

HF637 - 0 - Environmental Justice Areas; Pollution and Permits

Chief Author: **Fue Lee**
 Committee: **Environment and Natural Resources Finance And Policy**
 Date Completed: **1/31/2023 10:25:32 AM**
 Agency: **Pollution Control Agency**

| State Fiscal Impact | Yes | No |
|---------------------------|-----|----|
| Expenditures | X | |
| Fee/Departmental Earnings | | X |
| Tax Revenue | | X |
| Information Technology | | X |
| Local Fiscal Impact | X | |

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

| State Cost (Savings) | Biennium | | | Biennium | | |
|-----------------------|----------------------|--------------|---------------|----------|--------|--------|
| | Dollars in Thousands | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| General Fund | - | 235 | 200 | - | - | - |
| Environmental | - | 9,291 | 9,221 | - | - | - |
| Total | - | 9,526 | 9,421 | - | - | - |
| Biennial Total | | | 18,947 | | | - |

| Full Time Equivalent Positions (FTE) | Biennium | | | Biennium | |
|--------------------------------------|----------|-------------|--------------|--------------|--------------|
| | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| General Fund | - | 1.5 | 1.25 | - | - |
| Environmental | - | 61.4 | 60.9 | 59.65 | 59.65 |
| Total | - | 62.9 | 62.15 | 59.65 | 59.65 |

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Jim Carlson **Date:** 1/31/2023 10:25:32 AM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

| State Cost (Savings) = 1-2 | | Biennium | | | Biennium | |
|--|---|-----------------|---------------|--------------|-----------------|---------------|
| Dollars in Thousands | | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| General Fund | - | 235 | 200 | - | - | - |
| Environmental | - | 9,291 | 9,221 | - | - | - |
| Total | - | 9,526 | 9,421 | - | - | - |
| Biennial Total | | | 18,947 | | | - |
| 1 - Expenditures, Absorbed Costs*, Transfers Out* | | | | | | |
| General Fund | - | 235 | 200 | - | - | - |
| Environmental | - | 9,291 | 9,221 | 9,021 | 9,021 | 9,021 |
| Total | - | 9,526 | 9,421 | 9,021 | 9,021 | 9,021 |
| Biennial Total | | | 18,947 | | | 18,042 |
| 2 - Revenues, Transfers In* | | | | | | |
| General Fund | - | - | - | - | - | - |
| Environmental | - | - | - | 9,021 | 9,021 | 9,021 |
| Total | - | - | - | 9,021 | 9,021 | 9,021 |
| Biennial Total | | | | | | 18,042 |

Bill Description

Bill amends section 1 of Minnesota Statutes 2022, section 116.06 subdivision 1 on Applicability.

Bill amends section 2 of Minnesota Statutes 2022, section 116.06 subdivision 6a to define commissioner.

Bill amends section 3 of Minnesota Statutes 2022, section 116.06 subdivision 10a to define environmental justice.

Bill amends section 4 of Minnesota Statutes 2022, section 116.06 subdivision 10b to define environmental justice areas.

Bill amends section 5 of Minnesota Statutes 2022, section 116.07 subdivision 4a. Permits, by requiring the agency to not issue, renew, or amend a permit that potentially increases pollution levels or the toxicity of emissions to a facility in an Environmental Justice area. Including exposure from mobile sources and contaminated soils. The demographic, social, and economic characteristics of residents and their sensitivity to increased pollution must be considered.

The permit applicant must indicate whether the permit action will impact health or environment of residents, and include the data used to make the determination. The Agency must review the determination and is responsible for determining whether the proposed permit will impact the environmental or health of an environmental justice area. The Agency must determine the geographical boundaries of an environmental justice area. The Agency's reasonable costs of complying with this subdivision are to be reimbursed by the permit applicant.

Bill adds a new subdivision 4m, Demographic analysis, to Minnesota Statutes, section 116.07. The subdivision includes the information used for the demographic analysis by the applicant and the Agency. The costs of complying with this subdivision are to be paid by the permit applicant.

Bill adds a new subdivision 4n, Permits; environmental justice area, to Minnesota Statutes, section 116.07. The subdivision requires that at a public meeting held for permit applications undergoing a cumulative analysis all relevant data used by the Agency to determine if a permit is part of the public record.

The Agency's must review the permit application, the analysis of cumulative pollution, the permit applicant's demographic analysis, and any additional relevant information, including testimony and written comments, to determine whether impacts from approval of the permit will cause or contribute to increased levels of environmental or health impacts compared with denying the permit.

If the Agency determines that issuing the permit would cause or contribute to increased levels of environmental or health impacts compared with not issuing the permit, the commissioner must deny the permit, or place conditions on the permit that eliminate any contribution to increased levels of environmental or health impacts.

Bill adds Minnesota Statute 2022, section 116.076, Environmental Justice Areas; Boundaries; Maps. This section requires the Agency to determine the geographical boundaries of environmental justice areas. The Agency's determination may be appealed through a petition. Updated maps of each environmental justice area in the state are to be on the Agency website.

Bill amends Minnesota Statutes 2022, section 116D.04 by adding a new subdivision 2c for environmental assessment worksheets and environmental impact statements for projects that have increase pollution levels or the toxicity in an environmental justice area must also contain a demographic analysis.

Assumptions

1. The costs reflected in this analysis only address Minnesota Pollution Control Agency (MPCA) and Environmental Quality Board (EQB) costs and are over and above current program appropriations.
2. The MPCA's environmental justice (EJ) area definition does not include all of the same parameters as listed in the bill. Therefore, the MPCA used its definition of EJ areas and counted permitted facilities and environmental review actions located within one mile of an EJ area, because it is assumed they are close enough to be potentially capable of increasing pollution levels or the toxicity of emissions in the EJ area.
3. The permit action types covered by the bill include new issuances, reissuances, and major amendments of air quality permits. Solid waste permits subject to the bill include general permits, permits-by-rule, individual permits, reissuances and extensions, and major amendments. No other type of permit media is included in this analysis.
4. MPCA work activities would include file and data review, modeling, risk assessment, permit development, and preparing for and attending public meetings.
5. Federal (Title V) air permits expire after five years. Although a small number of individual state air permits expire, it is assumed that no other air permit types expire. Based on MPCA data, there are 122 Title V facilities in or within 1 mile of an EJ area and it is assumed that on average one-fifth (24) of those will expire each year.
6. Based on historical MPCA air permitting data, it is assumed there will be 301 applications for new air permits (individual federal, individual state, general, capped, and registration) and air major amendments received each year and that 49 of those applications will be in or within 1 mile of an EJ area.
7. Estimate of air permitting staff time for these work activities would vary depending upon size, complexity and extent of public interest for each facility. Experience with development of several cumulative levels and effects permits indicates that the requirement adds six (6) months to the schedule and takes 1) approximately 1,125 hours of staff time above the average amount of time required to develop a permit. (Typical permit development time takes approximately 150 hours each for planning purposes) and 2) an additional 220 hours per permit for air toxics risk review, air dispersion modeling and preparation support to permit development. Total permit development time per permit/action is 1,345 hours of additional staff time.
8. Based on historical MPCA solid waste permit data, it is assumed that on average, 16 solid waste facilities in EJ areas are issued permits (including general permits, permits-by-rule, individual permits, reissuances and extensions, and major amendments) each year.
9. Estimate of solid waste permitting staff time for these work activities would vary depending upon size, complexity, and extent of public interest for each facility. The solid waste permitting program would coordinate and work closely with other program staff across the agency to complete the additional review of cumulative levels and effects of the permit. Based on the experience of other agency permitting programs, this type of permit review and development takes 1,345 hours of additional staff time per permit.
10. MPCA conducts work on approximately 20 environmental review actions per year. Approximately 25% would be both located in EJ areas and be air quality or solid waste related. The additional cumulative impacts work would require an additional 0.25 FTE/year to keep pace with current project timelines.

11. The proposed bill would result in the need for EQB to conduct rulemaking to amend the decision criteria in Minn. R.4410.1700 to consider the potential significance of the additional analyses, as well as additional staff for amending the environmental assessment worksheet form, creating guidance, and implementing outreach activities.

12. Number of public meetings held on a permit application will vary depending upon size, complexity and extent of public interest for each facility. It is assumed that one to two public meetings per permit or environmental review action will be necessary to provide for the public the opportunity to give testimony and written comments.

13. This fiscal note only addresses MPCA and EQB environmental review actions; no other impacts to state or local responsible governmental units that may lead a project subject to this bill.

14. Translations may need to be performed in multiple languages in these areas. It is assumed ~25% of public meetings will need these services, in two languages.

15. Rulemaking will be required to recover costs through permit fees and invoicing. It will take two years to complete rulemaking, so costs could not be recovered until FY26.

16. It is assumed that updating the existing MPCA EJ area maps and responding to petitioners will have an initial and ongoing cost. The additional work would require an additional 1 FTE to develop a petition process in the first year and an ongoing 0.5 FTE to review petitions, coordinating with other agencies, answering questions from the public and updating the EJ map tool on the agency website.

Expenditure and/or Revenue Formula

1. MPCA staff costs each year related to permitting, environmental review and environmental justice programs

a. 24 air permit reissuance applications per year + 49 new air permit and major permit amendment applications per year = 73 permits x 1,345 hours per permit = 98,185 hours/year. 1 FTE = 2,080 hours/year.

$98,185 \text{ hours/year} / 2,080 \text{ hours/FTE/year} = 47.2 \text{ FTE/year}$. $47.2 \text{ FTE} \times \$140,000/\text{year} = \$6,608,000/\text{year}$

b. 16 solid waste permit issuances per year x 1,345 hours per permit = 21,520 hours/year. 1 FTE = 2,080hours/year.

$21,520 \text{ hour/year} / 2,080 \text{ hours/FTE/year} = 10.3 \text{ FTE/year}$. $10.3 \text{ FTE} \times \$140,000/\text{year} = \$1,442,000/\text{year}$

c. 5 environmental review actions/year require 0.25 FTE/year. $0.25 \text{ FTE} \times \$140,000 = \$35,000/\text{year}$

d. 1 environmental justice program FTE. $1 \text{ FTE} \times \$140,000 = \$140,000$ (FY 24 only)

e. 0.5 environmental justice program FTE. $0.5 \text{ FTE} \times \$140,000 = \$70,000$ (per FY, starting in FY25)

Total FY24: $47.2 \text{ FTE} + 10.3 \text{ FTE} + 0.25 \text{ FTE} + 1.00 \text{ FTE} = 58.75 \text{ FTE}$ and \$8,225,000

Total per FY, starting in FY25: $47.2 \text{ FTE} + 10.3 \text{ FTE} + 0.25 \text{ FTE} + 0.5 \text{ FTE} = 58.25 \text{ FTE}$ and \$8,155,000

2. EQB rulemaking costs (General fund FY 24 and 25 only)

a. Rule coordinator staff ($0.5 \text{ FTE} \times \$140,000 \times 2 \text{ years}$) = \$140,000 (or \$70,000 per FY)

b. Program staff ($0.75 \text{ FTE} \times \$140,000 \times 2 \text{ years}$) = \$210,000 (or \$105,000 per FY)

c. Attorney costs (\$148/hour for 86 hours) = \$12,728 (or \$6,364 per FY)

d. OAH costs: \$33,075 (or \$16,538 per FY)

e. State Register costs: \$3,705 (\$1,852 per FY)

Total FY 24 0.5 FTE + 0.75 FTE = 1.25 FTE and \$199,754

Total FY 25: 0.5 FTE + 0.75 FTE = 1.25 FTE and \$199,754

3. EQB (General fund) costs to amend the EAW Form, create guidance, and implement outreach activities (FY24 only)

a. 0.25 FTE x \$140,000 = \$35,000

4. MPCA public meeting venues and staffing and related costs each year

a. Public meeting actions required per permit and environmental review action. 73 air actions + 16 solid waste actions + 5 environmental review actions = 94 actions/year

b. 94 actions/year. ~50% will need one public meeting = 47 public meetings; ~50 will need 2 public meetings = 97 public meetings. 97 public meetings + 47 public meetings = 141 public meetings/year

c. 141 public meetings/year x venue cost of \$1,500 each = \$211,500 venue cost/year. (Costs for public meeting venues can vary greatly depending upon size of space needed and whether a public space is available (could cost \$200 per event) versus the requirement of using private space (could cost \$2500 per event)).

d. 141 public meetings/year x public notification cost of \$2,500 each = \$352,500 public notice cost/year. (Costs for public notification includes flyers and other materials mailed and delivered to the affected communities providing notification of meeting purpose, time, and location.)

e. 141 public meetings/year. ~25% of meetings needing translators = 35.25 public meetings x translator cost of \$500 for 3 hours of services x 2 languages/meeting = \$35,250 translator cost/year.

f. 141 public meetings/year x transcription for public testimony of \$250 for 3 hours of services x 2 reporters = \$70,500 transcription cost/year.

g. 141 public meetings/year x 10 hours x 2 staff to prepare for public meeting, attend public meetings and process public testimony = 2,820 hours. 1 FTE = 2,080 hours/year.

2,820/2,080/FTE/year = 1.4 FTE public meeting prep. and review x \$140,000 = \$196,000

Total: 1.4 FTE; \$211,500 + \$352,500 + \$35,250 + \$70,500 + \$196,000 = 1.4 FTE and \$865,750

5. MPCA cost recovery rulemaking costs (FY24 and 25 only)

a. Rule coordinator staff (0.5 FTE x \$140,000 x 2 years) = \$140,000 (or \$70,000 per FY)

b. Program staff (0.75 FTE x \$140,000 x 2 years) = \$210,000 (or \$105,000 per FY)

c. Attorney costs (\$148/hour for 86 hours) = \$12,728 (or \$6,364 per FY)

d. OAH costs: \$33,075 (or \$16,538 per FY)

e. State Register costs: \$3,705 (\$1,852 per FY)

Total FY 24 0.5 FTE + 0.75 FTE = 1.25 FTE and \$199,754

Total FY 25: 0.5 FTE + 0.75 FTE = 1.25 FTE and \$199,754

*The annual cost of 1.0 FTE is \$140,000 in FY2023-2027. Annual costs for 1.0 FTE include salary, fringe, and non-specialized employee support costs (work space, computer and office supplies, office equipment, local travel, etc.)

Long-Term Fiscal Considerations

The costs associated with this bill will continue in future fiscal years.

Local Fiscal Impact

The bill may have a fiscal impact on local government to the extent that their staff would provide input and/or monitor the processes. Local responsible governmental units leading environmental review projects may be subject to, and impacted by, this bill.

References/Sources

- MPCA EJ mapping
- MPCA staff with expertise and experience in cumulative impacts analysis and development of air and solid waste permits
- MPCA data on air and solid waste permits and amendments and locations of facilities
- MPCA and EQB expertise and experience on environmental review

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