

Minnesota Proposes Environmental Justice Standards for Air Permits

Alert

05.18.2023

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In Minnesota and around the country, agencies and legislatures are working to formally incorporate concepts of environmental justice and cumulative impacts into permitting decisions and enforcement.

PROPOSED MINNESOTA ENVIRONMENTAL JUSTICE STATUTE

The Minnesota legislature has proposed changes to Chapter 116 that would require consideration of environmental justice for air permit applications, with the goal of reducing the burden on areas and populations that have historically borne environmental harm and the risks to current vulnerable populations.

Environmental justice areas would be defined based on the race, income level, or English language proficiency of the population and households in the area.

For air permits for facilities within a mile of an environmental justice area, the proposed legislation creates a system for assessing cumulative impacts and requires consideration of that analysis in permitting decisions. For the cumulative impacts analysis, the Minnesota Pollution Control Agency (MPCA) would determine whether a cumulative impacts analysis is required and the degree of harm to the environmental justice area. As part of that process, applicants must submit data on the project's cumulative impacts. Projects meeting certain benchmarks will be required to conduct a cumulative impacts analysis. MPCA also has discretion to require cumulative impacts analysis, including when there is a petition requesting such an analysis.

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The results of that analysis influence whether an air permit is issued or denied. If MPCA determines that the results of the cumulative impact analysis show a “substantial adverse impact” on the environmental justice area, then MPCA must deny the permit unless the applicant enters into a community benefit agreement with MPCA.

The proposed process does have limitations. It would apply only to certain categories of air permits, including a major source air permit under Minnesota Rules 7007.0200, state air permits under Minnesota Rules 7007.0250, subps. 5 or 6, and “permits required for new construction, facility expansion, or the reissuance of an existing permit.” Additionally, it would apply to permits for facilities in only Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington counties, first-class cities, and Indian Country.

Consideration of environmental justice in Minnesota will continue to evolve even after enactment of the proposed legislation. If enacted, MPCA would be required to adopt rules concerning issues such as: the benchmarks for when cumulative impacts analysis is required, the process for petitioning for such an analysis, what constitutes substantial impact, and others.

OTHER FEDERAL AND STATE ENVIRONMENTAL JUSTICE EFFORTS

Minnesota’s focus on environmental justice is part of a nationwide trend. At the federal level, the Environmental Protection Agency has invested tremendous resources into building environmental justice tools to identify over-burdened areas, and the Department of Justice created an environmental justice office to inform enforcement efforts. Recently, the Biden-Harris administration issued an executive order advancing environmental justice that focuses on cumulative impacts and increasing community involvement.

At the state level, agencies and state legislators are emphasizing environmental justice and community involvement.

- The Missouri Department of Natural Resources will change its policy and begin posting air permit applications online in order to increase transparency and community involvement.
- New Jersey enacted legislation that requires a consideration of cumulative impacts and a denial of permits for new facilities that will add more harm to overburdened communities.
- New York developed and finalized criteria for identifying disadvantaged communities so that those communities can be better served in the regulatory process.

Stinson’s environmental attorneys are keeping watch of all environmental justice developments, and are prepared to help you navigate the shifting regulatory landscape.

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