e) The commissioner must publish and maintain on the agency website a list of
 6.7 environmental justice areas in the state.

6.8 (f) The commissioner must publish and maintain on the agency website an archive of
 6.9 cumulative impacts analyses done under this law.

6.10 **EFFECTIVE DATE.** This section is effective the day following final enactment and
 6.11 applies to an application for a new permit, permit renewal, or major permit amendment filed
 6.12 with the commissioner on or after that date.

6.13 Sec. 11. Minnesota Statutes 2022, section 116.07, is amended by adding a subdivision to
 6.14 read:

6.15 Subd. 4p. **Environmental justice area permits; rulemaking.** (a) The commissioner
 6.16 must adopt rules to implement subdivisions 4m to 4o and to govern the cumulative impacts
 6.17 analysis and issuance or denial of permits for facilities that impact environmental justice
 6.18 areas.

6.19 (b) During the rulemaking process, the Pollution Control Agency must engage in robust
 6.20 public engagement and Tribal consultation, including public meetings located in
 6.21 environmental justice areas, greater Minnesota, and the seven-county metropolitan area.
 6.22 Public engagement meetings must be open to the public. Public engagement meetings and
 6.23 Tribal consultations must address the proposed rule and rulemaking process.

6.24 (c) The commissioner must in rules adopted under this subdivision:

6.25 (1) define conditions, criteria, or circumstances that qualify as a compelling public
 6.26 interest, which must not include economic considerations as part of the compelling public
 6.27 interest, unless the economic benefit considered directly and beneficially impacts residents
 6.28 of the environmental justice area of concern. The commissioner must establish clear,
 6.29 quantitative criteria for establishing whether a facility fulfills an essential environmental,
 6.30 health, or safety need. Compelling public interest must also include consideration of the
 6.31 public comments received;

7.1 (2) establish procedures for entering into community benefit agreements, which must
7.2 include consultation with members of the public and community-based organizations and
7.3 coalitions representing resident interests who reside within the environmental justice area;

7.4 (3) establish a petition process and form submitted to the agency by environmental
7.5 justice area residents to support the need for a cumulative impacts analysis;

7.6 (4) establish and define criteria for requiring a cumulative impacts analysis, using tools
7.7 such as risk management to define facilities with lower, less toxic emissions;

7.8 (5) create a process for conducting cumulative impacts analysis, which must include
7.9 environmental and public health stressors from data that are publicly available. An analysis
7.10 must determine whether granting a permit would, together with other environmental or
7.11 public health stressors affecting the environmental justice area, cause or contribute to adverse
7.12 cumulative environmental or public health stressors in the environmental justice area that
7.13 are higher than those borne by other communities within the state, county, or other geographic
7.14 unit of analysis as determined by the agency;

7.15 (6) consider questions and comments received from residents of the environmental
7.16 justice areas;

7.17 (7) in determining whether "the facility or proposed expansion exceeds the benchmarks
7.18 established in rulemaking," the agency must identify specific environmental and public
7.19 health stressors and create clear criteria for determining whether or not those stressors are
7.20 present in a given census tract. These stressors should be quantified when possible to allow
7.21 for comparisons between both census tracts in close proximity and between stressors in a
7.22 given census tract and a statewide average for each stressor; and

7.23 (8) the agency must maintain an updated database of the identified stressors and in which
7.24 census tracts those stressors are present. This database must be used to create a baseline
7.25 comparison for projects requiring a cumulative impacts analysis and the agency must provide
7.26 an analysis of stressors for the relevant census tracts to an applicant upon their initial
7.27 application. The agency will make this database accessible to the public.

7.28 (d) The Pollution Control Agency must provide translation services and translated
7.29 materials upon request during rulemaking meetings.

7.30 (e) The Pollution Control Agency must provide public notice on the agency's website
7.31 at least 30 days before public meetings. The notice must include the date, time, and location
7.32 of the meeting. Through additional communications methods, the agency must strive to
7.33 include residents of environmental justice areas in the public meetings for this rulemaking.

8.1 The Pollution Control Agency must perform public outreach to solicit comments on the
8.2 rule.

8.3 **EFFECTIVE DATE.** This section is effective the day following final enactment and
8.4 applies to an application for a new permit, permit renewal, or major permit amendment filed
8.5 with the commissioner on or after that date.