

1.1 Senator moves to amend S.F. No. 466 as follows:

1.2 Delete everything after the enacting clause and insert:

1.3 "Section 1. [116.065] CUMULATIVE IMPACTS ANALYSIS; PERMIT DECISIONS
1.4 IN ENVIRONMENTAL JUSTICE AREAS.

1.5 Subdivision 1. Definitions. (a) For the purposes of this section, the following terms have
1.6 the meanings given them.

1.7 (b) "Commissioner" means the commissioner of the Minnesota Pollution Control Agency.

1.8 (c) "Compelling public interest" means a factor or condition that is necessary to serve
1.9 an essential environmental, health, or safety need of residents of an environmental justice
1.10 area, and which cannot reasonably be met by alternative available means.

1.11 (d) "Cumulative impacts" means the impacts of aggregated levels of past and current
1.12 air, water, and land pollution in a defined geographic area to which current residents are
1.13 exposed.

1.14 (e) "Environmental justice" means:

1.15 (1) communities of color, Indigenous communities, and low-income communities have
1.16 a healthy environment and are treated fairly when environmental statutes, rules, and policies
1.17 are developed, adopted, implemented, and enforced; and

1.18 (2) in all decisions that have the potential to affect the environment of an environmental
1.19 justice area or the public health of its residents, due consideration is given to the history of
1.20 the area's and its residents' cumulative exposure to pollutants and to any current
1.21 socioeconomic conditions that could increase harm to those residents from additional
1.22 exposure to pollutants.

1.23 (f) "Environmental justice area" means one or more census tracts in Minnesota:

1.24 (1) in which, based on the most recent data published by the United States Census Bureau:

1.25 (i) 40 percent or more of the population is nonwhite;

1.26 (ii) 35 percent or more of the households have an income at or below 200 percent of the
1.27 federal poverty level; or

1.28 (iii) 40 percent or more of the population over the age of five have limited English
1.29 proficiency; or

1.30 (2) located within Indian country, as defined in United States Code, title 18, section
1.31 1151.

2.1 (g) "Environmental stressors" mean factors that may make residents of an environmental
2.2 justice area susceptible to harm from exposure to pollutants. Environmental stressors include:

2.3 (1) cumulative impacts; and

2.4 (2) social and environmental factors, including but not limited to, poverty, substandard
2.5 housing, food insecurity, elevated rates of disease, and poor access to health insurance and
2.6 medical care.

2.7 (h) "Major source" means a major source of air pollution as defined by the federal Clean
2.8 Air Act, United States Code, title 42, section 7401 et seq.

2.9 Subd. 2. **Cumulative impacts analysis; when required.** (a) This subdivision applies
2.10 to the following permit applications for the construction of a new facility or the expansion
2.11 of an existing facility:

2.12 (1) a major air permit, as defined in Minnesota Rules, chapter 7007.0200;

2.13 (2) a state air permit required under Minnesota Rules, chapter 7007.0250, subpart 1 to
2.14 6;

2.15 (3) an individual solid waste permit for waste disposal facilities that receive 100,000
2.16 cubic yards or more of waste annually;

2.17 (4) a permit required for the treatment, storage, or disposal of hazardous waste; and

2.18 (5) a major National Pollution Discharge Elimination System permit for an industrial
2.19 facility or a wastewater treatment plant that receives discharges from an industrial facility.

2.20 (b) The owner or operator of a facility subject to paragraph (a), clauses (2) to (5), must
2.21 conduct a cumulative impacts analysis if the facility is located in or, as determined by the
2.22 commissioner, may affect the environment or health of residents in, an environmental justice
2.23 area, and:

2.24 (1) the proposed facility exceeds the benchmarks established in the rulemaking required
2.25 under subdivision 5 requiring conduct of a cumulative impacts analysis; or

2.26 (2) a petition signed by at least 50 persons residing or owning property in the affected
2.27 environmental justice area is submitted to the commissioner supported by material evidence
2.28 demonstrating, as defined in rules, to the satisfaction of the commissioner, that a potential
2.29 adverse cumulative impact on the environment or health of the residents of the environmental
2.30 justice area may result if the permit is issued.

3.1 In making this determination, the commissioner may consider material evidence submitted
3.2 by the owner or operator of the facility seeking the permit that issuance of the permit will
3.3 not result in a potential adverse cumulative impact in the environmental justice area.

3.4 (c) The owner or operator of a facility subject to paragraph (a), clause (1) must conduct
3.5 a cumulative impacts analysis if the facility is located in or, as determined by the
3.6 commissioner, may affect the environment or health of residents in an environmental justice
3.7 area.

3.8 (d) The commissioner may require an owner or operator of a facility subject to paragraph
3.9 (a) or a facility described in paragraph (a), clauses (1) to (5), that is seeking reissuance of
3.10 a permit to conduct a cumulative impacts analysis if the commissioner has material evidence
3.11 that demonstrates that a potential adverse cumulative impact on the environment or health
3.12 of the residents of the environmental justice area may result if the permit is issued and the
3.13 facility is located within an environmental justice area of concern or within two miles of
3.14 the boundary of an environmental justice area.

3.15 (e) The commissioner must require an owner or operator of a facility that is seeking
3.16 reissuance of a permit described in paragraph (a), clauses (1) to (5) to conduct a cumulative
3.17 impacts analysis if:

3.18 (1) the facility is seeking reissuance of a major source air permit within an environmental
3.19 justice area of concern; or

3.20 (2) the facility is located within an environmental justice area of concern or within two
3.21 miles of the boundary of an environmental justice area and a petition is signed as described
3.22 in paragraph (b), clause (2).

3.23 Subd. 3. **Cumulative impacts analysis; public meeting requirements.** (a) Any permit
3.24 applicant or permit holder required to conduct a cumulative impacts analysis under
3.25 subdivision 2 must hold at least two public meetings in the environmental justice area
3.26 impacted by the facility before the commissioner issues or denies a permit. The first public
3.27 meeting must be held before conducting a cumulative impacts analysis, and the second must
3.28 be held after conducting the analysis.

3.29 (b) The permit applicant or permit holder must:

3.30 (1) publish notice containing the date, time, and location of the public meetings, and a
3.31 brief description of the permit or project in a newspaper of general circulation within the
3.32 environmental justice area at least 30 days before the meetings;

4.1 (2) post physical signage in the environmental justice area impacted, as directed by the
4.2 commissioner; and

4.3 (3) provide the commissioner with notice of the public meeting and a copy of the
4.4 cumulative impacts analysis at least 45 days before the second public meeting.

4.5 (c) The commissioner must post the notice and cumulative impacts analysis on the
4.6 agency's website at least 30 days before the second public meeting.

4.7 (d) The permit applicant or permit holder must:

4.8 (1) provide an opportunity for robust public and Tribal engagement at the public meetings;

4.9 (2) accept written and oral comments, as directed by the commissioner, from any
4.10 interested party; and

4.11 (3) provide an electronic copy of all written comments and a transcript of oral comments
4.12 to the agency within 30 days of the public meetings.

4.13 (e) If the permit applicant or permit holder is applying for more than one permit that
4.14 may affect the same environmental justice area, the permit applicant or permit holder may
4.15 request that the commissioner require that the facility hold two public meetings that address
4.16 all of the permits sought. The commissioner may approve or deny the request.

4.17 (f) The commissioner may incorporate conditions in a permit for a facility located in or
4.18 affecting an environmental justice area to hold multiple in-person, meetings with residents
4.19 of the environmental justice area affected by the facility to share information and discuss
4.20 community concerns.

4.21 Subd. 4. Environmental justice area; permit decisions. (a) In determining whether to
4.22 issue or deny a permit, the commissioner must consider the cumulative impacts analysis
4.23 conducted, the testimony presented, and comments submitted in public meetings held under
4.24 subdivision 3. The permit may be issued no earlier than 30 days following the last public
4.25 meeting.

4.26 (b) The commissioner must deny an application for a permit subject to this section for
4.27 a facility in an environmental justice area if the cumulative impacts analysis determines that
4.28 issuing the permit in combination with the environmental stressors present in the
4.29 environmental justice area would contribute to adverse cumulative environmental stressors
4.30 in the environmental justice area, unless:

5.1 (1) the commissioner enters into a community benefit agreement with the facility owner
5.2 or operator, in consultation with community-based organizations representing the interests
5.3 of residents of the environmental justice community; and

5.4 (2) there is a compelling public interest to issue the permit, as determined by the
5.5 commissioner, based on criteria established in the rules required under subdivision 5.

5.6 (c) If the commissioner determines that a compelling public interest exists and the
5.7 applicant enters into a community benefit agreement with the commissioner, the agency
5.8 may grant a permit that imposes conditions on the construction and operation of the facility
5.9 to protect public health and the environment.

5.10 (d) Issuance of a permit under this section must include a requirement that the facility
5.11 provide information to the community describing the health risks that the facility poses.

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

5.14 (f) The commissioner must publish and maintain on its website a list of environmental
5.15 justice areas in the state.

5.16 (g) The agency must maintain an updated database of the identified stressors in specific
5.17 census tracts, and make this database accessible to the public.

5.18 Subd. 5. **Rulemaking.** (a) The commissioner shall adopt rules under chapter 14 to
5.19 implement and govern the cumulative impacts analysis and issuance or denial of permits
5.20 for facilities that impact environmental justice areas as contained in this section.

5.21 Notwithstanding section 14.125, the agency must publish notice of intent to adopt rules
5.22 within 36 months of the effective date of this act, or the authority for the rules expires.

5.23 (b) During the rulemaking process, the Pollution Control Agency shall engage in robust
5.24 public engagement, including public meetings, and Tribal consultation.

5.25 (c) Rules developed under this section must:

5.26 (1) define conditions, criteria, or circumstances that qualify as a compelling public
5.27 interest, which:

5.28 (i) must not include economic considerations unless the economic benefit considered
5.29 directly and substantially benefits residents of the environmental justice area of concern;

5.30 (ii) must include noneconomic considerations that would directly benefit the residents
5.31 of the environmental justice area of concern; and

6.1 (iii) must take into account public comments made at public meetings held under
6.2 subdivision 3;

6.3 (2) establish benchmarks to assist the commissioner's determination regarding the need
6.4 for a cumulative impacts analysis to be conducted;

6.5 (3) establish the content of a community benefit agreement and procedures for entering
6.6 into community benefit agreements, which must include:

6.7 (i) meaningful consultation with members of the public and community-based
6.8 organizations or coalitions representing the interests of residents within the environmental
6.9 justice area;

6.10 (ii) at least one public meeting held within the environmental justice area; and

6.11 (iii) a formal petition showing support from 50 community members that is signed after
6.12 a public meeting;

6.13 (4) establish a petition process and form submitted to the agency by environmental
6.14 justice area residents to support the need for a cumulative impact analysis, including criteria
6.15 defining potential adverse cumulative impact on the environment or health of the residents;

6.16 (5) establish and define criteria for requiring a cumulative impact analysis; and

6.17 (6) establish a process for conducting cumulative impacts analysis.

6.18 (d) The agency must provide translation services and translated materials upon request
6.19 during rulemaking meetings.

6.20 (e) The agency must provide public notice on the agency's website at least 30 days before
6.21 public meetings held on this rulemaking. The notice must include the date, time, and location
6.22 of the meeting. The agency must use multiple communications methods to inform residents
6.23 of environmental justice areas in the public meetings held for the rulemaking.

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

6.25 Sec. 2. Minnesota Statutes 2022, section 116.07, subdivision 6, is amended to read:

6.26 Subd. 6. **Pollution Control Agency; exercise of powers.** In exercising all its powers
6.27 the Pollution Control Agency ~~shall give due consideration to~~ must:

6.28 (1) consider the establishment, maintenance, operation and expansion of business,
6.29 commerce, trade, industry, traffic, and other economic factors and other material matters
6.30 affecting the feasibility and practicability of any proposed action, including, but not limited
6.31 to, the burden on a municipality of any tax which may result therefrom, and ~~shall~~ must take

7.1 or provide for such action as may be reasonable, feasible, and practical under the
7.2 circumstances; and

7.3 (2) to the extent reasonable, feasible, and practical under the circumstances:

7.4 (i) ensure that actions or programs that have a direct, indirect, or cumulative impact on
7.5 environmental justice areas incorporate community-focused practices and procedures in
7.6 agency processes, including communication, outreach, engagement, and education to enhance
7.7 meaningful, timely, and transparent community access;

7.8 (ii) collaborate with other state agencies to identify, develop, and implement means to
7.9 eliminate and reverse environmental and health inequities and disparities;

7.10 (iii) promote the utility and availability of environmental data and analysis for
7.11 environmental justice areas, other agencies, federally recognized Tribal governments, and
7.12 the public;

7.13 (iv) encourage coordination and collaboration with residents of environmental justice
7.14 areas to address environmental and health inequities and disparities; and

7.15 (v) ensure environmental justice values are represented to the agency from a
7.16 commissioner-appointed environmental justice advisory committee that is composed of
7.17 diverse members and that is developed and operated in a manner open to the public and in
7.18 accordance with the duties described in the bylaws and charter adopted and maintained by
7.19 the commissioner.

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

7.21 Amend the title accordingly