

MINNESOTA

How Does Minnesota Define Environmental Justice and Environmental Justice Communities?

Environmental Justice Definitions:

The Minnesota Pollution Control Agency (MPCA) defines environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”¹ MPCA states that this will be achieved when “everyone benefits from the same degree of environmental protection and has equal access to the decision-making processes that contribute to a healthy environment.”²

MPCA states that *fair treatment* means that “no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies.”³

The agency states that *meaningful involvement* means that “people have an opportunity to participate in decisions about activities that may affect their environment and/or health; the public’s contribution can influence the regulatory agency’s decision; their concerns will be considered in the decision-making process; the decision makers seek out and facilitate the involvement of those potentially affected.”⁴

Environmental Justice Mapping Tools:

MPCA’s has an interactive map of “areas of environmental justice concern.”⁵ Areas of environmental justice concern are those in which more than 50% of residents are people of color and/or 40% of households have a household income of less than 185% of the federal poverty level. Minnesota also includes areas within tribal boundaries as potential environmental justice areas.⁶

¹ Minn. Pollution Control Agency, Environmental Justice Framework, at p.1 (May 2022), <https://www.pca.state.mn.us/sites/default/files/p-gen5-05.pdf> (last visited June 30, 2022).

² *Id.*

³ Minn. Pollution Control Agency, *MPCA and environmental justice*, <https://www.pca.state.mn.us/about-mpca/mpca-and-environmental-justice> (last visited June 30, 2022).

⁴ *Id.*

⁵ ArcGIS, Minn. Pollution Control Agency, Understanding environmental justice in Minn., <https://mpca.maps.arcgis.com/apps/MapSeries/index.html?appid=f5bf57c8dac24404b7f8ef1717f57d00> (last visited June 30, 2022).

⁶ Minn. Pollution Control Agency, *supra* note 3.

The mapping tool includes a modeling tool called MNRISKS⁷. MNRISKS models air pollution in the different regions specified by the MPCA’s mapping tool. The emissions and sources in MNRISKS are meant to be updated every three years but the tool’s emissions inventory was last updated in 2014.⁸ This modeling tool assesses the air pollution levels on a scale from 0-26; an area with a score of 1 is considered to meet the health “benchmark” for air pollution. A score of less than one has less pollution than the benchmark; a score of more than one has more pollution than the benchmark (i.e., greater potential risk). The MNRISKS filter on the mapping tool gives the air pollution score, the most relevant or prevalent pollutants in an area, any contributing emission sources, and whether the area is an “area of environmental justice concern” as determined by the criteria above.

Additionally, MPCA has a map of power plants and their potential health impacts on areas of environmental justice concern.⁹ The tool estimates nitrogen oxides, sulfur dioxide, and particulate emissions from power plants in the state, as well as their location in/not in an environmental justice area and the reason an area is or is not designated as an area of environmental justice concern. This tool only estimates emissions from 2006, 2015, and *projected* emissions for 2030.

MPCA also had a map of permitted facilities and their emissions, with emission data collected as recently as 2019. However, this tool does not include or reference environmental justice areas.¹⁰

Another tool that MPCA maintains is the “Whats in My Neighborhood” mapping tool which offers residents access a wide variety of environmental information about the community like potentially contaminated sites and environmental permits and registrations.¹¹

Lastly, the MPCA maintains the “Environmental Review Projects Interactive Map” which provides an interactive way to find information on active projects undergoing environmental review in the community.¹² Information embedded into this map includes public comment periods for each project, public meetings, notices of decisions on environmental review documents, and more.

⁷ Minn. Pollution Control Agency, MNRISKS, Minn. Statewide Screening of Health Risks from Air Pollution (Feb. 2022) <https://www.pca.state.mn.us/sites/default/files/aq9-29.pdf> (last visited June 30, 2022).

⁸ Minn. Pollution Control Agency, *supra* note 5.

⁹ Minn. Pollution Control Agency, *Power plants and environmental justice*, <https://www.pca.state.mn.us/air/power-plants-and-environmental-justice> (last visited June 30, 2022).

¹⁰ Minn. Pollution Control Agency, *Permitted facility air emissions data*, <https://www.pca.state.mn.us/air/permitted-facility-air-emissions-data> (last visited June 30, 2022).

¹¹ Minn. Pollution Control Agency, *What’s in My Neighborhood*, <https://www.pca.state.mn.us/data/whats-my-neighborhood> (last visited July 7, 2022).

¹² Minn. Pollution Control Agency, *Environmental Review Projects Interactive Map*, <https://www.eqb.state.mn.us/content/env-rev-projects-interactive-map> (last visited July 7, 2022).

How Does Minnesota Consider Environmental Justice in its Substantive Actions¹³?

Environmental Justice as a Policy of the Environmental Agency or Across All Agencies:

Minnesota's Environmental Policy Act sets forth the general policy that the State shall

use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which human beings and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of the state's people.¹⁴

Consideration of Environmental Justice in Permitting:

MPCA does not explicitly require consideration of environmental justice in permitting. In 2008, however, the state legislature passed a law that requires the MPCA to analyze and consider “cumulative levels and effects of past and current pollution” before a permit may be issued for a facility located in a specific part of South Minneapolis.¹⁵ (see “Other Consideration of Cumulative Impacts” section below).

In 2017 MPCA published its Environmental Justice Framework Implementation Report.¹⁶ The report discusses an air permitting pilot project, pursuant to which MPCA staff developed a checklist of steps for a revised air permitting process that includes evaluating “impacts on environmental justice communities during permitting, exploring ways to mitigate those impacts, and changing the way the agency communicates and engages with the public about that process.”¹⁷

A pipeline permit issued by the Minnesota Public Utilities Commission required an Environmental Justice Communities Mitigation Plan and monthly Mitigation Report until construction was completed.¹⁸

Consideration of Environmental Justice in Enforcement:

There are no statutory or regulatory requirements relating to environmental justice and enforcement. The 2015 MPCA Environmental Justice Framework outlines four strategies to promote environmental justice in enforcement:

¹³ Substantive is defined as governing the original rights and obligations of individuals. Cornell L. Sch., LII, *Wex Legal Encyclopedia*, https://www.law.cornell.edu/wex/substantive_law (last visited June 30, 2022).

¹⁴ Minn. Stat. 116D.02 Subd. 1.

¹⁵ Minn. Stat. 116.07 Subd. 4a.

¹⁶ *MPCA Environmental Justice Framework Implementation Report* (April 26, 2017), available at <https://www.pca.state.mn.us/sites/default/files/p-gen5-32.pdf> (last visited June 30, 2022).

¹⁷ *Id.* at 3.

¹⁸ *In the Matter of the Application of Enbridge Energy, Limited Partnership, for a Routing Permit for the Proposed Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border*, 2020 WL 6293165 (Minn.P.U.C.).

1. Conducting more frequent compliance inspections in facilities in environmental justice areas.
2. Resolving noncompliance with community benefits, such as an increased reduction in emissions or a community improvement project, in addition to compliance.
3. Supporting MPCA permitting programs with additional compliance determinations and assistance to facilities.
4. Informing potentially affected communities of noncompliance if there is “potential for adverse effects” in the community – “except when prohibited by law such as during a formal investigation or ongoing enforcement action.”¹⁹

Consideration of Environmental Justice in Land Use:

N/A.

State Environmental Policy Act “Mini-NEPA”:

The Minnesota Environmental Policy Act (MEPA) is similar to the National Environmental Policy Act.²⁰ Neither the statute nor its implementing regulations include any mention of environmental justice.²¹

Dedicated Funding to Environmental Justice Communities:

N/A.

Other Consideration of Cumulative Impacts:

Minn. Stat. § 116.07, subd. 4a, prohibits the MPCA from issuing an air permit without first analyzing and considering the cumulative levels and effects of past and current environmental pollution from all sources on the environment and residents. It applies to a defined area that is part of South Minneapolis. MPCA has developed two guidance documents for implementing the cumulative levels and affects analysis.²² The analysis includes the following steps:

- Determining whether the facility is within the area described by the statute,

¹⁹ Minn. Pollution Control Agency, *supra* note 1. The Environmental Justice Framework “provides direction and guidance to modify [MPCA’s] practices and integrate environmental justice principles into our work over the next two-three years.”

²⁰ Minn. Stat. 116D.04.

²¹ MN ADC 4410.0200 - .6500.

²² (1) Process Document for Minn. Stat. § 116.07, subd. 4a, Cumulative Levels and Effects Process v.02 (May 2013), available at <https://www.pca.state.mn.us/sites/default/files/aq1-41.pdf> and (2) Reference Document for Minn. Stat. § 116.07, subd. 4a: Information Source for Use in Complying with Statute,” available at <https://www.pca.state.mn.us/sites/default/files/aq1-42.pdf>.

- Conducting an Air Emissions Risk Analysis (AERA) and criteria pollutant modeling to define the extent of the geographic area of study,
- The permit applicant analyzing potential impacts on human health and the environment from their facility, and
- MPCA considering the analysis in permitting determinations.

Prohibitions on Disparate Impact Discrimination:

N/A.

Established Environmental Rights:

N/A.

How Does Minnesota Address Environmental Justice in its Procedures²³?

Environmental Justice as Part of Environmental Agency's Mission:

MPCA adopted Administrative Policy No. i-admin8-29, effective November 2020, which states:

The Minnesota Pollution Control Agency (MPCA) expects the fair treatment and meaningful involvement of communities of color, Indigenous communities, and low-income communities in agency actions and decisions that affect them. It is the policy of the MPCA that an outcome of its work, in addition to protecting and improving the environment and public health, must address environmental justice concerns.²⁴

The Agency adopted an Environmental Justice Framework in 2015, which sets out the goals of ensuring that:

- Pollution does not have disproportionate negative impacts on any group of people.
- The benefits, opportunities, and risks of agency policies, decisions, and activities are fairly and equitably distributed.
- All individuals and groups are given the opportunity for meaningful involvement in agency decisions that may impact them.

²³ Procedural is defined as rules and the methods used to ensure the rights of individuals. Cornell L. Sch., LII, *Wex Legal Encyclopedia*, https://www.law.cornell.edu/wex/procedural_law (last visited June 30, 2022).

²⁴ MPCA Admin. Policy No. i-admin8-29, available at <https://www.pca.state.mn.us/sites/default/files/i-admin8-29.pdf>.

- Environmental justice concerns are given due consideration by agency decision-makers during the development, implementation, and enforcement of environmental laws, regulations, and policies.
- The MPCA and its stakeholders have mechanisms in place to regularly evaluate progress, success, and failure in meeting the agency’s goals and the outcomes of those evaluations are used to inform future planning and decision-making by the agency.²⁵

Environmental Justice as Part of Other Agency’s Mission:

N/A.

Processes and Procedures (including Title VI):

- Non-Discrimination Policy:

MPCA has a nondiscrimination webpage that includes information about its non-discrimination policy²⁶ and its grievance procedures.²⁷

- Grievance Procedures:

N/A.

- Enhanced Public Participation and Information Access:

Enhanced public participation is required for permits in areas covered by the Cumulative Levels and Affects Process. This includes information sessions when an application is filed, email notifications, and an extended public comment period.²⁸

- Language Access:

Minnesota does not have any statutory or regulatory provisions for translation services or requirements nor does it have a language access plan. According to the 2017 Environmental Justice Framework Implementation Report, mapping tools include expanded demographic info including language, which “will help to determine . . . if translation is warranted.” The report gives examples of MPCA’s use of interpreters, translation of documents, and methods for identifying LEP communities.

- Consultation with Indigenous Communities and Tribal Nations:

²⁵ Minn. Pollution Control Agency, *Environmental Justice Framework*, p.4; available at <https://www.pca.state.mn.us/sites/default/files/p-gen5-05.pdf>.

²⁶ <https://www.pca.state.mn.us/about-mpca/nondiscrimination-and-civil-rights>.

²⁷ Minn. Pollution Control Agency, *Nondiscrimination and civil rights*, <https://www.pca.state.mn.us/about-mpca/grievance-procedures-related-civil-rights> (last visited June 30, 2022).

²⁸ See Minn. Pollution Control Agency, *Process Document for Minn. Stat. § 116.07, subd. 4a Cumulative Levels and Effects Process v.02* (May 2013), available at <https://www.pca.state.mn.us/sites/default/files/aq1-41.pdf>.

Minnesota Executive Order 13-10 requires all cabinet level agencies to develop and implement, in consultation with Minnesota Tribal Nations, tribal consultation policies.²⁹ Each agency must also designate a staff member responsible for implementation of the policy. Prior to February 1 of each year, the agencies are required to consult with each Minnesota Tribal Nation to identify priority issues for consultation and they must then consider the input generated from the consultations “with the goal of achieving mutually beneficial solutions.”³⁰

The MPCA has adopted a Policy on Consultation and Coordination with Indian Tribal Governments, as a Guidance on Air Quality Permit Consultation with Minnesota Tribal Nations, and a Guidance on Water Quality Consultation with Minnesota Tribal Nations.³¹ MPCA is supposed to consult with Tribal Governments when MPCA actions – such as permitting – “may directly affect tribal interests.”³² There is “no single formula” for how or when to consult and no specific trigger for consultation.³³ Consultation may be initiated by either MPCA or the tribes themselves.³⁴ Tribal Nations may also submit “counties of interest,” discussed above, to MPCA. MPCA is then supposed to notify Tribal Liaisons of all permitting actions in those counties. Tribal Nations have early, pre-notice access to permit drafts, are invited to accompany MPCA on site tours (at the discretion of the applicant) and can meet with MPCA at any time before or during the public comment period. The guidance is not, however, binding or enforceable.

The Minnesota Chippewa Tribe in coordination with Honor the Earth and the six Bands of the Tribe, drafted a Tribal Cumulative Impact Assessment.³⁵

Lastly, there is an Environmental Health Tracking and Biomonitoring Advisory Panel where members are appointed by the commissioner of health and the panel makes recommendations to the commissioner and legislature on topics including environmental hazard exposures to study under the state environmental health tracking system.³⁶

Governmental Environmental Justice Structures, Positions, and Funding Streams;

²⁹ Minn. Exec. Order 13-10 available at <https://mn.gov/gov-stat/images/EO-13-10.pdf>.

³⁰ *Id.*

³¹ *Policy on Consultation and Coordination with Indian Tribal Governments* (Sept. 2013), available at <https://www.pca.state.mn.us/sites/default/files/p-gen5-06.pdf>; *Guidance on Air Quality Consultation with Minnesota Tribal Nations* (May 2016), available at <https://www.pca.state.mn.us/sites/default/files/aq2-32.pdf>; *Guidance on Water Quality Consultation with Minnesota Tribal Nations* (May 2016), available at <https://www.pca.state.mn.us/sites/default/files/wq-gen1-12.pdf>.

³² Minn. Pollution Control Agency, Off. of the Comm’r, *Policy on Consultation and Coordination with Indian Tribal Governments*, at p.1, available at <https://www.pca.state.mn.us/sites/default/files/p-gen5-06.pdf>.

³³ *Id.*

³⁴ *Id.* at 2.

³⁵ Minn. Chippewa Tribe, *Tribal Cumulative Impact Assessment*, https://www.mnchippewatribe.org/impact_assessment.html (last visited June 30, 2022).

³⁶ Minn. Stat. § 144.998.

- Environmental Justice Coordinating Agency:

There is not an Office of Environmental Justice, but Ned Brooks (see Minnesota Environmental Justice Contacts for contact information) is listed as the MPCA's Environmental Justice Coordinator.

- Environmental Justice Coordinator:

N/A.

- Environmental Justice Advisory Board:

The Environmental Justice Advisory Group advises the MPCA Commissioner on implementation of the agency's environmental justice framework, provides feedback on its effectiveness, and offers suggestions for future improvements.³⁷ Its membership is selected by the MPCA Commissioner with the input from a selection committee that includes external stakeholders and current Advisory Board members.

- Funding for Environmental Justice:

MPCA has not allocated any funding to environmental justice specifically.

Additional Minnesota Environmental Justice Provisions?

N/A.

Minnesota Environmental Justice Contacts?

The MPCA Nondiscrimination Coordinator is:

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Minnesota Pollution Control Agency
520 Lafayette Road North
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651-757-2557
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Where to Find Minnesota Environmental Justice Laws, Policies, and Tools?

Constitutional Provisions:

³⁷ Minn. Pollution Control Agency, *MPCA Environmental Justice Advisory Group*, <https://www.pca.state.mn.us/about-mpca/mpca-environmental-justice-advisory-group> (last visited June 30, 2022).

N/A.

Executive Orders:

- Executive Order No. 13-10, “Affirming the Government-to-Government Relationship between the State of Minnesota and the Minnesota Tribal Nations: Providing for Consultation, Coordination, and Cooperation; Rescinding Executive Order 03-05,” <https://mn.gov/gov-stat/images/EO-13-10.pdf>.

Legislation and Statutes:

- Minn. Stat. § 144.998 (Environmental Health Tracking and Biomonitoring Advisory Panel).
- Minn. Stat. § 116D.04 (Minnesota Environmental Policy Act).
- Minn. Stat. § 116.07 Subd.4a. (Cumulative Levels and Effects).

Regulations:

- MN ADC 4410.0200 - .6500 (Minnesota Environmental Policy Act).

Policies/Guidance:

- MPCA Environmental Justice Framework (2015), <https://www.pca.state.mn.us/sites/default/files/p-gen5-05.pdf>.
- MPCA Framework Implementation Report (2017), <https://www.pca.state.mn.us/sites/default/files/p-gen5-32.pdf>.
- MPCA, Process Document for Minn. Stat. § 116.07, subd. 4a Cumulative Levels and Effects Process v.02 (May 2013), <https://www.pca.state.mn.us/sites/default/files/aq1-41.pdf>.
- Reference Document for Minn. Stat. § 116.07, subd. 4a: Information Source for Use in Complying with Statute,” <https://www.pca.state.mn.us/sites/default/files/aq1-42.pdf>.
- MPCA Admin. Policy No. i-admin8-29, <https://www.pca.state.mn.us/sites/default/files/i-admin8-29.pdf>.
- MPCA Policy on Consultation and Coordination with Indian Tribal Governments, <https://www.pca.state.mn.us/sites/default/files/p-gen5-06.pdf>.
- MPCA Guidance on Air Quality Consultation with Minnesota Tribal Nations, <https://www.pca.state.mn.us/sites/default/files/aq2-32.pdf>.

- MPCA Guidance on Water Quality Consultation with Minnesota Tribal Nations, <https://www.pca.state.mn.us/sites/default/files/wq-gen1-12.pdf>.
- MNRISKS (Air Toxics Risk Screening Tool), <https://www.pca.state.mn.us/sites/default/files/aa9-29.pdf>.

Mapping Tools:

- Areas of Environmental Justice Concern - <https://mpca.maps.arcgis.com/apps/MapSeries/index.html?appid=f5bf57c8dac24404b7f8ef1717f57d00>.
- Minnesota Environmental Quality Board Environmental Review Projects Interactive Map - <https://www.eqb.state.mn.us/content/env-rev-projects-interactive-map>.
- Power Plants and Environmental Justice Map - <https://www.pca.state.mn.us/air/power-plants-and-environmental-justice>.

Other:

N/A.